



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: **KSC-BC-2020-07**
The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: **Pre-Trial Judge**
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 24 February 2021

Language: English

Classification: **Public**

Decision on Review of Detention of Nasim Haradinaj

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 41(10) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 22 September 2020, the Specialist Prosecutor's Office ("SPO") requested the arrest of Hysni Gucati ("Mr Gucati") and Nasim Haradinaj ("Mr Haradinaj") for alleged dissemination of confidential information relating to the work of the Special Investigative Task Force and/or the SPO at three press conferences held on 7, 16, and 22 September 2020 (respectively, "First Press Conference", "Second Press Conference", and "Third Press Conference") and sought their transfer to the detention facilities of the Specialist Chambers ("SC").²

2. Mr Haradinaj was arrested on 25 September 2020³ and transferred to the SC detention facilities the following day.⁴

¹ KSC-BC-2020-07, F00061, President, *Decision Assigning a Pre-Trial Judge*, 29 October 2020, public. Prior to this decision, the President had assigned the same Judge as Single Judge; see KSC-BC-2020-07, F00003, President, *Decision Assigning a Single Judge Pursuant to Article 33(2) of the Law*, 29 May 2018, public.

² KSC-BC-2020-07, F00009/RED, Specialist Prosecutor, *Urgent Request for Arrest Warrants and Related Orders*, filing KSC-BC-2020-07/F0009 dated 22 September 2020, 22 September 2020, public, paras 1, 35(a); with Annexes 1-2, public.

³ KSC-BC-2020-07, F00012/A03/COR/RED, Single Judge, *Public Redacted Version of Corrected Version of Arrest Warrant for Nasim Haradinaj*, 24 September 2020, public; F00016, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 25 September 2020, public.

⁴ KSC-BC-2020-07, KSC-BC-2020-07, F00012/A04/RED, Single Judge, *Public Redacted Version of Order for Transfer to Detention Facilities of the Specialist Chambers*, 24 September 2020, public; F00020, Registrar, *Notification of the Reception of Nasim Haradinaj in the Detention Facilities of the Specialist Chambers*, 26 September 2020, public, with Annex 1, confidential; F00026/COR, Registrar, *Corrected Report on the Arrest and Transfer of Nasim Haradinaj to the Detention Facilities*, 28 September 2020, confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*. A public redacted version of F00026 was filed 14 October 2020, see F00026/COR/RED.

3. On 29 September 2020, Mr Haradinaj filed a request for his immediate release from detention.⁵ On 27 October 2020, the Single Judge rendered a decision rejecting this request.⁶
4. On 30 October 2020, the SPO submitted for confirmation a strictly confidential and *ex parte* indictment (“Indictment”) against Mr Gucati and Mr Haradinaj.⁷
5. On 11 December 2020, the Pre-Trial Judge confirmed, in part, the Indictment and ordered the SPO to submit a revised indictment, as confirmed (“Confirmed Indictment”).⁸
6. On 24 December 2020, the Pre-Trial Judge rendered a second decision continuing Mr Haradinaj’s detention (“Second Detention Decision”).⁹
7. On 1 February 2021, Mr Haradinaj filed submissions on continued detention.¹⁰ The SPO responded on 12 February 2021.¹¹ Mr Haradinaj replied on 15 February 2021.¹²

⁵ KSC-BC-2020-07, F00030, Defence, *Initial appearance, preliminary motion to dismiss the charges and motion for immediate release*, 29 September 2020, public.

⁶ KSC-BC-2020-07, F00058, Single Judge, *Decision on Request for Immediate Release of Nasim Haradinaj* (“First Detention Decision”), 27 October 2020, public.

⁷ KSC-BC-2020-07, F00063, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Requests*, 30 October 2020, strictly confidential and *ex parte*, with Annexes 1 and 2, strictly confidential and *ex parte*.

⁸ KSC-BC-2020-07, F00074/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on the Confirmation of the Indictment* (“Confirmation Decision”), 11 December 2020, public; KSC-BC-2020-07, F00075, Specialist Prosecutor, *Submission of Confirmed Indictment*, 14 December 2020, public, with Annex 1, strictly confidential, and Annex 2, public.

⁹ KSC-BC-2020-07, F00094, Pre-Trial Judge, *Decision on Review of Detention of Nasim Haradinaj* (“Second Detention Decision”), 24 December 2020, public.

¹⁰ KSC-BC-2020-07, F00111, Defence, *Defence Submissions on Second Review of the Detention of Nasim Haradinaj* (“Defence Submission”), 1 February 2021, public.

¹¹ KSC-BC-2020-07, F00124, Specialist Prosecutor, *Prosecution Consolidated Response for Review of Detention* (“SPO Submission”), 12 February 2021, public.

¹² KSC-BC-2020-07, F00125, Defence, *Defence Reply to Prosecution Consolidated Response for Review of Detention* (“Reply”), 15 February 2021, confidential.

8. On 9 February 2021, the Court of Appeals Chamber rendered a decision denying Mr Haradinaj's appeal of the Second Detention Decision.¹³

II. SUBMISSIONS

9. Mr Haradinaj requests that his detention be terminated or alternatively that he be released with conditions.¹⁴ Mr Haradinaj submits that the reasons for continued detention no longer exist.¹⁵ He argues that the manner in which he acted during arrest does not support a finding that he is a flight risk.¹⁶ Mr Haradinaj also argues that there is no risk regarding the obstruction of the progress of proceedings¹⁷ and that a generalized risk, unsupported in evidence, cannot justify continued detention.¹⁸

10. The SPO responds that continued detention of Mr Haradinaj remains necessary.¹⁹ The SPO argues that there has been no relevant change in circumstances which undermine the reasons for detention.²⁰ The SPO asserts that Article 41(6)(b) risks have increased since the Second Detention Decision²¹ and conditions on release would fail to mitigate such risks.²²

11. Mr Haradinaj replies that the Pre-Trial Judge should order disclosure of statements and supporting evidence from arresting officers regarding his arrest and provide him the opportunity to respond within 10 days of any such disclosures.²³

¹³ KSC-BC-2020-07, IA002, F00005, Court of Appeal Panel, *Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention*, 9 February 2021, public.

¹⁴ Defence Submission, paras 99, 100.

¹⁵ Defence Submission, para. 2.

¹⁶ Defence Submission, paras 65-79.

¹⁷ Defence Submission, paras 80-93.

¹⁸ Defence Submission, paras 94-98.

¹⁹ SPO Submission, para. 1.

²⁰ SPO Submission, para. 1.

²¹ SPO Submission, paras 1, 3.

²² SPO Submission, para. 2.

²³ Reply, paras 23-26.

III. APPLICABLE LAW

12. Article 41(6) of the Law 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 the criminal offence, complete an attempted crime or commit a crime which he or she has threatened to commit the criminal offences.

13. Article 41(10) of the Law provides that, until a judgement 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.

14. 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.

15. Pursuant to Rule 57(2) of the Rules, the Pre-Trial Judge shall review a decision on detention on remand upon expiry of two (2) months from the last ruling on detention.

IV. DISCUSSION

16. Article 41(10) of the Law obliges the Pre-Trial Judge to examine whether reasons for detention on remand still exist, including the grounds set out in Article 41(6) of the Law, namely whether (i) there is grounded suspicion that the person committed the

crime(s); and (ii) there are articulable grounds to believe that any of the requirements set out in Article 41(6)(b) of the Law has been fulfilled. The SPO bears the burden of establishing that the detention of the Accused is necessary.²⁴ The following decision addresses the requirements of Article 41(6) of the Law within the framework of the submissions made by the Parties.

A. GROUNDED SUSPICION

17. Mr Haradinaj does not challenge whether there is grounded suspicion that offences were committed. The Pre-Trial Judge recalls that when confirming the Indictment, he found that there is a well-grounded suspicion that Mr Haradinaj committed offences in violation of Articles 387, 388, 392 and 401 of the Kosovo Criminal Code, by virtue of Article 15(2) of the Law.²⁵ The Pre-Trial Judge accordingly finds that Article 41(6)(a) of the Law continues to be met.

B. NECESSITY OF DETENTION

18. Once the threshold in Article 41(6)(a) of the Law is met, the grounds that allow the Pre-Trial Judge to deprive a person of his or her liberty must be articulable in the

²⁴ KSC-CC-PR-2017-01, F00004, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office*, 26 April 2017, para. 115. Similarly, for example, ICC, *Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/15-208, Appeals Chamber, [Judgment on the Appeal of Mr Laurent Gbagbo Against the Decision of Trial Chamber I of 8 July 2015 Entitled "Ninth Decision on the Review of Mr Laurent Gbagbo's Detention Pursuant to Article 60\(3\) of the Statute"](#) ("Gbagbo 8 September 2015 Appeal Judgment"), 8 September 2015, para. 36; *Prosecutor v. Bemba*, ICC-01/05-01/08-1019, Appeals Chamber, [Judgment on the Appeal of Mr Jean-Pierre Bemba Gombo Against the Decision of Trial Chamber III of 28 July 2010 Entitled "Decision on the Review of the Detention of Mr Jean-Pierre Bemba Gombo Pursuant to Rule 118\(2\) of the Rules of Procedure and Evidence"](#), 19 November 2010, para. 51; *Prosecutor v. Katanga and Ngudjolo Chui*, ICC-01/04-01/07-330, Pre-Trial Chamber I, [Decision on the Powers of the Pre-Trial Chamber to Review Proprio Motu the Pre-Trial Detention of Germain Katanga](#), 18 March 2008, p. 7.

²⁵ Confirmation Decision, paras 103, 109, 113, 117, 121, 125.

sense that they must be specified in detail.²⁶ In this regard, it is recalled that determining the existence of either risks under Article 41(6)(b)(i)-(iii) of the Law, so as to make the detention of the person necessary, is a matter of assessing the possibility, as opposed to the unavailability that such risks materialise.²⁷

1. Risk of Flight

19. With regard to flight risk under Article 41(6)(b)(i) of the Law, Mr Haradinaj puts forth an account of his arrest in order to demonstrate that he did not attempt to evade arrest.²⁸ Mr Haradinaj further argues that, when assessed in the context of his cooperativeness during arrest, his statements against the jurisdiction of the SC do not support a finding that he is a flight risk.²⁹ Mr Haradinaj further submits that the fact that he has not sought to disguise or conceal his whereabouts and that his family resides in Kosovo further supports a finding that he is not a flight risk.³⁰

20. The SPO responds that Mr Haradinaj's account of his arrest is "distorted and selective" and but one factor upon which the finding of flight risk is based.³¹ The SPO further argues that while Mr Haradinaj is free to make statements regarding

²⁶ Article 19.1.9 of the Kosovo Criminal Procedure Code. Article 19.1.30 of the Kosovo Criminal Procedure Code 2012, Law No. 04/L-123 defines "articulable" as: "the party offering the information or evidence must specify in detail the information or evidence being relied upon".

²⁷ KSC-BC-2020-07/IA001, F00005, Court of Appeals Panel, *Decision on Hysni Gucati's Appeal on Matters Related to the Arrest and Detention* ("Decision on Gucati's Appeal of First Detention Decision"), 9 December 2020, public, para. 67; KSC-BC-2020-07, F00012, Single Judge, *Decision on Request for Arrests and Transfers* ("Decision on Arrest and Transfer"), 24 September 2020, public, para. 19, with Annexes 1-4, public. 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.

²⁸ Defence Submission, paras 29-74.

²⁹ Defence Submission, para. 71.

³⁰ Defence Submission, para. 73.

³¹ SPO Submission, paras 5-7.

his opinion of the SC or the SPO, the Pre-Trial Judge is also entitled to rely on such statements to determine he is a flight risk.³²

21. Mr Haradinaj replies that, in light of the varying accounts of his arrest, and in order to enable him to effectively challenge the finding that he is a flight risk, the Pre-Trial Judge should order disclosure of statements and supporting evidence from the arresting officers and give him an opportunity to respond within 10 days.³³

22. At the outset, the Pre-Trial Judge notes that the Registry is not a party to the proceedings and its report of Mr Haradinaj's arrest can be considered a pertinent accounting of the events as they unfolded.³⁴ As Mr Haradinaj has access to the reports upon which the Pre-Trial Judge has relied, his ability to challenge such accounts has not been thwarted.³⁵ The Pre-Trial Judge accordingly does not consider an additional account, from the staff of one of the parties to the proceedings, to be necessary for determining Mr Haradinaj's continued detention at this stage. That being said, nothing prevents the Haradinaj Defence from seeking further information from the SPO or the Registry. As a result, the Pre-Trial Judge orders the SPO to submit any statement(s) of the arresting officer(s) or any other material such as video footage, if available, by 12 March 2021.

23. The Pre-Trial Judge recalls his finding that Mr Haradinaj's attempt to evade SPO officers by vehicle and on foot support the finding that he is a flight risk.³⁶

³² SPO Submissions, para. 7.

³³ Reply, paras 7-26.

³⁴ KSC-BC-2020-07, F00047, Registrar, *Corrected Report on the Arrest and Transfer of Nasim Haradinaj to the Detention Facilities*, Filing KSC-BC-2020-07/F00026/COR dated 28 September 2020 ("Report of Arrest and Transfer"), 14 October 2020, confidential and *ex parte*, with Annex 1, confidential redacted and *ex parte*. See also, KSC-BC-2020-07, F00026/COR/RED, Registrar, *Public Redacted Version of 'Corrected Report on the Arrest and Transfer of Nasim Haradinaj to the Detention Facilities'*, filing KSC-BC-2020-07/F00026/COR dated 28 September 2020 ("Public Redacted Version of Report on Arrest and Transfer"), 14 October 2020, public.

³⁵ The annex of F00026 is available to Mr Haradinaj through F00047.

³⁶ First Detention Decision, para. 21; Second Detention Decision, para. 31.

Mr Haradinaj presents the issue as a matter of arbitrating his account against the SPO's account of his arrest.³⁷ However, the Registry's report on Mr Haradinaj's arrest and transfer provides a detailed account of the events as they unfolded.³⁸ In particular, it recounts the evasive manoeuvres taken by Mr Haradinaj while in a taxi, his attempt to run from arresting officers as he exited a taxi, and his lack of cooperativeness until Kosovo police became involved.³⁹

24. With respect to Mr Haradinaj's submissions regarding any attempt to evade arrest, the Pre-Trial Judge notes that Mr Haradinaj simply provides his own recollection of the arrest without sufficient support. As to Mr Haradinaj's account, the Pre-Trial Judge considers that limited weight must accorded to the fact that Mr Haradinaj drove 100 kilometres to the Kosovo Liberation Army War Veterans Association ("KLA WVA") offices⁴⁰ when, though aware of Mr Gucati's arrest, he was not aware of the existence of the strictly confidential arrest warrant against him.⁴¹ As regards Mr Haradinaj's travels by car to give an interview to a media outlet, the Pre-Trial Judge considers that Mr Haradinaj, by his own admission, made what can be considered evasive manoeuvres to ascertain whether he was being followed,⁴² and in this way his account confirms the SPO's account.⁴³ Finally, with respect to Mr Haradinaj's cooperation upon arrest, his account does not address the fact that his cooperativeness came after the involvement of Kosovo police as he rejected being arrested by the SPO and insisted upon their involvement.⁴⁴ In this context, the fact that handcuffs were not required during Mr Haradinaj's arrest is of limited significance. The Pre-Trial Judge accordingly finds

³⁷ Reply, paras 14-18.

³⁸ Report of Arrest and Transfer, paras 3-7, with Annex 1, confidential redacted and *ex parte*. See also, Public Redacted Version of Report on Arrest and Transfer, paras 3-7.

³⁹ Public Redacted Version of Report of Arrest and Transfer, paras 3-7.

⁴⁰ Defence Submission, paras 32-39, 42-43, 67-68.

⁴¹ Defence Submission, paras 42, 48.

⁴² Defence Submission, paras 50-55, 69.

⁴³ SPO Submission, para. 5. See also, Public Redacted Version of Report on Arrest and Transfer, para. 3.

⁴⁴ Public Redacted Version of Report on Arrest and Transfer, paras 4-7.

Mr Haradinaj's submissions do not undermine the above finding that he attempted to evade arrest.

25. The Pre-Trial Judge also recalls the finding that Mr Haradinaj's non-recognition of the SC portends a lack of willingness to voluntarily bring himself before a judicial institution for which he has no regard.⁴⁵ The Pre-Trial Judge notes that Mr Haradinaj acknowledges that such statements have been made.⁴⁶ The Pre-Trial Judge readily accepts that everyone is entitled to his or her political opinions, including criticising the SC; however, the Pre-Trial Judge finds statements concerning the non-recognition of the SC, particularly when made directly before the SC,⁴⁷ pertinent to assessing Mr Haradinaj's willingness to abide by orders of the SC and whether there is a risk that he may flee.⁴⁸

26. The Pre-Trial Judge recalls that the following additional factors were relied upon in assessing Mr Haradinaj's flight risk: (i) his EU citizenship which enables him to travel with ease to a number of jurisdictions, including those that do not have extradition agreements with Kosovo; and (ii) his ability, as deputy head of the KLA WVA, to call upon the network and resources of the organisation's estimated 40,000 members to assist in any attempt to flee, regardless of the monthly stipend he received from the KLA WVA or the amount of money at the disposal of the organisation.⁴⁹ No new arguments were presented that disturb these findings.

27. In addition, the Pre-Trial Judge also notes that, since the Second Detention Decision, the SPO has completed disclosure of supporting material to the Confirmed Indictment, pursuant to Rule 102(1)(a) of the Rules, and has further

⁴⁵ First Detention Decision, para. 21; Second Detention Decision, para. 31.

⁴⁶ Defence Submission, paras 66, 71.

⁴⁷ KSC-BC-2020-07, Transcript of Hearing, 29 September 2020, public, p. 17, line 13 to p. 18, line 5.

⁴⁸ First Detention Decision, para. 21; Second Detention Decision, para. 31.

⁴⁹ First Detention Decision, para. 21; Second Detention Decision, para. 31.

disclosed evidence under Rule 102(1)(b) of the Rules.⁵⁰ This factor supports the Pre-Trial Judge's prior assessment that there is a risk that Mr Haradinaj may flee.

28. As regards the fact that Mr Haradinaj's family resides in Kosovo and Mr Haradinaj submissions that he has not sought to hide or conceal his whereabouts in the lead up to his arrest, the Pre-Trial Judge considers that, while these factors alone, may militate against a finding of flight risk, they are not sufficient to offset the factors noted above which support a finding that there is a risk that Mr Haradinaj may flee.

29. The Pre-Trial Judge accordingly finds that Mr Haradinaj remains a flight risk.

2. Obstruction of the Progress of Criminal Proceedings

30. Mr Haradinaj submits that there is no risk regarding the obstruction of the progress of proceedings under Article 41(6)(b)(ii) of the Law, given that (i) the relevant documents were seized and the accompanying court orders were respected;⁵¹ (ii) it is unclear whether the seized documents were confidential or protected;⁵² and (iii) he did not solicit, facilitate, make use of threats or take any steps to come into possession of the seized documents.⁵³ Mr Haradinaj submits that a generalised risk, unsupported in evidence, cannot justify continued detention.⁵⁴

31. The SPO argues that there has been no relevant change in circumstances detracting from the established reasons for detention.⁵⁵

32. With respect to Mr Haradinaj's argument relating to the seizure of documents and orders of the SC, the Pre-Trial Judge recalls his prior finding that

⁵⁰ KSC-BC-2020-07, F00104, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 22 January 2021, public, paras 39, 44.

⁵¹ Defence Submission, paras 81-86.

⁵² Defence Submission, para. 89.

⁵³ Defence Submission, paras 87-88, 90-92.

⁵⁴ Defence Submission, paras 94-98.

⁵⁵ SPO Submission, para. 1.

Mr Haradinaj has publicly stated that he would continue to disseminate confidential and non-public information,⁵⁶ despite orders to the KLA WVA from the Single Judge forbidding such dissemination.⁵⁷ The Pre-Trial Judge also recalls his finding that the SPO's seizure of the relevant confidential and non-public information, does not negate Mr Haradinaj's intent to disseminate such information should the opportunity arise⁵⁸ particularly when, on two occasions, Mr Haradinaj's involvement in press conferences regarding confidential and non-public documents were preceded by authorised seizures.⁵⁹

33. As to the alleged lack of clarity regarding the confidential nature of information in the leaked batches and access to the batches, the Pre-Trial Judge notes that this matter has been addressed in another decision.⁶⁰ However, with respect to establishing the risks under Article 41(6)(b) of the Law, what is pertinent is Mr Haradinaj's belief that he had in his possession confidential and non-public information and nevertheless sought to disseminate it. In this regard, the Pre-Trial Judge notes that Mr Haradinaj acknowledged the confidential and non-public nature of the information he was disclosing and the lack of authorisation for such disclosure.⁶¹ Furthermore, the Single Judge's orders, which were addressed and/or served upon⁶²

⁵⁶ First Detention Decision, para. 24, *citing* KSC-BC-2020-07, F0009/RED/A01, Specialist Prosecutor, *Annex 1 to Request for Arrest Warrants and Related Orders* ("Annex 1 to SPO Request for Arrest Warrants"), 1 October 2020, public, pp. 5-6; KSC-BC-2020-07, F0009/RED/A02, Specialist Prosecutor, *Annex 2 to Request for Arrest Warrants and Related Orders* ("Annex 2 to SPO Request for Arrest Warrants"), 1 October 2020, public, p. 8.

⁵⁷ First Detention Decision, para. 24, *citing* KSC-BC-2020-07, F00005, Single Judge, *Urgent Decision Authorising a Seizure* ("First Order"), 7 September 2020, public, para. 22; KSC-BC-2020-07, F00007, Single Judge, *Decision Authorising a Seizure* ("Second Order"), 17 September 2020, public, para. 22.

⁵⁸ Second Detention Decision, para. 36.

⁵⁹ First Detention Decision, para. 24, *citing* Annex 1 to SPO Request for Arrest Warrant; Annex 2 to SPO Request for Arrest Warrant; First Order; Second Order. *See also*, Second Detention Decision, para. 36.

⁶⁰ KSC-BC-2020-07, F00141, *Decision on Disclosure of Certain Documents Seized from the KLA War Veterans Association*, 23 February 2021, confidential.

⁶¹ Annex 1 to Request for Arrest Warrants, pp. 5, 10.

⁶² KSC-BC-2020-07, F00008, Specialist Prosecutor, *Prosecution Report Pursuant to Decision KSC-BC-2018-01/F00121*, 21 September 2020, confidential, with Annex 1, confidential; KSC-BC-2020-07, F00028, Specialist Prosecutor, *Prosecution Report Pursuant to Decision KSC-BC-2018-01-F00123*, 29 September 2020, confidential, paras 2, 5, with Annex 1, confidential.

the KLA WVA, explicitly recognised the confidential and non-public nature of the information in question.⁶³

34. As concerns Mr Haradinaj's renewed submission that he did not seek to obtain the confidential and non-public documents, by threat or otherwise, the Pre-Trial Judge emphasises again that for the purpose of assessing the risk that Mr Haradinaj may obstruct the progress of proceedings, the pertinent question is not who leaked the relevant confidential and non-public information. Rather, the relevant question is what Mr Haradinaj did with the confidential and non-public information once he had access to it.⁶⁴ In this regard, the Pre-Trial Judge recalls that Mr Haradinaj, at the Second Press Conference, revealed the names of individuals and information relating to confidential investigations,⁶⁵ told those present at the press conference that the documents were available for the taking,⁶⁶ promised to continue disseminating documents provided to the KLA WVA,⁶⁷ and declared that he sought to discredit the work of the SC.⁶⁸ Similarly, at the Third Press Conference, Mr Haradinaj revealed the name of individuals and other information in relation to confidential investigations,⁶⁹ invited those in attendance to look at, record, or public the contents of documents,⁷⁰ and stated his intent to further disseminate confidential and non-public information.⁷¹ No new arguments were presented that disturb these findings.

35. The Pre-Trial Judge accordingly finds that the risk that Mr Haradinaj may obstruct the progress of proceedings remains.

⁶³ First Order, paras 11-13, 21-22; Second Order, paras 11-13, 21-22.

⁶⁴ Second Detention Decision, para. 37.

⁶⁵ Second Detention Decision, para. 38; Annex 1 to SPO Request for Arrest Warrants, pp. 8-9, 11.

⁶⁶ Second Detention Decision, para. 38; Annex 1 to SPO Request for Arrest Warrants, p. 10.

⁶⁷ Second Detention Decision, para. 38; Annex 1 to SPO Request for Arrest Warrants, p. 11.

⁶⁸ Second Detention Decision, para. 38; Annex 1 to SPO Request for Arrest Warrants, pp. 10-11.

⁶⁹ Second Detention Decision, para. 38; Annex 1 to SPO Request for Arrest Warrants, pp. 14-15.

⁷⁰ Second Detention Decision, para. 38; Annex 1 to SPO Request for Arrest Warrants, pp. 15, 16-17, 20, 24.

⁷¹ Second Detention Decision, para. 38; Annex 1 to SPO Request for Arrest Warrants, pp. 15-17.

3. Commission of Further Offences

36. With regard to the risk of committing further offences under Article 41(6)(b)(iii) of the Law, Mr Haradinaj argues that this ground cannot be generalised and must be a plausible one and considered in light of the circumstances of the case.⁷²

37. The SPO argues that there has been no relevant change in circumstances detracting from the established reasons for detention.⁷³

38. The Pre-Trial Judge notes that Mr Haradinaj does not advance any concrete argument. For the reasons discussed above, with regard to the obstruction of proceedings, the Pre-Trial Judge finds that the risk that Mr Haradinaj may commit further crimes by threatening, intimidating, or putting at risk (potential) witnesses through the disclosure of confidential and non-public information remains.⁷⁴

4. Conclusion

39. The Pre-Trial Judge finds that Mr Haradinaj's submissions do not undermine the determination that there are articulable grounds to believe that all three risks envisaged under Article 41(6)(b)(i)-(iii) of the Law exist.⁷⁵

C. CONDITIONAL RELEASE

40. Mr Haradinaj alternatively requests conditional release and proposes the following conditions to mitigate any perceived risks: (i) surrender of his passport; (ii) an order to remain in Kosovo at a given address; (iii) registration, with the

⁷² Defence Submission, para. 95.

⁷³ SPO Submission, para. 1.

⁷⁴ See also, Second Detention Decision, para. 41.

⁷⁵ Decision on Arrest and Transfer, paras 27-31.

SPO, of electronic devices used for communications; (iv) regular reporting to a local police station; (v) a prohibition on contacting his co-defendant; (vi) a prohibition on communicating with the media or publishing information concerning matters before the SC; and (vii) any other condition the Pre-Trial Judge deems fit to impose (“Proposed Conditions”).⁷⁶

41. The SPO responds that the measures proposed by Mr Haradinaj were rejected by the Pre-Trial Judge in the Second Detention Decision.⁷⁷

42. With respect to the flight risk, the Pre-Trial Judge recalls his finding that the Proposed Conditions were insufficient in light of Mr Haradinaj’s attempts to evade SPO officers during arrest, lack of recognition of the SC, and EU citizenship that would enable him to travel with ease to jurisdictions that do not have extradition agreements with Kosovo.⁷⁸ No new conditions were proposed by Mr Haradinaj that disturb these findings.

43. With respect to the risk of obstructing the proceedings or the commission of further offences, the Pre-Trial Judge recalls his finding that, in the face of Mr Haradinaj’s failure to comply with orders of the Single Judge on two prior occasions,⁷⁹ stated desire to continue disseminating confidential and non-public documents and information,⁸⁰ and his non-recognition of the SC,⁸¹ any personal assurances to refrain from contacting a co-defendant or the media or publishing information concerning matters before the SC cannot be relied upon.⁸² It was further found that, if released, Mr Haradinaj would be in a position to receive, without oversight, confidential and non-public information and that, in these

⁷⁶ Defence Submission, para. 99.

⁷⁷ Response, para. 8.

⁷⁸ First Detention Decision, para. 21; Second Detention Decision, para. 44.

⁷⁹ First Order, para. 22; Second Order, para. 22.

⁸⁰ Annex 1 to SPO Request for Arrest Warrant, pp. 5-6; Annex 2 to SPO Request for Arrest Warrant, p. 8.

⁸¹ KSC-BC-2020-07, Transcript, 29 September 2020, public, p. 17, line 13 to p.18, line 5.

⁸² Second Detention Decision, para. 45.

circumstances, conditional release would be insufficient to overcome the Article 41(6)(b) risks identified above.⁸³ No new conditions were proposed by Mr Haradinaj that disturb these findings.

44. The Pre-Trial Judge accordingly finds that release with conditions is insufficient to mitigate the Article 41(6)(b) risks and conditional release must be denied.

V. DISPOSITION

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

- a. **ORDERS** Mr Haradinaj's continued detention;
- b. **ORDERS** Mr Haradinaj to file submissions on the next review of detention by Thursday, 1 April 2021, with responses and replies following the timeline set out in Rule 76 of the Rules; and
- c. **ORDERS** the SPO to submit any statement(s) of the arresting officer(s) or any other material such as video footage, if available, regarding Mr Haradinaj's arrest by Friday, 12 March 2021.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Wednesday, 24 February 2021
At The Hague, the Netherlands

⁸³ Second Detention Decision, para. 45.