

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

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

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Counsel for Rexhep Selimi

**Date:** 30 June 2021

**Language:** English

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**Public Redacted Version of Selimi Defence Reply to SPO  
Response to Defence Submissions on Review of  
Detention, KSC-BC-2020-06/F00361, dated 18 June 2021**

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## I. INTRODUCTION

1. Pursuant to Article 41(6) of the Law<sup>1</sup> and Rules 57(2) and 76 of the Rules<sup>2</sup> the Defence for Mr. Rexhep Selimi hereby files a Reply to the SPO Response<sup>3</sup> to the Defence Submissions on Review of Detention.<sup>4</sup>
2. This Reply addresses the following issues which all arise directly from the Response:
  - a) The manner in which the Pre-Trial Judge must exercise the review of detention;
  - b) The irrelevance of the purported comments by the head of the KLA WVA and allegations about Mr. Selimi's supposed "network" of supporters.
  - c) The impact of the [REDACTED];
  - d) Whether conditions can sufficiently mitigate the risks posed by the Accused and be enforced by the Kosovo Police; and,
  - e) The responsibility for delay in proceedings.

## II. Submissions

### a. Re-assessment by Pre-Trial Judge of Article 41(6) factors

3. The SPO asserts simultaneously that the Pre-Trial Judge's determination as to whether reasons continue to exist under Article 41(6) of the Law inevitably concerns what has changed, if anything, since the previous ruling on detention<sup>5</sup> but conversely that "the Pre-Trial Judge is not required to make findings on the factors already decided upon in the initial ruling on detention."<sup>6</sup> The inherent contradiction between these positions appears lost on the SPO. A determination as to whether reasons continue to exist under

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<sup>1</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015.

<sup>2</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020.

<sup>3</sup> Prosecution response to Selimi Defence Submissions on Detention Review With confidential Annex 1, KSC-BC-2020-06/F00346, 10 June 2021 ("SPO Response").

<sup>4</sup> Selimi Defence Submissions on Review of Detention, KSC-BC-2020-06/F0033, 31 May 2021 ("Defence Submissions").

<sup>5</sup> SPO Response, para. 1.

<sup>6</sup> SPO Response, para. 3.

Article 41(6) of the Law inevitably requires analysis on these factors, regardless of whether there is no ultimate change in the Pre-Trial Judge's finding.

4. To be "satisfied that, [...] grounds for continued detention still exist" all relevant factors must be considered anew, including those that had previously been assessed by the Pre-Trial Judge in the Interim Release Decision, especially given the Appeals Panel's concerns regarding the lack of reasoning employed therein.<sup>7</sup>

**b. Wholly irrelevant factors relied upon by the SPO**

5. Despite the finding by the Appeals Panel that "the SPO adduced no concrete evidence of influence exerted by Selimi on individuals within the support network of the KLA War Veterans Association"<sup>8</sup> the SPO again seeks to rely on spurious and irrelevant allegations related to the actions of individuals in Kosovo with whom Mr. Selimi had no demonstrable link.
6. First, the SPO cites a newspaper article which alleges, purportedly in relation to the Indictment in *Thaci et al.* that "KLA war veterans were furious at the indictment" and 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."<sup>9</sup> No reference was made in the newspaper article to this alleged campaign and certainly no reference in support of the SPO's own allegation that it "went viral."<sup>10</sup>
7. One of the Founders of this group explained that this movement started well before the Indictments issued by the KSC and was established so that people do not forget the history of the conflict.<sup>11</sup> Indeed neither the newspaper article itself, nor the official name of the initiative "Liria Ka Emër" makes specific reference to the KLA. It is the SPO which has misleadingly added this term in order to support its otherwise baseless allegations.

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<sup>7</sup> Decision on Rexhep Selimi's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA003/F00005, 30 April 2021 ("Interim Release Appeal Decision"), para. 46.

<sup>8</sup> Interim Release Appeal Decision, para. 66.

<sup>9</sup> SPO Response, para. 7.

<sup>10</sup> Ibid.

<sup>11</sup> <https://www.facebook.com/watch/?v=1346118205738827> (3:19)

8. Most importantly, there is no suggestion that the campaign has any nefarious purpose. It has been set up by public personalities, artists, musicians, and sportspersons<sup>12</sup> and is nothing more than a goodwill initiative to start a debate on the new history of Kosovo and the need for a comprehensive collective memory about the past and the future.<sup>13</sup>
9. There is also no evidence for the SPO's allegation that the campaign "has been highly active in recent months, demonstrating the widespread support for the Accused in Kosovo"<sup>14</sup> beyond the vague assertion to that effect. The purpose of the campaign appears to be to document, explain and remember what happened to Kosovo during that period. Indeed, the SPO's reasoning on this point borders on the offensive as it suggests that any recognition or remembrance of the conflict constitutes an attempt to improperly assist the accused brought before the KSC and obstruct their investigations.
10. Moreover, there is no suggestion either in the newspaper article or even by the SPO that Mr. Selimi either had any connection to those behind the campaign or even benefitted from it. The article itself makes no mention of him at all.
11. Second, the purported statement on 4 June 2021 by Faton KLINAKU, the acting chairman of the KLA War Veterans Association ('KLA WVA') that he would publish more confidential KSC documents if he obtained them is wholly irrelevant. The Pre-Trial Judge already held that "the SPO adduced no concrete evidence of specific influence exerted by Mr. Selimi on individuals within the support network of the KLA War Veterans Association"<sup>15</sup> as recognised and endorsed by the Appeals Panel.<sup>16</sup> The SPO had made no showing of any link between Mr. Selimi and the KLA WVA to change the Pre-Trial Judge's mind on this issue. It is thus wholly improper for the SPO to misleadingly and hyperbolically suggest such a link.<sup>17</sup> There is simply no concrete identification of Mr. Selimi's alleged network to whom he would or could somehow influence.

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<sup>12</sup><https://kosovapress.com/liria-ka-emer-nis-publikimin-e-rrefimeve-autentike-te-ushtareve-te-uck-se/>.

<sup>13</sup> "LIRIA KA EMËR", at <https://www.facebook.com/liriakaemer/about>.

<sup>14</sup> SPO Response, para. 7.

<sup>15</sup> Decision on Rexhep Selimi's Application for Interim Release, KSC-BC-2020-06/F00179, 22 January 2021 ("Interim Release Decision"), para. 37.

<sup>16</sup> Interim Release Appeal Decision, para. 66.

<sup>17</sup> SPO Response, paras 8 & 13.

**c. Impact of [REDACTED]**

12. The SPO does not contest the Defence's submission that it may not rely [REDACTED]. Indeed, it refers solely in the SPO Response [REDACTED].
13. The Defence notes that the SPO's argument on this issue is entirely based on the suggestion that [REDACTED]. However, the SPO has not contested the specific arguments set out by the Defence on this point, namely that [REDACTED]:
- a. [REDACTED];<sup>18</sup>
  - b. [REDACTED];<sup>19</sup> and,
  - c. [REDACTED].<sup>20</sup>
14. In the absence of any indication, or cogent evidence, that [REDACTED], this weight of this factor becomes substantially reduced.
15. Even if the Pre-Trial Judge is satisfied that [REDACTED].
16. Contrary to the misunderstanding displayed by the SPO,<sup>21</sup> the Defence does not seek to either endorse [REDACTED], or otherwise suggest that [REDACTED]. However, in such circumstances, it does directly affect the assessment of [REDACTED].

**d. Proposed conditions**

17. The SPO's bald assertion that "no conditions can actually mitigate the risks posed by the Accused"<sup>22</sup> ignores the reality that draconian measures can be undertaken to ensure the elimination of the sufficiently real possibility that any of the risks under Article 41(6)(b)(i)-(iii) of the Law will actually materialise.

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<sup>18</sup> [REDACTED].

<sup>19</sup> [REDACTED].

<sup>20</sup> [REDACTED].

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

<sup>22</sup> Ibid, para. 12.

18. The Defence sought the agreement from the General Director of the Kosovo Police (KP) to the monitoring and enforcement of the list of specific and intrusive conditions specifically relating to Mr. Selimi.<sup>23</sup>
19. The General Director of the KP confirmed that the KP would “be ready to fulfil all the conditions should they be asked to do so by the Court.”<sup>24</sup> As the Court is well aware, the Director of the Kosovo Police has had ample opportunity to carefully consider the proposed conditions, as he did so previously in relation to a Co-Accused. In expressing the Kosovo Police’s ability to enforce the proposed conditions on behalf of Mr Selimi, the Director of Police was clearly communicating an informed, and considered decision on the matter. The Defence invites the Pre-Trial Judge to engage directly with the Director of Police if any clarification or further information is required.
20. The scope of these proposed conditions, and the resulting intrusion on Mr. Selimi’s rights and freedoms appears to be unprecedented in international criminal proceedings where an accused has been released for any significant duration. They will entirely curtail Mr. Selimi’s right to leave his residence and communicate with any individual, remove all communication devices from the house and would allow for unlimited and random monitoring of his visitors.
21. Mr. Selimi fully accepts and will strictly comply with any conditions ordered by the Pre-Trial Judge, including those previously proposed, however the least invasive combination of measures should respectfully be maintained.

**e. Delay and proportionality**

22. The SPO Response characterises the finding of the Appeals Panel as “the Pre-Trial Judge’s detention assessment did not require estimating the probable length of detention.”<sup>25</sup>

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<sup>23</sup> Annex 1. Letter from Lead Counsel for Mr. Selimi to the General Director of the Kosovo Police, 11 June 2021.

<sup>24</sup> Annex 2. Response from the General Director of the Kosovo Police to Counsel for Mr. Selimi, 14 June 2021.

<sup>25</sup> SPO Response, para. 14.

23. As set out by the Defence, even if the Pre-Trial Judge was justified in not taking this into account when issuing the Interim Release Decision on 22 January 2021, the situation almost five months later is markedly different.<sup>26</sup>
24. The SPO's shameless attempt to shift responsibility for any potential delays in proceedings onto the Defence stands no scrutiny. As the SPO is well aware, the resolution of requests for provisional release is not a pre-requisite step for the commencement of trial proceedings, as opposed to the completion of pre-trial disclosure and the preparation of the Prosecution pre-trial brief which is taking far longer than the timeframe initially stated by the SPO.
25. Despite being granted an extension of time to file preliminary motions which it did not actively seek,<sup>27</sup> the Selimi Defence also sought to file submissions on its main jurisdictional challenge relating to JCE at the earliest opportunity.<sup>28</sup> In contrast, the Defence notes that the SPO took its full allotted time limit to respond<sup>29</sup> and continues to make submissions on this issue many months later.<sup>30</sup>
26. Finally, the invocation of agreed facts, and the suggestion that somehow the Defence was delaying proceedings by not agreeing to those proposed by the SPO<sup>31</sup> almost beggars belief.

### III. CONCLUSION AND RELIEF SOUGHT

27. In light of the foregoing, the Defence therefore reiterates its request to the Pre-Trial Judge to:
- a. Order the interim release of Mr. Selimi, either with, or without, conditions.

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<sup>26</sup> Detention Submissions, paras 11-13.

<sup>27</sup> Oral order regarding timeline for defence submissions on continued detention, 19 May 2021, pp.451 - 452.

<sup>28</sup> Selimi Defence Challenge to Jurisdiction – JCE, KSC-BC-2020-06/F00198, 10 February 2021

<sup>29</sup> Consolidated Prosecution response to preliminary motions challenging Joint Criminal Enterprise (JCE), KSC-BC-2020-06/F00263, 23 April 2021.

<sup>30</sup> Prosecution Sur-reply, KSC-BC-2020-06/F00333, 1 June 2021.

<sup>31</sup> SPO Response, para. 16.

**Word count: 1799**

Respectfully submitted on 30 June 2021,



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