



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

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**Public redacted version of Prosecution response to Application for Interim
Release on behalf of Mr Rexhep Selimi**

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I. INTRODUCTION

1. The SELIMI Release Request¹ should be rejected, and Mr SELIMI ('SELIMI') should remain in detention. As found in the Arrest Warrant Decision,² the criteria for detention under Article 41(6) of the Law³ are satisfied. Those criteria continue to be met and, as discussed below, subsequently discovered information only underscores the seriousness of the risks presented. No alternative measures are sufficient to address these risks.

II. SUBMISSIONS

A. THE APPLICABLE LEGAL FRAMEWORK IN PROPER CONTEXT

2. The Pre-Trial Judge must be satisfied⁴ that: (i) there is a grounded suspicion that SELIMI has committed a crime within the jurisdiction of the Specialist Chambers ('KSC'); and (ii) there are articulable grounds to believe that: (1) there is a risk of flight; (2) SELIMI will obstruct the progress of the criminal proceedings, including by influencing witnesses, victims or accomplices; or (3) the seriousness of the crime, or the manner or circumstances in which it was committed and SELIMI's personal characteristics, past conduct, the environment and conditions in which he lives or other personal circumstances indicate a risk that he will repeat the criminal offence,

¹ Defence Application for Interim Release, KSC-BC-2020-06/F00124, 7 December 2020, Confidential (with three annexes) ('SELIMI Release Request').

² Decision on Request for Arrest Warrants and Transfer Orders, KSC-BC-2020-06/F00027, 26 October 2020 ('Arrest Warrant Decision'). *See also* Confidential Redacted Version of 'Request for arrest warrants and related orders', filing KSC-BC-2020-06/F00005 dated 28 May 2020, KSC-BC-2020-06/F00005/CONF/RED, 15 November 2020 ('Arrest Warrant Application').

³ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

⁴ Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, KSC-BC-2020-07/IA001/F00005, 9 December 2020, Public, ('Appeals Decision'), para.51.

complete an attempted crime or commit a crime which he has threatened to commit.⁵

If these conditions are met, the person shall continue to be detained.⁶

3. The Law does include the terms 'is' and 'will' when describing the Article 41(6) criteria, but these terms are surrounded by language making it clear that certainty is not remotely required. The Pre-Trial Judge need not conclude that SELIMI 'will' obstruct the investigation, but rather that 'there are articulable grounds to believe' this. Equally, it is not necessary to establish that SELIMI 'will flee' or 'will commit' further crimes, but that there are articulable grounds to believe there is a *risk* of these. As recently confirmed by the Court of Appeals, the relevant assessment is as to the possibility –as opposed to the inevitability –of such future occurrences.⁷

4. On 26 October 2020, the Pre-Trial Judge found the Article 41(6) criteria to be met and SELIMI's detention to be necessary. Pursuant to the SELIMI Release Request and Rule 57(2),⁸ the matter now to be addressed is a review of that decision.⁹

B. THE ARTICLE 41(6) RISKS ARE ESTABLISHED

5. For the reasons set out in the Confirmation Decision,¹⁰ there is a well-grounded suspicion that SELIMI committed multiple crimes within the jurisdiction of the KSC.

6. Further, and although just one would suffice, all three Article 41(6)(b) risks are present and no conditions sufficiently mitigate them. As elaborated below, the SELIMI

⁵ Article 41(6)(b)(i)-(iii).

⁶ Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.51.

⁷ Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.67; Arrest Warrant Decision, para.27.

⁸ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

⁹ See *similarly*, Appeals Decision, KSC-BC-2020-07/IA001/F00005, paras 37-38.

¹⁰ 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, Strictly Confidential and *Ex Parte* ('Confirmation Decision').

Defence's attempts to undermine the grounds alleged in the Arrest Warrant Application are flawed and unconvincing. Considered together the evidence presented amply demonstrates the considerable risks that Rexhep SELIMI at liberty presents.

7. Before turning to the risks themselves, two preliminary considerations must be addressed.

8. First, the SELIMI Defence argue that the trial commencement date is a relevant consideration for interim release.¹¹ However, the SELIMI Defence makes no attempt to link the Article 41(6)(b) risks to its estimated length of pre-trial detention. Instead, the estimated length is presented as its own independent justification for release.

9. The present detention review falls under Rule 57. A different provision—Rule 56(2)—governs the possibility of releasing an accused due to being detained for an unreasonable period prior to the opening of the case. It would be meritless for the SELIMI Defence to claim relief under Rule 56(2) when the Accused was arrested only last month, and it does not attempt to do so. The SELIMI Defence has set out its views on the anticipated length of the pre-trial process, and the SPO has explained why it considers these views unreasonable.¹² But resolving this dispute has no bearing on the matters currently before the Pre-Trial Judge, especially where the legal framework contemplates periodic review of detention every two months.¹³

10. Secondly, the SELIMI Defence challenges the factors relied upon as being incompatible with an individualised assessment of the risks posed by the accused.¹⁴ Such arguments proceed from a flawed premise, namely that evidence of context or

¹¹ SELIMI Release Request, KSC-BC-2020-06/F00124, paras 11-14.

¹² Prosecution submission further to the status conference of 18 November 2020, KSC-BC-2020-06/F00097, 23 November 2020.

¹³ Rule 57(2).

¹⁴ SELIMI Release Request, KSC-BC-2020-06/F00124, paras 16, 44.

the actions of others cannot inform a proper, individualised assessment of the risks posed by an accused. On the contrary, an accused's position or contacts may be considered when determining the likelihood of his returning for trial, threatening witnesses if released, or committing further crimes.¹⁵ Extensive and active support networks can also increase the risk that an accused would use the resources of a support network to flee.¹⁶ Relatedly, where multiple accused have common circumstances, discussing such circumstances together—as done, where relevant, in the Arrest Warrant Application and Arrest Warrant Decision—remains compatible with an individualised assessment.

11. Risks posed by one accused can increase due to his personal actions or to circumstances equally applicable to him and all co-accused. In particular, it is entirely proper to take into account the known problem of witness intimidation in criminal cases involving former KLA members in Kosovo, as long as this is not the sole consideration.¹⁷ This persistent climate of witness intimidation, while undeniably a significant concern, is by no means the only circumstance alleged in support of SELIMI's detention.

1. Risk of flight

12. It has been established that a risk of flight exists because: (a) convictions of senior KLA in other cases create an incentive to flee; (b) SELIMI's current and former

¹⁵ Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.63 (finding no error in reliance upon a person's position as indicating contacts and a network that 'could create the risk that Gucati may obstruct the proceedings or that he may commit further offences'); ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-824, Judgment on the Appeal of Mr. Lubanga Dyilo Against the Decision of Pre-Trial Chamber 1 Entitled "*Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo*", 13 February 2007, paras 136-37.

¹⁶ ICC, *Prosecutor v. Gbagbo*, ICC-02/11-01/11-180-Red, Decision on the "*Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo*", 13 July 2012, para.62.

¹⁷ Eulex, *Prosecutor v. Sabit Tafil Geci et al.*, 117/2013, Ruling on Appeals Against Extension of Detention on Remand, 22 February 2013, SITF00177439-SITF00177695, p.SITF00177484 (para. 21).

positions allow for mobilisation of supporters; (c) of SELIMI's access to significant funds; (d) of SELIMI's ability to travel to places with no obligation to transfer him; and (e) the incentive to flee would increase once SELIMI was informed of the confirmed charges.¹⁸

13. SELIMI is charged with war crimes and crimes against humanity across over 40 detention sites, including murder and torture. The crimes charged against SELIMI entail a potential sentence of life-long imprisonment.¹⁹ This prospect creates a persistent risk of flight that will only increase as SELIMI learns the full scope of the evidence against him.²⁰ It is not a 'retrograde step in the application of interim release'²¹ to rely on the gravity of the charges and length of potential sentences in a detention assessment. As the Court of Appeals recently emphasised: 'the nature of the offence as well as the severity of the penalty are important factors to consider when deciding whether detention is necessary in the circumstances of a particular case.'²² The ECtHR Grand Chamber also recognises them as relevant in assessing the risk an accused might abscond,²³ and they are particularly pertinent in cases alleging war crimes and crimes against humanity, like this one.²⁴

14. SELIMI's connections to Kosovo do not change the reality that, as a Kosovo institution, the KSC can only seek binding cooperation to surrender him from Kosovo

¹⁸ Arrest Warrant Decision, KSC-BC-2020-06/F00027, para.36. *See also* Arrest Warrant Application, KSC-BC-2020-06/F00005, paras 31-33 (incorporated by reference).

¹⁹ Article 44(1).

²⁰ Arrest Warrant Decision, KSC-BC-2020-06/F00027, para.28.

²¹ SELIMI Release Request, KSC-BC-2020-06/F00124, para.42. *But see* SELIMI Release Request, KSC-BC-2020-06/F00124, para.43 ('the Defence does not deny that the allegations in the indictment are of some relevance when undertaking this task).

²² Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.72.

²³ ECtHR (Grand Chamber), *Idalov v. Russia*, 5826/03, 22 May 2012, para.145.

²⁴ The ECtHR has found that, in cases concerning war crimes against the civilian population, detention may be justified and extended solely on the gravity of the charges, and attached particular significance to the seriousness of the crime at issue and the nature and gravity of the charges. *See* ECtHR, *Šuput v. Croatia*, 49905/07, Judgment, 31 May 2011, paras 101-110; ECtHR, *Getoš-Magdić v. Croatia*, 56305/08, Judgment, 2 December 2010, paras 80-91.

or a country which recognises Kosovo and has an extradition agreement with it, or other enabling legislation.²⁵ There are only a limited number of countries with such agreements.²⁶ This situation is markedly different from other jurisdictions and other institutions such as the former ICTY, which could seek broader binding cooperation on the basis of its powers derived from the United Nations Security Council.²⁷ SELIMI can travel to over 180 countries in the world and potentially place himself permanently beyond the reach of the KSC. His status as a 'public figure who is well-known throughout Kosovo' is precisely what makes him more likely to successfully evade justice if released²⁸ - the network of supporters available to facilitate his escape gives him every opportunity to do so when he wishes. There are obvious examples of well-known international figures who used their resources to travel to other countries and evade justice for years, including: Hissène HABRÉ (over 12 years), Charles TAYLOR (three years), and Radovan KARADŽIĆ (12 years, doing so even with limited resources).

15. As to the SELIMI Defence assertion that no evidence has been disclosed as to his significant funds,²⁹ the larger issue is the funds which his broad network of supporters can avail to him. SELIMI's focus on his own personal assets obscures the reality that SELIMI has *access* to significant funds.

²⁵ Article 55(2); Rule 208.

²⁶ Including Albania, Austria, Belgium, Croatia, the Czech Republic, Germany, Hungary, Italy, Macedonia, Turkey, the United Kingdom, and the United States. Most of these countries have entered into extradition agreements with Kosovo itself. Others have formally agreed with Kosovo on the continued application of extradition agreements reached with the Federal Republic of Yugoslavia.

²⁷ United Nations Security Council, S/RES/827 (1993), Resolution 827, 25 May 1993, para.4.

²⁸ *Contra* SELIMI Release Request, KSC-BC-2020-06/F00124, para.18.

²⁹ SELIMI Release Request, KSC-BC-2020-06/F00124, para.27.

16. SELIMI's [REDACTED] appearance at SPO interviews hardly negates the flight risk,³⁰ and such facts were available to the Pre-Trial Judge at the time of the Arrest Warrant Decision.

17. Similarly, SELIMI's surrender, though relevant, does not merit significant weight.³¹ He was informed that any other course of action would result in his immediate arrest within 24 hours, and was doubtless aware that a significant SPO operation was underway in Kosovo at that time, with assistance from EULEX and the Kosovo Police. In short, he had no choice but to surrender. Of course, permanently maintaining the same deployment on the ground in Kosovo is impossible, so a provisionally released accused—especially one of SELIMI's stature, resources, and connections—would have a significantly greater opportunity to escape which he did not have when he surrendered.

2. Risk of obstructing the investigation

18. It has been established that a risk of obstructing the investigation exists because: (a) SELIMI's former and current positions allow for mobilisation of a vast support network; (b) SELIMI's presence on the United States sanctions list; (c) SELIMI has made efforts to interfere with prior legal proceedings; and (d) there is a prevailing climate in Kosovo of intimidation of witnesses who testify against KLA members.³² As outlined below, further factors supporting the existence of this risk have been revealed.

³⁰ *Contra* SELIMI Release Request, KSC-BC-2020-06/F00124, paras 19, 21, 23. As to the submission that the extent of the Accused's cooperation with the SPO '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', Mr SELIMI's suspect interview with the SPO is cited seven times in the Arrest Warrant Application.

³¹ SELIMI Release Request, KSC-BC-2020-06/F00124, para.20.

³² Arrest Warrant Decision, KSC-BC-2020-06/F00027, para.37. *See also* Arrest Warrant Application, KSC-BC-2020-06/F00005, paras 34-38 (incorporated by reference).

(a) Support network and the climate of intimidation

19. In September 2020, collections of SITF/SPO-related materials were provided without authorisation to the KLA War Veterans Association ('KLA WVA'), which then distributed or otherwise made them available to the public. There is evidence that these documents were delivered as part of a campaign to intimidate witnesses, and the KLA WVA head and deputy have since been arrested for violating the secrecy of proceedings and intimidating/retaliating against potential witnesses.³³

20. The KLA WVA has long had a particularly active network of supporters hostile to the SPO's investigation.³⁴ There is a significant risk the KLA WVA and others will continue such activities, and a prime potential source of leaks is material to be disclosed to the Accused. What the KLA WVA has already done has intimidated or frightened several of the SPO's potential witnesses. Such actions demonstrate – again – that conducting legal proceedings in The Hague or offering a comprehensive witness protection program are best seen not as a panacea for mitigating interference risks so much as a concrete reflection of the deadly seriousness of the problem.³⁵

21. By virtue of his past role as a senior KLA leader, Rexhep SELIMI is in a position of particular influence over this network. The SELIMI Defence fails to acknowledge that the existence of such networks creates risks that extend to SELIMI individually.

(b) Interference in legal proceedings

³³ See generally *Prosecutor v. Gucati and Haradinaj*, Redacted indictment, KSC-BC-2020-07/F00075, 14 December 2020 (confirmed 11 December 2020).

³⁴ Arrest Warrant Application, KSC-BC-2020-06/F00005, paras 4-5.

³⁵ *Contra* SELIMI Release Request, KSC-BC-2020-06/F00124, para.39. See also *Obstructing the Investigation – Too Many Obstacles, Too Little Evidence*, in Sense Agency, ICTY: The Kosovo Case, 1998-1999, available at <https://kosovo.sense-agency.com/>; Arrest Warrant Application, KSC-BC-2020-06/F00005, paras 21-22.

22. As for SELIMI's interference in the current proceedings, the Defence provides a series of implausible explanations for the acts and conduct alleged in the Arrest Warrant Application and relied on in the Arrest Warrant Decision.

23. There are at least three sound reasons for the Court to believe that Rexhep SELIMI is a high risk to obstruct the proceedings or interfere with witnesses. First [REDACTED]. [REDACTED]. [REDACTED].³⁶ [REDACTED].³⁷ [REDACTED]. [REDACTED].³⁸ [REDACTED]. [REDACTED].³⁹

24. [REDACTED]. [REDACTED] [REDACTED]. [REDACTED].

25. [REDACTED]. [REDACTED].⁴⁰ [REDACTED]. [REDACTED].⁴¹

26. The evidence does not stop there, however. A second area of concern is SELIMI's apparent interference in the context of an [REDACTED] investigation into the attempted murder [REDACTED].⁴² Contrary to the SELIMI Defence's claim, the responsible [REDACTED] investigator did not understand SELIMI's involvement as having 'amounted to nothing more than [REDACTED]'.⁴³ He rather noted that '[i]t is [...] of great concern that Rexhep Selimi can call a KPS Officer at anytime and ask him to utilize his position to recover evidence possibly used in criminal offences'.⁴⁴

27. [REDACTED]. [REDACTED].⁴⁵ [REDACTED].⁴⁶

³⁶ [REDACTED].

³⁷ [REDACTED].

³⁸ [REDACTED].

³⁹ [REDACTED]

⁴⁰ [REDACTED].

⁴¹ [REDACTED]; [REDACTED]. [REDACTED].

⁴² Arrest Warrant Application, KSC-BC-2020-06/F00005, para.9.

⁴³ SELIMI Release Request, KSC-BC-2020-06/F00124, paras 34-38 (quote at para.38).

⁴⁴ [REDACTED].

⁴⁵ [REDACTED].

⁴⁶ *Egs* [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

28. [REDACTED].⁴⁷ [REDACTED]. [REDACTED].

29. A third circumstance supporting SELIMI's continued detention as a threat to interfere with the proceedings or witnesses is his inclusion on the Specially Designated Nationals list of the United States Office of Foreign Assets Control.⁴⁸ SELIMI claims not to understand the basis for his inclusion on the United States government blacklist and attacks it as 'political and arbitrary'.⁴⁹ But the Executive Order imposing these sanctions is publicly available, and in relevant part it designates for sanctions persons who (1) have committed or pose a significant risk of committing acts of violence that threaten stability in the region, undermining the authority of international organizations in the region, or endangering the safety of persons working for such organizations; or (2) have actively obstructed, or pose a significant risk of actively obstructing implementation of UNSC Resolution 1244.⁵⁰

30. These three pieces of evidence—[REDACTED], a past attempt to interfere with the evidence in a murder investigation, and blacklisting by a foreign government for possible interference with implementation of a United Nations Security Council Resolution— are not only individualised to SELIMI but manifestly necessitate his continued detention.

3. Risk of committing further crimes

31. It has been previously established that a risk of committing further crimes exists because: (a) the nature of the joint criminal enterprise charge concerned targeting opponents of the accused; (b) SELIMI has already attempted to obstruct legal

⁴⁷ [REDACTED].

⁴⁸ Arrest Warrant Application, KSC-BC-2020-06/F00005, para.9.

⁴⁹ SELIMI Release Request, KSC-BC-2020-06/F00124, paras 32-33.

⁵⁰ 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.

proceedings; and (c) there is a prevailing climate in Kosovo of intimidation of witnesses who testify against KLA members.⁵¹

32. The heart of the joint criminal enterprise in this case is the targeting of perceived opponents of the KLA.⁵² For these former KLA leaders, these methods persist.⁵³

33. That there is a well-grounded suspicion that SELIMI committed a wide range of war crimes and crimes against humanity⁵⁴ is a serious indicator of the risk that he is willing to commit further violent acts, even many years later. When combined with his past obstruction efforts, his capability to interfere with the current proceedings, and the culture of intimidation in Kosovo, SELIMI is indeed a risk to commit further crimes within the meaning of Article 41(6)(b)(iii). The consequences to SELIMI's personal and family situation caused by his detention - consequences which naturally follow when anyone is detained - do not change this risk.⁵⁵

C. NO CONDITIONS SUFFICIENTLY MITIGATE THESE RISKS

⁵¹ Arrest Warrant Decision, KSC-BC-2020-06/F00027, para.38. *See also* Arrest Warrant Application, KSC-BC-2020-06/F00005, para.40 (incorporated by reference).

⁵² Confirmed Indictment, KSC-BC-2020-06/F00034/A01, 30 October 2020, para.32.

⁵³ To reference a prominent example from 2020 involving former KLA commander Sami LUSHTAKU: on 11 April 2020, lawyer Gazmend HALILAJ posted on Facebook that Sami LUSHTAKU is behind the misuse of 1.4 million German marks during the war. LUSHTAKU then called HALILAJ on the phone, asking him to remove the writing while cursing and threatening him. Three days later, and with the intent to avenge Sami LUSHTAKU, his cousin Ibrahim LUSHTAKU and Xhelal ZEQIRI allegedly crashed into HALILAJ's car on the afternoon of 14 April 2020 and then shot after HALILAJ as he fled from his car. They did not hit him. Sami LUSHTAKU plead guilty for committing criminal harassment against HALILAJ on 28 October 2020 and was fined 2000 euros. Ibrahim LUSHTAKU and Xhelal ZEQIRI have been charged with attempted murder, and their case remains pending. Annex 1 to Prosecution response to Application for Interim Release on behalf of Mr Hashim Thaçi, KSC-BC-2020-06/F00149/A01, 16 December 2020.

⁵⁴ Confirmation Decision, KSC-BC-2020-06/F00026, paras 474, 478, 482, 491.

⁵⁵ *Contra* SELIMI Release Request, KSC-BC-2020-06/F00124, para.43.

34. The Defence presents a list of conditions which could be applied in the event of a conditional release.⁵⁶ No combination of the conditions proposed comes close to mitigating the array of risks SELIMI poses if released.⁵⁷ Detention is the only means by which they can be adequately managed, with the communications monitoring framework of the KSC Detention Centre being particularly important to ensure that no confidential information disclosed to him is disseminated to the outside world.⁵⁸

35. The KSC/SPO does not have the resources to adequately monitor provisionally released accused in Kosovo. Further, EULEX's monitoring mandate does not extend to monitoring conditions of release, nor does it have the resources to do so.⁵⁹

36. The Kosovo Police have been of assistance to the SPO when called upon, particularly in the recent arrests of the Accused. But there are good reasons to believe that the Kosovo authorities are limited in their ability to monitor an accused of SELIMI's stature, resources, and authority in a case like this one.⁶⁰

37. *Remzi SHALA*.⁶¹ A war crimes indictment was filed against former KLA commander Remzi SHALA on 19 October 2016. The trial opened on 12 May 2017. During the portion of SHALA's trial conducted in 2018, he was granted provisional release on the condition that he appear in court when summoned. The last court session in 2018 was held on 16 November 2018, and SHALA was released during the court adjournment on the condition that he be present at the scheduled continuation

⁵⁶ SELIMI Release Request, KSC-BC-2020-06/F00124, paras 47-48.

⁵⁷ Decision on Application for Bail, KSC-BC-2020-07/F00059, 27 October 2020, para.21. *See also* Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.51.

⁵⁸ *See especially* Articles 4.2, 6-8 and 17 of the Registry Practice Direction on Detainees – Visits and Communications, KSC-BD-09/Rev1/2020, 23 September 2020.

⁵⁹ *Contra* SELIMI Release Request, KSC-BC-2020-06/F00124, para.48(c).

⁶⁰ *Contra* SELIMI Release Request, KSC-BC-2020-06/F00124, paras 45-46.

⁶¹ Humanitarian Law Center Kosovo, HLC Kosovo Annual Report 2019: War Crimes Trials – Still at the Beginning, 2020, p.414; Humanitarian Law Center Kosovo, War Crimes: A discouraging Transition, 2019, p.297; Humanitarian Law Center Kosovo, HLC Kosovo Annual Report 2017: War Crimes Trials – What Comes Next?, March 2018, p.402 ('HLC 2018 Report').

of the trial on 9 January 2019. SHALA did not appear in court that day, nor did he inform the court of his intended absence. The competent domestic authorities were unable to apprehend SHALA, so an international warrant was issued for his arrest. SHALA was not arrested until 24 May 2019, and he was placed in detention on remand from that point forward.

38. *Sami LUSHTAKU*. Sami LUSHTAKU, former Drenica Zone commander in the KLA, was tried alongside named JCE members Sabit GECI and Syljeman SELIMI in the *Drenica* case. Before that trial commenced, LUSHTAKU was being treated at the University Clinical Centre in Priština/Prishtinë in lieu of detention on remand.⁶² In May 2014, he and two other detainees escaped from the hospital for a two-day period. During the summer after LUSHTAKU's 2015 conviction in his main case, he, Sylejman SELIMI, and another of those convicted used false medical excuses to be placed in private apartments within the Priština/Prishtinë Medical Centre so as to avoid serving time in detention.⁶³ On 21 August 2015, LUSHTAKU again escaped the hospital for several hours to go to his house in Priština/Prishtinë.⁶⁴ On 22 September 2015, EULEX Police re-arrested LUSHTAKU after he escaped correctional custody for a third time. Indictments were filed against LUSHTAKU and twenty-three others concerned in these three escapes. In April 2020, LUSHTAKU was acquitted in relation to the May 2014 escape and convicted for the others.

39. *Sabit GECI*. Sabit GECI was also detained in a hospital following his 2011 conviction,⁶⁵ and evidently had enormous authority over the conditions of his

⁶² Humanitarian Law Center Kosovo, HLC Kosovo Report 2014: High-Profile Trials: Justice Delayed, 2014, p.325.

⁶³ U.S. Department of State, '2015 Country Reports on Human Rights Practices – Kosovo', 13 April 2016, available at <https://www.refworld.org/docid/5716124d15.html>.

⁶⁴ HLC 2018 Report, p.389.

⁶⁵ *Sabit Geci et al.*, 45/2010, Trial Verdict, 29 July 2011.

imprisonment. [REDACTED] reveal that he could come and go whenever he wanted.⁶⁶

In one particularly telling 10 March 2012 exchange, a [REDACTED] reported GECI saying the following in response to a question about the behaviour of his guards:

Good, very good...imagine one night was another new guard and he was scared that I may escape through the window ... (offending the guard due to his way of thinking for S.G) ... if I really would like to escape I could do it at any time and I would order the guard to escort me, and just because of him thinking for me this way, I did went out to have dinner near here at "[REDACTED]" and didn't came back for four hours, I did it in purpose...⁶⁷

40. These prominent examples demonstrate Kosovo's lack of capacity to effect arrests or monitor conditions of former KLA leaders.

D. THE ADDITIONAL RELIEF SOUGHT IS UNNECESSARY

41. As to the SELIMI Defence request for an oral hearing, the Pre-Trial Judge has already determined he has enough information to resolve this request on the written filings alone.⁶⁸

III. CLASSIFICATION

42. The present submission is filed confidentially in accordance with Rule 82(4). A public redacted version will be filed.

IV. RELIEF REQUESTED

43. For the foregoing reasons, the relief sought by the SELIMI Defence should be rejected in full.

⁶⁶ Annex 2.8 to Prosecution response to Application for Interim Release on behalf of Mr Hashim Thaçi, KSC-BC-2020-06/F00149/A02, 16 December 2020, Confidential.

⁶⁷ [REDACTED].

⁶⁸ Decision on the Conduct of Detention Review and Varying the Deadline for Preliminary Motions, KSC-BC-2020-06/F00150, 16 December 2020.

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Specialist Prosecutor

Tuesday, 22 December 2020
At The Hague, the Netherlands.