



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 26 October 2020

Language: English

Classification: Public

**Public Redacted Version of
Decision on Request for Arrest Warrants and Transfer Orders**

Specialist Prosecutor

Jack Smith

THE PRE-TRIAL JUDGE,¹ pursuant to Articles 35(3), 39(3), 41, 53, 54, and 55 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 50, 53, 55, 86(6)(b), and 208(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chamber ("Rules"), hereby renders the following decision.

I. PROCEDURAL BACKGROUND

1. On 24 April 2020, the Specialist Prosecutor's Office ("SPO") submitted for confirmation a strictly confidential and *ex parte* indictment together with evidentiary material in support of the factual allegations and a detailed outline linking each item of evidentiary material to each allegation.²

2. On 28 May 2020, the Specialist Prosecutor submitted a request for, *inter alia*: (i) the issuance of arrest warrants for Hashim Thaçi ("Mr Thaçi"), Kadri Veseli ("Mr Veseli"), Rexhep Selimi ("Mr Selimi"), and Jakup Krasniqi ("Mr Krasniqi") (collectively, the "Accused") and related transfer orders.³

3. On 23 June 2020, the Pre-Trial Judge authorised, upon request of the Specialist Prosecutor,⁴ that the following information from the indictment is publicly disclosed, namely: (i) the identities of Mr Thaçi and Mr Veseli as charged persons; and (ii) the number of counts, the legal characterisation and nature of the alleged crimes, the approximate number of known victims, and their affiliation or ethnicity.⁵

¹ KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

² KSC-BC-2020-06, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation* ("Initial Submission"), 24 April 2020, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

³ KSC-BC-2020-06, F00005, Specialist Prosecutor, *Request for Arrest Warrants and Related Orders* ("Request"), 28 May 2020, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

⁴ KSC-BC-2020-06, F00008, Specialist Prosecutor, *Urgent Request for Authorisation to Disclose Information Relating to the Indictment*, 23 June 2020, strictly confidential and *ex parte*.

⁵ KSC-BC-2020-06, F00009, Pre-Trial Judge, *Decision on Special Prosecutor's Urgent Request*, 23 June 2020, strictly confidential and *ex parte*.

4. On 2 July 2020, the Pre-Trial Judge ordered the SPO to file, *inter alia*, a revised indictment by 24 July 2020.⁶
5. On 24 July 2020, the SPO submitted a revised indictment for confirmation (“Revised Indictment”).⁷
6. On 11 September 2020, the Pre-Trial Judge ordered the SPO to submit, *inter alia*, information concerning the current or last known residence of the Accused by 30 September 2020 (“11 September 2020 Order”).⁸
7. On 21 September 2020, the President issued a decision invoking a change of venue of the proceedings to the Netherlands (“Host State”).⁹
8. On 30 September 2020, the SPO submitted the information requested in the 11 September 2020 Order.¹⁰
9. On 12 October 2020, the Pre-Trial Judge ordered the SPO to file by 19 October 2020 further submissions on two discrete matters relating to the arrest of Mr Thaçi.¹¹
10. On 19 October 2020, the SPO filed the aforementioned requested submissions.¹² On the same day, the Pre-Trial Judge issued an order setting a target date for the issuance of the decision reviewing the Revised Indictment.¹³

⁶ KSC-BC-2020-06, F00010, Pre-Trial Judge, *Order to the Specialist Prosecutor Pursuant to Rule 86(4) of the Rules*, 2 July 2020, strictly confidential and *ex parte*

⁷ KSC-BC-2020-06, F00011, Specialist Prosecutor, *Submission of Revised Indictment for Confirmation*, 24 July 2020, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*.

⁸ KSC-BC-2020-06, F00015, Pre-Trial Judge, *Order to the Specialist Prosecutor for Further Submissions*, 11 September 2020, strictly confidential and *ex parte*.

⁹ KSC-BC-2020-06, F00017, President, *Decision Invoking a Change of Venue to the Host State* (“Decision on Change of Venue to the Host State”), 21 September 2020, confidential and *ex parte*.

¹⁰ KSC-BC-2020-06, F00019, Specialist Prosecutor, *Further Submissions Pursuant to Order KSC-BC-2020-06/F00015*, 30 September 2020, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*.

¹¹ KSC-BC-2020-06, F00020, Pre-Trial Judge, *Order to the Specialist Prosecutor for Further Submissions*, 12 October 2020, strictly confidential and *ex parte*.

¹² KSC-BC-2020-06, F00022, Specialist Prosecutor, *Prosecution Submissions Pursuant to Order KSC-BC-2020-06/F00020* (“SPO Additional Submissions”), 19 October 2020, strictly confidential and *ex parte*.

¹³ KSC-BC-2020-06, F00023, Pre-Trial Judge, *Order Setting Target Date for a Decision Pursuant to Article 39(2)*, 19 October 2020, strictly confidential and *ex parte*.

11. On 21 October 2020, the SPO filed a notice of communication received from Ben Emmerson (“Mr Emmerson”), representing Mr Veseli.¹⁴ On the same day, the SPO submitted further information pursuant to the 11 September 2020 Order.¹⁵

12. On 26 October 2020, the Pre-Trial Judge confirmed the Revised Indictment.¹⁶

II. SUBMISSIONS

13. The SPO requests the Pre-Trial Judge to issue arrest warrants against the Accused and corresponding orders for transfer to the detention facilities of the Specialist Chambers in the Host State.¹⁷ To this end, the SPO asserts that the requirements of Article 41(6) of the Law have been met.¹⁸ The SPO alleges that there is a grounded suspicion that the Accused have committed crimes within the jurisdiction of the Specialist Chambers.¹⁹ The SPO further alleges that there are articulable grounds to believe that the Accused: (i) are a flight risk;²⁰ (ii) will obstruct the progress of criminal proceedings, including by influencing witnesses, victims or accomplices;²¹ and (iii) may repeat the criminal offence or commit a crime which they have threatened to commit.²²

¹⁴ KSC-BC-2020-06, F00024, Specialist Prosecutor, *Notice of Communication* (“Notice”), 21 October 2020, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*.

¹⁵ KSC-BC-2020-06, F00025, Specialist Prosecutor, *Second Prosecution Supplement to KSC-BC-2020-06/F00019*, 21 October 2020, strictly confidential and *ex parte*.

¹⁶ KSC-BC-2020-06, F00026, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, strictly confidential and *ex parte*.

¹⁷ Request, paras 2, 60(a).

¹⁸ Request, para. 28.

¹⁹ Request, para. 29.

²⁰ Request, paras 30-33.

²¹ Request, paras 30, 34-38.

²² Request, paras 30, 39-40.

14. The SPO further requests that the arrest warrants be transmitted to, and executed by, the SPO, in cooperation with the Registrar.²³ In executing the arrest warrants, the SPO seeks authorisation to disclose them as necessary for this purpose.²⁴

15. With respect to the transfer of the Accused, the SPO requests that the Pre-Trial Judge order their transfer to the detention facilities of the Specialist Chambers, pursuant to Rule 50(1)-(2) of the Rules.²⁵

16. Mr Emmerson submits, *inter alia*, that, should the indictment against Mr Veseli be confirmed, it is unnecessary for the Pre-Trial Judge to issue an order for his arrest as: (i) Mr Veseli undertakes that he will travel voluntarily to The Hague in order to surrender to the Specialist Chambers;²⁶ and (ii) there is no evidence justifying an assessment that he will abscond or interfere with witnesses.²⁷ He further avers, *inter alia*, that Mr Veseli: (i) is a recognizable public figure who lives with his family in Prishtinë/Priština and occupies a public political position, which eliminates any risk of absconding;²⁸ and (ii) has been aware of the existence of an indictment against him since June 2020 and therefore, the confirmation thereof cannot significantly alter the evaluation of the Article 41(6) risks.²⁹ Lastly, Mr Emmerson submits that, in the absence of direct and credible evidence implicating him personally in any interference with witnesses, there is no basis for depriving Mr Veseli of his liberty, noting that vague or generic concerns about witness protection in Kosovo are insufficient to this end.³⁰

²³ Request, para. 56.

²⁴ Request, para. 58.

²⁵ Request, para. 41.

²⁶ Annex 1 to Notice, p. 3.

²⁷ Annex 1 to Notice, pp. 3-4.

²⁸ Annex 1 to Notice, p. 3.

²⁹ Annex 1 to Notice, p. 3.

³⁰ Annex 1 to Notice, pp. 3-4.

III. APPLICABLE LAW

17. Pursuant to Article 39(3) of the Law and Rule 86(6)(b) of the Rules, at the request of the Specialist Prosecutor, the Pre-Trial Judge may issue any orders and warrants as may be required for the preparation of a fair and expeditious trial.

18. Pursuant to Article 41(6)(a) of the Law, before an arrest warrant may be issued, the SPO must first demonstrate that there is a grounded suspicion that the person has committed a crime within the jurisdiction of the Specialist Chambers. Second, the SPO must prove that there are articulable grounds to believe that at least one of the three grounds in Article 41(6)(b) of the Law is present, namely that a person: (i) is a flight risk; (ii) will destroy, hide, change or forge evidence or will obstruct the progress of the criminal proceedings by influencing witnesses, victims or accomplices; or (iii) will repeat the criminal offence, complete an attempted crime, or commit a crime that he or she has threatened to commit. Lastly, pursuant to Article 41(1), (4), and (5) of the Law, the issuance of the arrest warrant must be consistent with the fundamental rights provided for in Chapter II of the Kosovo Constitution, and the person concerned must be informed of his or her rights under the Law with a view to exercising them before the Pre-Trial Judge.

19. Pursuant to Rule 53(2) of the Rules, the arrest warrant shall contain the following information: (i) the name of the person and any other relevant identifying information; (ii) a specific reference to the crimes for which the person's arrest is sought; (iii) a concise statement of the facts allegedly constituting those crimes; and (iv) where applicable, the detention facility of the Specialist Chambers where the person shall be transferred. Rule 53(3) of the Rules provides that the arrest warrant shall remain in effect until otherwise ordered by the Panel.

20. Pursuant to Article 35(3) of the Law, the police within the SPO shall have the authority and responsibility to exercise powers given to Kosovo police under Kosovo law.

21. Upon the issuance of an arrest warrant by the Specialist Chambers, Article 55 of the Law and Rules 50(2) and 208(1) of the Rules provide that the Pre-Trial Judge may request the transfer of the person concerned from the competent authorities of a Third State to the Specialist Chambers pursuant to an arrangement between that State and the Specialist Chambers, an agreement between that State and Kosovo, or on the basis of reciprocity. Furthermore, Rule 55(3) of the Rules provides that, where an arrest warrant relates to a person located or last known to be located in a Third State, which has not yet assumed an obligation to provide assistance, the Registrar shall transmit the request for cooperation, including the arrest warrant, to the competent authorities of that State.

22. Pursuant to Rule 55(4) of the Rules, upon notification of the arrest by the competent authorities, the Registrar shall make the necessary arrangements, with the competent authorities and the Host State, for the prompt transfer of the arrested person to a detention facility of the Specialist Chambers.

23. Pursuant to Article 41(7) of the Law, persons subject to arrest warrants may be detained in detention facilities overseen by the Specialist Chambers and managed by the Registry near the seat of the Specialist Chambers in the Host State, if proceedings are relocated thereto.

IV. DISCUSSION

A. JURISDICTION

24. The SPO seeks arrest warrants and transfer orders for the Accused, all Kosovan nationals, for crimes under Articles 13(1) and 14(1)(c) of the Law, committed in Kosovo and northern Albania from at least March 1998 through September 1999.³¹ The

³¹ Revised Indictment, paras 16, 18, 57, 59, 95-96, 136-137, 172.

Pre-Trial Judge recalls his findings that the requisite subject matter, temporal, and territorial jurisdiction requirements under Articles 6-8 of the Law have been met.³²

B. PROCEDURAL BAR IN RELATION TO MR THAÇI

25. Before turning to the merits of the SPO request for the issuance of an arrest warrant and transfer order against Mr Thaçi, the Pre-Trial Judge notes that the Accused is currently the President of Kosovo who, in principle, enjoys immunities under the Kosovo Constitution and international law. Nevertheless, this procedural bar is inapplicable in the proceedings *sub judice* in view of the existing Specialist Chambers legal framework, including the Kosovo Constitution. The Pre-Trial Judge notes Article 162 of the Kosovo Constitution, which was adopted by the Kosovo Assembly on 3 August 2015 for the purpose of regulating the organisation, functioning, and jurisdiction of the Specialist Chambers.³³ Article 162(8) of the Kosovo Constitution states, in relevant part, that “*any* persons accused of crimes before the Specialist Chambers may be detained on remand and transferred to the Specialist Chambers sitting outside the territory of Kosovo” (emphasis added). Therefore, Article 162(8) of the Kosovo Constitution allows for the arrest, transfer, and subsequent detention of any person accused of any crime under the Specialist Chambers jurisdiction, including an incumbent President. It follows that the issue of immunities of Mr Thaçi does not constitute a procedural bar for issuing an arrest warrant and transfer order against him.

³² Confirmation Decision, para. 43.

³³ As regards the compatibility of Article 162 with the Kosovo Constitution, see Kosovo Constitutional Court, [*Judgment on Assessment of an Amendment to the Constitution of the Republic of Kosovo proposed by the Government of the Republic Kosovo and referred by the President of the Assembly of the Republic of Kosovo on 9 March 2015 by Letter No. 05-433/DO-318*](#), KO26/15, 15 April 2015.

C. REQUIREMENTS OF ARTICLE 41(6) OF THE LAW

1. Crimes Allegedly Committed

26. The Pre-Trial Judge recalls that, when confirming the Revised Indictment, he found that there is a well-grounded suspicion that the Accused committed crimes within the jurisdiction of the Specialist Chamber, namely, the crimes against humanity of persecution, imprisonment, other inhumane acts, torture, murder, and enforced disappearance, and the war crimes of arbitrary detention, cruel treatment, torture, and murder in violation of Articles 13(1) and 14(1)(c) of the Law, respectively.³⁴ The Pre-Trial Judge therefore finds that the first requirement of Article 41(6)(a) of the Law has been met.

2. Necessity of the Arrest

27. The SPO submits that the arrest of the Accused is necessary because there are articulable grounds to believe that all three risks envisaged under Article 41(6)(b)(i)-(iii) of the Law exist.³⁵ The Pre-Trial Judge recalls that the determination of such risks is a matter of assessing the possibility, as opposed to the unavailability, that such risks materialise.³⁶

(a) Mr Thaçi

28. With respect to flight risk, the Pre-Trial Judge considers Mr Thaçi's: (i) awareness of publicly reported convictions of former senior Kosovo Liberation Army ("KLA") members and named Joint Criminal Enterprise ("JCE") members;³⁷ (ii) current

³⁴ Confirmation Decision, paras 474, 478, 482, 491, 498, 505, 512.

³⁵ Request, para. 30; SPO Additional Submissions, paras 10, 16.

³⁶ Similarly, ICC, *Prosecutor v. Bemba Gombo et al.*, ICC-01/05-01/13-558, Appeals Chamber, [*Judgment on the appeal of Mr Aimé Kilolo Musamba against the decision of Pre-Trial Chamber II of 14 March 2014 entitled "Decision on the 'Demande de mise en liberté provisoire de Maître Aimé Kilolo Musamba'"*](#), 11 July 2014, para. 107.

³⁷ Request, para. 31.

position as President of Kosovo and former positions including, *inter alia*, Prime Minister of Kosovo and First Deputy Prime Minister and Minister of Foreign Affairs,³⁸ which allow him to readily mobilise a vast network of supporters and government officials, including persons with security, police, and intelligence expertise;³⁹ (iii) access to significant funds;⁴⁰ and (iv) ability to travel freely to jurisdictions with no obligation to transfer him to the Specialist Chambers or not requiring a visa.⁴¹ The Pre-Trial Judge also notes that Mr Thaçi has been aware of the existence of an indictment against him since June 2020 and that he complied with a summons for a suspect interview before the SPO on 13-16 July 2020. However, while Mr Thaçi may have known since June 2020 certain general information about the then-unconfirmed indictment against him and has complied thereafter with an SPO summons, his incentive to flee will increase once he is informed of the confirmed charges against him, and the potential penalties, which may include a sentence of up to life-long imprisonment.⁴² Accordingly, the Pre-Trial Judge concludes that Mr Thaçi has an incentive and the means to flee.

29. With respect to the obstruction of proceedings through interference with victims, witnesses, or accomplices, the Pre-Trial Judge considers that Mr Thaçi: (i) was a founding member of the KLA, including its General Staff, wherein he held positions of authority, including that of KLA Commander-in-Chief,⁴³ and, as President of Kosovo, currently holds a position of authority and influence in Kosovo,⁴⁴ which allows him to readily mobilise a vast network of supporters to obstruct SPO investigations and the proceedings against him;⁴⁵ (ii) publicly attacked the mandate of

³⁸ Revised Indictment, para. 3.

³⁹ Request, paras 4-5, 32; SPO Additional Submissions, para. 12.

⁴⁰ Request, para. 32; SPO Additional Submissions, para. 12.

⁴¹ Request, para. 33; SPO Additional Submissions, para. 12.

⁴² Request, para. 31; Confirmation Decision, para. 521; Article 44(1) of the Law.

⁴³ Revised Indictment, para. 2; Confirmation Decision, para. 455.

⁴⁴ Revised Indictment, para. 3; Request, paras 34-35; SPO Additional Submissions, para. 12.

⁴⁵ Request, para. 35; SPO Additional Submissions, para. 13.

the Specialist Chambers and attempted to delegitimize it;⁴⁶ and (iii) based on the material submitted by the SPO, has allegedly undertaken efforts to interfere with SPO investigative activities through witness interference.⁴⁷ Specifically, Mr Thaçi, *inter alia*, was allegedly involved in government pay-outs to potential SPO witnesses⁴⁸ and [REDACTED].⁴⁹ Moreover, the Pre-Trial Judge notes that, while some witnesses and victims may agree to be relocated, the SPO has indicated that not everyone will agree to such measures and that, especially in the circumstances of a trial against former senior KLA members, other protective measures will not fully address the risks of interference and intimidation.⁵⁰ The Pre-Trial Judge also notes information about the general climate of intimidation of witnesses who testified against KLA members in the past.⁵¹ In these circumstances, the Pre-Trial Judge concludes that Mr Thaçi has an incentive, the means, and the opportunity to interfere with witnesses, victims or accomplices, and, consequently, obstruct the progress of criminal proceedings.

30. With respect to the further commission of crimes, the Pre-Trial Judge considers that Mr Thaçi allegedly participated in a JCE targeting real or perceived KLA opponents.⁵² In light of Mr Thaçi's alleged attempts to obstruct proceedings⁵³ and the pervasive climate of intimidation that has marred cases against KLA members in the past,⁵⁴ the Pre-Trial Judge concludes that there is a further risk that Mr Thaçi may resort to physical violence or threats of physical violence against those perceived as being opposed to the KLA, including victims and witnesses.

⁴⁶ Request, paras 7, 36; Annex 2 to Request, pp. 3-9 (Letter of Hashim Thaçi to Michael Pompeo Reported in Gazeta Express).

⁴⁷ Request, paras 8, 10-17 and the references contained therein; Annex 1 to Request, pp. 3-4; Annex 3 to Request, p. 8; SPO Additional Submissions, para. 14.

⁴⁸ Request, paras 10-11 and the references contained therein.

⁴⁹ Request, para. 12; Annex 1 to Request, pp. 3-4.

⁵⁰ Request, para. 37.

⁵¹ Request, paras 18-26, 34-35, 40; SPO Additional Submissions, para. 15.

⁵² Request, para. 40; SPO Additional Submissions, para. 14; Confirmation Decision, paras 453, 474.

⁵³ *See supra*, para. 29.

⁵⁴ Request, paras 18-26, 34-35, 40; SPO Additional Submissions, para. 15.

31. In light of the foregoing, the Pre-Trial Judge finds that there are articulable grounds to believe that there is a risk that Mr Thaçi may flee, obstruct the progress of proceedings by influencing witnesses, victims or accomplices, or commit further crimes, thereby necessitating his arrest and detention, in accordance with Article 41(6)(b) of the Law.

(b) Mr Veseli

32. With respect to flight risk, the Pre-Trial Judge considers Mr Veseli's: (i) awareness of publicly reported convictions of former senior KLA members and named JCE members;⁵⁵ (ii) current position as leader of the Democratic Party of Kosovo and former positions including, *inter alia*, chief of the Kosovo Intelligence Service and Provisional Government of Kosovo ("PGoK") Minister of the Intelligence Service,⁵⁶ which allow him to readily mobilise a vast network of supporters and government officials, including persons with security, police, and intelligence expertise;⁵⁷ (iii) access to significant funds;⁵⁸ and (iv) ability to travel freely to jurisdictions with no obligation to transfer him to the Specialist Chambers or not requiring a visa.⁵⁹ The Pre-Trial Judge also notes that Mr Veseli has been aware of the existence of an indictment against him since June 2020 and undertook, *inter alia*, that, should the indictment against him be confirmed, he will travel voluntarily to The Hague in order to surrender to the Specialist Chambers.⁶⁰ However, while Mr Veseli may have known since June 2020 certain general information about the then-unconfirmed indictment against him, his incentive to flee will increase once he is informed of the confirmed charges against him, and the potential penalties, which may include a sentence of up

⁵⁵ Request, para. 31.

⁵⁶ Revised Indictment, paras 5-6.

⁵⁷ Request, paras 4-5, 32.

⁵⁸ Request, para. 32.

⁵⁹ Request, para. 33.

⁶⁰ Annex 1 to Notice, p. 3.

to life-long imprisonment.⁶¹ The same applies to Mr Veseli's undertaking to travel voluntarily to The Hague, which was made at a time when he did not know that an indictment would be confirmed against him, and of the scope and seriousness of the confirmed charges. Moreover, this statement must be assessed in light of Mr Veseli's alleged attempts to obstruct proceeding before the Specialist Chambers, which suggests an opposition to the Specialist Chambers.⁶² Accordingly, the Pre-Trial Judge concludes that Mr Veseli has an incentive and the means to flee.

33. With respect to the obstruction of proceedings through interference with victims, witnesses or accomplices, the Pre-Trial Judge considers that Mr Veseli: (i) was a founding member of the KLA, including its General Staff, wherein he held positions of authority, including that of Head of the KLA intelligence services,⁶³ and currently holds a position of authority and influence in Kosovo,⁶⁴ which allows him to readily mobilise a vast network of supporters to obstruct SPO investigations and the proceedings against him;⁶⁵ and (ii) based on the material submitted by the SPO, has allegedly undertaken efforts to interfere with SPO investigative activities through witness interference.⁶⁶ Specifically, Mr Veseli, *inter alia*, was allegedly involved in government pay-outs to potential SPO witnesses⁶⁷ and [REDACTED].⁶⁸ Moreover, the Pre-Trial Judge notes that, while some witnesses and victims may agree to be relocated, the SPO has indicated that not everyone will agree to such measures and that, especially in the circumstances of a trial against former senior KLA members, other protective measures will not fully address the risks of interference and intimidation.⁶⁹ The Pre-Trial Judge also notes information about the general climate of

⁶¹ Request, para. 31; Confirmation Decision, para. 521; Article 44(1) of the Law.

⁶² See *infra*, para. 33.

⁶³ Revised Indictment, para. 5.

⁶⁴ Revised Indictment, para. 6; Request, paras 34-35.

⁶⁵ Request, para. 35.

⁶⁶ Request, paras 8, 10-17 and the references contained therein; Annex 1 to Request, pp. 3-4.

⁶⁷ Request, paras 10-11 and the references contained therein

⁶⁸ Request, para. 12; Annex 1 to Request, pp. 3-4.

⁶⁹ Request, para. 37.

intimidation of witnesses who testified against KLA members in the past.⁷⁰ In these circumstances, the Pre-Trial Judge concludes that Mr Veseli has an incentive, the means, and the opportunity to interfere with witnesses, victims or accomplices, and, consequently, obstruct the progress of criminal proceedings.

34. With respect to the further commission of crimes, the Pre-Trial Judge considers that Mr Veseli allegedly participated in a JCE targeting real or perceived KLA opponents.⁷¹ In light of Mr Veseli's alleged attempts to obstruct proceedings⁷² and the pervasive climate of intimidation that has marred cases against KLA members in the past,⁷³ the Pre-Trial Judge concludes that there is a further risk that Mr Veseli may resort to physical violence or threats of physical violence against those perceived as being opposed to the KLA, including victims and witnesses.

35. In light of the foregoing, the Pre-Trial Judge finds that there are articulable grounds to believe that there is a risk that Mr Veseli may flee, obstruct the progress of proceedings by influencing witnesses, victims or accomplices, or commit further crimes, thereby necessitating his arrest and detention, in accordance with Article 41(6)(b) of the Law.

(c) Mr Selimi

36. With respect to flight risk, the Pre-Trial Judge considers Mr Selimi's: (i) awareness of the notification of the charges, as contained in the indictment to be served, and potential penalties, which may include a sentence of up to life-long imprisonment;⁷⁴ (ii) awareness of publicly reported convictions of former senior KLA members and JCE members;⁷⁵ (iii) current position as member of the Kosovo Assembly and former

⁷⁰ Request, paras 18-26, 34-35, 40.

⁷¹ Request, para. 40; Confirmation Decision, paras 453, 474.

⁷² See *supra*, para. 33.

⁷³ Request, paras 18-26, 34-35, 40.

⁷⁴ Request, para. 31; Confirmation Decision, para. 521; Article 44(1) of the Law.

⁷⁵ Request, para. 31.

positions including, *inter alia*, as a high-ranking officer in the Kosovo Protection Corps,⁷⁶ which allow him to readily mobilise a vast network of supporters and government officials, including persons with security, police, and intelligence expertise;⁷⁷ (iii) access to significant funds;⁷⁸ and (iv) ability to travel freely to jurisdictions with no obligation to transfer him to the Specialist Chambers or not requiring a visa,⁷⁹ demonstrate that he has an incentive and the means to flee.

37. With respect to the obstruction of proceedings through interference with victims, witnesses or accomplices, the Pre-Trial Judge considers that Mr Selimi: (i) was a founding member of the KLA General Staff, held positions of authority, including as Head of the KLA Operational Directorate and PGoK Minister of Public Order/Minister of Internal Affairs,⁸⁰ and in 2010 was elected to the Kosovo Assembly,⁸¹ which allows him to readily mobilise a vast network of supporters to obstruct SPO investigations and the proceedings against him;⁸² (ii) has been included by the United States of America on a list of persons whose property has been blocked for threatening international stabilization efforts in the Western Balkans through, *inter alia*, potential involvement in obstruction of the implementation of United Nations Security Council Resolution 1244, establishing UNMIK;⁸³ (iii) according to information provided by [REDACTED], has interfered with other proceedings regarding the attempted murder of [REDACTED].⁸⁴ Moreover, the Pre-Trial Judge notes that, while some witnesses and victims may agree to be relocated, the SPO has indicated that not everyone will agree to such measures and that, especially in the circumstances of a trial against former senior KLA members, other protective measures will not fully address the risks of

⁷⁶ Revised Indictment, para. 9.

⁷⁷ Request, paras 4-5, 32.

⁷⁸ Request, para. 32.

⁷⁹ Request, para. 33.

⁸⁰ Revised Indictment, para. 8; Confirmation Decision, para. 460.

⁸¹ Revised Indictment, para. 9; Request, paras 34-45.

⁸² Request, para. 35.

⁸³ United States, Executive Order 13219 Blocking Property of Persons Who Threaten International Stabilization Efforts in the Western Balkans, 26 June 2001, 66 F.R. 34777. *See also*, Request, para. 9.

⁸⁴ Request, para. 9 and the references contained therein.

interference and intimidation.⁸⁵ The Pre-Trial Judge also notes information about the general climate of intimidation of witnesses who testified against KLA members in the past.⁸⁶ In these circumstances, the Pre-Trial Judge concludes that Mr Selimi has an incentive, the means, and the opportunity to interfere with witnesses, victims or accomplices and, consequently, obstruct the progress of criminal proceedings.

38. With respect to the further commission of crimes, the Pre-Trial Judge considers that Mr Selimi allegedly participated in a JCE targeting real or perceived KLA opponents.⁸⁷ In light of Mr Selimi's alleged attempts to obstruct proceedings⁸⁸ and the pervasive climate of intimidation that has marred cases against KLA members in the past,⁸⁹ the Pre-Trial Judge concludes that there is a further risk that Mr Selimi may resort to physical violence or threats of physical violence against those perceived as being opposed to the KLA, including victims and witnesses.

39. In light of the foregoing, the Pre-Trial Judge finds that there are articulable grounds to believe that there is a risk that Mr Selimi may flee, obstruct the progress of proceedings by influencing witnesses or victims, or commit further crimes, thereby necessitating his arrest and detention, in accordance with Article 41(6)(b) of the Law.

(d) Mr Krasniqi

40. With respect to flight risk, the Pre-Trial Judge considers that Mr Krasniqi's: (i) awareness of the notification of the charges, as contained in the indictment to be served, and potential penalties, which may include a sentence of up to life-long imprisonment;⁹⁰ (ii) awareness of publicly reported convictions of former senior KLA

⁸⁵ Request, para. 37.

⁸⁶ Request, paras 18-26, 34-35, 40.

⁸⁷ Request, para. 40; Confirmation Decision, paras 453, 474.

⁸⁸ See *supra*, para. 34.

⁸⁹ Request, paras 18-26, 34-35, 40.

⁹⁰ Request, para. 31; Confirmation Decision, para. 521; Article 44(1) of the Law.

members and JCE members;⁹¹ (iii) former positions as, *inter alia*, Chairman of the Kosovo Assembly and acting President of Kosovo,⁹² which allow him to readily mobilise a vast network of supporters and government officials, including persons with security, police, and intelligence expertise;⁹³ (iv) access to significant funds;⁹⁴ and (v) ability to travel freely to jurisdictions with no obligation to transfer him to the Specialist Chambers and or requiring a visa,⁹⁵ demonstrate that he has an incentive and the means to flee.

41. With respect to the obstruction of proceedings through interference with victims, witnesses or accomplices, the Pre-Trial Judge considers that Mr Krasniqi: (i) was a member of the KLA General Staff and the KLA Political Directorate, held several positions of authority, such as KLA Deputy Commander, KLA and PGoK spokesperson, and former acting President of Kosovo,⁹⁶ which allows him to readily mobilise a vast network of supporters to obstruct SPO investigations and the proceedings against him;⁹⁷ and (ii) publicly attacked the legality and the mandate of the Specialist Chambers,⁹⁸ for example by stating that: “The constitutional amendment regarding the founding of the Specialists Chambers and the Specialist Prosecutor’s Office asks for the suspension of the constitutional provisions regarding the sovereignty of the judiciary. [...] You have neither the legal constitutional right nor the democratic legitimacy to give up the sovereignty which in our Republic derives from the people as its inalienable right. [...] You, the four institutional leaders of the Republic of Kosovo, have neither the right, nor the mandate, nor the authorisation to cancel the country’s sovereignty.”,⁹⁹ and that “[m]embers of the Kosovo Assembly

⁹¹ Request, para. 31.

⁹² Revised Indictment, para. 12.

⁹³ Request, paras 4-5, 32.

⁹⁴ Request, para. 32.

⁹⁵ Request, para. 33.

⁹⁶ Revised Indictment, paras 11-12; Request, paras 34-35; Confirmation Decisions, para. 468.

⁹⁷ Request, para. 35.

⁹⁸ Request, para. 7; Annex 2 to Request, pp. 11-23 (Facebook Posts by Jakub Krasniqi).

⁹⁹ Annex 2 to Request, pp. 11-12 (3 June 2015 Facebook Post by Jakub Krasniqi).

who voted for the Law of the Specialist Chambers delivered a bad service”.¹⁰⁰ Moreover, the Pre-Trial Judge notes that, while some witnesses and victims may agree to be relocated, the SPO has indicated that not everyone will agree to such measures and that, especially in the circumstances of a trial against former senior KLA members, other protective measures will not fully address the risks of interference and intimidation.¹⁰¹ The Pre-Trial Judge also notes information about the general climate of intimidation of witnesses who testified against KLA members in the past.¹⁰² In these circumstances, the Pre-Trial Judge concludes that Mr Krasniqi has an incentive, the means, and the opportunity to interfere with witnesses, victims or accomplices, and, consequently, obstruct the progress of criminal proceedings.

42. With respect to the further commission of crimes, the Pre-Trial Judge notes that Mr Krasniqi allegedly participated in a JCE targeting real or perceived KLA opponents.¹⁰³ In light of Mr Krasniqi’s expressed opposition to the Specialist Chambers¹⁰⁴ and the pervasive climate of intimidation that has marred cases against KLA members in the past,¹⁰⁵ the Pre-Trial Judge concludes that there is a further risk that Mr Krasniqi may resort to physical violence or threats of physical violence against those perceived as being opposed to the KLA, including victims and witnesses.

43. In light of the foregoing, the Pre-Trial Judge finds that there are articulable grounds to believe that there is a risk that Mr Krasniqi may flee, obstruct the progress of proceedings by influencing witnesses, victims or accomplices, or commit further crimes, thereby necessitating his arrest and detention, in accordance with Article 41(6)(b) of the Law.

¹⁰⁰ Annex 2 to Request, p. 20 (15 November 2019 Facebook Post by Jakub Krasniqi).

¹⁰¹ Request, para. 37.

¹⁰² Request, paras 18-26, 34-35, 40.

¹⁰³ Request, para. 40; Confirmation Decision, paras 453, 474.

¹⁰⁴ See *supra*, para. 41.

¹⁰⁵ Request, paras 18-26, 34-35, 40.

D. COMPLIANCE WITH FUNDAMENTAL RIGHTS

44. The SPO submits that appropriate measures will be taken for the protection of victims and witnesses, and the fundamental rights of the Accused, when executing the arrest warrants.¹⁰⁶ In so far as the SPO undertakes to adopt such measures, the Pre-Trial Judge considers that nothing in its request for arrest warrants and transfer orders is *prima facie* inconsistent with the fundamental rights provided for in Chapter II of the Kosovo Constitution. To this effect, pursuant to Article 41(4) and (5) of the Law, and Rule 55(6) of the Rules, as soon as each of the Accused is in custody and falls under the jurisdiction of the Specialist Chambers, they shall be informed of all of their rights under the Law with a view to exercising them before the Pre-Trial Judge as soon as practicable.

E. ORDER FOR TRANSFER TO DETENTION FACILITIES OF THE SPECIALIST CHAMBERS

45. For security reasons and the proper administration of justice, the SPO has invoked a change of venue of the proceedings to the Host State pursuant to Article 3(8)(a) of the Law.¹⁰⁷ In light of this venue change,¹⁰⁸ the Pre-Trial Judge considers it necessary that the Accused are transferred to the detention facilities of the Specialist Chambers, managed by the Registrar, in the Host State. Pursuant to Article 41(7) of the Law and Rule 55(4) of the Rules, the Registrar shall execute the orders for transfer to the detention facilities of the Specialist Chambers in the Host State and make the necessary arrangements for the prompt transfer of the Accused.

¹⁰⁶ Request, para. 57.

¹⁰⁷ Initial Submission, para. 4.

¹⁰⁸ Decision on Change of Venue to the Host State, p. 3.

F. EXECUTION AND SERVICE OF THE ORDERS

46. Pursuant to Article 35(3) of the Law, the police within the SPO have the authority and responsibility to exercise powers given to Kosovo police under Kosovo law. It may therefore be considered a “competent authority” under Rule 49(1) of the Rules, capable of executing and serving orders of the Specialist Chambers, including the annexed arrest warrants.¹⁰⁹ Pursuant to Rule 49(1) of the Rules, the Registrar shall transmit the annexed transfer orders in cooperation with the SPO. The SPO may, as appropriate and necessary, disclose the arrest warrants for the purposes of their execution.

47. If the SPO receives information about the Accused’s travel, whether planned or ongoing, or that the Accused are present on the territory of any Third State, the SPO shall promptly provide such information to the Registrar. If the Registrar receives such information from a source other than the SPO, she shall promptly provide such information to the SPO. The Registrar shall then, having consulted the Specialist Prosecutor, transmit the relevant annexed arrest warrant(s) and transfer order(s) to the competent authorities of any Third State concerned, in conformity with Article 55 of the Law.

48. Upon arrival at the detention facilities of the Specialist Chambers from Kosovo, or in any case before the initial appearance, the Registrar shall submit a report on the arrest and transfer of the Accused to the Pre-Trial Judge, including any relevant details and information provided by the SPO. If the arrest of the Accused is effectuated on the territory of a Third State, the Registrar shall prepare and submit a report on any action involving a Third State, or any follow-up that may be received from a Third State, including: (i) any information regarding the basis on which the Third State has agreed or may have assumed an obligation to provide assistance to the Specialist

¹⁰⁹ In notifying the Specialist Prosecutor of the present decision, together with the eight annexes, through Legal Workflow, the transmission of the relevant documents to the Specialist Prosecutor is deemed fulfilled, in accordance with Rules 49(1) and 55(1) of the Rules.

Chambers; and (ii) any relevant details and information provided by the competent authorities of the Third State and/or the SPO.

V. DISPOSITION

49. For the above reasons, the Pre-Trial Judge hereby:

- a. **GRANTS** the request for arrest warrants (Annexes 1, 3, 5, and 7);
- b. **GRANTS** the request for transfer orders (Annexes 2, 4, 6, and 8);
- c. **DIRECTS** the SPO to serve and execute the annexed arrest warrants in Kosovo;
- d. **DIRECTS** the Registrar, in consultation with the SPO, to transmit the annexed arrest warrant(s) and transfer order(s) to the competent authorities of any Third State, as the case may be, for service and execution;
- e. **DIRECTS** the SPO to consult with the Registrar on the necessary arrangements to be made, including appropriate and necessary disclosure of the annexed arrest warrants, for their execution and service;
- f. **DIRECTS** the Registrar to execute the transfer of the Accused to the detention facilities of the Specialist Chamber in the Netherlands; and
- g. **DIRECTS** the Registrar, upon the Accused's arrival at the detention facilities of the Specialist Chambers, or in any case before the initial appearance, to submit a report on the arrest and transfer of the Accused, as further specified in paragraph 48.



Judge Nicolas Guillou

Pre-Trial Judge

Dated this Monday, 26 October 2020

At The Hague, the Netherlands.