



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**In:** KSC-BC-2020-06

**Before:** A Panel of the Court of Appeals Chamber  
Judge Michèle Picard  
Judge Emilio Gatti  
Judge Kai Ambos

**Registrar:** Fidelma Donlon

**Date:** 1 October 2021

**Original language:** English

**Classification:** Public

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**Public Redacted Version of**

**Decision on Rexhep Selimi's Appeal Against Decision on Review of Detention**

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**Specialist Prosecutor's Office:**

Jack Smith

**Counsel for Hashim Thaçi:**

Gregory Kehoe

**Counsel for Victims:**

Simon Laws

**Counsel for Kadri Veseli:**

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**Counsel for Jakup Krasniqi:**

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**THE PANEL OF THE COURT OF APPEALS CHAMBER** of the Kosovo Specialist Chambers (“Court of Appeals Panel”, “Appeals Panel” or “Panel” and “Specialist Chambers”, respectively)<sup>1</sup> acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 169 of the Rules of Procedure and Evidence (“Rules”) is seised of an appeal filed on 8 July 2021 by Mr Rexhep Selimi (“Selimi” or “the Accused” and “Appeal”, respectively),<sup>2</sup> against the “Decision on Review of Detention of Rexhep Selimi” (“Impugned Decision”).<sup>3</sup> The Specialist Prosecutor’s Office (“SPO”) responded on 21 July 2021 that the Appeal should be denied.<sup>4</sup> Selimi replied on 26 July 2021.<sup>5</sup>

## I. BACKGROUND

1. On 5 November 2020, Selimi was arrested in Kosovo pursuant to an arrest warrant issued by the Pre-Trial Judge,<sup>6</sup> further to the confirmation of an indictment against him.<sup>7</sup>

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<sup>1</sup> F00002, Decision Assigning a Court of Appeals Panel, 9 July 2021 (confidential, reclassified as public on 30 September 2021).

<sup>2</sup> F00001, Public Redacted Version of Appeal against Decision on Review of Detention of Rexhep Selimi, 25 August 2021 (original version filed on 8 July 2021) (“Appeal”).

<sup>3</sup> F00372/RED, Public Redacted Version of Decision on Review of Detention of Rexhep Selimi, 30 June 2021 (original version filed on 25 June 2021) (“Impugned Decision”).

<sup>4</sup> F00003, Public Redacted Version of Response to Selimi Defence Appeal of June 2021 Detention Decision, 21 July 2021 (original version filed on 21 July 2021) (“Response”).

<sup>5</sup> F00004, Selimi Defence Reply to “Response to Selimi Defence Appeal of June 2021 Detention Decision with public annex 1”, 26 July 2021 (“Reply”).

<sup>6</sup> F00027/RED, Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders, 26 November 2020 (original version filed on 26 October 2020); F00027/A05/RED, Public Redacted Version of Arrest Warrant for Rexhep Selimi, 5 November 2020 (original version filed on 26 October 2020); F00049, Notification of Arrest of Rexhep Selimi Pursuant to Rule 55(4), 5 November 2020 (strictly confidential and *ex parte*, reclassified as public on 20 November 2020).

<sup>7</sup> F00026/RED, Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, 30 November 2020 (original version filed on 26 October 2020). The operative indictment was filed on 4 November 2020; see F00045/A03, Further redacted Indictment, 4 November 2020 (strictly confidential and *ex parte*, reclassified as public on 5 November 2020).

2. On 22 January 2021, the Pre-Trial Judge rejected Selimi's application for interim release.<sup>8</sup>
3. On 30 April 2021, the Court of Appeals Panel denied Selimi's appeal against the First Detention Decision.<sup>9</sup>
4. On 25 June 2021, after having received submissions from Selimi and the SPO,<sup>10</sup> the Pre-Trial Judge issued the Impugned Decision, ordering Selimi's continued detention on the basis that the risks that Selimi will abscond, obstruct the progress of Specialist Chambers proceedings or commit further crimes against those perceived as being opposed to the Kosovo Liberation Army ("KLA"), including potential witnesses, continue to exist.<sup>11</sup> The Pre-Trial Judge further found that the conditions Selimi proposed in relation to the First Detention Decision for his conditional release as an alternative to unconditional release and the additional conditions he proposed ("Proposed Conditions" and "Additional Proposed Conditions" respectively), could sufficiently mitigate the risk of flight but could not sufficiently mitigate the risk of obstructing the progress of Specialist Chambers proceedings or the risk of committing further crimes.<sup>12</sup>

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<sup>8</sup> F00124/RED, Public Redacted Version of Defence Application for Interim Release, KSC-BC-2020-06/F00124, dated 7 December 2020, 12 December 2020; F00179/RED, Public Redacted Version of Decision on Rexhep Selimi's Application for Interim Release, 22 January 2021 ("First Detention Decision").

<sup>9</sup> F00005/RED, Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Interim Release, 30 April 2021 (original version filed on 30 April 2021) ("*Selimi* Appeal Decision").

<sup>10</sup> See F00330/RED, Public Redacted Version of Selimi Defence Submissions on Review of Detention, KSC-BC-2020-06/F00330, dated 31 May 2021, 30 June 2021 (original version filed on 31 May 2021) ("*Selimi* Submissions on Detention Review"); F00346/RED, Public redacted version of Prosecution response to Selimi Defence Submissions on Detention Review, 14 June 2021 (original version filed on 10 June 2021) ("*SPO* Response on Detention Review"); F00361, 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, 30 June 2021 (original version filed on 18 June 2021) ("*Reply* on Detention Review").

<sup>11</sup> Impugned Decision, paras 26, 44, 53-54, 69.

<sup>12</sup> Impugned Decision, paras 58-59, 63.

5. In the Appeal, Selimi develops five grounds of appeal consisting of alleged errors of law and of fact committed by the Pre-Trial Judge, as well as abuse of discretion.<sup>13</sup> Selimi requests that the Court of Appeals Panel reverse the Impugned Decision, substitute its reasoning for that of the Pre-Trial Judge and order his immediate release with or without conditions.<sup>14</sup>

## II. STANDARD OF REVIEW

6. The Court of Appeals Panel adopts the standard of review for interlocutory appeals established in its first decision and applied subsequently.<sup>15</sup>

## III. DISCUSSION

### A. ALLEGED ERROR REGARDING THE STANDARD APPLICABLE TO REVIEW OF DETENTION AND REASONED OPINION (GROUND A)

#### 1. Submissions of the Parties

7. Selimi submits that the Pre-Trial Judge erred in finding that he was “not required to make findings on the factors already decided upon in the initial ruling on detention” since he must provide sufficient reasoning.<sup>16</sup> In Selimi’s view the Pre-Trial Judge’s interpretation entails a “reduction in reasoning” with respect to these factors.<sup>17</sup> He also contends that the Impugned Decision suffers the same defects of lack of reasoning and of reference to evidence than the ones pointed out in the *Selimi* Appeal Decision, and that these defects ultimately compromise the Impugned Decision.<sup>18</sup>

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<sup>13</sup> Appeal, paras 2-3, 53.

<sup>14</sup> Appeal, paras 4, 54. See also Reply, paras 1, 17.

<sup>15</sup> KSC-BC-2020-07, F00005, Decision on Hysni Gucati’s Appeal on Matters Related to Arrest and Detention, 9 December 2020 (“*Gucati* Appeal Decision”), paras 4-14. See also e.g. KSC-BC-2020-07, F00005, Decision on Nasim Haradinaj’s Appeal on Decision Reviewing Detention, 9 February 2021 (“*Haradinaj* Appeal Decision”), paras 11-14; *Selimi* Appeal Decision, paras 4-7.

<sup>16</sup> Appeal, para. 10, referring to Impugned Decision, para. 16.

<sup>17</sup> Appeal, para. 10.

<sup>18</sup> Appeal, paras 5-7, 12. See also Appeal, paras 8-11; Reply, paras 3-6.

8. The SPO responds that the Pre-Trial Judge was not required to provide further reasoning on the factors already upheld by the Court of Appeals Panel and that Selimi's arguments repeating unsuccessful submissions should be summarily dismissed on that basis.<sup>19</sup> According to the SPO, the Court of Appeals Panel set forth that factual findings underpinning detention need not be set out anew in subsequent reviews.<sup>20</sup> The SPO further argues that to the extent that Selimi made new submissions, the Pre-Trial Judge gave full reasoning in addressing them.<sup>21</sup>

## **2. Assessment of the Court of Appeals Panel**

9. The Court of Appeals Panel recalls the provisions of the Law and of the Rules relevant to review of detention.

10. Article 41(10) of the Law provides that:

Until a judgement is final or until release, upon the expiry of two (2) months from the last ruling on detention on remand, the Pre-Trial Judge or Panel seized with the case shall examine whether reasons for detention on remand still exist and render a ruling by which detention on remand is extended or terminated. The parties may appeal against such a ruling to a Court of Appeals Panel.

11. Rule 57(2) of the Rules states:

After the assignment of a Pre-Trial Judge pursuant to Article 33(1)(a) of the Law and until a judgment is final, the Panel seized with a case shall review a decision on detention on remand upon the expiry of two (2) months from the last ruling on detention, in accordance with Article 41(6), (10), (11) and (12) of the Law or at any time upon request by the Accused or the Specialist Prosecutor, or *proprio motu*, where a change in circumstances since the last review has occurred.

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<sup>19</sup> Response, paras 10-11. See also Response, para. 8.

<sup>20</sup> Response, para. 10, referring to *Haradinaj* Appeal Decision, para. 55.

<sup>21</sup> Response, para. 10.

12. In the *Haradinaj* Appeal Decision issued by the Court of Appeals Panel on Haradinaj's appeal against the first decision of the Pre-Trial Judge on review of Haradinaj's detention, the Panel found that:

The competent panel has an obligation to review the reasons or circumstances underpinning detention and determine whether these reasons continue to exist under Article 41(6) of the Law. The competent panel 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 competent panel is satisfied that, at the time of the review decision, grounds for continued detention still exist.<sup>22</sup>

13. In light of Selimi's submissions in the present case, the Panel considers that a further explanation of how the above findings must be interpreted is warranted. In that regard, the Panel underlines that the duty to determine whether the circumstances underpinning detention "still exist"<sup>23</sup> is not a light one. It imposes on the competent panel the task to, *proprio motu*, assess whether, it is still satisfied that, at the time of the review and under the specific circumstances of the case when the review takes place, the detention of the Accused remains warranted.

14. The Panel is mindful that according to the Specialist Chamber of the Constitutional Court, the reference to "change in circumstances" in Rule 57(2) of the Rules applies to review of detention at any point in time and separately from the mandated review at two-month intervals. Such a review "ensures that *new* relevant factors that *arise in the intervals* between reviews of detention can be assessed".<sup>24</sup> The Panel finds that, although the automatic review every two-months under Rule 57(2) of the Rules is not strictly limited to whether or not a change of circumstances occurred

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<sup>22</sup> *Haradinaj* Appeal Decision, para. 55.

<sup>23</sup> See Article 41(10) of the Law: "whether reasons for detention on remand still exist".

<sup>24</sup> KSC-CC-PR-2020-09, F00006, Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020, 26 May 2020, para. 67.

in the case, such a change can nonetheless be determinative and shall be taken in consideration if raised before the Panel or *proprio motu*.<sup>25</sup>

15. In light of the above, the Panel is satisfied that the Pre-Trial Judge applied the correct standard.<sup>26</sup> Additionally, the Panel finds that the Pre-Trial Judge should not be expected to entertain submissions that merely repeat arguments that have already been addressed in his previous decisions.<sup>27</sup>

16. In addition, to the extent that Selimi argues that the Pre-Trial Judge's findings in the Impugned Decision are not sufficiently reasoned,<sup>28</sup> or that the Pre-Trial Judge's interpretation entails a "reduction in reasoning",<sup>29</sup> the Panel finds that Selimi's allegations are largely unsupported and Selimi further fails to point to any portion of the Impugned Decision he takes issue with. The Panel therefore summarily dismisses these assertions.<sup>30</sup>

B. ALLEGED FAILURE TO APPLY THE THRESHOLD UNDER ARTICLE 41(6)(B) OF THE LAW  
(GROUND C)

**1. Submissions of the Parties**

17. Selimi submits that the Pre-Trial Judge must not only assess whether each of the risks under Article 41(6)(b) of the Law exist but also "quantify" that risk "so as to properly assess whether it can be mitigated", namely to assess "how likely each risk

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<sup>25</sup> Rule 57(2) of the Rules.

<sup>26</sup> See Impugned Decision, para. 16.

<sup>27</sup> See e.g. ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-1626-Red, Public Redacted Version of Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 27 June 2011 entitled "Decision on Applications for Provisional Release", 12 September 2011, para. 60; ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-1019, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 28 July 2010 entitled "Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence", 19 November 2010, para. 53.

<sup>28</sup> Appeal, paras 5-9, 11-12.

<sup>29</sup> Appeal, para. 10.

<sup>30</sup> See e.g. *Haradinaj* Appeal Decision, para. 29 and jurisprudence cited therein.



[is] of materialising”.<sup>31</sup> He contends that the Pre-Trial Judge failed to do so in the Impugned Decision.<sup>32</sup> According to Selimi, any proposed condition for interim release must be assessed against both the type of risk to be mitigated (i.e. flight, obstruction or further crimes) as well as the likelihood of the risk materialising (i.e. marginal, probable or almost certain).<sup>33</sup>

18. The SPO responds that there is no requirement to further quantify the risk assessment beyond the threshold set by the Appeals Panel.<sup>34</sup>

## **2. Assessment of the Court of Appeals Panel**

19. The Panel recalls that what is required from the Pre-Trial Judge is to be satisfied there are “articulable grounds to believe” that there is a risk that one of the grounds under Article 41(6)(b) of the Law will occur, and to be satisfied that there is “more than a mere possibility of a risk materialising”.<sup>35</sup> The applicable standard must therefore be determined on a scale between a mere possibility and certainty.<sup>36</sup>

20. The Pre-Trial Judge found that each of the risks under Article 41(6)(b) of the Law “continue[s] to exist”.<sup>37</sup> The Pre-Trial Judge did not expressly set forth, in his conclusion for each of the risks, whether they exceeded the mere possibility of this risk materialising as required under the threshold. However, the Panel notes that the language the Pre-Trial Judge used in his assessment<sup>38</sup> demonstrates that he was

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<sup>31</sup> Appeal, paras 34, 36, 40.

<sup>32</sup> Appeal, paras 35, 40.

<sup>33</sup> Appeal, para. 36. See also Appeal, paras 37-39, 47.

<sup>34</sup> Response, para. 13.

<sup>35</sup> See *Selimi* Appeal Decision, para. 40; F00005, Public Redacted Version of Decision on Hashim Thaçi’s Appeal Against Decision on Interim Release, 30 April 2021 (original version filed on 30 April 2021) (“*Thaçi* Appeal Decision”), para. 22.

<sup>36</sup> See *Selimi* Appeal Decision, para. 44.

<sup>37</sup> Impugned Decision, para. 54. See also Impugned Decision, paras 26, 44, 53.

<sup>38</sup> See e.g. Impugned Decision, paras 43 (“Mr Selimi misstates the applicable test, which pertains to a sufficiently real possibility, and not the inevitability, of such obstruction occurring”), 51 (“[...] the applicable test, which pertains to a sufficiently real possibility, and not the inevitability, of such crimes being committed”).



mindful of the applicable standard that he also recalled in the section of the Impugned Decision on the necessity of detention.<sup>39</sup>

21. As noted above, the Panel has already established the applicable threshold in the *Selimi* Appeal Decision and fails to see what the Defence is trying to demonstrate in arguing that the Pre-Trial Judge should provide further specificity and establish whether the likelihood of the risk materialising is “marginal, probable or almost certain”.<sup>40</sup> The Panel underlines that the determination that has to be made by the Pre-Trial Judge still needs to be sufficiently specific. In that regard, the term “articulable”, although not directly speaking to the threshold but to the information or evidence presented by the SPO, involves, as previously held by this Panel,<sup>41</sup> an assessment as to whether the SPO presented *specific reasoning based on evidence*. At the same time, the assessment as to whether the evidence presented by the SPO is sufficient is a question of fact depending on the individual circumstances of each case.<sup>42</sup>

22. The only concrete example provided by Selimi pertains to the risk of flight.<sup>43</sup> This allegation is dismissed for the reasons recalled below with respect to the assessment of the risk under Article 41(6)(b)(i) of the Law.<sup>44</sup> In any event, Selimi’s disagreement with the individual circumstances of the case relied upon by the Pre-Trial Judge to establish a risk of flight<sup>45</sup> as well as his attempt to suggest other purely hypothetical factors<sup>46</sup> is insufficient to demonstrate an error.

23. As a result, the Panel dismisses Selimi’s arguments under this ground of appeal.

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<sup>39</sup> See Impugned Decision, para. 21.

<sup>40</sup> Appeal, para. 36.

<sup>41</sup> See *Selimi* Appeal Decision, paras 43-44.

<sup>42</sup> See *Selimi* Appeal Decision, para. 44.

<sup>43</sup> Appeal, paras 37-38.

<sup>44</sup> See below, para. 41.

<sup>45</sup> Appeal, para. 37.

<sup>46</sup> Appeal, para. 38.

C. ALLEGED ERRORS REGARDING ASSESSMENT OF RISKS UNDER ARTICLE 41(6)(B) OF THE LAW (GROUND B)

1. Submissions of the Parties

24. Selimi challenges the Pre-Trial Judge's reliance on the following factors in his assessment of the risks under Article 41(6)(b) of the Law:<sup>47</sup> (i) Selimi's alleged awareness of the charges against him and the possibility of a serious sentence;<sup>48</sup> (ii) his increased insight into the evidence underpinning the charges against him;<sup>49</sup> (iii) his alleged significant role in Kosovo based on his previous positions and his influence;<sup>50</sup> (iv) [REDACTED];<sup>51</sup> (v) [REDACTED];<sup>52</sup> and (vi) a persisting climate of intimidation.<sup>53</sup> Selimi submits that, although the Appeals Panel dismissed some of his previous arguments as it declined to address the risk of flight, these arguments still need to be considered here given that the Pre-Trial Judge is using the same factors "interchangeably and repeatedly" to assess the three different risks set out under Article 41(6)(b) of the Law.<sup>54</sup>

25. Selimi contends that the Pre-Trial Judge's reliance on his alleged influence is unsupported by any evidence.<sup>55</sup> He also submits that despite the Appeals Panel's findings in the *Selimi* Appeal Decision, the Pre-Trial Judge failed to establish the composition of the alleged network, Selimi's level of control over the network, its capacity and resources to assist him, as well as whether and how he would use his alleged influence unlawfully.<sup>56</sup> In sum, Selimi contends that the Pre-Trial Judge fails

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<sup>47</sup> Appeal, paras 13-14, 29.

<sup>48</sup> Appeal, paras 16-17. See also Reply, para. 8.

<sup>49</sup> Appeal, paras 18-21.

<sup>50</sup> Appeal, paras 22-23.

<sup>51</sup> Appeal, paras 24-26.

<sup>52</sup> Appeal, para. 27.

<sup>53</sup> Appeal, para. 28.

<sup>54</sup> Appeal, para. 15.

<sup>55</sup> Appeal, paras 22-23.

<sup>56</sup> Ibid.

to take into account this Panel's call for greater specificity and thus his finding "constitutes nothing more than a speculative assertion".<sup>57</sup>

26. With respect to [REDACTED], Selimi argues that the Pre-Trial Judge failed to establish with "concrete and reliable evidence" that [REDACTED].<sup>58</sup> He further argues that the Pre-Trial Judge's finding that [REDACTED] lacks reasoning and is unsupported, in spite of the critical observation made in the *Selimi* Appeal Decision.<sup>59</sup>

27. Selimi also asserts that the Pre-Trial Judge's findings on the climate of intimidation of witnesses in Kosovo are generic and "vague"; and that the Pre-Trial Judge had the obligation to assess whether past incidents were proven and are sufficiently proximate to his case.<sup>60</sup> He finally submits that the Pre-Trial Judge abused his discretion in granting less weight to the favourable factors advanced by the Defence, such as Selimi's cooperation with the SPO and in adopting a "broad-brush blanket approach" without any separation or analysis of each individual factor.<sup>61</sup> Moreover, Selimi submits that the Pre-Trial Judge excluded relevant factors which militate against his continued detention.<sup>62</sup>

28. The SPO responds that Selimi merely disagrees with the Pre-Trial Judge's assessment, provides no reason why factors linked to his awareness of crimes and seriousness of sentence, [REDACTED], position of influence, climate of intimidation and factors mitigating risks should be re-evaluated and identifies no discernible error.<sup>63</sup>

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<sup>57</sup> Appeal, para. 23.

<sup>58</sup> Appeal, paras 24-26.

<sup>59</sup> Appeal, para. 27, referring to *Selimi* Appeal Decision, para. 70.

<sup>60</sup> Appeal, para. 28.

<sup>61</sup> Appeal, paras 30-32.

<sup>62</sup> Appeal, para. 33.

<sup>63</sup> Response, paras 14-17, 21.

## 2. Assessment of the Court of Appeals Panel

29. At the outset, the Court of Appeals Panel notes that Selimi argues that the Pre-Trial Judge relied “interchangeably” and “repeatedly” on the six above-mentioned factors in relation to his assessment of each of the risks under Article 41(6)(b) of the Law. However, this is not entirely accurate. If in some instances the Pre-Trial Judge considered the same factors in his assessment of different risks, he has not done so systematically.<sup>64</sup> In that respect, the Panel finds that Selimi misrepresents the Impugned Decision. As a result, the Panel will assess, in turn and where applicable, allegations of errors regarding the Pre-Trial Judge’s assessment of relevant factors relied upon for each risk individually.

### (a) Article 41(6)(b)(i) of the Law

30. The Pre-Trial Judge found that Selimi’s Proposed Conditions in support of his alternative request for conditional interim release could sufficiently mitigate the risk of him absconding.<sup>65</sup> As the Pre-Trial Judge’s conclusion that Selimi’s detention shall continue is not based on his findings regarding the risk of flight, the Appeals Panel summarily dismisses Selimi’s arguments related to factors relied upon by the Pre-Trial Judge in his assessment of the risk of him absconding<sup>66</sup> to the extent that these factors do not also form part of the Pre-Trial Judge’s determination on the continuation of Selimi’s detention. The Panel recalls in this respect that, when a party alleges that an error of law or of fact has been committed, that party must go on to show that the

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<sup>64</sup> For instance, the Pre-Trial Judge relied on Selimi’s increased insight into the evidence underpinning the charges against him on the basis of the ongoing disclosure process in his assessment of the risk of flight and of the risk of reoffending, but not for the risk of obstruction. See Impugned Decision, paras 25, 42, 50.

<sup>65</sup> Impugned Decision, para. 58.

<sup>66</sup> With regard to the assessment of the risk of flight under Article 41(6)(b)(i) of the Law, the Pre-Trial Judge relied on the following factors: (i) Selimi’s awareness of the charges against him and the possibility of a serious sentence in the event of a conviction; (ii) Selimi’s increased insight into the evidence underpinning the charges against him on the basis of the ongoing disclosure process; and (iii) the significant role he continues to play in Kosovo based on his previous positions and the influence he continues to enjoy. See Impugned Decision, paras 25-26. See also Appeal, paras 16-23, 37-39; Reply, paras 7-11.

alleged error invalidates the decision or occasions a miscarriage of justice. The Panel is therefore not required to consider the arguments of a party if they do not allege an error of law invalidating the decision, or an error of fact occasioning a miscarriage of justice.<sup>67</sup>

(b) Article 41(6)(b)(ii) of the Law

31. In his assessment of the risk of obstructing the progress of the Specialist Chambers proceedings under Article 41(6)(b)(ii) of the Law, the Pre-Trial Judge relied on the following factors: (i) Selimi's [REDACTED]; (ii) his position of influence allowing him to elicit the support of sympathisers; and (iii) the persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members.<sup>68</sup> He also found that Selimi's strong family and professional ties to Kosovo, the statements on his good character, his cooperation with the SPO and his voluntary surrender had to be attributed limited weight and did not affect the Pre-Trial Judge's conclusion.<sup>69</sup>

32. Contrary to Selimi's assertion,<sup>70</sup> the factors linked to Selimi's alleged awareness of the charges against him and the possibility of a serious sentence, as well as to his increased insight into the evidence underpinning the charges against him, were not relied upon by the Pre-Trial Judge in his determination of the risk of obstruction.<sup>71</sup> As a result, and for the reasons indicated above,<sup>72</sup> the Panel will not address these arguments.

33. The Panel will now address Selimi's influence and ability to mobilise support networks. The Panel notes that in the Impugned Decision, the Pre-Trial Judge found

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<sup>67</sup> See e.g. *Selimi* Appeal Decision, para. 50; ICTR, *Rutaganda v. Prosecutor*, ICTR-96-3-A, Judgement, 26 May 2003, para. 18.

<sup>68</sup> Impugned Decision, paras 37-42, 44.

<sup>69</sup> Impugned Decision, para. 43.

<sup>70</sup> See Appeal, paras 14-15. See also Appeal, paras 16-20.

<sup>71</sup> See Impugned Decision, paras 33-44.

<sup>72</sup> See above, para. 30.

that as a former high-ranking KLA member and political figure, Selimi still holds a position of influence in Kosovo.<sup>73</sup> The Pre-Trial Judge stated that this position could allow him to secure access to relevant information and call upon the support of persons sympathetic to him and/or the KLA to obstruct Specialist Chambers' proceedings.<sup>74</sup> The Panel recalls that in its *Selimi* Appeal Decision, it found that the Pre-Trial-Judge did not err in finding that Selimi continued to enjoy an influential position in Kosovo from his former and current functions.<sup>75</sup> However, the Panel also found that the evidence was insufficient to demonstrate that Selimi's opinions may mobilise support networks, including present and former subordinates, that there was no concrete evidence of influence exerted by Selimi on individuals within the support network of the KLA War Veterans Association, and that there was also no evidence adduced with regard to the existence of a support network, such as its composition, its capacity or its resources.<sup>76</sup>

34. The Panel observes that if the Pre-Trial Judge is no longer referring to the support of a "network" of supporters, he now refers to the support of "persons sympathetic to him and/or the KLA" or "sympathisers".<sup>77</sup> While the Panel finds that it is reasonable for the Pre-Trial Judge to find that Selimi continues to enjoy a position of influence in Kosovo, the Panel however finds some merit in Selimi's assertion that the evidence relied upon by the Pre-Trial Judge is insufficient to reasonably conclude that he exerts influence over sympathisers of the KLA in the absence of any new concrete evidence adduced since the previous assessment that would support such a finding. In that regard, the Panel is not convinced that the material adduced by the SPO could be sufficient to show how Selimi would actually be in a position to exert influence over KLA sympathisers insofar as there appears to be no evidence therein

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<sup>73</sup> Impugned Decision, para. 40. See also Impugned Decision, para. 25.

<sup>74</sup> Ibid. See also Impugned Decision, para. 42.

<sup>75</sup> *Selimi* Appeal Decision, paras 63, 68.

<sup>76</sup> *Selimi* Appeal Decision, paras 65-67.

<sup>77</sup> See Impugned Decision, paras 25, 40, 42, 50.

linking him to the events referred to.<sup>78</sup> This finding must be set aside. The Panel will address the repercussions, if any, of this finding subsequently.

35. Turning next to [REDACTED], the Panel recalls its finding in the *Selimi* Appeal Decision that this indicated, at least, that Selimi was predisposed to witness intimidation.<sup>79</sup>

36. In the Impugned Decision, the Pre-Trial Judge found that the fact that [REDACTED]. The Pre-Trial Judge further found that this demonstrates, at a minimum, [REDACTED].<sup>80</sup>

37. While Selimi contends that the Pre-Trial Judge's "circular reasoning" "assumes" that [REDACTED],<sup>81</sup> the Pre-Trial Judge in fact never "assumed" so and clearly stressed that: "[REDACTED]."<sup>82</sup> This fact is therefore irrelevant. In addition, [REDACTED] is only one among several factors relied upon by the Pre-Trial Judge to determine that [REDACTED].<sup>83</sup> The Panel notes that the Pre-Trial Judge provided detailed reasons as to why it was not determinative whether [REDACTED], nor whether [REDACTED].<sup>84</sup> Rather, the Pre-Trial Judge focused on [REDACTED].<sup>85</sup> The Panel finds that Selimi merely repeats unsuccessful arguments previously made before the Pre-Trial Judge<sup>86</sup> but fails to identify any clear error on his part.<sup>87</sup>

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<sup>78</sup> See SPO Response on Detention Review, paras 7-8, referred to at Impugned Decision, para. 23.

<sup>79</sup> *Selimi* Appeal Decision, para. 74.

<sup>80</sup> Impugned Decision, paras 33-37.

<sup>81</sup> See Appeal, para. 25.

<sup>82</sup> Impugned Decision, para. 37.

<sup>83</sup> See Impugned Decision, paras 34-36.

<sup>84</sup> Impugned Decision, paras 36-37.

<sup>85</sup> Impugned Decision, para. 38 ("[REDACTED].")

<sup>86</sup> Compare Selimi Submissions on Detention Review, paras 27-28, 34-35 and Reply on Detention Review, paras 14-16 with Appeal, paras 24-26.

<sup>87</sup> See e.g. *Thaçi* Appeal Decision, para. 60.



38. In addition, while Selimi argues that [REDACTED],<sup>88</sup> the Panel is not convinced that this, as such, affects the previous determination by the Pre-Trial Judge of [REDACTED].<sup>89</sup> As a result, Selimi's submissions in that regard are dismissed.

39. Finally, the Panel finds that the Pre-Trial Judge expressly weighed his findings against Selimi's personal circumstances.<sup>90</sup> That Selimi is of the view that these favourable factors should have been given more weight is not sufficient to overturn the factual findings of the trier of fact. The Panel recalls that an appellant's mere disagreement with the Pre-Trial Judge's weighing of various factors and the conclusions reached therefrom is not enough to establish a clear error.<sup>91</sup> In addition, the Panel is not convinced that the mere fact that the Pre-Trial Judge referred to these factors together in the Impugned Decision means that he did not conduct an independent assessment of each factor individually.<sup>92</sup>

40. The Court of Appeals Panel has previously found that: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; and (iv) [REDACTED] indicate that Selimi is predisposed to witness intimidation. The Panel further concluded that these factors amply support the Pre-Trial Judge's conclusion that there is a risk that, if released, Selimi will obstruct the progress of the criminal proceedings.<sup>93</sup> Consequently, the Panel finds that the Pre-Trial Judge's erroneous reliance on Selimi's influence allegedly exerted over persons sympathetic to the KLA<sup>94</sup> does not invalidate his overall conclusion that there continues to be a risk that, if released, Selimi will obstruct the progress of the criminal proceedings. The Panel therefore finds that Selimi has failed to demonstrate that the Pre-Trial Judge erred in finding so. In light of this

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<sup>88</sup> Appeal, paras 24-26.

<sup>89</sup> Impugned Decision, paras 37-38, 42.

<sup>90</sup> Impugned Decision, para. 43.

<sup>91</sup> F00005, Decision on Kadri Veseli's Appeal Against Decision on Interim Release, 30 April 2021, para. 47; *Gucati* Appeal Decision, para. 64.

<sup>92</sup> *Contra* Appeal, para. 31.

<sup>93</sup> *Selimi* Appeal Decision, paras 74-75.

<sup>94</sup> See above, para. 34.

finding, the Panel does not need to address the remainder of Selimi's arguments<sup>95</sup> on Article 41(6)(b)(ii) of the Law.

(c) Article 41(6)(b)(iii) of the Law

41. Given that the Panel has found no error in the Pre-Trial Judge's conclusion that a risk of obstruction existed under Article 41(6)(b)(ii) of the Law, making continued detention necessary, Selimi's allegations with regard to factors that were relied upon by the Pre-Trial Judge in his determination of the risk under Article 41(6)(b)(iii) of the Law – and not previously reviewed in the present Decision – need not be addressed.<sup>96</sup> The Panel recalls that the conditions set forth in Article 41(6)(b) of the Law are alternative to one another.<sup>97</sup> If one of those conditions is fulfilled, the other conditions do not have to be addressed in order for detention to be maintained. Any findings by the Panel on Selimi's arguments under Article 41(6)(b)(iii) of the Law would therefore not have an impact on the outcome of the Impugned Decision.

42. The Panel needs nonetheless to address the Parties' arguments on the length of the detention. The Panel also needs to address whether the Pre-Trial Judge erred in finding that the risk of obstructing the proceedings could not be mitigated by the Proposed Conditions.

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<sup>95</sup> Appeal, paras 27-30 referring to [REDACTED] and further alleging errors in the Pre-Trial Judge's finding on the general climate of witness intimidation in Kosovo.

<sup>96</sup> With regard to the risk of committing further crimes under Article 41(6)(b)(iii) of the Law, the Pre-Trial Judge relied on: (i) Selimi's position of influence allowing him to call upon the support of sympathisers; (ii) the general climate of witness intimidation and interference; (iii) [REDACTED]; and (iv) his increased knowledge of the case against him through ongoing disclosure of material underpinning the charges against him. See Impugned Decision, paras 50, 53. See also Appeal, paras 18-21, 28; Reply, paras 9-11.

<sup>97</sup> See e.g. *Selimi* Appeal Decision, para. 76.

D. ALLEGED ERRORS REGARDING ASSESSMENT OF THE PROPORTIONALITY OF DETENTION  
(GROUND E)

**1. Submissions of the Parties**

43. Selimi submits that the expected total length of pre-trial detention, in light of the likely start date of the trial, is a relevant factor for assessing the reasonableness and proportionality of detention, which should have been taken into consideration in the Impugned Decision, regardless of whether the Parties disagree on that issue.<sup>98</sup> He states that in failing to do so, the Pre-Trial Judge abused his discretion.<sup>99</sup> Selimi adds that information provided by the SPO since then reinforces the Defence's position that the trial will not start until well into 2022.<sup>100</sup>

44. The SPO responds that the Pre-Trial Judge did not accept any particular estimate and only relied on the fact that the Parties differed widely in that regard.<sup>101</sup> It submits that the Pre-Trial Judge committed no discernible error in concluding that detention remained proportionate and that estimating pre-trial detention remained premature and speculative.<sup>102</sup>

**2. Assessment of the Court of Appeals Panel**

45. The Panel notes that the Pre-Trial Judge considered the following factors to reach his conclusion that the time spent so far by Selimi in pre-trial detention is not unreasonable and that a discussion on the expected total length of such pre-trial detention remains premature and speculative at this stage: (i) Selimi's arrest on 5 November 2020; (ii) he is charged with ten counts of war crimes and crimes against humanity for events in multiple locations over an extended period of time; (iii) if convicted, Selimi's sentence could be lengthy; (iv) the risks under Article 41(6)(b)(ii)

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<sup>98</sup> Appeal, paras 49-50.

<sup>99</sup> Appeal, para. 52.

<sup>100</sup> Appeal, para. 51.

<sup>101</sup> Response, para. 24.

<sup>102</sup> Response, para. 25.

and (iii) of the Law cannot be mitigated by any additional condition; (v) all pre-trial procedural steps will be completed to transmit the case for trial in the foreseeable future; (vi) time limits have either been met or extended for good cause, including at the Selimi's request; and (vii) Selimi and the SPO continue to differ on the likely start date of the trial.<sup>103</sup>

46. The Appeals Panel recalls the importance of the proportionality principle in the determination of the reasonableness of pre-trial detention.<sup>104</sup> The length of time spent in detention pending trial is a factor that needs to be considered along with the risks that are described in Article 41(6)(b) of the Law, in order to determine whether, all factors being considered, the continued detention "stops being reasonable" and the individual needs to be released.<sup>105</sup> The Panel further recalls its determination in the *Selimi* Appeal Decision that the Pre-Trial Judge had not erred in adopting a different approach than some judges at the International Criminal Tribunal for the former Yugoslavia who took the probable length of pre-trial detention into account in the exercise of their discretion to release an accused, especially in light of the periodic review of the necessity of continued detention.<sup>106</sup>

47. Given the current stage of the pre-trial proceedings, and the Parties' persisting different positions as to the likely start date for the trial, and therefore as to the likely length of the pre-trial period, the Panel finds that it was again not unreasonable and within his discretion for the Pre-Trial Judge to find, like in his previous assessment, that any determination *at the present stage* as to the expected total length of Selimi's pre-trial detention is premature and speculative. The Panel is not convinced by Selimi's assertion that the Pre-Trial Judge has the "central responsibility" to assess

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<sup>103</sup> Impugned Decision, paras 67-68.

<sup>104</sup> *Selimi* Appeal Decision, para. 79 and jurisprudence cited therein.

<sup>105</sup> *Ibid.*

<sup>106</sup> *Selimi* Appeal Decision, para. 81 and jurisprudence cited therein. See also Rule 57(2) of the Rules; Article 41(10) of the Law.

which of the Parties' positions is correct.<sup>107</sup> In any event, such an assessment at this stage of the proceedings in the present case would be wholly speculative. Accordingly, the Panel dismisses Selimi's ground of appeal related to the length of the pre-trial proceedings.

E. ALLEGED ERRORS REGARDING ASSESSMENT OF CONDITIONS OF RELEASE (GROUND D)

**1. Submissions of the Parties**

48. Selimi submits that the Pre-Trial Judge erred in finding that the conditions proposed by the Defence or any other additional conditions cannot sufficiently mitigate the risks under Article 41(6)(b) of the Law.<sup>108</sup> In particular, he contends that the Pre-Trial Judge should have assessed the resources or capacity of the Kosovo Police to enforce such conditions, and engage directly with the General Director of the Kosovo Police ("Police Director") as to the enforcement of specific conditions, instead of dismissing as "general assertion" the latter's response to the Defence.<sup>109</sup> Additionally, Selimi argues that the Pre-Trial Judge, when concluding that only the communication monitoring framework applicable at the Specialist Chambers Detention Facilities could sufficiently mitigate the risks, misunderstood the nature of the detention regime, which in fact does not prevent passing of information to the outside world.<sup>110</sup> According to him, "nothing short of solitary confinement" would achieve the mitigation to the level of certainty required by the Pre-Trial Judge.<sup>111</sup> Selimi finally argues that in doing so, the Pre-Trial Judge has set an artificially high bar resulting in automatically rejecting any possible proposed condition.<sup>112</sup>

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<sup>107</sup> Contra Appeal, para. 50.

<sup>108</sup> Appeal, paras 41-48.

<sup>109</sup> Appeal, paras 43, 48. See also Reply, para. 16.

<sup>110</sup> Appeal, paras 45-46.

<sup>111</sup> Appeal, para. 45.

<sup>112</sup> Appeal, paras 45-46. See also Appeal, para. 43.

49. The SPO responds that Selimi merely disagrees with the Pre-Trial Judge's assessment of the Proposed Conditions and fails to identify any discernible error.<sup>113</sup> According to the SPO, if no condition can mitigate the risks identified, a Panel "is not obligated to assess a State's willingness and ability to enforce conditions".<sup>114</sup> In any event, the SPO contends that the Pre-Trial Judge properly weighed the assurances provided by the Police Director.<sup>115</sup> The SPO further refers to a previous decision in which the Appeals Panel upheld the Pre-Trial Judge's finding that vague assurances from the Police Director were insufficient.<sup>116</sup>

50. Selimi replies that the assessment of the Appeals Panel was based on the relevant information submitted at the time and did not include a review of the additional proposed conditions.<sup>117</sup>

## **2. Assessment of the Court of Appeals Panel**

51. The Pre-Trial Judge found that the Proposed Conditions, the Additional Proposed Conditions or any additional conditions imposed by the Pre-Trial Judge could not sufficiently mitigate the risk of obstructing the progress of Specialist Chambers proceedings or the risk of committing further crimes.<sup>118</sup> In particular, the Pre-Trial Judge found that the Proposed Conditions would not prevent Selimi from employing electronic devices belonging to other persons or from asking other persons to employ their devices.<sup>119</sup> He also found that the response of the Police Director did not specifically address whether the Additional Proposed Conditions could be efficiently enforced and if so which measures would be adopted, stating that it "further augments the need for a detailed response by the [Police] Director".<sup>120</sup> The

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<sup>113</sup> Response, para. 22.

<sup>114</sup> Response, para. 23.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> Reply, paras 12-15.

<sup>118</sup> Impugned Decision, paras 59-63.

<sup>119</sup> Impugned Decision, para. 60.

<sup>120</sup> Impugned Decision, para. 61.

Pre-Trial Judge added that the Additional Proposed Conditions would not prevent unmonitored conversations between Selimi and family members or approved visitors, who, even if they were to surrender their devices and consent to subsequent monitoring, would still be able to pass messages “in a number of other ways”.<sup>121</sup> In the Pre-Trial Judge’s view, any further conditions such as monitoring visits by the Kosovo Police would insufficiently mitigate that risk, and it is only through the communication monitoring framework applicable at the Specialist Chambers Detention Facilities that Selimi’s communications can be sufficiently restricted and monitored.<sup>122</sup>

52. The Court of Appeals Panel notes that the assessment of whether a condition could sufficiently mitigate the risks under Article 41(6)(b) of the Law is a case-by-case analysis and the Panel’s scope of review is limited to determining whether the Pre-Trial Judge erred in his assessment. In this regard, the Panel observes that the measures contained in the Additional Proposed Conditions submitted by Selimi are very extensive.<sup>123</sup> For instance, measures such as the prohibition of any telecommunications or Internet-enabled devices inside Selimi’s property, the surrender of any such device by — pre-approved — visitors prior to any visit, and the subsequent monitoring of the visitors’ communication devices for the duration of Selimi’s provisional release could prevent Selimi from employing electronic devices belonging to his family or acquaintances.

53. On the other hand, the Panel agrees with Selimi that in theory, the use of code and obscure language remains possible even in detention, unless the Accused is indeed denied any external communication or visit.<sup>124</sup> However, such

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<sup>121</sup> Impugned Decision, para. 62.

<sup>122</sup> Impugned Decision, paras 62-63.

<sup>123</sup> F00361/A01, Annex 1 to Defence Reply to SPO Response to Defence Submissions on Review of Detention, 18 June 2021 (confidential) (“Annex 1 to Reply on Detention Review”). See also Appeal, para. 41.

<sup>124</sup> See Appeal, para. 45.



communications would still be submitted to some degree of monitoring in the controlled environment of the Specialist Chambers Detention Facilities in accordance with the applicable legal framework.<sup>125</sup> Whether the same level of monitoring of conversations can be implemented outside detention remains to be determined.

54. The Panel notes that Selimi did indeed propose a detailed list of conditions which may, in the abstract, restrict and monitor his communications. That being said, the Panel stresses that it still needs to be assessed whether such measures can be effectively enforced. In that regard, the Panel finds that the Kosovo Police's willingness and ability to enforce proposed conditions could assist in mitigating the risks identified by the Pre-Trial Judge. The competent panel therefore has to review whether, when applicable, the guarantees that have been provided can appropriately mitigate the risks.<sup>126</sup> Such a review should be done on a case-by-case basis. The Panel considers that in light of the extensive list of conditions put forward by Selimi, it was not open to the Pre-Trial Judge to conclude that none of these conditions could sufficiently mitigate the identified risks without enquiring further into the enforceability of these measures.

55. Turning therefore to the guarantees provided by the Kosovo Police, the Panel agrees with the Pre-Trial Judge that the response from the Police Director, given its general and generic character,<sup>127</sup> cannot be considered as constituting, as such, an acceptance to enforce the Additional Proposed Conditions,<sup>128</sup> contrary to Selimi's

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<sup>125</sup> See notably Registry Practice Direction on Detainees Visits and Communications, KSC-BD-09/Rev1/2020, 23 September 2020 ("Practice Direction"). In the Detention Centre, visits with a detainee are conducted within the sight and hearing of Detention Officers and they may order the recording, listening to, summarising, and transcribing of visits with certain visitors (Article 15 of the Practice Direction). Unmonitored communications are in fact strictly limited. For instance, the accused are allowed unmonitored "private visits" but only for certain close family members and within limited time periods (Article 24 of the Practice Direction). See also more generally, Rules on Detention, 23 September 2020, Detention Management Unit Instructions, 23 September 2020.

<sup>126</sup> Contra Response, para. 23.

<sup>127</sup> See F00361/A02, Annex 2 to Defence Reply to SPO Response to Defence Submissions on Review of Detention, 18 June 2021 (confidential) ("Annex 2 to Reply on Detention Review").

<sup>128</sup> Impugned Decision, para. 61.

contention.<sup>129</sup> Likewise, the Panel agrees with the Pre-Trial Judge that given the level of detail of the questions asked by Counsel for Selimi,<sup>130</sup> a more specific response from the Police Director supported by relevant documentation as well as concrete measures that could be adopted could have been expected but was not provided.<sup>131</sup> In such circumstances, the Panel finds that while the guarantees from the Kosovo Police seem to demonstrate its general willingness/readiness to enforce proposed conditions, in light of the little information available, it is not possible to assess to what extent the Kosovo Police has the actual capacity and resources to implement these measures.

56. However, the Panel finds that if the Pre-Trial Judge considered, and as he did in fact, that the response from the Kosovo Police was not sufficiently satisfactory, he should then have enquired with the Police Director to obtain the detailed response he found was lacking, especially as he was expressly invited to do so by Selimi<sup>132</sup> and the response of the Police Director implies the Kosovo Police's ability to enforce conditions.<sup>133</sup> The Panel recalls that conducting such an enquiry would fall within the discretionary powers the Pre-Trial Judge is vested with pursuant to Article 39(13) of the Law with regard to detention related matters, depending on the circumstances of the case.<sup>134</sup> The Panel also notes that the Pre-Trial Judge did not provide reasons for not ordering the Police Director to provide a detailed response despite acknowledging the need for it.

57. Therefore, in light of the specific circumstances of the case, the Panel finds merit in Selimi's contention that the Pre-Trial Judge abused his discretion when concluding

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<sup>129</sup> Appeal, para. 48.

<sup>130</sup> Annex 1 to Reply on Detention Review, pp. 6-8.

<sup>131</sup> Annex 2 to Reply on Detention Review. See also Impugned Decision, para. 61.

<sup>132</sup> See Reply on Detention Review, para. 19 where Selimi asked the Pre-Trial Judge "to engage directly with the Director of Police if any clarification or further information is required". See also Impugned Decision, para. 61.

<sup>133</sup> Annex 2 to Reply on Detention Review, p. 3: "[REDACTED]." (emphasis added).

<sup>134</sup> KSC-BC-2020-04, F00005, Public Redacted Version of Decision on Pjetër Shala's Appeal Against Decision on Provisional Release, 20 August 2021 (original version filed on 20 August 2021), para. 60. See also *Selimi* Appeal Decision, para. 86.

that none of the Additional Proposed Conditions nor any other additional condition could mitigate the identified risks without first seeking additional submissions from the Police Director. The Panel finds that the Pre-Trial Judge erred in not doing so, as this information would have put him in a position to assess whether the Kosovo Police can effectively enforce these measures, including the ones he suggested, such as monitoring visits. More precise information of this kind would give the Pre-Trial Judge a more complete and solid factual basis to assess the feasibility of such conditions, without of course anticipating the outcome of the final determination on these matters.

58. In light of the above, the Court of Appeals Panel grants Selimi's ground of appeal D and remands the matter to the Pre-Trial Judge in order to assess whether the Kosovo Police can effectively enforce the Proposed Conditions, the Additional Proposed Conditions or any further condition he identifies as necessary to mitigate the identified risks.

#### IV. DISPOSITION

59. For these reasons, the Court of Appeals Panel:

**GRANTS** Selimi's ground of appeal D;

**REMANDS** the matter to the Pre-Trial Judge for further consideration consistent with paragraphs 56-58 of this Decision; and

**DISMISSES** all other aspects of the Appeal (Selimi's grounds of appeal A, B, C and E).



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**Judge Michèle Picard,  
Presiding Judge**

Dated this Friday, 1 October 2021

At The Hague, the Netherlands