



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA 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:** 23 April 2021

**Language:** English

**Classification:** **Public**

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**Public Redacted Version of the  
Decision on Review of Detention of Nasim Haradinaj**

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> 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 25 September 2020, Hysni Gucati ("Mr Gucati") and Nasim Haradinaj ("Mr Haradinaj") were arrested in relation to alleged dissemination of confidential and non-public information relating to the work of the Special Investigative Task Force and/or the Specialist Prosecutor's Office ("SPO").<sup>2</sup>

2. On 27 October 2020, the Single Judge rejected Mr Haradinaj's request for his immediate release from detention.<sup>3</sup> Detention of Mr Haradinaj was then reviewed and extended by the Pre-Trial Judge at regular intervals, namely on 24 December 2020<sup>4</sup> (which was upheld by the Court of Appeals Panel)<sup>5</sup> and 24 February 2021.<sup>6</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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. As regards transfer of Mr Haradinaj to the detention facilities of the Specialist Chambers ("SC") in The Hague, the Netherlands, see 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 on 14 October 2020; see F00026/COR/RED.

<sup>3</sup> KSC-BC-2020-07, F00058, Single Judge, *Decision on Request for Immediate Release of Nasim Haradinaj ("First Detention Decision")*, 27 October 2020, public.

<sup>4</sup> KSC-BC-2020-07, F00094, Pre-Trial Judge, *Decision on Review of Detention of Nasim Haradinaj ("Second Detention Decision")*, 24 December 2020, public.

<sup>5</sup> The Second Detention Decision was upheld by the Court of Appeals Panel; see KSC-BC-2020-07, IA002/F00005, Court of Appeals Panel, *Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention*, 9 February 2021, public, para. 66.

<sup>6</sup> KSC-BC-2020-07, F00144, Pre-Trial Judge, *Decision on Review of Detention of Nasim Haradinaj ("Third Detention Decision")*, 24 February 2021, public.

3. On 12 March 2021, the SPO, pursuant to the third “Decision on Review of Detention of Nasim Haradinaj” (“Third Detention Decision”),<sup>7</sup> disclosed a report of an arresting officer (“Report”)<sup>8</sup> and a video of the arrest (“Video”).<sup>9</sup>

4. On 6 April 2021, Mr Haradinaj filed submissions on continued detention.<sup>10</sup> The SPO responded on 15 April 2021.<sup>11</sup> On 20 April 2021, Mr Haradinaj replied.<sup>12</sup>

## II. SUBMISSIONS

5. Mr Haradinaj argues that he should be released from detention. He contends that there are no sufficient and specific reasons for his detention, especially given the passage of time since his arrest.<sup>13</sup> Mr Haradinaj submits that the Report and the Video are insufficient to conclude that he is a flight risk.<sup>14</sup> Concerning the remaining Article 41(6)(b) risks, Mr Haradinaj refers to previous submissions and avers that the SPO has not offered any evidence in support thereof.<sup>15</sup> He also indicates that the Article 41(6)(b)(i) and (iii) risks are alleviated due to [REDACTED].<sup>16</sup> [REDACTED].<sup>17</sup> Lastly, he indicates conditions under which he could be released.<sup>18</sup>

6. The SPO responds that the continued detention of Mr Haradinaj remains necessary as there has been no relevant change in circumstances.<sup>19</sup> The SPO asserts

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<sup>7</sup> Third Detention Decision, paras 22 *in fine*, 45(c).

<sup>8</sup> Disclosure 11, 083798-083799.

<sup>9</sup> Disclosure 11, 081981-01.

<sup>10</sup> KSC-BC-2020-07, F00173, Defence, *Defence Submissions on Third Review of Detention of Nasim Haradinaj* (“Defence Submission”), 1 April 2021 (filed on 6 April 2021), confidential.

<sup>11</sup> KSC-BC-2020-07, F00184/RED, Specialist Prosecutor, *Public Redacted Version of Prosecution Consolidated Response for Review of Detention* (“SPO Submission”), 15 April 2021, public.

<sup>12</sup> KSC-BC-2020-07, F00186, Defence, *Defence Reply to Prosecution Consolidated Response for Review of Detention* (“Reply”), 20 April 2021, confidential.

<sup>13</sup> Defence Submission, paras 4, 37-40, 44, 62-64, 66, 68, 76.

<sup>14</sup> Defence Submission, paras 6-7, 48-51, 53, 56-57.

<sup>15</sup> Defence Submissions, paras 58-68.

<sup>16</sup> [REDACTED].

<sup>17</sup> [REDACTED].

<sup>18</sup> Defence Submission, para. 78.

<sup>19</sup> SPO Submission, paras 1, 3-4, 7.

that no further evidence is needed to demonstrate “articulable grounds to believe” that Mr Haradinaj may flee. The SPO adds that the risk of flight is predicated upon several other factors besides Mr Haradinaj having evaded arrest.<sup>20</sup> [REDACTED].<sup>21</sup> The SPO also contends that the Article 41(6)(b) risks have increased as the SPO has now filed its Pre-Trial Brief, list of witnesses, list of exhibits, and the Rule 102(3) list, and Mr Haradinaj knows that his trial imminently approaches.<sup>22</sup>

7. Mr Haradinaj replies that the SPO argument that there has been no change in circumstances is not a standard to be applied to the present review.<sup>23</sup> In any event, in his view, there has been such a change [REDACTED].<sup>24</sup> Mr Haradinaj also submits that the SPO argument that the Article 41(6)(b) risks have increased is unsubstantiated.<sup>25</sup> He disagrees with the SPO’s assertion that the trial imminently approaches, as the case has not been transferred to a Trial Panel and no trial date has been fixed. Also, he stresses that Covid-19 restrictions are having a detrimental impact on the ability of the Defence to prepare its case, and that there is a delay in the translation of documents.<sup>26</sup> Mr Haradinaj further contests the SPO’s characterisation of his arrest,<sup>27</sup> and maintains [REDACTED].<sup>28</sup>

### III. APPLICABLE LAW

8. Article 41(6) of the Law provides that the SC shall only order the 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

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<sup>20</sup> SPO Submission, paras 8, 11.

<sup>21</sup> [REDACTED].

<sup>22</sup> SPO Submission, paras 1 *in fine*, 5.

<sup>23</sup> Reply, paras 4-8, 15-16.

<sup>24</sup> Reply, para. 9.

<sup>25</sup> Reply, paras 10-12.

<sup>26</sup> Reply, paras 13-14, 24-30.

<sup>27</sup> Reply, paras 17-20.

<sup>28</sup> [REDACTED].

person (i) is a flight risk; (ii) will destroy, hide, change or forge evidence of a crime; 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.

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

10. 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.

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

#### IV. DISCUSSION

12. As a preliminary matter, the Pre-Trial Judge notes that Mr Haradinaj filed his submissions outside the time limit set by the Pre-Trial Judge.<sup>29</sup> However, the Pre-Trial Judge finds it appropriate to recognise these submissions as validly made, pursuant to Rule 9(5)(b) of the Rules. This recognition is made on an exceptional basis so as not to deny Mr Haradinaj the opportunity to present submissions on a matter so

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<sup>29</sup> The deadline for making submissions was set for 1 April 2021, *see* Third Detention Decision, para. 45(b). The Defence for Mr Haradinaj filed submissions on 6 April 2021.

fundamental as whether detention should be continued.<sup>30</sup> However, the Pre-Trial Judge emphasises that, for future purposes, if the Defence for Mr Haradinaj chooses to make submissions, and does so out of time, it must submit a proper request showing good cause, as per Rule 9(5) of the Rules.

13. With regard to the review of detention, Article 41(10) of the Law requires the Pre-Trial Judge to examine whether the reasons for detention on remand still exist, including the grounds set out in Article 41(6) of the Law, namely whether (i) there is a grounded suspicion that the person has committed the crime(s), and (ii) there are articulable grounds to believe that any of the risks 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.<sup>31</sup> Contrary to the arguments of the Defence,<sup>32</sup> providing an opportunity to Mr Haradinaj to make submissions first and to reply last to the SPO submissions enables the Defence to comment on the observations made by the SPO and does not reverse the burden of proof.<sup>33</sup> This decision addresses the requirements of Article 41(6) of the Law with due regard to the submissions made by the Parties.

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<sup>30</sup> KSC-BC-2020-07, F00143, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 24 February 2021, public, para. 16.

<sup>31</sup> 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.

<sup>32</sup> Defence Submission, para. 41.

<sup>33</sup> In its decision dated 9 February 2021, the Court of Appeal Panel noted that the SC legal framework does not prescribe a specific procedure for the review of detention but highlighted that in this context both Parties must have the opportunity to present their case and have knowledge of and comment on the observations made by either party. The Court of Appeal Panel also referred with approval to the order of submissions established in the Second Detention Decision. See KSC-BC-2020-07, IA002/F00005,



## A. GROUNDED SUSPICION

14. The Pre-Trial Judge recalls that the evidentiary threshold, against which the facts are assessed to establish a grounded suspicion in Article 41(6)(a) of the Law, is not the same as that for a conviction or even the bringing of charges.<sup>34</sup> In any event, when confirming the charges against Mr Haradinaj, the Pre-Trial Judge has found an even higher threshold of suspicion against Mr Haradinaj than the one in Article 41(6)(a) of the Law, namely a well-grounded suspicion, as regards the offences under Articles 387, 388, 392 and 401 of the Kosovo Criminal Code, as set out in Article 15(2) of the Law.<sup>35</sup>

15. The Pre-Trial Judge thus finds that the requirement in Article 41(6)(a) of the Law continues to be met.

## B. NECESSITY OF DETENTION

16. Once the *sine qua non* requirement 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 sense that they must be specified in detail.<sup>36</sup> 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.<sup>37</sup>

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*Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention*, 9 February 2021, public, paras 38, 43, footnote 82.

<sup>34</sup> See ECtHR, *Murray v. the United Kingdom*, 28 October 1994, Series A no. 300-A, para. 55; *Yüksel and Others v. Turkey*, nos. 55835/09 and 2 others, 31 May 2016, para. 52.

<sup>35</sup> KSC-BC-2020-07, F00074/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on the Confirmation of the Indictment*, 11 December 2020, public, paras 103, 109, 113, 117, 121, 125.

<sup>36</sup> See Article 19.1.9 of the Kosovo Criminal Procedure Code 2012, Law No. 04/L-123. Article 19.1.30 of the Code defines "articulable" as "the party offering the information or evidence must specify in detail the information or evidence being relied upon".

<sup>37</sup> 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*, 24 September 2020, public, para. 19, with Annexes 1-4, public. *Similarly*, ICC, *Prosecutor v.*

17. The SPO argues that continued detention of Mr Haradinaj is necessary due to the risk of flight, the risk of obstruction of the proceedings, and the risk of committing further offences.<sup>38</sup> The Pre-Trial Judge turns to the assessment of these risks argued by the SPO as to whether they indeed still exist, necessitating Mr Haradinaj's continued detention.

### 1. Risk of Flight

18. With respect to Mr Haradinaj's submission that the Report and the Video are insufficient to conclude that he is a flight risk, the Pre-Trial Judge underlines, at the outset, that he assesses the evidence holistically and not in isolation. That being said, the Pre-Trial Judge recalls that the Registry's report on Mr Haradinaj's arrest and transfer provides a detailed account of the events as they unfolded.<sup>39</sup> The Registry's report 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 the Kosovo police became involved.<sup>40</sup> This also follows from the Report of the arresting officer submitted by the SPO.<sup>41</sup> Insofar as Mr Haradinaj indicates that the Video does not show the initial stages of the arrest,<sup>42</sup> the Pre-Trial Judge notes that it does not cast doubt on the aforementioned account of the events in

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*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.

<sup>38</sup> SPO Submission, paras 1-2.

<sup>39</sup> KSC-BC-2020-07, F00047, Registrar, *Confidential and Ex Parte 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, 14 October 2020, confidential and *ex parte*, paras 3-7, 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, paras 3-7.

<sup>40</sup> Public Redacted Version of Report of Arrest and Transfer, paras 3-7.

<sup>41</sup> Disclosure 11, 083798-083799.

<sup>42</sup> Defence Submission, para. 49.



the Registry's report or the Report. Hence, and, unlike suggested by Mr Haradinaj,<sup>43</sup> there is no need for additional recordings.

19. With respect to Mr Haradinaj's submission regarding his relaxed and cooperative attitude after his arrest, the Pre-Trial Judge notes that this does not change the fact that initially he had attempted to evade the SPO officers. Furthermore, he rejected being arrested by the SPO and insisted upon the involvement of the Kosovo police.<sup>44</sup> In this context, the fact that no measures of restraint were applied during Mr Haradinaj's arrest<sup>45</sup> is of limited significance. The Pre-Trial Judge thus finds that Mr Haradinaj's submissions do not undermine the above finding that he attempted to evade the arrest.

20. The Pre-Trial Judge also recalls that several other factors contribute to the risk that Mr Haradinaj may flee, namely his non-recognition of the SC,<sup>46</sup> his EU citizenship enabling him to travel with ease, and his ability, as deputy head of the KLA War Veterans' Association ("KLA WVA"), to call upon the network and resources of the organisation's estimated 40,000 members to assist in any attempt to flee.<sup>47</sup> Moreover, the risk of flight is amplified by the advancement of the proceedings. In particular, the Pre-Trial Judge notes that, since the Third Detention Decision,<sup>48</sup> further significant steps have been taken for the preparation of the case for trial. In particular, the SPO has filed its Pre-Trial Brief.<sup>49</sup> Moreover, the Pre-Trial Judge has already set a date for the submission of the Defence Pre-Trial Briefs, if any, namely by 14 June 2021, and a

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<sup>43</sup> Defence Submission, para. 50.

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

<sup>45</sup> Defence Submission, para. 52.

<sup>46</sup> First Detention Decision, para. 21; Second Detention Decision, para. 31; Third Detention Decision, para. 25; KSC-BC-2020-07, Transcript of Hearing, 29 September 2020, public, p. 17, line 13 to p. 18, line 5.

<sup>47</sup> First Detention Decision, para. 21; Second Detention Decision, para. 31; Third Detention Decision, para. 26.

<sup>48</sup> Third Detention Decision, para. 27.

<sup>49</sup> KSC-BC-2020-07, F00181, Specialist Prosecutor, *Submission of Pre-Trial-Brief, Witness and Exhibit Lists, and Rule 109(c) Chart with Confidential Annexes 1-4*, 9 April 2021, public.

tentative date for the transmission of the case file to a Trial Panel, namely on 30 June 2021.<sup>50</sup>

21. [REDACTED],<sup>51</sup> the Pre-Trial Judge is not persuaded that this offsets the aforementioned factors indicating that Mr Haradinaj may flee. It is outweighed by the above considerations as regards his earlier attempt to evade the SPO officers, non-recognition of the SC, and the further factors noted above.

22. In that light, the Pre-Trial Judge finds that Mr Haradinaj remains a flight risk.

## **2. Risk of Obstructing the Proceedings**

23. With respect to Mr Haradinaj's repeated submissions that the SPO has failed to advance articulable grounds in relation to this risk and that instead the SPO's submissions are generalised statements and provide no evidence in support,<sup>52</sup> the Pre-Trial Judge notes that the previous findings in this regard were based on specific factors indicating the risk of obstruction.

24. In particular, the Pre-Trial Judge recalls that Mr Haradinaj at the second press conference on 16 September 2020, revealed information relating to confidential investigations,<sup>53</sup> told those present that the documents were available for the taking,<sup>54</sup> promised to continue disseminating documents provided to the KLA WVA,<sup>55</sup> and declared that he sought to discredit the work of the SC.<sup>56</sup> Mr Haradinaj made similar

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<sup>50</sup> KSC-BC-2020-07, F00148, Pre-Trial Judge, *Consolidated Calendar for the Remainder of the Pre-Trial Proceedings*, 8 March 2021, public, para. 6.

<sup>51</sup> [REDACTED].

<sup>52</sup> Defence Submission, paras 59, 63-64, 66-68.

<sup>53</sup> Third Detention Decision, para. 34; Second Detention Decision, para. 38; 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. 8-9, 11.

<sup>54</sup> Third Detention Decision, para. 34; Second Detention Decision, para. 38; Annex 1 to SPO Request for Arrest Warrants, p. 10.

<sup>55</sup> Third Detention Decision, para. 34; Second Detention Decision, para. 38; Annex 1 to SPO Request for Arrest Warrants, p. 11.

<sup>56</sup> Third Detention Decision, para. 34; Second Detention Decision, para. 38; Annex 1 to SPO Request for Arrest Warrants, pp. 10-11.

statements also at the third press conference on 22 September 2020.<sup>57</sup> In addition, the Pre-Trial Judge recalls that Mr Haradinaj stated that he would continue to disseminate confidential and non-public information<sup>58</sup> despite orders to the KLA WVA from the Single Judge forbidding such dissemination.<sup>59</sup>

25. In that connection, the Pre-Trial Judge also recalls 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 arise,<sup>60</sup> given Mr Haradinaj's past conduct on at least two occasions.<sup>61</sup> Furthermore, the Pre-Trial Judge notes that, currently, Mr Haradinaj has access, through the disclosure process, to the evidence, classified as confidential, including information about the confidential nature of the leaked documents and witness contacts.<sup>62</sup>

26. Further, the Pre-Trial Judge considers that Mr Haradinaj's new awareness of the full account of the SPO case and the approaching trial further confirms the risk that he will obstruct the proceedings.

27. In that light, the Pre-Trial Judge finds that the risk that Mr Haradinaj may obstruct the progress of proceedings remains.

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<sup>57</sup> Third Detention Decision, para. 34; Second Detention Decision, para. 38; Annex 1 to SPO Request for Arrest Warrants, pp. 14-17, 20, 24.

<sup>58</sup> First Detention Decision, para. 24, *citing* Annex 1 to SPO Request for Arrest Warrants, 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.

<sup>59</sup> 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.

<sup>60</sup> Second Detention Decision, para. 36.

<sup>61</sup> First Detention Decision, para. 24, *citing* Annex 1 to SPO Request for Arrest Warrants; Annex 2 to SPO Request for Arrest Warrants; First Order; Second Order. *See also* Second Detention Decision, para. 36.

<sup>62</sup> KSC-BC-2020-07, F00141, Pre-Trial Judge, *Decision on Disclosure of Certain Documents Seized from the KLA War Veterans Association*, 23 February 2021, confidential; F00136, Pre-Trial Judge, *Decision on Non-Disclosure of Certain Witness Contacts*, 22 February 2021, confidential.

### 3. Risk of Committing Further Offences

28. For the specific reasons discussed above with regard to the risk of obstruction, 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.<sup>63</sup> These considerations also outweigh any consideration regarding [REDACTED].<sup>64</sup>

### 4. Conclusion

29. The Pre-Trial Judge concludes that there remains a risk that Mr Haradinaj will flee, obstruct the progress of the proceedings, or commit further offences. The Pre-Trial Judge will assess below whether these risks can be adequately addressed by any condition.

#### C. CONDITIONAL RELEASE

30. Mr Haradinaj reiterates his previous proposal of specific conditions that could be applied, including any other condition that the Pre-Trial Judge may deem appropriate (“Proposed Conditions”), to alleviate the three risks identified above.<sup>65</sup> The SPO submits that Mr Haradinaj proposes no new conditions that could mitigate the risks.<sup>66</sup>

31. The Pre-Trial Judge recalls his previous findings that the risks of flight, obstructing the proceedings or committing further offences are insufficiently mitigated by the Proposed Conditions.<sup>67</sup> In particular, as regards the risk of flight, the Pre-Trial Judge refers to the above considerations that Mr Haradinaj has already

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<sup>63</sup> Third Detention Decision, para. 38; Second Detention Decision, para. 41.

<sup>64</sup> [REDACTED].

<sup>65</sup> Defence Submission, para. 78. The Proposed Conditions are materially similar to those made in KSC-BC-2020-07, F00111, Defence, *Defence Submissions on Second Review of the Detention of Nasim Haradinaj*, 1 February 2021, public, para. 99.

<sup>66</sup> SPO Submission, para. 3.

<sup>67</sup> Second Detention Decision, paras 40-44.

attempted to evade the SPO officers during the arrest, and has expressed the lack of recognition of the SC. Further, his EU citizenship would enable him to travel with ease to jurisdictions that do not have extradition agreements with Kosovo. As regards the risk of obstructing the proceedings and the risk of further offences, the Pre-Trial Judge notes in particular that Mr Haradinaj has already failed to comply with orders of the Single Judge on two prior occasions.<sup>68</sup> He has also stated the desire to continue disseminating confidential and non-public documents and information.<sup>69</sup> Furthermore, if released from detention, Mr Haradinaj would be in a position to disseminate and receive, without oversight, confidential and non-public information.<sup>70</sup>

32. It follows that the risks of flight, obstructing the proceedings, and committing further offences can only be effectively managed at the SC detention facilities. Being released under the Proposed Conditions or any other condition provided for by Article 41(12) of the Law, such as house detention in Kosovo or elsewhere, with or without additional restrictions as to movement or use of devices, does not adequately address the risk that Mr Haradinaj may obstruct the proceedings. This is particularly so in view of the above considerations as to Mr Haradinaj's earlier attempt to evade the SPO officers, public statements vowing to continue to disclose confidential and non-public information and his failure to abide by the orders of the Single Judge.

33. In these circumstances, the Pre-Trial Judge finds that Mr Haradinaj's continued detention is necessary in order to avert the identified Article 41(6)(b) risks, [REDACTED].

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<sup>68</sup> First Order, para. 22; Second Order, para. 22.

<sup>69</sup> Annex 1 to SPO Request for Arrest Warrants, pp. 5-6; Annex 2 to SPO Request for Arrest Warrants, p. 8.

<sup>70</sup> Third Detention Decision, para. 43; Second Detention Decision, para. 45.

#### D. PROPORTIONALITY OF DETENTION

34. As to the length of pre-trial detention, the Pre-Trial Judge notes that since the last review of detention, further significant steps have been taken for preparation of the case for trial. In particular, on 9 April 2021, the SPO filed its Pre-Trial Brief.<sup>71</sup> Moreover, the Pre-Trial Judge has already set a date for the submission of the Defence Pre-Trial Briefs, if any, namely by 14 June 2021, and a tentative date for the transmission of the case file to a Trial Panel, namely on 30 June 2021.<sup>72</sup>

35. Against this backdrop, and the fact that the risks of flight, obstruction of the proceedings, and commission of further offences exist and cannot be sufficiently addressed by the application of alternative measures, the Pre-Trial Judge finds that Mr Haradinaj's detention for a further two months is necessary and proportional in the specific circumstances of the case.

#### E. [REDACTED]

36. [REDACTED].<sup>73</sup> [REDACTED].<sup>74</sup> [REDACTED].<sup>75</sup>

37. [REDACTED].<sup>76</sup>

38. [REDACTED]. [REDACTED].

#### V. DISPOSITION

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

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<sup>71</sup> KSC-BC-2020-07, F00181, Specialist Prosecutor, *Submission of Pre-Trial-Brief, Witness and Exhibit Lists, and Rule 109(c) Chart with Confidential Annexes 1-4*, 9 April 2021, public.

<sup>72</sup> KSC-BC-2020-07, F00148, Pre-Trial Judge, *Consolidated Calendar for the Remainder of the Pre-Trial Proceedings*, 8 March 2021, public, para. 6.

<sup>73</sup> [REDACTED].

<sup>74</sup> [REDACTED].

<sup>75</sup> [REDACTED].

<sup>76</sup> [REDACTED].



- a. **ORDERS** Mr Haradinaj's continued detention;
- b. [REDACTED];
- c. **ORDERS** Mr Haradinaj to file submissions on the next review of detention by **Tuesday, 1 June 2021**, with responses and replies following the timeline set out in Rule 76 of the Rules; and
- d. **ORDERS** Mr Haradinaj to file public redacted versions of F00173 and F00186 by **Friday, 30 April 2021**.



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**Judge Nicolas Guillou**  
**Pre-Trial Judge**

Dated this Friday, 23 April 2021  
At The Hague, the Netherlands