



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

In: KSC-BC-2020-06
Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon
Filing Participant: Specialist Prosecutor
Date: 14 June 2021
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**Public redacted version of Prosecution response to Selimi Defence Submissions
on Detention Review**

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I. INTRODUCTION

1. The continued detention of Rexhep SELIMI remains necessary.¹ There has been no relevant change in circumstances detracting from the established reasons for detention.² Rather, the Article 41(6)(b) risks have increased since the latest decision.³

2. The Pre-Trial Judge ('PTJ') previously found: (i) grounded suspicion that the Accused committed crimes within the jurisdiction of the Specialist Chambers ('KSC');⁴ (ii) articulable grounds to believe that the Accused will obstruct the progress of criminal proceedings, and will repeat or attempt to repeat the criminal offences;⁵ and (iii) that the release conditions proposed by the Accused insufficiently mitigated the Article 41(6)(b) risks.⁶ These findings continue to be true in all respects.

II. SUBMISSIONS

3. For purposes of a detention review under Rule 57(2), the reasons or circumstances underpinning detention must be reviewed in order to determine whether these reasons continue to exist under Article 41(6) of the Law.⁷ That determination inevitably concerns what has changed, if anything, since the previous

¹ *Contra* Selimi Defence Submissions on Review of Detention, KSC-BC-2020-06/F00330, 31 May 2021, Confidential (with annex) ('SELIMI Submissions').

² *See* Article 41 of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'); Rule 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Article' or 'Articles' herein refer to articles of the Law, and all references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ Public Redacted Version of Decision on Rexhep Selimi's Application for Interim Release, KSC-BC-2020-06/F00179/RED, 22 January 2021 (redacted version notified 26 January 2021) ('SELIMI Release Decision'), *upheld by* Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA003/F00005/RED, 30 April 2021 ('SELIMI Release Appeal Decision').

⁴ *See* SELIMI Release Decision, KSC-BC-2020-06/F00179/RED, para.27.

⁵ SELIMI Release Decision, KSC-BC-2020-06/F00179/RED, paras 34-49.

⁶ SELIMI Release Decision, KSC-BC-2020-06/F00179/RED, paras 51-56.

⁷ *Prosecutor v. Gucati and Haradinaj*, Decision on Nasim Haradinaj's Appeal on Decision Reviewing Detention, KSC-BC-2020-07/IA002/F00005, 9 February 2021, para.55.

ruling on detention.⁸ The Pre-Trial Judge is not required to make findings on the factors already decided upon in the initial ruling on detention,⁹ and any Defence arguments suggesting otherwise must be rejected.

4. Certain Defence submissions repeat past arguments or re-frame them without any facts which could justify a revised assessment.¹⁰ Re-arguing adverse findings does not justify release.

5. Below, the SPO addresses new arguments concerning the Accused's detention. None of them constitutes a relevant change in circumstances, impacts the Pre-Trial Judge's previous findings, or detracts from the need for the continued detention of the Accused.

A. RECENT DEVELOPMENTS INCREASE THE RELEVANT RISKS

6. The SPO has disclosed voluminous Rule 102(1)(b) material since the last detention decision. As the disclosure process reaches an advanced stage,¹¹ the Accused has an ever-growing account of the SPO's case against him, which only increases his incentive to attempt to unlawfully evade or obstruct the proceedings, including through a repetition of criminal offences.

7. That SELIMI is in a position of influence to mobilise support networks was upheld by the Appeals Panel,¹² and this potential network remains as active as ever.¹³

⁸ How this assessment compares or does not compare with assessing 'changed circumstances' at the ICC is immaterial. *Contra* SELIMI Submissions, KSC-BC-2020-06/F00329, para.6.

⁹ KSC-BC-2020-07/IA002/F00005, para.55

¹⁰ *Egs* SELIMI Submissions, KSC-BC-2020-06/F00329, paras 18-20 (on SELIMI's cooperation), 22-23 (on climate of intimidation and support network), 26 (how past submissions allegedly were not considered by the Appeals Panel), 40-42 (on SELIMI being progressively informed of the evidence against him).

¹¹ Decision on Categorisation of Evidence Under Rule 109(c) and Related Matters, KSC-BC-2020-06/F00218, 12 March 2021, para.22.

¹² SELIMI Release Appeal Decision, KSC-BC-2020-06/IA003/F00005/RED, paras 62-63.

¹³ See United States Department of State, Kosovo 2020 Human Rights Report, available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/kosovo/> ('[I]leading politicians and civil society leaders, particularly veterans' organizations, publicly denounced the SPO and the KSC and worked to undermine public support for the work of the SPO and the KSC. These

The 'Freedom has a name, the KLA' campaign was set up shortly after the Accused's arrest and went viral.¹⁴ This campaign has been highly active in recent months, demonstrating the widespread support for the Accused in Kosovo.

8. On 4 June 2021, Faton KLINAKU, the acting chairman of the KLA War Veterans Association ('KLA WVA') gave an interview whereby he promised he would publish more confidential KSC documents if he obtained them.¹⁵ This is extraordinary, noting that Mr KLINAKU is the acting chairman because the previous head and deputy head of the KLA WVA are being prosecuted before the KSC for identical conduct.¹⁶ That the law is no constraint for the acting head of the KLA WVA is emblematic of the lengths the Accused's supporters are willing to go to obstruct these proceedings, and indeed this court.

B. [REDACTED]

9. [REDACTED].¹⁷ [REDACTED].¹⁸ [REDACTED].¹⁹

efforts included public protests, a petition drive to abrogate the court, and a legislative initiative proposed by former president Thaci that could have undermined the KSC's mandate').

¹⁴ Balkan Transitional Justice, Serbeze HAXHIAJ, Kosovo: Top Politicians Sent to Hague to Face War Charges, 28 December 2020, available at <https://balkaninsight.com/2020/12/28/kosovo-top-politicians-sent-to-hague-to-face-war-charges/> ('KLA war veterans were furious at the indictment, however. A nationwide campaign was launched under the slogan "Freedom has a name" by artists, veterans and politicians as a sign of support for the former KLA leaders facing trial').

¹⁵ Faton KLINAKU interview with KlanKosovaTv, 4 June 2021, 100911-100915 (Annex 1.1; '[w]e, as a Veterans Association, have opposed the Special Court because it is a monoethnic court and prosecutes only the KLA, after they were served the files by Serbia, like UNMIK and EULEX did earlier, and they do not deal with the crimes and massacres committed by the Serb occupier during the war in Kosovo. As we have been against this Court, we will make public any material we receive that is in everybody's interest').

¹⁶ *Prosecutor v. Gucati and Haradinaj*, KSC-BC-2020-07.

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED]. [REDACTED].

10. [REDACTED]²⁰ [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]²¹ [REDACTED].²² [REDACTED]. [REDACTED].²³

C. CONDITIONS REMAIN UNABLE TO MITIGATE THE RISKS

11. The Pre-Trial Judge concluded that no conditions could mitigate the risks posed by SELIMI if released, and this conclusion has been upheld on appeal.²⁴ The latest Defence submissions provide no information warranting a different assessment.

12. No conditions can actually mitigate the risks posed by the Accused.²⁵ Prohibitions on internet use, keyloggers, or other monitoring processes are only partial and imperfect substitutes for what can be monitored from a controlled environment in the detention centre. The Article 41(6) risks are such that anything short of detention creates an unacceptable opportunity for clandestine communications. Even a single such communication could have grave consequences.

13. The Accused's network will stop at nothing to secure his acquittal in this case. In the circumstances of a case like this one, there is nothing that Kosovo or any other state could do to sufficiently mitigate the Article 41(6) risks becoming manifest. Should this occur, it will irreversibly damage the integrity of these proceedings. Continued detention is the only way to address the risks entailed.

D. DETENTION REMAINS PROPORTIONATE

14. The Appeals Panel has already determined that the Pre-Trial Judge's detention assessment did not require estimating the probable length of detention.²⁶ All deadlines

²⁰ [REDACTED].

²¹ [REDACTED].

²² [REDACTED] [REDACTED] [REDACTED].

²³ [REDACTED].

²⁴ SELIMI Release Appeal Decision, KSC-BC-2020-06/IA003/F00005/RED, paras 88-93.

²⁵ *Contra* SELIMI Submissions, KSC-BC-2020-06/F00329, paras 43-46.

²⁶ *See* Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA002/F00005/RED, 30 April 2021, para.71.

set by the Pre-Trial Judge in the case to date have been met or extended for good cause. There is no indication that the SPO has been dilatory, and trial preparations are proceeding in an expeditious manner.²⁷

15. As the SPO has stated previously, '[t]he length of pre-trial detention must be balanced against the Article 41(6) risks and the circumstances of the case as a whole, including the potential penalties for the crimes charged. [...] In the course of this balancing exercise, even significant pre-trial detention may still be reasonable.'²⁸ The Accused has been detained for seven months on a vast array of war crimes and crimes against humanity committed over a near two-year period. The scale of these charges affects all aspects of the trial process, including preparations and the necessity of continued detention.

16. The Defence's insistence that pre-trial proceedings must certainly be too long conveniently ignores its own responsibility in this regard. The Defence received an extension of time to file the present detention submissions,²⁹ as well as its preliminary motions³⁰ (which must all have a final resolution before the case can be sent to a trial panel). The Defence has made no effort to attempt to reach any agreed facts which might expedite trial proceedings, even on proposed facts such as the Accused's date and place of birth. All Defence teams in this case have also made submissions that they have not received sufficient disclosure in order to meaningfully prepare, repeatedly failing to appreciate the volume of what has been disclosed and the reality

²⁷ SELIMI Submissions, KSC-BC-2020-06/F00329, paras 2, 8-15.

²⁸ Prosecution response to Application for Interim Release on behalf of Mr Kadri Veseli, KSC-BC-2020-06/F00161, 4 January 2021, para.10, n.16, *citing* ICC, *Prosecutor v. Bemba et al.*, Judgment on the appeals against Pre-Trial Chamber II's decision regarding interim release in relation to Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu, and Narcisse Arido and order for reclassification, 29 May 2015, ICC-01/05-01/13-969, para.45.

²⁹ Oral order regarding timeline for defence submissions on continued detention, 19 May 2021, pp.451-52.

³⁰ Decision on the Conduct of Detention Review and Varying the Deadline for Preliminary Motions, KSC-BC-2020-06/F00150, 16 December 2020, para.30(f).

that delayed disclosure loses its meaning if the Defence renders itself unable to proceed without postponements following delayed disclosure.

17. Nothing about the Accused's detention thus far has been unreasonable. There have not been any unjustified delays. The Accused's rights have been fully respected. Defence arguments on the proportionality of detention must therefore be rejected.

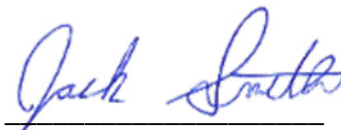
III. CLASSIFICATION

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

IV. RELIEF REQUESTED

19. For the foregoing reasons, the relief sought by the SELIMI Defence should be rejected.

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At The Hague, the Netherlands.