



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

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**Public Redacted Version of
Decision on Review of Detention of Rexhep Selimi**

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 41(6), (10) and (12) 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 5 November 2020, further to the confirmation of an indictment ("Confirmation Decision"),² Rexhep Selimi ("Mr Selimi") was arrested pursuant to a decision and an arrest warrant issued by the Pre-Trial Judge.³

2. On 22 January 2021, the Pre-Trial Judge rejected Mr Selimi's application for interim release ("Interim Release Application" and "First Detention Decision").⁴

3. On 24 February 2021, further to a joint request by the Accused in the present case, who also waived the right to have their detention reviewed before the expiry of the two-month time limit set out in Article 41(10) of the Law and Rule 57(2) of the Rules, the Pre-Trial Judge varied the time limit for Mr Selimi to make submissions on his continued detention until ten days after notification of the decision of the Panel of the Court of Appeals on his appeal against the First Detention Decision.⁵

¹ KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

² KSC-BC-2020-06, F00026/RED, Pre-Trial Judge, *Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, public; KSC-BC-2020-06, F00045/A03, Specialist Prosecutor, *Further Redacted Indictment*, 4 November 2020, public.

³ KSC-BC-2020-06, F00049, Registrar, *Notification of Arrest of Rexhep Selimi Pursuant to Rule 55(4)*, 5 November 2020, public; KSC-BC-2020-06, F00027/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders*, 26 October 2020, public; KSC-BC-2020-06, F00027/A05/RED, *Public Redacted Version of Arrest Warrant for Rexhep Selimi*, 26 October 2020, public.

⁴ KSC-BC-2020-06, F00124/RED, Defence for Mr Selimi, *Public Redacted Version of Defence Application for Interim Release*, KSC-BC-2020-06/F00124, dated 7 December 2020, 12 December 2020, public; KSC-BC-2020-06, F00179/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Rexhep Selimi's Application for Interim Release*, 22 January 2021, public.

⁵ KSC-BC-2020-06, F00206, Pre-Trial Judge, *Decision on Joint Defence Request for Extension of Time Limit*, 24 February 2021, public, paras 3, 5, 6.

4. On 30 April 2021, the Panel of the Court of Appeals denied Mr Selimi's appeal against the First Detention Decision ("Court of Appeals Decision").⁶
5. On 10 May 2021, Mr Selimi notified the Pre-Trial Judge that, without prejudice to any future application for interim release, he did not intend to make submissions on his continued detention.⁷
6. On 19 May 2021, after Mr Selimi reconsidered his position and indicated that it would assist him if the time limit to make submissions on his continued detention would be extended,⁸ the Pre-Trial Judge further varied this time limit to 31 May 2021.⁹
7. On 31 May 2021, Mr Selimi filed submissions on his continued detention, requesting the Pre-Trial Judge to grant him interim release with or without conditions ("Request").¹⁰ The Specialist Prosecutor's Office ("SPO") responded on 10 June 2021 ("Response").¹¹ Mr Selimi replied on 18 June 2021 ("Reply").¹²

II. SUBMISSIONS

8. Mr Selimi submits that, in light of the recent admission by the SPO as to its readiness for trial, the context and framework of the First Detention Decision needs to be reassessed.¹³ In the alternative, Mr Selimi avers that the risks of

⁶ KSC-BC-2020-06, IA003/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Interim Release*, 30 April 2021, public.

⁷ KSC-BC-2020-06, F00286, Defence for Mr Selimi, *Selimi Defence Notification pursuant to Decision KSC-BC-2020-06-F00206*, 10 May 2021, public, para. 4.

⁸ KSC-BC-2020-06, Transcript, 19 May 2021, public ("*19 May 2021 Transcript*"), p. 444, lines 14-18.

⁹ 19 May 2021 Transcript, p. 451, line 19 – p. 452, line 2.

¹⁰ KSC-BC-2020-06, F00330, Defence for Mr Selimi, *Selimi Defence Submissions on Review of Detention*, 31 May 2021 (notified on 1 June 2021), confidential, paras 1, 47, with Annex 1, confidential.

¹¹ KSC-BC-2020-06, F00346, Specialist Prosecutor, *Prosecution Response to Selimi Defence Submissions on Detention Review with Confidential Annex 1*, 10 June 2021 (notified on 11 June 2021), confidential, with Annex 1, confidential. A public redacted version was filed on 14 June 2021, see F00346/RED.

¹² KSC-BC-2020-06, F00361, Defence for Mr Selimi, *Selimi Defence Reply to SPO Response to Defence Submissions on Review of Detention*, 18 June 2021 (notified on 21 June 2021), confidential, with Annexes 1-2.

¹³ Request, para. 2.

obstructing the proceedings or committing further crimes are reduced and that the conditions proposed in relation to the First Detention Decision would now be sufficient to mitigate these risks.¹⁴

9. The SPO responds that the continued detention of Mr Selimi remains necessary as there has been no relevant change in circumstances detracting from the established reasons for detention and that the risks under Article 41(6)(b) of the Law have rather increased since the First Detention Decision.¹⁵

10. In his Reply, Mr Selimi reiterates his request to the Pre-Trial Judge to release him with or without conditions.¹⁶

III. APPLICABLE LAW

11. Article 41(6) of the Law provides that the Specialist Chambers (“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 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.

12. 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

¹⁴ Request, paras 3, 47; First Detention Decision, para. 51.

¹⁵ Response, para. 1.

¹⁶ Reply, para. 27.

on remand is extended or terminated. This also follows from Rule 57(2) of the Rules.

13. 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.

14. Pursuant to Rule 56(2) of the Rules, the Panel shall ensure that a person is not detained for an unreasonable period prior to the opening of the case and, in case of an undue delay caused by the Specialist Prosecutor, the Panel, having heard the Parties, may release the person under conditions as deemed appropriate.

IV. DISCUSSION

A. APPLICABLE STANDARD

15. According to Mr Selimi, the requirement to demonstrate a change in circumstances relates solely to the requirement for a *proprio motu* decision on remand under Rule 57(2) of the Rules and not to the periodic review required of the Pre-Trial Judge.¹⁷ The SPO responds that the determination under Rule 57(2) of the Rules inevitably concerns what has changed, if anything, since the previous ruling on detention and that the Pre-Trial Judge is not required to make findings on the factors already decided upon in the initial ruling on detention.¹⁸ Mr Selimi replies that the SPO's position is contradictory considering that a determination

¹⁷ Request, para. 6.

¹⁸ Response, para. 3.

as to whether reasons continue to exist under Article 41(6) of the Law inevitably requires analysis on these factors.¹⁹

16. The Pre-Trial Judge recalls that he has an obligation, under Article 41(10) of the Law, 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.²⁰ The Pre-Trial Judge is not required to make findings on the factors already decided upon in the initial ruling on detention but must examine these reasons or circumstances and determine whether they still exist. What is crucial is that the Pre-Trial Judge is satisfied that, at the time of the review decision, grounds for continued detention still exist.²¹ The SPO bears the burden of establishing that the detention of the Accused is necessary.²² The Parties' submissions will be considered against this threshold.

B. GROUNDED SUSPICION

17. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires at the outset a grounded suspicion that the detained person has committed a crime within the jurisdiction of the SC. This is a condition *sine qua non* for the validity of the detained person's continued detention.²³

18. Neither Mr Selimi nor the SPO make submissions as to the existence of a grounded suspicion under Article 41(6)(a) of the Law.

¹⁹ Reply, para. 3.

²⁰ See for example KSC-BC-2020-07, F00143, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 24 February 2021, public, para. 17.

²¹ KSC-BC-2020-07, IA002/F00005, Court of Appeals Panel, *Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention*, 9 February 2021, para. 55.

²² First Detention Decision, para. 18, with further references. Similarly, ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#) ("*Merabishvili v. Georgia* [GC]"), 28 November 2017, para. 234.

²³ [Merabishvili v. Georgia](#) [GC], para. 222, with further references.

19. The Pre-Trial Judge recalls that, in the Confirmation Decision, it was determined that, pursuant to Article 39(2) of the Law, there is a well-grounded suspicion that Mr Selimi is criminally liable for a number of crimes against humanity (persecution, imprisonment, other inhumane acts, torture, murder, and enforced disappearance) and war crimes (arbitrary detention, cruel treatment, torture, and murder) under Articles 13(1), 14(1)(c) and 16(1)(a) of the Law.²⁴ These findings were made on the basis of a standard exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a) of the Law.²⁵ There have been no developments in the case negating these findings.

20. The Pre-Trial Judge, therefore, finds that there continues to be a grounded suspicion that Mr Selimi has committed crimes within the subject-matter jurisdiction of the SC for the purposes of Article 41(6)(a) and (10) of the Law.

C. NECESSITY OF DETENTION

21. Once the threshold in Article 41(6)(a) of the Law is met, the grounds that would justify the deprivation of a person's liberty must be articulable in the sense that they must be specified in detail.²⁶ The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"²⁷ that any of the risks under the three limbs of Article 41(6)(b) of the Law exists, denoting an acceptance of the possibility, not the inevitability, of a future occurrence.²⁸ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.²⁹ When deciding

²⁴ Confirmation Decision, para. 521(a).

²⁵ See for example KSC-BC-2020-04, F00007/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on the Confirmation of the Indictment Against Pjetër Shala*, 12 June 2020, public, para. 35.

²⁶ First Detention Decision, para. 19; Court of Appeals Decision, paras 43-44.

²⁷ See *chapeau* of Article 41(6)(b) of the Law.

²⁸ First Detention Decision, para. 19, with further references.

²⁹ Court of Appeals Decision, para. 40.

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) of the Law.³⁰

1. Risk of Flight

22. Mr Selimi, while contesting the existence of the risk of flight, provides no submissions on the question whether it continues to exist since the Court of Appeals Panel summarily dismissed his arguments in this regard on the basis that the Pre-Trial Judge had found that the conditions proposed in relation to the First Detention Decision sufficiently mitigate this risk.³¹

23. The SPO responds that, following the disclosure of voluminous material under Rule 102(1)(b) of the Rules, Mr Selimi has an ever-growing account of the SPO's case against him, which only increases his incentive to attempt to evade.³² The SPO adds that Mr Selimi is in a position of influence to mobilise support networks in view of the campaign launched in support of the Kosovo Liberation Army ("KLA").³³ Furthermore, according to the SPO, the acting chairman of the KLA War Veterans Association stated that he would release more confidential documents if he would obtain them.³⁴

24. Mr Selimi replies that the newspaper article cited by the SPO in relation to the campaign in support of the KLA does not support its allegations regarding the support network.³⁵ He adds that the statement of the acting chairman of the KLA War Veterans Association is irrelevant as the Pre-Trial Judge held that the SPO

³⁰ As regards the obligation to consider "alternative measures", 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*, 26 April 2017, public, para. 114. See also ECtHR, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, [Judgment](#), 5 July 2016, para. 87 *in fine*; ECtHR, *Idalov v. Russia* [GC], no. 5826/03, [Judgment](#), 22 May 2012, para. 140 *in fine*.

³¹ Request, para. 4.

³² Response, para. 6.

³³ Response, para. 7.

³⁴ Response, para. 8.

³⁵ Reply, paras 6-10.

adduced no concrete evidence of specific influence exerted by Mr Selimi on the support network of this association.³⁶

25. The Pre-Trial Judge considers that, after having been made aware of the charges against him and the possibility of a serious sentence in the event of a conviction,³⁷ Mr Selimi has gained increased insight into the evidence underpinning these charges on the basis of the ongoing disclosure process. In addition, Mr Selimi continues to play a significant role in Kosovo on the basis of the previous positions he occupied, namely a founding member of the KLA General Staff, Head of the KLA Operational Directorate, Minister in the Provisional Government of Kosovo, and member of the Assembly.³⁸ The influence he continues to enjoy may assist him in evading SC proceedings by, for instance, calling upon the support of persons sympathetic to him and/or the KLA, securing access to relevant information, and obtaining funds and means to travel.

26. Therefore, notwithstanding the counter-balancing factors identified in the First Detention Decision,³⁹ the risk of flight in relation to Mr Selimi continues to exist.

2. Risk of Obstructing the Progress of SC Proceedings

27. Mr Selimi contends that, besides his strong family and professional ties to Kosovo, the statements describing his good character and the fact that he has not (been alleged to have) obstructed the proceedings, the Pre-Trial Judge must take into account that his co-operation with the SPO's investigations [REDACTED] and

³⁶ Reply, para. 11.

³⁷ First Detention Decision, para. 31.

³⁸ First Detention Decision, para. 31; Court of Appeals Decision, paras 62-63.

³⁹ First Detention Decision, para. 32.

his voluntary surrender for arrest undermine any presumption that he would be pre-disposed to obstruct the current proceedings.⁴⁰

28. Mr Selimi also reiterates the arguments he raised before the Court of Appeals Panel regarding the irrelevance of [REDACTED]⁴¹ [REDACTED].⁴²

29. [REDACTED], Mr Selimi asserts that: (i) [REDACTED];⁴³ (ii) [REDACTED];⁴⁴ (iii) [REDACTED];⁴⁵ (iv) [REDACTED];⁴⁶ (v) [REDACTED];⁴⁷ (vi) [REDACTED];⁴⁸ (vii) [REDACTED];⁴⁹ and (viii) [REDACTED].⁵⁰

30. The SPO responds that, besides its aforementioned arguments regarding the disclosure of material and Mr Selimi's position of influence to mobilise support networks,⁵¹ rearguing adverse findings does not justify release.⁵²

31. [REDACTED], the SPO avers that [REDACTED].⁵³ [REDACTED].⁵⁴ [REDACTED].⁵⁵ [REDACTED].⁵⁶

32. Mr Selimi replies that the SPO has not contested the arguments that [REDACTED]: (i) [REDACTED]; (ii) [REDACTED]; and (iii) [REDACTED].⁵⁷ [REDACTED].⁵⁸ [REDACTED].⁵⁹

⁴⁰ Request, paras 18-20.

⁴¹ [REDACTED].

⁴² Request, para. 26.

⁴³ Request, para. 28.

⁴⁴ Request, para. 29.

⁴⁵ Request, para. 30.

⁴⁶ Request, para. 31.

⁴⁷ Request, para. 32.

⁴⁸ Request, para. 33.

⁴⁹ Request, paras 34-35.

⁵⁰ Request, para. 36.

⁵¹ Response, paras 6-8.

⁵² Response, para. 4.

⁵³ Response, para. 9.

⁵⁴ Response, para. 9.

⁵⁵ Response, para. 10.

⁵⁶ Response, para. 10.

⁵⁷ Reply, para. 13.

⁵⁸ Reply, para. 15.

⁵⁹ Reply, para. 16.

33. At the outset, the Pre-Trial Judge finds that, [REDACTED]: (i) [REDACTED],⁶⁰ (ii) [REDACTED],⁶¹ and (iii) [REDACTED].⁶²

34. [REDACTED].⁶³ [REDACTED].⁶⁴

35. [REDACTED]: (i) [REDACTED], (ii) [REDACTED], and (iii) [REDACTED]. [REDACTED].⁶⁵

36. [REDACTED].⁶⁶ [REDACTED]. [REDACTED]⁶⁷ [REDACTED]. [REDACTED].⁶⁸ [REDACTED].

37. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

38. [REDACTED]. [REDACTED].

39. [REDACTED]: (i) [REDACTED]⁶⁹ [REDACTED];⁷⁰ and (ii) [REDACTED].⁷¹ [REDACTED]. [REDACTED].

40. Furthermore, as set out above, as a former high-ranking KLA member and political figure, Mr Selimi still holds a position of influence in Kosovo.⁷² This position could allow him to [REDACTED] and call upon the support of persons sympathetic to him and/or the KLA for the purposes of obstructing the progress of SC proceedings.

⁶⁰ Court of Appeals Decision, para. 73.

⁶¹ KSC-BC-2020-06, F00154/A01, Specialist Prosecutor, *Annex 1 to Prosecution response to Application for Interim Release on behalf of Mr Rexhep Selimi*, 17 December 2020, confidential (“Annex 1 to SPO Response to Interim Release Application”), pp 10-11.

⁶² Court of Appeals Decision, para. 73.

⁶³ Annex 1 to SPO Response to Interim Release Application, p. 4 (paras 3-4).

⁶⁴ Annex 1 to SPO Response to Interim Release Application, p. 4 (para. 4).

⁶⁵ Annex 1 to SPO Response to Interim Release Application, pp 4-5 (paras 4-5).

⁶⁶ KSC-BC-2020-06, F00330/A01, Defence for Mr Selimi, *Annex 1 to Selimi Defence Submissions on Review of Detention*, 31 May 2021 (notified on 1 June 2021), confidential, p. 295.

⁶⁷ Request, para. 33.

⁶⁸ Request, para. 33.

⁶⁹ Annex 1 to SPO Response to Interim Release Application, p. 46

⁷⁰ Annex 1 to SPO Response to Interim Release Application, pp 35, 36.

⁷¹ Annex 1 to SPO Response to Interim Release Application, pp 60-61.

⁷² Court of Appeals Decision, paras 62-63.

41. The Pre-Trial Judge further recalls that there is a persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members.⁷³ Even though this factor is, in and of itself, not determinative in relation to the risk of obstructing the progress of the proceedings, it provides the context against which [REDACTED] and his position of influence must be considered. In this regard, the Pre-Trial Judge further recalls that this risk need not materialise in an Accused personally tampering with evidence or exerting influence or pressure on witnesses. It suffices that an Accused instigates others or contributes in any way to the materialisation of that risk.⁷⁴

42. In conclusion, the Pre-Trial Judge finds that the mutually corroborative indications that [REDACTED], together with his still existing position of influence that allows him to elicit the support of sympathisers in the context of the general climate of witness intimidation and interference, establish the risk that Mr Selimi will, under any form of responsibility, obstruct the progress of SC proceedings.

43. Mr Selimi's arguments regarding his strong family and professional ties to Kosovo, the statements describing his good character, his co-operation with the SPO's investigations [REDACTED], and his voluntary surrender for arrest must be attributed limited weight in view of the seriousness of the considerations set out above and, as such, do not affect the preceding conclusion. Furthermore, the Pre-Trial Judge considers that, in arguing that he has not (been alleged to have) obstructed the proceedings, Mr Selimi misstates the applicable test, which pertains to a sufficiently real possibility, and not the inevitability, of such obstruction occurring.

44. Accordingly, the Pre-Trial Judge concludes that the risk that Mr Selimi will obstruct the progress of SC proceedings continues to exist.

⁷³ First Detention Decision, para. 42.

⁷⁴ First Detention Decision, para. 37; Court of Appeals Decision, para. 59.

3. Risk of Committing Further Crimes

45. Mr Selimi argues that the Pre-Trial Judge must take into account his co-operation with the SPO's investigations [REDACTED], his voluntary surrender for arrest, his strong family and professional ties to Kosovo, the statements describing his good character, and the fact that he has not (been alleged to have) committed further crimes.⁷⁵ Furthermore, in his view, the Pre-Trial Judge may not rely solely on a finding under Article 41(6)(a) of the Law as proof of the risk that an Accused would commit further crimes, and the general factors invoked by the Pre-Trial Judge are insufficient to demonstrate a sufficiently real possibility that he would commit further crimes.⁷⁶

46. Mr Selimi adds that [REDACTED].⁷⁷

47. Lastly, according to Mr Selimi, the SPO alleges that he is remote from the vast majority of crimes alleged against him in the Indictment, which significantly reduces the likelihood of the risk that he would commit future crimes.⁷⁸

48. The SPO responds that Mr Selimi's ever-growing account of the SPO's case against him increases his incentive to repeat criminal offences.⁷⁹

49. The Pre-Trial Judge recalls that, even though the existence of a risk of obstruction does not automatically translate into a risk of committing further crimes, the factors underpinning the former are of relevance to the assessment of the latter in the circumstances of the present case.⁸⁰ It is further recalled that it suffices that an Accused instigates or assists others to commit such crimes, or

⁷⁵ Request, paras 18-19.

⁷⁶ Request, paras 37-38.

⁷⁷ Request, para. 39.

⁷⁸ Request, paras 40-42.

⁷⁹ Response, para. 6.

⁸⁰ First Detention Decision, para. 47.

contributes in any other way to their commission; he does not need to physically execute such acts.⁸¹

50. Turning to the facts under consideration, the Pre-Trial Judge recalls that, besides Mr Selimi's position of influence that allows him to call upon the support of sympathisers in the context of the general climate of witness intimidation and interference, there are specific and mutually corroborative indications that [REDACTED]. In addition, the Pre-Trial Judge notes that Mr Selimi's knowledge of the SPO's case against him has increased after the First Detention Decision in view of the ongoing disclosure of material underpinning the serious charges against him.

51. The Pre-Trial Judge further finds that Mr Selimi's arguments regarding his strong family and professional ties to Kosovo, the statements describing his good character, his co-operation with the SPO's investigations [REDACTED], and his voluntary surrender for arrest carry limited weight in view of the seriousness of the aforementioned considerations. The argument that he has not (been alleged to have) committed further crimes is not pertinent to the applicable test, which pertains to a sufficiently real possibility, and not the inevitability, of such crimes being committed.

52. Lastly, Mr Selimi's argument that he is alleged to have been removed from the crimes misrepresents the Confirmation Decision, which explicitly describes that he personally participated in the commission of crimes.⁸² It also fails to appreciate that the findings that he used others to commit crimes as a JCE member⁸³ add to the risk that he may commit further crimes.

53. On this basis, the Pre-Trial Judge considers that the risk that Mr Selimi will, under any form of responsibility, commit crimes similar to the underlying acts

⁸¹ First Detention Decision, para. 47.

⁸² Confirmation Decision, para. 466.

⁸³ Confirmation Decision, paras 453-454, 465-467.

charged against those perceived as being opposed to the KLA, including witnesses who have provided or could provide evidence in the case and/or are due to appear before the SC, continues to exist.

4. Conclusion

54. The Pre-Trial Judge concludes that the risks that Mr Selimi will abscond, obstruct the progress of SC proceedings, or commit further crimes against those perceived as being opposed to the KLA, including witnesses who have provided or could provide evidence in the case and/or are due to appear before the SC, continue to exist. The Pre-Trial Judge will assess below whether these risks can be adequately addressed by any conditions for his release.

D. CONDITIONAL RELEASE

55. According to Mr Selimi, the conditions proposed in relation to the First Detention Decision (“Proposed Conditions”) would now be sufficient to mitigate these risks.⁸⁴ He adds that it is far from clear whether the Pre-Trial Judge specifically considered a prohibition on the use of internet, a keylogger or other monitoring processes including visits by local police.⁸⁵ He also avers that the Pre-Trial Judge must methodically assess each and every available condition while considering the arguments included in the Request.⁸⁶

56. The SPO responds that 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.⁸⁷ In its view, the

⁸⁴ Request, paras 3, 47; First Detention Decision, para. 51.

⁸⁵ Request, para. 45.

⁸⁶ Request, paras 45-46.

⁸⁷ Response, para. 12.

risks under Article 41(6) of the Law are such that anything short of detention creates an unacceptable opportunity for clandestine communications.⁸⁸

57. In his Reply, Mr Selimi sets out an additional list of conditions (“Proposed Additional Conditions”) and asserts that the General Director of the Kosovo Police confirmed that the Kosovo Police are ready to monitor the enforcement of all the conditions should they be asked to do so by the Court.⁸⁹ Mr Selimi also invites the Pre-Trial Judge to engage directly with the General Director if any clarification or further information is required.⁹⁰

58. As regards the risk of flight, the Pre-Trial Judge considers that, as found in the First Detention Decision, the Proposed Conditions can sufficiently mitigate such a risk in relation to Mr Selimi. In this regard, the Pre-Trial Judge notes favourably that Mr Selimi commits himself to remain at his home, surrender his passport and other travel documents, report regularly to the relevant authorities, return to the SC at a judicially determined date, and comply with any variation or termination of the interim release.⁹¹

59. However, the Pre-Trial Judge considers that the Proposed Conditions, the Proposed Additional Conditions or any additional conditions cannot sufficiently mitigate the risks under Article 41(6)(b)(ii) and (iii) of the Law.

60. As to the Proposed Conditions, Mr Selimi’s commitment not to discuss the case with anyone other than members of his legal team cannot, without more, be enforced or monitored, if Mr Selimi were to be released. Any additional measures, such as restriction of internet and (mobile) telephone use, the installation of a

⁸⁸ Response, para. 12.

⁸⁹ Reply, para. 18; KSC-BC-2020-06, F00361/A01, Defence for Mr Selimi, *Annex 1 to Selimi Defence Reply to SPO Response to Defence Submissions on Review of Detention*, 18 June 2021 (notified on 21 June 2021), confidential (“Annex 1 to Reply”), pp 6-8; KSC-BC-2020-06, F00361, Defence for Mr Selimi, *Annex 2 to Selimi Defence Reply to SPO Response to Defence Submissions on Review of Detention*, 18 June 2021 (notified on 21 June 2021), confidential (“Annex 2 to Reply”), p. 3.

⁹⁰ Reply, para. 19.

⁹¹ First Detention Decision, para. 54.

keylogger or similar monitoring devices, would also be inadequate. Such measures would not prevent Mr Selimi from employing electronic devices belonging to other persons, asking other persons to employ their devices or devices belong to third persons, or circumventing such measures in another way, in view of, in particular, the wide array of communication devices available, Mr Selimi's position of influence, and [REDACTED].

61. In relation to the Proposed Additional Conditions, the Pre-Trial Judge observes that, despite Mr Selimi's request to confirm that the Kosovo Police are willing and able to enforce a detailed list of terms and conditions,⁹² the letter provided by the General Director of the Kosovo Police stipulates, in general, that the Kosovo Police are able to implement the decisions and orders of the SC.⁹³ This constitutes a general assertion, which does not specifically address whether the Proposed Additional Conditions can be efficiently enforced and, if so, which measures would be adopted. The fact that the Proposed Additional Conditions would require resource intensive measures to be adopted further augments the need for a detailed response by the General Director. This holds especially true in relation to Mr Selimi given his position of influence.

62. In addition, the Pre-Trial Judge considers that the Proposed Additional Conditions would not prevent unmonitored conversations between Mr Selimi and his family members or approved visitors from taking place. This entails that, even if the proposals to [REDACTED] could be implemented, messages could be passed on in a number of other ways. For instance, recalling his influential position and that [REDACTED], a real possibility exists that Mr Selimi could ask someone to pass on a message orally or to use a device belonging to a third person to do so. Any further conditions imposed by the Pre-Trial Judge, such as monitoring visits by the Kosovo Police, would insufficiently mitigate this risk due to the possibility

⁹² Annex 1 to Reply, pp 6-8.

⁹³ Annex 2 to Reply, p. 3.

of using code or obscure language which cannot be easily recognised or prevented by persons not familiar with SC proceedings.

63. It follows that, in light of the seriousness of the considerations set out above, it is only through the communication monitoring framework applicable at the SC detention facilities that Mr Selimi's communications can be restricted and monitored in a way to sufficiently mitigate the risks of him obstructing SC proceedings or committing further crimes. Accordingly, the Pre-Trial Judge finds that the Proposed Conditions, the Proposed Additional Conditions, and any further conditions, would insufficiently mitigate the risks of Mr Selimi obstructing SC proceedings or committing further crimes.

E. PROPORTIONALITY OF DETENTION

64. According to Mr Selimi, the SPO admits that it will not be in a position to submit its Pre-Trial Brief and list of witnesses until mid-October 2021 at the earliest, which means that the earliest the trial will start will be well into 2022.⁹⁴ He contends that, taking the likely duration of his pre-trial detention into account, such detention will become unreasonable under the first prong of Rule 56(1) of the Rules and, as this delay is caused by the SPO's inability to organise for the preparation of the case, the second prong of this provision has also been met.⁹⁵

65. The SPO responds that the Panel of the Court of Appeals has determined that the Pre-Trial Judge's detention assessment did not require estimating the probable length of detention.⁹⁶ According to the SPO, all deadlines set by the Pre-Trial Judge in the case to date have been met or extended for good cause, and there is no indication that the SPO has been dilatory.⁹⁷ The SPO adds that Mr Selimi has been

⁹⁴ Request, paras 12-13.

⁹⁵ Request, para. 15.

⁹⁶ Response, para. 14.

⁹⁷ Response, para. 14.

detained for seven months and that the scale of the charges against him affects all aspects of the trial process.⁹⁸ The SPO further contends that Mr Selimi's insistence that pre-trial proceedings are too long ignores his own responsibility.⁹⁹

66. Mr Selimi replies that, even if the Pre-Trial Judge was justified in not taking the estimated length of pre-trial detention into account for the First Detention Decision, the situation almost five months later is different.¹⁰⁰ As to the SPO's argument concerning Mr Selimi's own responsibility for the delay, Mr Selimi asserts that: (i) the resolution of requests for provisional release is not a prerequisite step for the commencement of trial proceedings, (ii) he filed his jurisdictional challenge relating to joint criminal enterprise at the earliest opportunity, and (iii) the suggestion that somehow the Defence was delaying proceedings by not agreeing to those proposed by the SPO almost beggars belief.¹⁰¹

67. The Pre-Trial Judge recalls that: (i) Mr Selimi was arrested on 5 November 2020; (ii) he is charged with 10 counts of war crimes and crimes against humanity in relation to events encompassing multiple locations in Kosovo and Albania over an extended period of time; (iii) he could be sentenced to a lengthy sentence, including life-long imprisonment, if convicted; (iv) the risks under Article 41(6)(b)(ii) and (iii) of the Law cannot be mitigated by the Proposed Conditions, Proposed Additional Conditions or any additional conditions; (v) all required procedural steps relating to the pre-trial phase of the present case have been, are being or will be completed with a view to transmitting the case for trial at a point in the foreseeable future; (vi) the relevant time limits have been either met or extended for good cause - also at the request of Mr Selimi on certain occasions - and any additional requests for extension of time will be evaluated

⁹⁸ Response, para. 15.

⁹⁹ Response, para. 16.

¹⁰⁰ Reply, para. 23.

¹⁰¹ Reply, paras 24-26.

against the applicable legal criteria; and (vii) Mr Selimi and the SPO continue to differ as to the likely start date of the trial.

68. On this basis, the Pre-Trial Judge finds that the time Mr Selimi has spent in pre-trial detention is not unreasonable and that, at the present stage, any discussion as to the expected total length of M Selimi's pre-trial detention for the purposes of Rule 56(2) of the Rules remains premature and speculative.¹⁰²

DISPOSITION

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

- a) **ORDERS** Mr Selimi's continued detention;
- b) **ORDERS** Mr Selimi, if he wishes to do so, to file submissions on the next review of detention by no later than **Wednesday, 4 August 2021**, with responses and replies following the timeline set out in Rule 76 of the Rules;
- c) **ORDERS** the SPO, should Mr Selimi decide not to file any submissions by the aforementioned time limit, to file submissions on the next review of Mr Selimi's detention by no later than **Monday, 9 August 2021**, and Mr Selimi, if he wishes to do so, to file his submissions by no later than **Thursday 19 August 2021**; and
- d) **ORDERS** Mr Selimi to file public redacted versions of the Request and Reply by no later than **Wednesday, 30 June 2021**, or to indicate whether these filings may be reclassified as public.

¹⁰² Court of Appeals Decision, paras 79-81.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Friday, 25 June 2021

At The Hague, the Netherlands.