

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

Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Counsel for Rexhep Selimi

Date: 1 December 2021

Language: English

Classification: Public

**Public Redacted Version of Selimi Defence Submissions on the Kosovo Police
Response to the Pre-Trial Judge's Order to Provide Information,
KSC-BC-2020-06/F00567, dated 12 November 2021**

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I. INTRODUCTION

1. The SPO's Submissions¹ on the Kosovo Police's Response² to the Order of the Pre-Trial Judge³ rely on unrestricted hyperbole in place of concrete and reasoned argument. Undoubtedly frustrated by the reality that the General Director of the Kosovo Police ("KP") has responded expeditiously and thoroughly to the questions posed, the SPO has resorted to the baseless and absurd assertion that releasing Mr. Selimi would constitute an "existential threat to the [...] Court."⁴ The SPO Submissions serve no other purpose than to seek to sow division amongst the Defence teams rather than move the issue forward in a dispassionate and objective manner and to intimidate or bully the Pre-Trial Judge into denying interim release.
2. The information provided in the KP Response is more than sufficient to satisfy the Pre-Trial Judge that if he orders interim release for Mr. Selimi, any reasonable conditions on such release will be effectively enforced. A refusal to order interim release by the Pre-Trial Judge, especially considering the inescapable reality that the SPO's projections for the start of trial were almost negligent in their level of underestimation, would therefore constitute a severe abuse of discretion.

II. SUBMISSIONS

A. Irrelevance of SPO submissions and attempts to politicise the process

3. The SPO recognises at the outset⁵ that the issue currently before the Pre-Trial Judge is whether the conditions proposed by the Defence to mitigate the risks that he identified in relation to Mr. Selimi, Mr. Veseli and Mr. Krasniqi pursuant to Article 41(6)(b) of the Law could be enforced.⁶
4. However, almost in the same breath, the SPO relied on spurious allegations relating to a supposed plot by which the "Kosovo Intelligence Agency had two agents pose as witnesses to give fabricated testimony linking former president Hashim Thaçi's political

¹ KSC-BC-2020-06/F00562, Prosecution response to Kosovo Police submissions on detention with public Annex 1, 8 November 2021 ("SPO Submissions").

² KSC-BC-2020-06/F00548, Response to the Request number KSC-BC-2020-06, dated 26 October 2021 ("KP Response").

³ KSC-BC-2020-06/F00513, Order to the Kosovo Police to Provide Information with confidential Annex, 8 October 2021 ("Pre-Trial Judge Order").

⁴ SPO Submissions, para. 25.

⁵ Ibid, para. 4.

⁶ KSC-BC-2020-06/IA007/F00005, Court of Appeals Panel, Decision on Rexhep Selimi's Appeal Against Decision on Review of Detention, 1 October 2021.

opponents to terrorist organisations.”⁷ Yet Mr. Thaci is not the subject of the current request and does not, as yet, currently seek interim release in Kosovo.⁸ Nor does the SPO do itself any favours in relying upon an ‘article’ featuring in paparaci.com, a clearly sensationalist news source, as the sole source of this accusation.⁹

5. The photograph of Abelard Tahiri, Rashit Qalaj, Shpend Maxhuni, Hashim Thaçi, and Bedri Hamza, bizarrely incorporated into the SPO submissions,¹⁰ again fails to demonstrate any link with Mr. Selimi and instead simply serves to highlight that the SPO seeks to distract the Pre-Trial Judge from the issue at hand.
6. Indeed, the SPO Response does appear to be carefully crafted to incite division between the accused on tangential issues. For example, it is no accident that the SPO refers to [REDACTED].¹¹ [REDACTED].
7. The same applies to the other allegations cast against anyone in Kosovo by the SPO. The Appeals Panel has already explicitly recognised that the general allegations about the climate of witness intimidation are, without more concrete information, irrelevant to the assessment of the existence of risks¹² but the SPO conspicuously ignores this finding to again seek to throw as much mud as possible towards Mr. Selimi. The same applies to the allegations against Mr. Gucati, Mr. Haradinaj and also Faton Klinaku. The Appeals Panel has found no link between the KLA WVA and Mr. Selimi¹³ and none exists between him and Mr. Klinaku.
8. The repeated, desperate attempts to ignore these findings are both lazy and abusive on the part of the SPO and should be strongly deprecated by the Pre-Trial Judge. They demonstrate no concrete link to the issues before the Pre-Trial Judge and should be accorded no weight by him.
9. Finally, the SPO’s attempt to insinuate that “prominent figures in the KP leadership have connections to the KLA”; [REDACTED] and that the “objectivity of these men [...] in enforcing conditional release for their former superiors in the KLA war cannot be

⁷ SPO Submissions, para. 2.

⁸ KSC-BC-2020-06/IA010-F00008, Decision on Hashim Thaçi’s Appeal Against Decision on Review of Detention, 27 October 2021.

⁹ SPO Submissions, Fn. 5.

¹⁰ Ibid, para. 6.

¹¹ [REDACTED].

¹² KSC-BC-2020-06/F00330, Selimi Defence Submissions on Review of Detention, 31 May 2021, paras 21-23.

¹³ KSC-BC-2020-06/IA007/F00005, Court of Appeals Panel, Decision on Rexhep Selimi’s Appeal Against Decision on Review of Detention, 1 October 2021, para. 33.

assured”¹⁴ is the quintessential example of the SPO seeking to benefit from its own failures of pleading.

10. The inherently vague and wide ranging JCE alleged by the SPO, even after correction by the Pre-Trial Judge,¹⁵ potentially includes any person who fought with the KLA or somehow assisted their struggle for liberation. It would therefore almost be impossible for any individual in any position of authority in the Kosovo Police to not have shared the objective of gaining and exercising control over Kosovo in a war of national liberation. Yet simply being named as an alleged JCE member does not lead to prosecution¹⁶ and nor does it mean that any other potential member of the JCE is unwilling or unable to enforce the conditions ordered by the Pre-Trial Judge.

B. Allegations of Kosovo Police Corruption

11. The SPO suggests that Kosovo is a borderline lawless state akin to the wild west where police officers can be bought and sold like cryptocurrencies. While such a severe state would reflect poorly on the time and effort deployed by the UNMIK, EULEX and OSCE in training the Kosovo Police over the last two decades, it also demonstrates the paucity of understanding displayed by the SPO of the reality of the situation in Kosovo.
12. Taken at their highest, the sources relied upon by the SPO serve only to illustrate isolated examples of corruption in Kosovo’s criminal justice system as a whole but not in relation to the KP. Indeed, the issue that is often raised in the cited sources relied upon by the SPO is that of the inability or unwillingness of local Kosovo courts to prosecute and sentence high-rank officials rather than the linked, but separate, question of enforcing potential conditions of detention. Further, the SPO relies on evidence of Kosovo police officers engaging in alleged ill-treatment and excessive use of force towards detainees, issues that are not directly linked to those presently before the Pre-Trial Judge.
13. For example, the sources cited extensively by the SPO refer to criticisms of sentences imposed by Kosovo judges in relation to organised crime and corruption,¹⁷ the relationship and potential corruption of prison officers at one particular penal

¹⁴ SPO Submissions, para. 23.

¹⁵ KSC-BC-2020-06/F00413, Decision on Defence Motions Alleging Defects in the Form of the Indictment, 22 July 2021, para. 80.

¹⁶ The Defence notes that not only is Azem Sylja an effective unindicted co-conspirator, but so are Lahi BRAHIMAJ, Fatmir LIMAJ, Sylejman SELIMI, Rustem MUSTAFA, Shukri BUJA, Latif GASHI and Sabit GECI. See Indictment, para. 35.

¹⁷ SPO Submissions, Fn. 19 and 20.

institution¹⁸ or general abuse and mistreatment of detainees by Kosovo prison officials.¹⁹ Indeed, even where there was some direct relevance to the Pre-Trial Judge's Order,²⁰ the SPO fails to appreciate the full context. It was never the intention of the government to disband the agency and not to fight corruption. On the contrary, due to the agency's inability to fight corruption, the government intended to invest more in other entities that are more effective in fighting corruption such as the KP and domestic prosecutorial authorities. In any event, no decision has actually been taken by the Government to disband the Agency.

14. These issues are irrelevant to the issue of whether the Kosovo Police can enforce conditions imposed by the Pre-Trial Judge. Indeed, they demonstrate the broad-brush approach of the SPO in seeking to tar every single part of the Kosovo criminal justice system equally, without any attempt to delineate those aspects which would be required to enforce any potential interim release conditions.
15. The specific allegation that the KP denies "any responsibility for the high-profile failures concerning Remzi Shala, Sami Lushtaku, and Sabit Geci"²¹ is a gross misrepresentation of the KP Response which is not even specifically cited. The General Director of the KP can only respond to the specific questions posed to him. Implicitly criticising the KP Response to the question [REDACTED]²² falls into this trap. This question was answered specifically and directly by the KP and the SPO can point to no information that what the KP provided was somehow not frank and complete.
16. As for the request for more information regarding the Sami Lushtaku case, the KP Response clearly explained that [REDACTED].²³ Again, the SPO has identified no information which would undermine this conclusion. As an EU established court, it beggars belief that the KSC would be unable to obtain such information [REDACTED] if it was directly relevant to the matters at hand.

¹⁸ Ibid, Fn. 22.

¹⁹ Id, Fn. 23 referring to a complaint lodged by an arrestee stating he was punched in the head by police; Fn. 24 referring to: (1) ill-treatment during the exercise of official duties or an excess of use of force; or (2) general living conditions in prisons and the concern that certain prisoners were able to afford better treatment.

²⁰ SPO Submissions, Fn. 21 referring to the "decision of the previous government in October 2020 to abolish the special Anti-Corruption Task Force within the Kosovo Police and also dismiss the Director of the police."

²¹ SPO Submissions, para. 8.

²² PTJ Order, Annex 1, para. 21.

²³ KP Response, p. 21.

17. Moreover, as with the question relating to Mr. Lushtaku, the SPO assumes no distinction between the KP and the Kosovo correctional authorities. However, there is a clear difference between the two. Correctional facilities fall under the Ministry of Justice. The KP falls under the authority of the Directorate of Police which is separate from the Ministry of Internal Affairs. Any attempt to conflate the two is misplaced.

C. Manner of assessing KP Response

18. At the outset, despite its previous warning,²⁴ the Defence notes the attempts by the SPO to pick apart the KP Response and identify discrete aspects of the detailed responses to the 46 questions posed by the Pre-Trial Judge to undermine confidence in the capacity of the KP to enforce any conditions of interim release as if one incomplete answer would suffice to warrant Mr. Selimi's continued detention. The Pre-Trial Judge must not fall into this trap.
19. The KP Response outlined the resources and capabilities which are at the KP's disposal. The KP can only respond to the questions posed by the Pre-Trial Judge. It does not set the final conditions and must not be faulted for a failure to somehow anticipate motivations behind the questions which were not expressed.
20. Assessed holistically and objectively, the KP Response provides substantial information as to the available resources for monitoring interim release conditions. The SPO's thinly veiled attempt to mischaracterise it as the final word on the precise conditions to be imposed does not bear scrutiny. However, to assist the Pre-Trial Judge in identifying these mischaracterisations and the logical fallacies which bely the SPO argument, the Defence responds to the individual categories of questions separately.

D. Surveillance

21. The response of the KP²⁵ that the number of police officers involved will be determined based on needs is not insufficient.²⁶ It merely reflects the KP's willingness to adapt the regime according to the specific needs of a given situation and a recognition that those needs may well fluctuate depending on a range of factors. The specific reference to one

²⁴ KSC-BC-2020-06/F00514, Selimi Defence Submissions on Review of Detention and Response to Order of the Pre-Trial Judge, 13 October 2021, para. 10.

²⁵ KP Response, Question 9, p. 11.

²⁶ SPO Submissions, para. 11.

police officer being placed at the door may not reasonably be interpreted to mean that the KP is in effect only proposing a sole officer to be responsible for enforcing the future house arrest. To interpret it in that manner as the SPO does²⁷ is wholly disingenuous, as is describing the extra police to patrol outside the residence as "hypothetical" in a specific attempt to mischaracterise the description of forces available at the disposal of the KP to enforce the conditions as being illusory. The Pre-Trial Judge's Order is predicated on the hypothetical decision of ordering release with conditions as no such order has yet been issued. Criticising the KP's concrete offer of more policing resources to satisfy requirements that the PTJ might have, if they are deemed necessary, therefore spectacularly misses the point.

22. The SPO misrepresents the KP Response regarding the installation of CCTV by claiming that through the inclusion of the words, "if necessary" on this point, "the KP is actually promising less than it did previously in this regard."²⁸ Yet, as explained, all questions posed by the Pre-Trial Judge were hypothetical and if ordered by the Pre-Trial Judge, such a necessary measure could be deployed. The SPO is seeking to create some difference in the KP's Response where none exists. Further, even on the SPO's interpretation, the KP Response unequivocally commits to placing a camera in front of the door of the residence where the person is residing and the phrase "if necessary" only refers to the additional camera at the entrance to the building not in relation to both cameras. Further, in relation to Mr. Selimi's house which is a separate self-contained dwelling, no separate camera would be required.
23. The lack of CCTV in the house is also entirely irrelevant. There is no CCTV in Mr. Selimi's cell. The SPO appears to suggest that CCTV should be placed in every room of the house so that every waking moment of his life would be monitored. Such a ridiculous suggestion does no benefit to the SPO. Nor does the generic suggestion that without such monitoring Mr. Selimi would be "outside the sight and hearing of the KP far more than would be the case with officers at the KSC Detention Centre."²⁹ That is not contested. What matters is not whether the Detention Centre or house arrest allows for more constant and intrusive monitoring but rather, whether the proposed surveillance

²⁷ Ibid.

²⁸ SPO Submissions, para. 12 referring to KP Response, Question 9, p. 11.

²⁹ SPO Submissions, para. 12.

measures in conjunction with the other factors identified below, would be sufficient to mitigate any Article 41(6)(b) risks.

E. Communications Monitoring

24. Taken as a whole the SPO's generic submissions about the monitoring of communications seek to demonstrate gaps in responses to questions which were not asked.
25. First, contrary to the SPO's simplistic evaluation of the KP Response,³⁰ the explanation that the Kosovo Police would "perform personal searches, and check the visitors with a metal detector, to make sure that no prohibited electronic devices are brought in"³¹ is directly relevant to the issues of whether communication devices, generally made out of metal in some form, may actually be detected when pre-approved individuals visit Mr. Selimi.
26. Second, the SPO's criticism that the KP addresses the required legal basis for monitoring communications inside "in meaningless generalities, referring to the need for a lawful order by a competent court"³² unfairly seeks to imply that the response that was provided was insufficient. Yet, the Kosovo Police explicitly confirmed that they had the capability to monitor electronic communications and indeed "have sufficient technical and technology resources to put in place intercepting measures."³³ Moreover, the requirement for "a legal order issued by a competent court, authorizing such monitoring"³⁴ is entirely proper. Fortunately, as the KSC is supposed to be a Court of Kosovo, it would surely not be beyond the capabilities of the Court to identify this specific legal basis itself. The KP are not a function of the judiciary and aren't required to make specific assessments on the law. This is clearly a special regime that will be imposed and it is up to the KSC court, not the KP, to make an assessment of whether it is a lawful order from a competent court. There is no reason to doubt it would be.

³⁰ SPO Submissions, para. 14.

³¹ KP Response, p.14.

³² SPO Submissions, para. 16.

³³ KP Response, p. 7.

³⁴ Ibid.

27. The remaining submissions by the SPO in relation to the detection of communication devices deliberately compare unlike situations to seek to undermine the KP Response.³⁵ For example, the detention regime at the KSC DU is established after years of consultation and review with the specific function of the court in mind. The KP is competent to impose any of the conditions requested by the PTJ, but these constitute an extraordinary set of circumstances, in a very short period of time, for a police force to set out the level of specificity unfairly required by the SPO.
28. Similarly, the SPO's unqualified assessment of the difficulty of [REDACTED], with a vague reference to a general article on the topic³⁶ does little to assist the Pre-Trial Judge in making an objective assessment of those capabilities.
29. Indeed, the SPO's claim that "the KP remain unable to identify a full range of devices capable of transmitting messages that they will stop from coming into the residence of the Accused"³⁷ clearly demonstrates their desire to object to interim release at all costs, whatever the circumstances. The SPO appears to want the KP to list every make and model of every single item that could ever transmit messages, an impossible request that it knows can never be satisfied. Any objective review of the KP Response on this point demonstrates that the KP will happily comply with any measures to exclude such devices. For example, if the Pre-Trial Judge wishes to include vinyl on the list of prohibited devices, to ensure such information is not engraved over an LP, this would clearly be enforced by the KP.
30. Finally, the SPO's intellectually dishonest attempt to use the protections of the ECHR to call into question the legality of measures taken by the KP to monitor communications by Mr. Selimi, to deprive Mr. Selimi of his fundamental right to liberty shows the extent to which the SPO will stop at nothing to detain him. It should not need repeating that Mr. Selimi should neither have to choose between his rights nor should one of his rights be used as a battering ram to prevent him enforcing another. At least the inherently problematic purpose behind the invocation of this argument is so transparent, that it will be given as little attention as it deserves. If the SPO genuinely cared for the rights of Mr. Selimi, the SPO Response would be vastly different in nature and scope.

³⁵ SPO Submissions, paras 17-19.

³⁶ Ibid, Fn. 47.

³⁷ SPO Submissions, para. 19.

F. Training and identification of police officers

31. The SPO finally suggests that the KP have not demonstrated how its police officers would be sufficiently trained to enforce any conditions imposed.³⁸ While the Defence does not accept that the long European Union Mission to Kosovo would not have resulted in sufficient training for such officers, the KP has already explicitly stated that [REDACTED].³⁹ Any potential deficiencies in training could therefore be rapidly and thoroughly rectified.
32. The revealing point-blank refusal by the SPO⁴⁰ to provide any assistance or information to named and designated KP officers regarding witnesses as requested by the KP, to allow them to effectively monitor the communications of Mr. Selimi, serves to demonstrate that they have no desire to constructively assist the KP to carry out its mandate. If the Pre-Trial Judge considers that such information should be provided to the KP to enforce such conditions effectively, a specific order to the SPO to provide such information can and must be provided.

III. CONCLUSION AND RELIEF REQUESTED

33. For the reasons set out herein, and to achieve concrete and practical solutions which move the pre-trial proceedings toward trial in an expeditious and fair manner, the Defence requests the Pre-Trial Judge to:
 - a. Order the interim release of Mr. Selimi.

Word Count: 3369

Respectfully submitted on 1 December 2021,

³⁸ SPO submissions, para. 20.

³⁹ KP Response, p. 8.

⁴⁰ SPO Submissions, para. 20.



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