

In: KSC-BC-2020-06
Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Counsel for Rexhep Selimi

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**Public Redacted Version of
Defence Application for Interim Release, KSC-BC-2020-
06/F00124, dated 7 December 2020**

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I. INTRODUCTION

1. The Defence for Mr. Rexhep Selimi hereby requests the Pre-Trial Judge, to grant him interim release pursuant to Article 41(6) of the Law and Rule 57(2) of the Rules.
2. Mr. Selimi is a dedicated family man, who is married, with two young children who live in a close, stable family home to which he wishes to return and remain throughout the pre-trial phase of proceedings, before returning to The Hague to strenuously contest the charges against him at trial. As a member of the Kosovo Assembly, Mr. Selimi's longstanding professional links are exclusively to Kosovo. He has no motivation, interest, or intention to flee from his home in Pristina.
3. At all times in these and related proceedings, he has fulfilled all obligations asked of him to the Specialist Chambers ("KSC") and Specialist Prosecutor ("SPO") [REDACTED], and there are no concrete indications that he will not continue to do so. The Prosecution's stated concerns in respect of Mr. Selimi being released are palpably false and/or misconceived in the light of his consistent engagement with the KSC, [REDACTED] and the various Prosecutors who sought to take witness statements from him, [REDACTED]. The SPO appear to have failed to inform the Pre-Trial Judge of Mr. Selimi's significant engagement in these [REDACTED] proceedings. Instead the SPO, who seemingly welcomed his co-operation, in the sense of his answering their questions in interview, have now chosen to seek to impugn his character, and tarnish his reputation.
4. Assessed in relation to his individual conduct, circumstances and extensive prior cooperation with the KSC and SPO, it is clear the conditions of Article 41(6)(b) are not met and Mr. Selimi should be released unconditionally. In the alternative, granting interim release, with reasonable conditions imposed by the Pre-Trial Judge, would constitute an effective and less restrictive means of securing the attendance of Mr. Selimi at trial and the protection of the integrity of the SPO's investigation.

II. APPLICABLE LAW

5. Article 41(6) of the Law No.05/L-053 provides that the SC shall only order the arrest and detention of a person when: there is a grounded suspicion that the person has

committed a crime within the jurisdiction of the SC; and there are articulable grounds to believe that the person: (i) is a flight risk, (ii) will destroy, hide, change or forge evidence or specific circumstances indicate that the person will obstruct the progress of criminal proceedings; or (iii) will repeat or attempt to repeat the criminal offence(s). Under the Kosovo Criminal Procedure Code 2012, Law No. 04/L-123, the evidentiary threshold of “grounded suspicion” is defined as “knowledge of information which would satisfy an objective observer that a criminal offence has occurred, is occurring or there is a substantial likelihood that one will occur and the person concerned is more likely than not to have committed the offence”.

6. Article 41(10) of the Law of the KSC, No.05/L-053, provides that, until judgment is final or until release, upon the expiry of two (2) months from the last ruling on detention on remand, the Pre-Trial Judge or Panel seized with the case shall examine whether reasons for detention on remand still exist and render a ruling by which detention on remand is extended or terminated.
7. Article 41(12) of the Law provides that, in addition to detention on remand, the following measures may be ordered to ensure the presence of the Accused, to prevent reoffending or ensure successful conduct of criminal proceedings: summons, arrest, bail, house detention, promise not to leave residence, prohibition on approaching specific places or persons, attendance at police station or other venue, and diversion.
8. Rule 56(2) provides that the Panel shall ensure that a person is not detained for an unreasonable period prior to the opening of the case. Rule 56(3) of the Rules provides that a Panel may order the temporary release of a detained person where compelling humanitarian grounds justify such release.

III. SUBMISSIONS

A. Presumption in favour of interim release and duration of pre-trial proceedings

9. Article 41(6) of the Law recognizes the principle that detention pending the trial of an accused before the Chambers is the exception and may only be granted if the SPO

persuades the Pre-Trial Judge that the criteria of Article 41(6)(a) and one of 41(6)(b)(i)-(iii) are fulfilled. Absent such a demonstration, detention may not be ordered.

10. The burden therefore rests on the SPO at all times to demonstrate the fulfillment of these conditions, notwithstanding the previous granting of the SPO's request for an arrest warrant by the Pre-Trial Judge.¹ While the *ex parte* nature of that SPO request may have been necessitated by the stage at which it was filed when the Indictment against Mr. Selimi was confidential, in no way does this mean that Mr. Selimi has to convince the Pre-Trial Judge to reconsider his previous decision. As such, and following the submissions made during the status conference, the SPO is obliged to justify these conditions and the Defence merely to respond to such arguments. However, in the interests of expediting the process and minimizing the impact on the liberty of Mr. Selimi, the Defence sets out substantive arguments in relation to the conditions for ordering detention. Further submissions in reply to the SPO's response may also be made in writing.
11. In this regard, the duration of pre-trial proceedings will clearly impact upon interim release. As discussed extensively in the status conference, and as reiterated by the SPO in their further submissions,² the parties significantly diverge on their estimates for when the trial would start in this case.
12. The SPO's suggestion that trial could start in the summer of 2021 is frankly oblivious to the reality of international criminal proceedings. Notwithstanding the official nature of the KSC as a domestic Kosovar court, the extended modes of liability based exclusively on customary international law and the scope of the alleged crimes in the Indictment, together with the specific rules of procedure applicable before the KSC, all serve to demonstrate that the *ad hoc* Tribunals or ICC would all provide a greater indication of when this case will start. At those courts, no case involving four or more accused before an international tribunal has started within a year of the initial appearance of the accused as the SPO suggests. Indeed, a period of between eighteen

¹ *Prosecutor v. Thaci et al.*, Decision on Request for Arrest Warrants and Transfer Orders, KSC-BC-2020-06/F00027, 26 October 2020, para 26 ("Arrest Warrant Decision").

² *Prosecutor v. Thaci et al.*, Prosecution submissions further to the status conference of 18 November 2020, KSC-BC-2020-06/F00097, 23 November 2020 ("SPO Further Submissions").

months to two years is often considered the appropriate duration of pre-trial proceedings.

13. Despite the SPO's superficial attempt to differentiate these proceedings from those before the ICTY, none of these reasons are convincing and certainly do not give the Defence the "fair opportunity to prepare for trial"³ and implement the right of the Defence to have "adequate time to prepare"⁴ that the SPO claims.
14. Therefore, when assessing this application, the Pre-Trial Judge must be fully cognizant of when trial will actually start, rather than when the SPO wishes, hopes, or suggests that it could start. Issuing a decision on interim release on the understanding that the trial would start after a further six months, would be a fundamentally mistaken premise which would only serve to undermine any decision taken.

B. Individual assessment of Mr. Selimi

15. The Indictment in this case alleges a wide-ranging joint criminal enterprise between the four accused in this case and various other unindicted co-conspirators,⁵ imputing to Mr. Selimi the acts and omissions of other alleged JCE members and tools. Similarly, the SPO's arrest warrant application, makes a range of allegations against all four accused in this case, often without any genuine attempt to differentiate their individual circumstances or conduct.
16. While the Defence will strenuously contest the existence and criminality of any alleged joint enterprise at the appropriate time, in the context of this application for release, it is all the more vital that Mr. Selimi is assessed individually for his own conduct against the criteria in Article 41(6). The alleged acts of co-accused, unindicted conspirators or even individuals who have no connection to Mr. Selimi, must not be relied upon to justify his continued detention.

C. Grounded suspicion

³ Ibid, para. 14.

⁴ Id, para. 13.

⁵ Indictment, paras 32-52.

17. The Defence notes that when issuing the arrest warrant for Mr. Selimi, the Pre-Trial Judge referred to his previous decision confirming the indictment in which “he found that there is a well-grounded suspicion that the Accused committed crimes within the jurisdiction of the Specialist Chamber” and therefore “the first requirement of Article 41(6)(a) of the Law has been met.”⁶ While the Defence contests that this standard has been reached in relation to Mr. Selimi, in the absence of disclosure of the indictment supporting material at the time of making this application, submissions on this issue cannot usefully be made at this time. However, the Defence reserves the right to raise this issue upon receipt of materials pursuant to Rule 102(1)(a).

D. Risk of flight

18. Mr. Selimi is a public figure who is well-known throughout Kosovo as a politician in the Vetëvendosje political party and currently serves as a Member of the Kosovo Assembly on behalf of that party, where he is also the Head of the Parliamentary Group of Vetëvendosje. As explained by Mr. Albin Kurti⁷, the leader of Kosovo's largest political party and former Prime Minister of Kosovo, Mr. Selimi's patriotic and professional activity has always been characterized by utter dedication, honour and integrity in the exercise of his duties. These duties have been substantial, starting with the position as Minister of Public Order in the Provisional Government of Kosovo (1999-2000), that of the Commander of the Defense Academy (2000-2003), and most recently that of MP of the Vetëvendosje political party in the Assembly of Kosovo.

19. Mr. Selimi fully cooperated with the SPO investigation, having been issued with a summons for interview by the SPO which he attended voluntarily for three days of interviews with the SPO on 12, 13 and 14 November 2019. He arranged his own travel to and from The Hague, travelling from Pristina for the purposes of attending the SPO interviews. At the request of the SPO, he returned to The Hague from Pristina for a further two days of interviews on 18 and 19 February 2020. Mr. Selimi answered the

⁶ Arrest Warrant Decision, para 26 referring to Pre-Trial Judge, Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00026, 26 October 2020, paras. 474, 478, 482, 491, 498, 505, 512 (“Confirmation Decision”).

⁷ Annex 1- Statement of Mr. Albin Kurti.

SPO's questions and did not avail himself of his right to legal representation during the interviews. [REDACTED].

20. Further, Mr. Selimi has cooperated fully when informed that the indictment was confirmed against him. Having been notified the day before his arrest that an indictment against him had been confirmed, he was given the opportunity to present himself the following morning. Mr Selimi voluntarily attended the location chosen in a timely manner.⁸
21. [REDACTED].
22. [REDACTED]. This is entirely consistent with the glowing character witness statements,⁹ annexed to this Application, which speak so highly of Mr Selimi's good character. Coming from three individuals, who know Mr Selimi so well over a period of some twenty years, their accounts of his responsible, dedicated attitude towards civic, professional and family life have all the hallmarks of truth. The Prosecution's assertions, unsupported by any cogent evidence, that Mr Selimi now presents a real risk of obstructing the course of justice, or committing criminal offences, lies in stark contrast with his actual personal history over the last 20 years. The Prosecution arguments do not stand up to even the most superficial form of scrutiny.
23. In light of the extent of this cooperation with the SPO investigation (which does not appear to have been brought to the attention of the Pre-Trial Judge when the SPO sought an arrest warrant for Mr. Selimi), as well as his cooperation with the arresting officers during the arrest and transfer to The Hague, the Pre-Trial Judge's previous finding that four factors "demonstrate that [Mr. Selimi] has an incentive and the means to flee"¹⁰ are unsupported.
24. First, Mr. Selimi's formal "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"¹¹ does not materially change the situation when he was

⁸ *Prosecutor v. Thaci et al.*, Public Redacted Version of 'Report on the Arrest and Transfer of Rexhep Selimi to the Detention Facilities', KSC-BC-2020-06/F00071, 10 November 2020, paras 4-5.

⁹ Annex 1 – Statement of Albin Kurti; Annex 2 - Statement of [REDACTED], Annex 3 – Statement of Shyqri Nimani

¹⁰ Arrest Warrant Decision, para 36.

¹¹ *Ibid.*

being interviewed. In light of the scope of the interview and the questions posed to him as a suspect, Mr. Selimi was well aware of the areas of interest to the SPO and the allegations for which he was potentially to be subject to prosecution and the resulting penalties. Despite this knowledge, there has been no indication that Mr. Selimi has made any effort to flee the jurisdiction of Kosovo and willingly surrendered to Kosovo police.

25. [REDACTED]¹² [REDACTED].

26. Third, far from constituting evidence of an incentive and means to flee, Mr. Selimi's current position as member of the Kosovo Assembly actually demonstrates his obligation to remain in Pristina and fulfil his obligations as an elected representative. Further, the assertion that his current and former positions "allow him to readily mobilise a vast network of supporters and government officials" is based on nothing more than a bald assertion to that effect by the SPO.¹³ No evidence to this effect is put forward to support such allegations by the SPO, who appear to be relying upon the alleged networks of others, which only deprives Mr. Selimi of his right to be treated individually.

27. Fourth, by the same token, there is no evidence put forward by the SPO or identified by the Pre-Trial Judge, that Mr. Selimi himself has access to significant funds.¹⁴ Again this finding by the Pre-Trial Judge is based on nothing more than mere assertion by the SPO. Indeed, as the Pre-Trial Judge is now aware, Mr. Selimi's family depends entirely on the salary he receives as an MP for their living costs,¹⁵ [REDACTED]. Vague and unsupported allegations of corruption, in relation to individuals other than Mr. Selimi, may not be relied upon to impute such access to funds.

28. Fifth, simply because Mr. Selimi possesses a passport, does not mean he has an incentive to flee. Mr. Selimi has no significant connection to any other countries, whether or not they recognise Kosovo, save for Kosovo and Albania. In any event, it is

¹² SPO Application, para 31.

¹³ Ibid.

¹⁴ *Prosecutor v. Thaci et al.*, Defence Request pursuant to Rule 71(3), KSC-BC 202006/F101, 25 November 2020.

¹⁵ [REDACTED].

a basic condition of interim release that Mr. Selimi would be required to surrender his passport to Kosovo authorities, an obligation he would be more than willing to fulfil.

E. Obstruction of proceedings

29. The Pre-Trial Judge's conclusion 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" is respectfully based on incomplete, inaccurate or irrelevant information provided by the SPO. The vague, and unsubstantiated allegations of witness interference alleged against other accused, or entirely separate individuals do not warrant a denial of interim release on this basis.
30. First, the Defence has already addressed the allegation above that Mr. Selimi's current position in the Kosovo Assembly increases the risk of flight and the same applies to whether it increases his ability or motivation to obstruct investigations. Both of Mr. Selimi's previous positions of authority, as Head of the KLA Operational Directorate and Minister of Public Order, were occupied over two decades previously, and during a provisional government. No concrete evidence has been brought forward by the SPO as to either the existence of a vast network of supporters and/or Mr. Selimi's concrete ability to influence them during the present day. Mr. Selimi is one of one hundred and twenty members of the Kosovo Assembly and wields no more or less authority in that position than any other single member. However, his position as a member of the Assembly, and the resulting obligations he owes his constituents, strongly militates against the motivation to obstruct the proceedings.
31. As a politician and a statesman, Mr Selimi has shown always the utmost respect for the rule of law and principles of democracy. While it is correct that Mr. Selimi and his colleagues openly argued in public before Kosovo's Assembly that the KSC should not be established, these transparent arguments were of a legal and political nature. In substitution for the KSC, they proposed the model of a local court in Kosovo, which would preside over, and fully investigate, any crimes alleged to have been committed during the war. Accordingly, Mr Selimi did not vote in favour of the law which led to

the constitutional amendments and the establishment of the KSC. At no stage however was he a party to any undemocratic attempts to interfere with the progress of the KSC.

32. Second, the SPO's reliance on irrelevant allegations of obstruction of UNMIK's activities and the resulting inclusion of Mr. Selimi on a US Government blacklist highlight the speculative nature of the SPO's allegations under this provision and the inappropriate extraterritorial application of US power. The inclusion upon this list appears to require nothing more than the authorisation of the President with no clear and accessible independent judicial oversight. As the SPO will be only too well aware, anyone can therefore be included on such lists of persons, including, most recently, the Prosecutor of the International Criminal Court. This clearly demonstrates the political and arbitrary nature of such designations, and severely undermines any reliance upon Mr. Selimi's inclusion on this list for the purposes of a decision on interim release.
33. Further, despite Mr. Selimi's efforts to understand the basis of this Order and to contest it by repeatedly seeking such information from the United States Embassy in Kosovo between 2001 and 2003, he was never provided with either the necessary information or the means to challenge it. If Mr. Selimi's name still appears on the US Register to this day, that demonstrates nothing more than the inertia of Government bureaucracy rather than reliable evidence to be used by the Pre-Trial Judge.
34. [REDACTED]¹⁶ [REDACTED].
35. [REDACTED].
36. [REDACTED].
37. [REDACTED].
38. [REDACTED]
39. [REDACTED]¹⁷ [REDACTED]¹⁸ [REDACTED].

¹⁶ Arrest Warrant Decision, para 37.

¹⁷ Arrest Warrant Decision, para. 37.

¹⁸ [REDACTED].

40. [REDACTED].¹⁹

41. [REDACTED]

F. Further Commission of Crimes

42. The reliance by the Pre-Trial Judge on the mere existence of allegations of participation in a JCE targeting real or perceived KLA opponents, appears to amount to a retrograde step in the application of interim release. Due to the very nature of the KSC and its jurisdiction over serious crimes, all confirmed indictments will include serious allegations. This does not mean that interim release cannot and should not be granted for such crimes, otherwise the very act of confirming an indictment would render interim release impossible.

43. The Pre-Trial Judge must respectfully make a thorough assessment of the actual risk that Mr. Selimi himself may resort to physical violence or threats of physical violence against those perceived as being opposed to the KLA if he is released now. While the Defence does not deny that the allegations in the indictment are of some relevance when undertaking this task, and the date and context in which they occurred, nevertheless the consequences for Mr. Selimi and his professional and family situation must also be examined by the Pre-Trial Judge when making this risk assessment.

44. [REDACTED]

G. State guarantees

45. The Defence notes that there is no obligation upon an accused to seek state guarantees as a pre-requisite for interim release but that it is considered "advisable" to satisfy the Chamber that the accused person will appear for trial.²⁰ While such guarantees "may

¹⁹ [REDACTED].

²⁰ *Prosecutor v. Blagojevic et al.*, IT-02-53-AR65, Decision on Application by Dragan Jokic for Leave to Appeal, 18 April 2002, paras. 7-8; *Prosecutor v. Cermak and Markac*, IT-03-73-AR65.1, 2 December 2004, Decision on Interlocutory Appeal Against Trial Chamber's Decision Denying Provisional Release, para. 30; *Prosecutor v. Beqaj*, Order for Provisional Release, 4 March 2005, p. 4; *Prosecutor v. Karemera et al.*, ICTR-98-44-AR-65, Decision on Matthieu Ngirumpatse's Appeal Against Trial Chamber's Decision Denying Provisional Release, 7

carry considerable weight in support of an application for interim release" the Chamber must still consider whether in the absence of the State's guarantees, the Accused's "personal circumstances could satisfy the Trial Chamber that he would appear for trial if released."²¹ Moreover, interim release has been granted even where the state in question has expressly indicated that they are unable to guarantee that the accused would appear for trial and would not pose a danger to any victim, witness or other person."²²

46. The Defence also notes that according to Article 1(2) of the Law, the Specialist Chambers are established within the Kosovo justice system. By contrast with the situation in front of the ICTY or ICC which involves international courts which are dependent on the cooperation of national authorities, the KSC can rely upon the direct implementation of its decisions. A State guarantee is therefore clearly not required or even envisaged for interim release before the KSC.

H. Conditions on interim release

47. Although the Defence submits that none of the criteria of Article 46(1)(b) are fulfilled, in the alternative, the Defence proposes various conditions which will minimise any possible risk that Mr. Selimi will flee, obstruct proceedings or commit any further crimes in accordance with Article 41(12).

48. These conditions have often been used by various other international courts to ensure the attendance of the accused or to protect the integrity of the proceedings. These could include:

- a. reside and remain at all times in his home residence in Pristina, Kosovo;
- b. surrender his passport and any other valid travel document to authorized officials of the KSC including his Kosovo ID card which allows for travel to Albania;

April 2009 ("Ngirumpatse Decision"), para. 13; *Prosecutor v. Haraqija and Morina*, IT-04-84-R77.4-A, Decision on Motion of Astrit Haraqija for Provisional Release, 8 April 2009, para. 8.

²¹ Ngirumpatse Decision, para. 13.

²² *Prosecutor v. Turinabo et al.*, Decision on Marie Rose Fatuma's Second Motion for Provisional Release to Rwanda, 29 July 2019, p. 2.

- c. regular reporting either to a police station in Pristina or the European Union Rule of Law Mission in Kosovo (“EULEX”) police headquarters, as required;
- d. respect any protective measures that continue to have effect before the KSC or may be ordered by the KSC;
- e. not discuss his case with anyone, including the media, other than Counsel or members of his legal Defence team, who have been duly recognized as such by the Registrar of the KSC;
- f. return to the KSC at a date to be determined by the Pre-Trial Judge or Trial Panel;
- g. strictly comply with any further order of the Pre-Trial Judge varying the terms of or terminating his interim release; and, any other conditions that the Pre-Trial Judge may impose upon his release.

I. Oral hearing and request for expedited response from the SPO

49. The Defence requests the Pre-Trial Judge hold an oral hearing on this application for interim release, in addition to the written submissions. An oral hearing would allow the parties to address any outstanding issues and respond to the Pre-Trial Judge’s questions as required.

50. Further, the Defence respectfully requests the Pre-Trial Judge to reduce the deadline for the SPO to respond to this motion from ten days to four days. This would allow the issue to be briefed before the oral hearing requested above, and would also thereby allow for a decision on this application to be issued before the commencement of the winter recess.

IV. CONCLUSION AND RELIEF SOUGHT

51. In light of the foregoing, the Defence therefore requests the Pre-Trial Judge to:
- a. Order the interim release of Mr. Selimi, either with, or without, conditions;
 - b. Reduce the SPO’s deadline to respond to this Request to Friday 11 December 2020; and,
 - c. Schedule an oral hearing on this Application, on or around 16 December 2020.

Respectfully submitted on 12 December 2020,

A handwritten signature in blue ink that reads "David A. Young". The signature is written in a cursive style with a large, prominent "D" and "Y".

DAVID YOUNG
Lead Counsel for Rexhep Selimi

A handwritten signature in blue ink that reads "G. Roberts". The signature is written in a cursive style with a large, prominent "G" and "R".

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