



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**In:** **KSC-BC-2020-07**  
**The Prosecutor v. Hysni Gucati and Nasim Haradinaj**

**Before:** **Trial Panel II**  
Judge Charles L. Smith, III, Presiding Judge  
Judge Christoph Barthe  
Judge Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Fidelma Donlon

**Date:** 22 October 2021

**Language:** English

**Classification:** **Public**

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**Decision on Review of Detention of Nasim Haradinaj**

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**TRIAL PANEL II**, pursuant to Articles 1(2), 2, 3(2)(e), 19(2), 21(3) and 40-41 of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 25 September 2020, Mr Hysni Gucati and Mr Nasim Haradinaj ("Mr Haradinaj" or "the Accused") were arrested in relation to alleged dissemination of confidential and non-public information relating to the work of the Special Investigative Task Force ("SITF") and/or the Specialist Prosecutor's Office ("SPO").<sup>1</sup>

2. On 27 October 2020, the Single Judge rejected Mr Haradinaj's request for his immediate release from detention.<sup>2</sup> The Pre-Trial Judge reviewed and extended Mr Haradinaj's detention at regular intervals, namely on 24 December 2020,<sup>3</sup> which was upheld by the Court of Appeals Panel,<sup>4</sup> and on 24 February, 23 April and 23 June 2021.<sup>5</sup>

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<sup>1</sup> F00012/A03/COR/RED, Single Judge, *Public Redacted Version of Corrected Version of Arrest Warrant for Nasim Haradinaj*, 24 September 2020; F00016, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 25 September 2020; F00012/A04/RED, Single Judge, *Public Redacted Version of Order for Transfer to Detention Facilities of the Specialist Chambers*, 24 September 2020; F00020, Registrar, *Notification of the Reception of Nasim Haradinaj in the Detention Facilities of the Specialist Chambers*, 26 September 2020, with Annex 1, confidential; F00026/COR, Registrar, *Corrected Report on the Arrest and Transfer of Nasim Haradinaj to the Detention Facilities*, 28 September 2020, confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*. A public redacted version of F00026 was filed on 14 October 2020; see F00026/COR/RED.

<sup>2</sup> F00058, Single Judge, *Decision on Request for Immediate Release of Nasim Haradinaj* ("First Detention Decision"), 27 October 2020.

<sup>3</sup> F00094, Pre-Trial Judge, *Decision on Review of Detention of Nasim Haradinaj* ("Second Detention Decision"), 24 December 2020.

<sup>4</sup> IA002/F00005, Court of Appeals Panel, *Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention*, 9 February 2021, para. 66.

<sup>5</sup> F00144, Pre-Trial Judge, *Decision on Review of Detention of Nasim Haradinaj* ("Third Detention Decision"), 24 February 2021; F00189/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on Review of Detention of Nasim Haradinaj* ("Fourth Detention Decision"), 23 April 2021; F00246, Pre-Trial Judge, *Decision on Review of Detention of Nasim Haradinaj* ("Fifth Detention Decision"), 23 June 2021.

3. On 16 July 2021, the Pre-Trial Judge transmitted the case to Trial Panel II (“Panel”).<sup>6</sup>

4. On 23 August 2021, the Panel reviewed and extended Mr Haradinaj’s detention (“Sixth Detention Decision”).<sup>7</sup>

5. On 8 October 2021, the SPO filed its consolidated submissions for review of detention (“SPO Submission”).<sup>8</sup>

6. On 15 October 2021, the Defence for Mr Haradinaj (“Defence”) responded to the SPO Submission (“Haradinaj Submission”).<sup>9</sup>

## II. SUBMISSIONS

7. The SPO submits that the continued detention of Mr Haradinaj remains necessary as the reasons for his detention all continue to exist, the Article 41(6)(b) risks are at their highest point with the commencement of the trial, and no conditions can sufficiently mitigate them.<sup>10</sup> The SPO asserts that the network of the Kosovo Liberation Army War Veterans’ Association (“KLA WVA”) remains ready and willing to obstruct the proceedings, that its acting chairman continues to claim the illegitimacy of the Specialist Chambers (“SC”), and that he has promised to distribute confidential information from the SC if given the opportunity.<sup>11</sup> The SPO avers that the Panel’s previous finding that there was a grounded suspicion that Mr Haradinaj committed offences against the administration of justice within the SC’s jurisdiction continues to be true and

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<sup>6</sup> F00265, President, *Decision Transmitting Case File to Trial Panel II*, 16 July 2021.

<sup>7</sup> F00280, Panel, *Decision on Review of Detention of Nasim Haradinaj* (“Sixth Detention Decision”), 23 August 2021.

<sup>8</sup> F00356, Specialist Prosecutor, *Prosecution Consolidated Submissions for Review of Detention* (“SPO Submission”), 8 October 2021.

<sup>9</sup> F00371, Haradinaj Defence, *Defence Submissions on Detention* (“Haradinaj Submission”), 15 October 2021.

<sup>10</sup> SPO Submission, paras 1-2.

<sup>11</sup> SPO Submission, para. 3.

justifies continued detention.<sup>12</sup> The SPO concludes that the detention of the Accused must be extended.<sup>13</sup>

8. The Defence responds that there is no basis for extending Mr Haradinaj's detention and that his continued detention is not necessary and, on that basis, requests Mr Haradinaj's unconditional release.<sup>14</sup> The Defence argues that a reasonable suspicion that the Accused committed an offence within the SC's jurisdiction, while being a necessary pre-condition for continued detention, no longer suffices on its own after a certain lapse of time.<sup>15</sup> The Defence submits that the Panel has to satisfy itself that the SPO provided relevant and sufficient grounds to justify detention.<sup>16</sup> Noting that the assessment of whether the release of the Accused would pose a concrete danger to victims or witnesses must establish a real and identifiable risk,<sup>17</sup> the Defence contends that the SPO fails to demonstrate that the risks of Article 41(6)(b) of the Law are substantiated.<sup>18</sup> It further submits that the SPO's reliance on the commencement of the trial and statements of persons, such as Mr Faton Klinaku, not charged in these proceedings as justifications for detention are unacceptable, irrelevant and without foundation in law.<sup>19</sup> The Defence further contends that, for the SPO to attribute the comments of another, no matter their relation to the Accused, as bearing significance on establishing the allegations against the Accused, indicates its bias and complete disregard for due process.<sup>20</sup> Rejecting the suggestion that the trial is moving expeditiously, the Defence submits that its commencement was significantly

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<sup>12</sup> SPO Submission, para. 2.

<sup>13</sup> SPO Submission, para. 7.

<sup>14</sup> Haradinaj Submission, paras 1, 3, 29-31.

<sup>15</sup> Haradinaj Submission, para. 13.

<sup>16</sup> Haradinaj Submission, para. 13.

<sup>17</sup> Haradinaj Submission, paras 16-17, 28.

<sup>18</sup> Haradinaj Submission, paras 13, 17.

<sup>19</sup> Haradinaj Submission, paras 21, 24.

<sup>20</sup> Haradinaj Submission, paras 24-25.

delayed due to the SPO's approach to its disclosure obligations, pointing in particular to the 12 October 2021 Disclosure package 48.<sup>21</sup>

### III. APPLICABLE LAW

9. Pursuant to Article 41(6)(a) and (b) of the Law, the SC shall only detain a person when there is a grounded suspicion that the person has committed a crime within its jurisdiction; and there are articulable grounds to believe that the person (i) is a flight risk; (ii) will obstruct the progress of the proceedings; or (iii) will repeat the criminal offence, complete an attempted crime or commit a crime which the person threatened to commit.

10. Article 41(12) of the Law provides for alternative measures to prevent or mitigate these risks, including, among others, bail, house detention, promise not to leave residence and prohibition on approaching specific places or persons.

11. Pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, until a judgment is final or until release, upon the expiry of two months from the last ruling on detention on remand, the Panel shall examine whether the reasons for detention on remand still exist, and extend or terminate it.<sup>22</sup>

12. While not required to make findings on the factors already decided upon in the initial ruling on detention, the Panel must examine these reasons or circumstances and determine whether they still exist to satisfy itself that, at the time of the review decision, grounds for continued detention still exist.<sup>23</sup> To do so, the Panel shall, *proprio motu*, assess whether it is still satisfied that, at the time of

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<sup>21</sup> Haradinaj Submission, para. 26.

<sup>22</sup> See also IA002-F00005, Court of Appeals Panel, *Decision on Nasim Haradinaj's Appeal on Decision Reviewing Detention* ("Haradinaj Appeal Detention Review Decision"), 9 February 2021, para. 55.

<sup>23</sup> Haradinaj Appeal Detention Review Decision, para. 55.

the review and under the specific circumstances of the case when the review takes place, the detention of the Accused remains warranted.<sup>24</sup>

#### IV. DISCUSSION

13. At the outset, the Panel recalls that any analysis of continued detention must accept the presumption of innocence as its starting point.<sup>25</sup> Detention cannot be maintained lightly and the burden to demonstrate that detention is necessary is on the SPO.<sup>26</sup> The Panel also recalls that it is not incumbent upon Mr Haradinaj to demonstrate the existence of reasons warranting his release.<sup>27</sup>

##### A. GROUNDED SUSPICION

14. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires a grounded suspicion that Mr Haradinaj committed a crime within the jurisdiction of the SC. In this regard, the Panel recalls that the Pre-Trial Judge confirmed the indictment against Mr Haradinaj having found that a “well-grounded suspicion” within the meaning of Article 39(2) of the Law existed that he committed offences under SC jurisdiction. It is further recalled that the “well-grounded suspicion” threshold for the confirmation of the indictment is

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<sup>24</sup> KSC-BC-2020-06, IA008-F00004, Court of Appeals Panel, *Public Redacted Version of Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention* (“Veseli Appeals Detention Review Decision”), 1 October 2021, para. 14.

<sup>25</sup> Sixth Detention Decision, para. 14. *See also*, albeit in relation to pre-trial detention, KSC-BC-2020-06, IA004-F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Hashim Thaçi’s Appeal Against Decision on Interim Release* (“Thaçi Appeal Decision”), 30 April 2021, para. 17. *See also* KSC-BC-2020-05, F00158, Trial Panel I, *Fifth Decision on Review of Detention*, 23 July 2021, para. 14.

<sup>26</sup> Sixth Detention Decision, para. 14. *See also* Thaçi Appeal Decision, para. 17.

<sup>27</sup> Sixth Detention Decision, para. 14. *See also* KSC-CC-PR-2017-01, F00004, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017* (“SCCC 26 April 2017 Judgment”), 26 April 2017, para. 115.

necessarily higher than the “grounded suspicion” required for continued detention.<sup>28</sup>

15. As a preliminary remark, the Panel observes that neither Party makes specific submissions on the grounded suspicion against Mr Haradinaj. In relation to the Defence’s submission that the grounded suspicion no longer suffices after a certain lapse of time,<sup>29</sup> the Panel observes that, like its Sixth Detention Decision, the present decision is based upon the joint consideration of the existence (or lack thereof) of: (i) the grounded suspicion that the Accused committed a crime within the SC’s jurisdiction; (ii) the risks envisaged in Article 41(6)(b) of the Law; (iii) the enforceability of alternative measures to the Accused’s detention; (iv) the reasonableness and proportionality of the Accused’s detention. The Panel therefore finds the Defence’s argument to be without merit as regard the relevant standard of a grounded suspicion.

16. In light of the foregoing, the Panel is satisfied that there continues to be a grounded suspicion against Mr Haradinaj as required by Article 41(6)(a) of the Law.

## **B. NECESSITY OF DETENTION**

17. With respect to the grounds for continued detention, Article 41(6)(b) of the Law sets out three alternative bases (risks) on which detention may be found to be necessary.<sup>30</sup> These grounds must be “articulable” in the sense that they must be

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<sup>28</sup> Sixth Detention Decision, para. 16. *See also* Veseli Appeals Detention Review Decision, para. 21; F00074/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on the Confirmation of the Indictment* (“Confirmation Decision”), 11 December 2020, para. 28.

<sup>29</sup> Haradinaj Submission, para. 13.

<sup>30</sup> Sixth Detention Decision, para. 19. *See also* ECtHR, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, 5 July 2016, para. 88; ECtHR, *Zohlandt v. the Netherlands*, no. 69491/16, 9 February 2021, para. 50; ECtHR, *Grubnyk v. Ukraine*, no. 58444/15, 17 September 2020, para. 115; ECtHR, *Korban v. Ukraine*, no. 26744/16, 4 July 2019, para. 155.



specified in detail by reference to the relevant information or evidence.<sup>31</sup> The SPO must accordingly demonstrate the existence of either of these risks against the threshold of articulable grounds to believe.<sup>32</sup> A Panel must provide specific reasoning and rely on concrete grounds when authorising continued detention.<sup>33</sup> In determining whether any of the grounds under Article 41(6)(b) of the Law allowing for a person's detention exist, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.<sup>34</sup>

18. The Panel observes that the SPO confines its submissions on the Article 41(6)(b) risks to recalling the findings of the Sixth Detention Decision and to asserting that "[i]n the specific circumstances of this case, detention remains warranted for the same reasons previously justifying these findings".<sup>35</sup> The Panel cautions the SPO that such general assertion might not satisfy the SPO's burden to demonstrate that there are articulable grounds to believe that such risks "still" exist. The SPO is duty-bound to provide at each review of detention detailed, up-to-date and concrete information or evidence that will satisfy the requirement of articulable grounds at the time relevant to the decision to be made by the Panel. The Panel will nonetheless assess, *proprio motu*, whether its Sixth Detention Decision findings on Article 41(6)(b) risks remain accurate in the present circumstances of the case.

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<sup>31</sup> Sixth Detention Decision, para. 19. *See also* Article 19.1.30 of the Kosovo Criminal Procedure Code 2012, Law No. 04/L-123 defines "articulable" as: "the party offering the information or evidence must specify in detail the information or evidence being relied upon". *Thaçi Appeal Decision*, para. 23.

<sup>32</sup> Sixth Detention Decision, para. 19. *See also* KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, para. 15.

<sup>33</sup> Sixth Detention Decision, para. 19. *See also* *Thaçi Appeal Decision*, para. 22.

<sup>34</sup> Sixth Detention Decision, para. 19. *See also* *Thaçi Appeal Decision*, para. 22.

<sup>35</sup> SPO Submission, para. 2.



## 1. Risk of Flight

19. With regard to flight risk, the Panel notes that neither Party makes specific submissions on that point.

20. The Panel recalls that the Registry's report on Mr Haradinaj's arrest and transfer recounts evasive manoeuvres and uncooperative conduct from the Accused until the Kosovo police became involved.<sup>36</sup> Furthermore, the Panel continues to consider that Mr Haradinaj's behaviour during his arrest suggests that he will try to evade the proceedings. The Panel similarly continues to regard other considerations – such as the Accused's non-recognition of the SC,<sup>37</sup> his EU citizenship enabling him to travel with ease, and his ability, as deputy head of the KLA WVA, to call upon the resources of the organisation to assist in any attempt to flee – as factors supporting the suggestion of Mr Haradinaj being a flight risk. Furthermore, the Panel considers that the commencement of the evidentiary hearing and Mr Haradinaj's increasing awareness of the details of the SPO case and incriminating evidence constitute an added incentive to flee.

21. In light of the foregoing, the Panel finds that Mr Haradinaj remains a flight risk.

## 2. Risk of Obstructing the Proceedings

22. The Panel recalls the Pre-Trial Judge's finding that there was a well-grounded suspicion, *inter alia*, that Mr Haradinaj: (i) intentionally participated in the unauthorised dissemination of protected information and threatened (potential)

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<sup>36</sup> Sixth Detention Decision, para. 21; F00047, Registrar, *Confidential and Ex Parte Version of Corrected Report on the Arrest and Transfer of Nasim Haradinaj to the Detention Facilities*, Filing KSC-BC-2020-07/F00026/COR dated 28 September 2020, 14 October 2020, confidential and *ex parte*, paras 3-7, with Annex 1, confidential redacted and *ex parte*. See also F00026/COR/RED, Registrar, *Public Redacted Version of 'Corrected Report on the Arrest and Transfer of Nasim Haradinaj to the Detention Facilities'*, filing KSC-BC-2020-07/F00026/COR dated 28 September 2020, 14 October 2020, paras 3-7. See also Disclosure 11, 083798-083799.

<sup>37</sup> Transcript of Hearing, 29 September 2020, p. 17, line 13 to p. 18, line 5.

information providers;<sup>38</sup> (ii) published on repeated occasions SPO/SITF-related documents received by the KLA WVA,<sup>39</sup> which contained, *inter alia*, names of (potential) information providers;<sup>40</sup> (iii) made various accusations regarding such persons for having allegedly interacted with the SITF/SPO;<sup>41</sup> (iv) encouraged others to disseminate such information and declared that he sought to discredit the work of the SC;<sup>42</sup> (v) repeatedly stated that he would continue to disseminate SPO/SITF-related documents, despite the Single Judge's orders to the KLA WVA forbidding such dissemination.<sup>43</sup> As noted, any analysis of continued detention must take as a starting point the Accused's presumption of innocence. The Panel nevertheless takes into consideration these findings when determining whether there are articulable grounds to believe that Mr Haradinaj poses a risk of obstructing the present proceedings.

23. Furthermore, the Panel observes that Mr Haradinaj, by virtue of the commencement of the evidentiary hearing, is increasingly aware of the details of the SPO case and incriminating evidence, including confidential information received through the disclosure process. The Panel confirms its finding that, as a deputy chair of the KLA WVA, Mr Haradinaj, if released, would have the means to disseminate information received through the disclosure process or any other

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<sup>38</sup> Confirmation Decision, paras 100, 102-103, 105, 108-109, 111-113, 115-117.

<sup>39</sup> Confirmation Decision, paras 101-102, 106, 108. *See also* F00009/RED/A01, Specialist Prosecutor, *Annex 1 to Request for Arrest Warrants and Related Orders* ("Annex 1 to SPO Request for Arrest Warrants"), 1 October 2020, pp. 8-9, 11; Second Detention Decision, para. 38; Third Detention Decision, para. 34; Fifth Detention Decision, para. 21.

<sup>40</sup> Confirmation Decision, para. 106.

<sup>41</sup> Confirmation Decision, paras 111, 115.

<sup>42</sup> Confirmation Decision, paras 101, 108, 120. *See also* Annex 1 to SPO Request for Arrest Warrants, pp. 10-11, 14-17, 20, 24; Second Detention Decision, para. 38; Third Detention Decision, para. 34; Fifth Detention Decision, para. 21.

<sup>43</sup> Confirmation Decision, paras 101-102, 106-108. *See also* F00005, Single Judge, *Urgent Decision Authorising a Seizure* ("First Order"), 7 September 2020, para. 22; F00007, Single Judge, *Decision Authorising a Seizure* ("Second Order"), 17 September 2020, para. 22; Annex 1 to SPO Request for Arrest Warrants, pp. 5-6; F00009/RED/A02, Specialist Prosecutor, *Annex 2 to Request for Arrest Warrants and Related Orders*, 1 October 2020, p. 8.

protected material he may obtain once released by communicating with the media or with the assistance of others within the KLA WVA.<sup>44</sup>

24. The Panel considers that these observations, assessed together with the Pre-Trial Judge's findings summarised above, lead to the conclusion that there is a risk that Mr Haradinaj, if released, would disseminate confidential information which, in turn, would risk obstructing the conduct of the present proceedings.

25. In light of the foregoing, the Panel finds that there remain articulable grounds to believe that, if released, Mr Haradinaj will obstruct the present proceedings by disseminating or facilitating the dissemination of confidential or otherwise protected information and thereby threaten or influence witnesses, victims or accomplices.

### **3. Risk of Committing Offences**

26. Considering the above findings regarding the risk of obstructing the proceedings and, more specifically, Mr Haradinaj's past conduct, including his vow to continue to publish SITF/SPO-related information, the Panel finds that there remain articulable grounds to believe that, if released, Mr Haradinaj will commit offences either in repetition of those charged or which he has previously threatened to commit. The Panel reiterates that this finding, based on the threshold of articulable grounds to believe, is without prejudice to the determination it will make in relation to the charges after having heard and assessed all relevant evidence and arguments put forth by the Parties at trial.<sup>45</sup>

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<sup>44</sup> Sixth Detention Decision, paras 27-28; First Detention Decision, para. 17; Fifth Detention Decision, para. 17.

<sup>45</sup> Sixth Detention Decision, para. 29.

#### 4. Conclusion

27. The Panel concludes that there remains a risk that Mr Haradinaj will flee, obstruct the progress of the proceedings, and commit offences either in repetition of those charged or which he has previously threatened to commit. The Panel will now assess whether the application of alternative measures can adequately address these risks.

#### C. MEASURES ALTERNATIVE TO DETENTION

28. Article 41(12) of the Law sets out a number of options to consider in order to ensure the accused's presence at trial, to prevent reoffending, or to ensure successful conduct of proceedings. The Panel recalls that detention should only be continued if there are no alternative, more lenient measures reasonably available that could sufficiently mitigate the risks set out in Article 41(6)(b) of the Law.<sup>46</sup> The Panel must therefore consider *proprio motu* all reasonable alternative measures that could be imposed and not only those raised by the Defence or the SPO.<sup>47</sup>

29. The Panel observes that neither Party has made specific submissions on proposed alternative measures, nor did the Defence request the specific alternative measures requested by the Defence for Hysni Gucati ("Proposed Conditions").<sup>48</sup> Nevertheless, the Panel shall give due consideration to all alternative measures, including the Proposed Conditions.

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<sup>46</sup> Sixth Detention Review, para. 31. See also SCCC 26 April 2017 Judgment, para. 114; SCCC 22 May 2020 Judgment, para. 70. See also ECtHR, *Buzadji v. the Republic of Moldova* [GC], para. 87 *in fine*; ECtHR, *Idalov v. Russia* [GC], no. 5826/03, 22 May 2012, para. 140 *in fine*.

<sup>47</sup> Sixth Detention Review, para. 31. See also 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, para. 86; KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, para. 24.

<sup>48</sup> F00375, Gucati Defence, *Submissions on the Sixth Review of Detention*, 15 October 2021 para. 13 referring to KSC-BC-2020-06, F00341/RED, *Public Redacted Version of Veseli Defence Submissions on Detention Review with Confidential Annexes A to C (F00341 dated 4 June 2021)*, 25 June 2021, para. 36.

30. The Panel will first address the measures previously proposed. As regards the risk of flight, considering that Mr Haradinaj: (i) has already attempted to evade the SPO officers during the arrest; (ii) has expressed that he does not recognise the SC; (iii) could easily travel with his EU citizenship to jurisdictions that do not have extradition agreements with Kosovo; and (iv) has failed to comply with the orders of the Single Judge on two prior occasions;<sup>49</sup> the Panel remains for the time being unconvinced that Mr Haradinaj would, for example, remain in house detention or would comply with any other alternative measure imposed upon him by the Panel with a view to ensure his presence at trial.<sup>50</sup> The Panel therefore remains of the view that no reasonably available alternative measures would, at this stage, sufficiently mitigate the risk of flight.<sup>51</sup>

31. As regards the risks of obstruction and committing offences, the Panel continues to be of the view that, if released from detention, Mr Haradinaj could obtain access to various means of communication in order to disseminate electronically confidential information received through the course of the proceedings or additional information which may come into his possession by other means.<sup>52</sup> The Panel remains convinced that, no alternative measures, such as house detention coupled with restrictions on communication with other persons, would effectively prevent Mr Haradinaj from employing other electronic devices belonging to, for example, his family or acquaintances, or from passing on confidential information to other persons.<sup>53</sup> The Panel thus remains of the view that Mr Haradinaj would also be in a position to share confidential information with other members of the KLA WVA with a view to such members disseminating

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<sup>49</sup> First Order, para. 22; Second Order, para. 22.

<sup>50</sup> Sixth Detention Decision, para. 34.

<sup>51</sup> Sixth Detention Decision, para. 34.

<sup>52</sup> Sixth Detention Decision, para. 35; Fifth Detention Decision, para. 29.

<sup>53</sup> Sixth Detention Decision, para. 35; Fifth Detention Decision, para. 31.

the information.<sup>54</sup> The Panel accordingly confirms its finding that it is only through the communication monitoring framework applicable at the SC's detention facilities that Mr Haradinaj's communications can be effectively controlled.<sup>55</sup>

32. With one qualification, the Panel considers that alternative measures previously considered would not mitigate the above risks. The qualification is that, as the Court of Appeals Panel has held, when assessing: (i) whether alternative measures can be effectively enforced and (ii) whether any proposed conditions can sufficiently mitigate the identified Article 41(6)(b) risks, the competent Panel must enquire into the enforceability of the alternative measures.<sup>56</sup>

33. Consistent with this holding, the Panel will ask the Kosovo Police, by way of a separate order, to provide information regarding: (i) its authority and capability to restrict the movements of individuals subject to temporary release, monitor and restrict such individuals' communications, administer house arrest and ensure the equivalent of the aforementioned measures during hospitalisation; (ii) the enforceability of the aforementioned measures attaching to temporary release; and (iii) previous instances of enforcing such measures attaching to the temporary release of persons accused of offences against the administration of justice.

34. In addition, the Panel will also ask the Registry, in a separate order, to provide submissions on: (i) its approach to restrictions on visits and communications at the SC's detentions facilities; (ii) all restrictions relating to visits, telephone conversations and correspondence at the SC's detention facilities and related urgent security measures; (iii) any other relevant aspects of the security environment or detention regime at the SC's detention facilities that may have an impact on visits, telephone conversations and correspondence; and (iv) any other

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<sup>54</sup> Sixth Detention Decision, para. 35.

<sup>55</sup> Sixth Detention Decision, para. 35; Fifth Detention Decision, para. 31.

<sup>56</sup> Veseli Appeals Detention Review Detention, paras 48-53.

matter relevant to the detention regime pertaining to the Accused at the SC's detention facilities.

35. Upon receipt of the above information, the Panel will assess the enforceability of the Proposed Conditions, in comparison with the regime at the SC's detention facilities.

36. In light of the foregoing, the Panel finds that, for the time being, the risks of flight, obstructing the proceedings and committing offences either in repetition of those charged or which Mr Haradinaj has previously threatened to commit can only be effectively managed at the SC's detention facilities. Pending the submission of information from the Kosovo Police and the Registrar, the Panel finds that Mr Haradinaj's continued detention is necessary in order to avert the risks in Article 41(6)(b)(i), (ii) and (iii) of the Law. The Panel clarifies that this finding is without prejudice to the assessment it will carry out upon receipt of the information from the Kosovo Police and the Registry.

#### **D. REASONABLENESS OF DETENTION**

37. As regards the length of detention, the Panel recalls that the duration of time spent in detention is a factor that needs to be considered along with the risks in Article 41(6)(b) of the Law, in order to determine whether, all factors being considered, the continued detention is unreasonable and the person needs to be released.<sup>57</sup> The Panel is accordingly under an obligation to ensure that the time spent in detention is reasonable, including during trial.<sup>58</sup>

38. The Panel observes that Mr Hardinaj has been in detention for almost thirteen months since his arrest. The Panel notes, however, the significant developments

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<sup>57</sup> 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, para. 79.

<sup>58</sup> SCCC 22 May 2020 Judgment, para. 63.



that occurred in the case during the time that Mr Haradinaj spent in detention including, *inter alia*, steps taken for the preparation of the case for trial;<sup>59</sup> transmission of the case file to the Panel in mid-July;<sup>60</sup> the Trial Preparation and SPO Preparation Conferences in September;<sup>61</sup> the presentation of the SPO's opening statements early October;<sup>62</sup> and on this week of 18 October 2021, the completion of the direct examination of the SPO first witness and the beginning of the Defence cross-examination.<sup>63</sup> Considering these substantial advancements in the proceedings, the Panel is not convinced by the Defence's argument that the trial has been significantly delayed as a result of the SPO's "apathetic approach to disclosure".<sup>64</sup> While the Panel acknowledges that the updated Rule 102(3) notices caused some procedural difficulties in the proceedings, the Panel considers that the latter do not render Mr Haradinaj's detention unreasonable or disproportionate.

39. In light of these significant developments and the continuing risks of fleeing, obstructing the proceedings and committing offences either in repetition of those charged or which Mr Haradinaj has previously threatened to commit, none of which can be sufficiently mitigated by the application of reasonable alternative measures at this stage, the Panel finds that Mr Haradinaj's continued detention is necessary and reasonable in the specific circumstances of the case.

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<sup>59</sup> Sixth Detention Decision, para. 30. *See also* Second Detention Decision, para. 46; Third Detention Decision, para. 41; Fourth Detention Decision, para. 28; Fifth Detention Decision, paras 29-30.

<sup>60</sup> F00265, President, *Decision Transmitting Case File to Trial Panel II*, 16 July 2021.

<sup>61</sup> F00267, Panel, *Order for Submissions and Scheduling the Trial Preparation Conference*, 21 July 2021; F00297, Panel, *Order on the Agenda for the Specialist Prosecutor's Conference*, 6 September 2021. *See also* Sixth Detention Decision, para. 5; Transcripts, 1-2 September 2021; Transcript, 8 September 2021.

<sup>62</sup> Transcript, 7 October 2021.

<sup>63</sup> Transcripts, 18-21 October 2021.

<sup>64</sup> Haradinaj Submission, para. 26.

**V. DISPOSITION**

41. For the above-mentioned reasons, the Panel hereby:

**ORDERS** Mr Haradinaj's continued detention until its decision following the receipt of information from the Kosovo Police and the Registrar.



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**Judge Charles L. Smith, III**

**Presiding Judge**

Dated this Friday, 22 October 2021  
At The Hague, the Netherlands