



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: 23 June 2021

Language: English

Classification: **Public**

Decision on Review of Detention of Nasim Haradinaj

Specialist Prosecutor
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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 25 September 2020, Hysni Gucati and Nasim 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").²

2. On 27 October 2020, the Single Judge rejected Mr Haradinaj's request for his immediate release from detention.³ Detention of Mr Haradinaj was then reviewed and extended by the Pre-Trial Judge at regular intervals, namely on 24 December 2020,⁴ which was upheld by the Court of Appeals Panel,⁵ and on 24 February and 23 April 2021.⁶

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, 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; 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.

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

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

⁵ 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.

⁶ KSC-BC-2020-07, F00144, Pre-Trial Judge, *Decision on Review of Detention of Nasim Haradinaj ("Third Detention Decision")*, 24 February 2021, public; F00189/RED, Pre-Trial Judge, *Public Redacted Version*

3. On 12 March 2021, the SPO, pursuant to the aforementioned decision of 24 February 2021,⁷ disclosed a report of an arresting officer (“Report”)⁸ and a video of the arrest of Mr Haradinaj (“Video”).⁹

4. On 11 June 2021, the SPO filed submissions on the present review of Mr Haradinaj’s detention.¹⁰ Mr Haradinaj filed his submissions on 17 June 2021.¹¹

II. SUBMISSIONS

5. The SPO argues that the detention of Mr Haradinaj remains necessary as there has been no relevant change in the circumstances, and, in fact, the Article 41(6)(b) risks have increased.¹² The SPO also submits that the Pre-Trial Judge’s findings in the last review of Mr Haradinaj’s detention continue to be true in all respects.¹³

6. Mr Haradinaj submits that his detention is not necessary and he should be released.¹⁴ As regards the SPO’s position of “no relevant change in the circumstances”, he asserts that no such test may found in the Law. The test, Mr Haradinaj argues, is whether the reasons for detention still exist, and – if there exists any risk – whether it can be mitigated by the imposition of conditions.¹⁵ Mr Haradinaj also contends that there is no evidence suggesting that the Article 41(6)(b) risks have increased.¹⁶

of the Decision on Review of Detention of Nasim Haradinaj (“Fourth Detention Decision”), 23 April 2021, public.

⁷ Third Detention Decision, paras 22 *in fine*, 45(c).

⁸ Disclosure 11, 083798-083799.

⁹ Disclosure 11, 081981-01.

¹⁰ KSC-BC-2020-07, F00228, Specialist Prosecutor, *Prosecution Consolidated Submissions for Review of Detention (“SPO Submission”)*, 11 June 2021, public, with Annex 1, public.

¹¹ KSC-BC-2020-07, F00239, Defence, *Defence Submissions for Review of Detention (“Defence Submission”)*, 17 June 2021, confidential.

¹² SPO Submission, para. 1.

¹³ SPO Submission, paras 2-3.

¹⁴ Defence Submission, paras 4, 9.

¹⁵ Defence Submission, paras 18-21.

¹⁶ Defence Submission, para. 23.

III. APPLICABLE LAW

7. Under Article 41(6)(a) and (b) of the Law, the Specialist Chambers (“SC”) shall only detain a person when there is a grounded suspicion that the person has committed a crime within the SC’s jurisdiction; and there are articulable grounds to believe that the person (i) is a flight risk; (ii) will obstruct the progress of the proceedings; or (iii) will commit further offences. Article 41(12) of the Law provides for alternative measures to prevent these risks, including, among others, bail, house detention, promise not to leave residence and prohibition on approaching specific places or persons.

8. Under Article 41(10) of the Law, until a judgment is final or until release, upon the expiry of two months from the last ruling on detention on remand, the Pre-Trial Judge shall examine whether the reasons for detention on remand still exist, and extend or terminate it. This also follows from Rule 57(2) of the Rules.

IV. DISCUSSION

9. As regards the review of Mr Haradinaj’s detention, the Pre-Trial Judge recalls that the SPO bears the burden of showing that the detention of Mr Haradinaj is necessary.¹⁷ The Pre-Trial Judge also recalls that it is not incumbent upon Mr Haradinaj to demonstrate the existence of reasons warranting his release.¹⁸ As regards Mr Haradinaj’s disagreement with the SPO’s approach of “no relevant change in the circumstances”, the Pre-Trial Judge recalls that the test to be applied to the present review of detention at two-month intervals under Article 41(10) of the Law

¹⁷ See, for example, KSC-BC-2020-06, IA004, F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Hashim Thaçi’s Appeal Against Decision on Interim Release* (“Thaçi Interim Appeal Decision”), 30 April 2021, public, para. 17; IA001, F00005, Court of Appeals Panel, *Decision on Kadri Veseli’s Appeal Against Decision on Interim Release* (“Veseli Interim Appeal Decision”), 30 April 2021, public, para. 14.

¹⁸ See 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* (“SCCC 26 April 2017 Judgment”), 26 April 2017, public, para. 115..

is “whether the reasons for detention on remand still exist”.¹⁹ With that in mind, the Pre-Trial Judge proceeds to the review of Mr Haradinaj’s detention.

A. GROUNDED SUSPICION

10. The Pre-Trial Judge notes that Mr Haradinaj submits that no such evidence has been disclosed from any witness as to indicate that he threatened or otherwise intimidated that witness.²⁰ Insofar as that argument may be relevant for the assessment of whether the requirement of grounded suspicion in Article 41(6)(a) of the Law continues to exist, the Pre-Trial Judge reiterates that a prerequisite for the lawfulness of the continued detention is the persistence of a “grounded suspicion”.

11. The Pre-Trial Judge recalls that, subsequent to Mr Haradinaj’s initial detention, the Pre-Trial Judge carried out a detailed examination of specific materials and information as to whether there exists an even higher threshold of suspicion against Mr Haradinaj, namely, a well-grounded suspicion required for the confirmation of charges under Article 39(2) of the Law. The Pre-Trial Judge confirmed the existence of a well-grounded suspicion that Mr Haradinaj committed the offences under Articles 387, 388, 392 and 401 of the Kosovo Criminal Code, as set out in Article 15(2) of the Law.²¹ There have been no developments in the case negating these findings.

12. The Pre-Trial Judge is thus satisfied that there is a grounded suspicion against Mr Haradinaj as required by Article 41(6)(a) and (10) of the Law.

¹⁹ See KSC-CC-PR-2020-09, F00006, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020*, 22 May 2020, public, paras 66-68. See also ECtHR, *Makarenko v. Ukraine*, no. 622/11, 30 January 2018, paras 41, 44, 91.

²⁰ Defence Submission, para. 48(a).

²¹ 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.

B. NECESSITY OF DETENTION

13. The Pre-Trial Judge recalls that, in determining whether the grounds under Article 41(6)(b) of the Law allowing for a person's detention exist, the standard to be applied is less than a certainty, but more than a mere possibility of a risk materialising.²² These grounds must be "articulable" in the sense that they must be specified in detail by reference to the relevant information or evidence.²³ It should also be emphasised that, when deciding on whether a person should be released or detained, the Pre-Trial Judge must consider alternative measures to prevent the risks in Article 41(6)(b),²⁴ namely to ensure the person's presence at trial, to prevent his or her obstructing the criminal proceedings or committing further offences.²⁵

1. Risk of Flight

14. Mr Haradinaj submits that no such evidence has been disclosed as to suggest that he would seek to leave the jurisdiction or evade the proceedings. In relation to the circumstances of his arrest, Mr Haradinaj submits that, upon being told by unidentified individuals that he was being arrested, he immediately complied. Mr Haradinaj also appears to maintain that the Video shows only the last stages of his arrest.²⁶

15. In this regard, the Pre-Trial Judge observes that the Registry's report on Mr Haradinaj's arrest and transfer provides a detailed account of the events as they

²² Veseli Interim Appeal Decision, paras 17 *in fine*, 19.

²³ 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". Thaçi Interim Appeal Decision, para. 23; Veseli Interim Appeal Decision, para. 18.

²⁴ As regards being "risks", see, for example, ECtHR, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, 5 July 2016, para. 88; ECtHR, *Zohlandt v. the Netherlands*, no. 69491/16, 9 February 2021, para. 50; ECtHR, *Grubnyk v. Ukraine*, no. 58444/15, 17 September 2020, para. 115; ECtHR, *Korban v. Ukraine*, no. 26744/16, 4 July 2019, para. 155.

²⁵ As regards the obligation to consider "alternative measures", see SCCC 26 April 2017 Judgment, para. 114. See also ECtHR, *Buzadji v. the Republic of Moldova* [GC], para. 87 *in fine*; ECtHR, *Idalov v. Russia* [GC], no. 5826/03, 22 May 2012, para. 140 *in fine*.

²⁶ Defence Submission, para. 48(b).

unfolded.²⁷ In particular, 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 the taxi, and his lack of cooperativeness until the Kosovo police became involved.²⁸ This also follows from the Report of the arresting officer submitted by the SPO.²⁹

16. Insofar as Mr Haradinaj appears to maintain that the Video shows only the last stages of his arrest, the Pre-Trial Judge notes that this does not cast doubt on the aforementioned account of the events in the Registry's report or the Report. Furthermore, Mr Haradinaj rejected being arrested by the SPO and insisted upon the involvement of the Kosovo police.³⁰

17. The Pre-Trial Judge finds that the aforementioned conduct of Mr Haradinaj during his arrest indicates that he may try to evade the proceedings. Furthermore, several other factors indicate this, namely Mr Haradinaj's non-recognition of the SC,³¹ 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. Moreover, the risk of flight is confirmed by the advancement of the proceedings. In particular, the Pre-Trial Judge notes that further significant steps have been taken for the preparation of the case for trial. The SPO has filed its Pre-Trial Brief,³² and the

²⁷ 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.

²⁸ Public Redacted Version of Report of Arrest and Transfer, paras 3-7.

²⁹ Disclosure 11, 083798-083799.

³⁰ Public Redacted Version of Report on Arrest and Transfer, paras 4-7.

³¹ KSC-BC-2020-07, Transcript of Hearing, 29 September 2020, public, p. 17, line 13 to p. 18, line 5.

³² KSC-BC-2020-07, F00181, Specialist Prosecutor, *Submission of Pre-Trial-Brief, Witness and Exhibit Lists, and Rule 109(c)*, 9 April 2021, public, with Annexes 1-4, confidential.

Pre-Trial Judge has taken steps to set a tentative date for the transmission of the case file to a trial panel.³³

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

2. Risk of Obstructing the Proceedings

19. The SPO submits that Mr Haradinaj's network of the KLA war veterans remains willing to obstruct the proceedings. In particular, the SPO refers to an interview given by the KLA WVA's acting chairperson on 4 June 2021, during which he stated, in relation to the SC's files, that "we will make public any material we receive that is in everybody's interest".³⁴

20. Mr Haradinaj, on the other hand, maintains that he is not responsible for the actions of others, and that he can make no comment in respect of the aforementioned interview. Also, there is no evidence that this interview was given at his behest.³⁵ Further, Mr Haradinaj contends that no such evidence has been disclosed from any witness as to indicate that he threatened or otherwise intimidated that witness, nor such other evidence as to suggest that he would obstruct the proceedings.³⁶

21. In that regard, the Pre-Trial Judge recalls that Mr Haradinaj at the second press conference on 16 September 2020 revealed information relating to confidential investigations,³⁷ told those present that the documents were available for taking, promised to continue disseminating documents provided to the KLA WVA, and

³³ KSC-BC-2020-07, F00224, Pre-Trial Judge, *Revised Calendar for the Remainder of the Pre-Trial Proceedings and Order Setting the Date for the Sixth Status Conference* ("Revised Calendar"), 9 June 2021, public, para. 29.

³⁴ SPO Submission, para. 5; Annex 1 to the SPO Submission, pp. 5 (in Albanian), 10 (translation into English from Albanian).

³⁵ Defence Submission, paras 24, 29-32.

³⁶ Defence Submission, paras 48(a), (c).

³⁷ 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.

declared that he sought to discredit the work of the SC.³⁸ Mr Haradinaj made similar statements at the third press conference on 22 September 2020.³⁹ In addition, the Pre-Trial Judge recalls that Mr Haradinaj stated that he would continue to disseminate confidential and non-public information⁴⁰ despite the Single Judge's orders to the KLA WVA forbidding such dissemination.⁴¹

22. In that light, Mr Haradinaj's own past conduct indicates that he may obstruct the progress of the proceedings through dissemination of confidential and non-public information, which may in addition jeopardise the safety of witnesses. In this connection, 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.⁴² Furthermore, since the last review of detention, Mr Haradinaj has received access to further confidential information,⁴³ the dissemination of which would pose a risk to the conduct of the proceedings. Mr Haradinaj has the means to disseminate such information by communicating with the media or his network of the KLA WVA. As the interview given by the KLA WVA's acting chairperson on 4 June 2021 suggests, the KLA WVA would be willing to disseminate any files of the SC.

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

³⁹ Third Detention Decision, para. 34; Second Detention Decision, para. 38; Annex 1 to SPO Request for Arrest Warrants, pp. 14-17, 20, 24.

⁴⁰ 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.

⁴¹ 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.

⁴² 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.

⁴³ KSC-BC-2020-07, F00210, Pre-Trial Judge, *Decision on Prosecution Requests and Challenges Pursuant to F00172*, 26 May 2021, confidential.

23. The Pre-Trial Judge also considers that Mr Haradinaj's awareness of the full account of the SPO case and the approaching trial further amplifies the risk that he will obstruct the proceedings.

24. In that light, the Pre-Trial Judge finds that the risk that Mr Haradinaj may obstruct the progress of the proceedings continues to exist.

3. Risk of Committing Further Offences

25. For the above reasons, the Pre-Trial Judge finds that the risk that Mr Haradinaj may commit further offences by threatening, intimidating, or putting at risk (potential) witnesses through the disclosure or dissemination of confidential and non-public information remains.

4. Conclusion

26. 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 the application of alternative measures.

C. CONDITIONAL RELEASE

27. The SPO recalls the past finding of the Pre-Trial Judge that the release conditions previously proposed by Mr Haradinaj insufficiently mitigate the Article 41(6)(b) risks. This finding, the SPO argues, continues to be true.⁴⁴ In this regard, Mr Haradinaj maintains his previous submission that he can be released subject to conditions. He also submits that no such evidence has been disclosed as to suggest that he would fail to comply with any conditions that the Chamber may seek to impose.⁴⁵

⁴⁴ SPO Submission, paras 2-3.

⁴⁵ Defence Submission, paras 47, 48(d).

28. The Pre-Trial Judge recalls his previous findings that the risks of absconding, obstructing the proceedings and committing further offences are insufficiently mitigated by the conditions proposed.⁴⁶ As regards the risk of flight, the Pre-Trial Judge refers to the above considerations that Mr Haradinaj has already 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. In that light, and, given in particular, that Mr Haradinaj has already failed to comply with the orders of the Single Judge on two prior occasions,⁴⁷ the Pre-Trial Judge is not persuaded that Mr Haradinaj would remain in house detention if ordered to do so by the Pre-Trial Judge with a view to ensure Mr Haradinaj's presence at trial.

29. As regards the risks of obstruction and further offences, the Pre-Trial Judge considers that, even if placed under house arrest, Mr Haradinaj could easily obtain access to various means of communication in order to disseminate or receive electronically, or through the mail, confidential or non-public information. Insofar as the Pre-Trial Judge could order, in addition to the measures just specified, restrictions on communication with other persons either directly or through other means, the Pre-Trial Judge is not persuaded that Mr Haradinaj would actually comply with such restrictions.

30. In particular, the Pre-Trial Judge recalls that Mr Haradinaj has already failed to comply with the orders of the Single Judge on two prior occasions.⁴⁸ He has also stated the desire to continue disseminating confidential and non-public documents and information,⁴⁹ and has expressed the lack of recognition of the SC.⁵⁰ If released from

⁴⁶ Fourth Detention Decision, para. 31.

⁴⁷ First Order, para. 22; Second Order, para. 22.

⁴⁸ First Order, para. 22; Second Order, para. 22.

⁴⁹ Annex 1 to SPO Request for Arrest Warrants, pp. 5-6; Annex 2 to SPO Request for Arrest Warrants, p. 8.

⁵⁰ KSC-BC-2020-07, Transcript, 29 September 2020, public, p. 17, line 13 to p. 18, line 5.

detention, Mr Haradinaj would be in a position to disseminate and receive, without oversight, confidential and non-public information.⁵¹

31. Insofar as measures could be put in place to monitor Mr Haradinaj's compliance with restrictions on communication while in house detention, the Pre-Trial Judge is not persuaded that they would suffice to prevent the risks present. Additional measures, such as installing a keylogger on Mr Haradinaj's personal computer or ordering limited access to a controlled mobile telephone without internet connection, would not prevent Mr Haradinaj from employing other electronic devices belonging to, for example, his family or acquaintances, or from passing on confidential and non-public information to other persons. The array of communication mediums available is so varied that it is only through the communication monitoring framework applicable at the SC's detention facilities that Mr Haradinaj's communications can be effectively restricted.

32. In these circumstances, the Pre-Trial Judge finds that the risks of fleeing, obstructing the proceedings and committing further offences can only be effectively managed at the SC's detention facilities. In these circumstances, the Pre-Trial Judge finds that Mr Haradinaj's continued detention is necessary in order to avert the risks in Article 41(6)(b)(i), (ii) and (iii) of the Law.

D. PROPORTIONALITY OF DETENTION

33. The SPO submits that there have been no unjustified delays, the Pre-Trial Judge's revised calendar aims to transmit the case to a trial panel in less than a month,⁵² and, besides, the Defence requested to extend the initial transmission date. The SPO further submits that the Defence has made no effort to attempt to

⁵¹ Third Detention Decision, para. 43; Second Detention Decision, para. 45.

⁵² SPO Submission, paras 4, 6, 8.

reach any agreed facts, which might expedite the proceedings, not even on the date or place of birth of the Accused.⁵³

34. Mr Haradinaj emphasises that no trial date has been fixed,⁵⁴ the case is not ready for transfer to a trial panel,⁵⁵ and the SPO alone is responsible for this. Mr Haradinaj submits that, at every status conference since February 2021, the SPO has indicated that disclosure was complete only for it to serve further thousands of pages of material in between the status conferences, as well as in the recent weeks. The Defence has in no way delayed this process.⁵⁶

35. In relation to the length of Mr Haradinaj's pre-trial detention, the Pre-Trial Judge notes that significant steps have been taken for the preparation of the case for trial. In particular, on 9 April 2021, the SPO filed its Pre-Trial Brief.⁵⁷ Furthermore, the SPO has finalised the disclosure, subject to the receipt of material that may emanate from a third party request.⁵⁸

36. The Pre-Trial Judge has continued to make all necessary rulings to ensure that the case is prepared properly and expeditiously for trial. The Pre-Trial Judge adjusted the date for the filing by the Defence of its Pre-Trial Brief and the tentative date for the transmission of the case file to a trial panel.⁵⁹ In this regard, the Pre-Trial Judge notes that the Defence has filed an application to vary these dates,⁶⁰ which is yet to be

⁵³ SPO Submission, para. 7.

⁵⁴ Defence Submission, paras 25-27.

⁵⁵ Defence Submission, para. 28.

⁵⁶ Defence Submission, paras 33-43.

⁵⁷ KSC-BC-2020-07, F00181, Specialist Prosecutor, *Submission of Pre-Trial-Brief, Witness and Exhibit Lists, and Rule 109(c) Chart*, 9 April 2021, public, with Annexes 1-4, confidential.

⁵⁸ Revised Calendar, para. 20. As regards the determination of requests in respect of the Pre-Trial Judge's decision on the SPO's motion for non-disclosure of certain items, these have been decided; see KSC-BC-2020-07, F00236, Pre-Trial Judge, *Decision on the Haradinaj Application for Leave to Appeal the Decision on the Search and Seizure Videos*, 15 June 2021, confidential; F00237, Pre-Trial Judge, *Decision on the Defence Motion for Clarification of Decision F00210*, 15 June 2021, confidential.

⁵⁹ Revised Calendar, para. 29.

⁶⁰ KSC-BC-2020-07, F00241, Defence, *Defence Application to Vary the Consolidated Calendar*, 18 June 2021, public; F00242, Defence, *Defence Application to Vary the Consolidated Calendar*, 21 June 2021, public.

decided. Also, the recent decision of the Court of Appeals Panel⁶¹ may affect the dates currently set by the Pre-Trial Judge. However, the Pre-Trial Judge will make any adjustments that may be deemed appropriate so as to ensure the expeditiousness of the proceedings.

37. Against this backdrop, and the fact that the risks of fleeing, obstructing the proceedings and committing further offences exist and they cannot sufficiently be 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.

V. CLASSIFICATION

38. The Pre-Trial Judge notes that Mr Haradinaj filed his submissions classified as "confidential". In this respect, the Pre-Trial Judge recalls that all submissions filed before the SC shall be public unless there are exceptional reasons for keeping them confidential, and that the Parties shall file public redacted versions of all submissions filed before the Pre-Trial Judge. In that light, the Pre-Trial Judge orders Mr Haradinaj to file a public redacted version of the submissions, F00239, or to request their reclassification as public.

39. In this connection, the Pre-Trial Judge also observes that Mr Haradinaj has not filed public redacted versions of F00173 and F00186 even though he was ordered by the Pre-Trial Judge to do so by 30 April 2021.⁶² The Pre-Trial Judge thus reminds Mr Haradinaj of his duty to file these public redacted versions forthwith.

⁶¹ KSC-BC-2020-07, IA004, F00007, Court of Appeals Panel, *Decision on the Defence Appeals Against Decision on Preliminary Motions*, 23 June 2021, public.

⁶² Fourth Detention Decision, para. 39(d).

VI. DISPOSITION

40. 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 his detention by **Wednesday, 4 August 2021**;
- c. **ORDERS** the SPO to file submissions on the next review of Mr Haradinaj's detention by **Wednesday, 11 August 2021**; with the possibility for Mr Haradinaj to comment, if he so wishes, on these submissions by **Monday, 16 August 2021**; and
- d. **ORDERS** Mr Haradinaj to file a public redacted version of F00239 or request its reclassification as public by **Wednesday, 30 June 2021**.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Wednesday, 23 June 2021
At The Hague, the Netherlands