



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 26 November 2021

Language: English

Classification: Public

**Public Redacted Version of Decision on Remanded Detention Review and
Periodic Review of Detention of Rexhep Selimi**

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 41(6), (10) and (12) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 56(2) and 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 5 November 2020, further to the confirmation of an indictment ("Confirmation Decision"),² Rexhep Selimi ("Mr Selimi" or "Accused") was arrested pursuant to a decision and an arrest warrant issued by the Pre-Trial Judge.³

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

3. On 30 April 2021, the Court of Appeals denied Mr Selimi's appeal against the First Detention Decision ("First Court of Appeals Decision").⁵

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

² KSC-BC-2020-06, F00026/RED, Pre-Trial Judge, *Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, public; The Specialist Prosecutor submitted the Confirmed Indictment in F00045/A03, Specialist Prosecutor, *Further Redacted Indictment*, 4 November 2020, public. A confidential further lesser redacted version of the confirmed indictment was submitted on 11 December 2020, F00134, confidential. Subsequent to the Decision on Defects in the Form of the Indictment, a confidential redacted version, F00455/CONF/RED/A01, and a public redacted version, F00455/RED/A01, of the corrected Confirmed Indictment were filed on 8 September 2021 ("Indictment").

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

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

⁵ KSC-BC-2020-06, IA003/F00005/RED, Court of Appeals, *Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Interim Release*, 30 April 2021, public.

4. On 25 June 2021, the Pre-Trial Judge ordered Mr Selimi's continued detention ("Second Detention Decision").⁶
5. On 1 October 2021, the Court of Appeals issued its decision on Mr Selimi's appeal against the Second Detention Decision ("Second Court of Appeals Decision"),⁷ in which it, *inter alia*, remanded the Second Detention Decision to the Pre-Trial Judge for further consideration in order to assess whether the Kosovo Police can effectively enforce the conditions proposed by the Accused or any further condition identified by the Pre-Trial Judge as necessary to mitigate the identified risks ("Remanded Issue").⁸
6. On 13 October 2021, the Defence for Mr Selimi ("Selimi Defence") filed its submissions on the review of Mr Selimi's detention and, in response to an order of the Pre-Trial Judge,⁹ requested to have Mr Selimi's detention reviewed in conjunction with the Remanded Issue ("Request").¹⁰
7. On 20 October 2021, the Registrar, further to an order by the Pre-Trial Judge,¹¹ provided information on the detention regime applicable to Mr Selimi ("Registry Submissions") at the Detention Facilities of the Specialist Chambers ("SC Detention Facilities").¹²

⁶ KSC-BC-2020-06, F00372, Pre-Trial Judge, *Decision on Review of Detention of Rexhep Selimi*, 25 June 2021, confidential. A public redacted version was issued on 30 June 2021, F00372/RED.

⁷ KSC-BC-2020-06, IA007/F00005, Court of Appeals, *Decision on Rexhep Selimi's Appeal Against Decision on Review of Detention*, 1 October 2021, confidential. A public redacted version was issued on the same day, IA007/F00005/RED.

⁸ Second Court of Appeals Decision, paras 56-58.

⁹ KSC-BC-2020-06, F00514, Pre-Trial Judge, *Order Seeking Observations from the Defence on the Timeline for the Next Review of Detention*, 8 October 2021, public.

¹⁰ KSC-BC-2020-06, F00523, Selimi Defence, *Selimi Defence Submissions on Review of Detention and Response to Order of the Pre-Trial Judge*, KSC-BC-2020-06/F00514, 13 October 2021, confidential, para. 3.

¹¹ KSC-BC-2020-06, F00522, Pre-Trial Judge, *Order to the Registrar to Provide Information on the Detention Regime*, 13 October 2021, confidential, para. 7.

¹² KSC-BC-2020-06, F00536, Registrar, *Registry Submissions Pursuant to the Order to Provide Information on the Detention Regime (F00522)*, 20 October 2021, confidential.

8. On 22 October 2021, the Specialist Prosecutor's Office ("SPO") responded to the Request ("Response").¹³

9. On 26 October 2021, the Kosovo Police, further to an order by the Pre-Trial Judge,¹⁴ provided information regarding: (i) the authority and capability of the Kosovo Police to restrict the movements of individuals subject to conditional release, monitor and restrict such individuals' communications, administer house arrest, and the enforceability of conditions attaching to interim release; and (ii) previous instances of enforcing conditions attaching to the interim release or detention of persons accused of severe crimes ("KP Submissions").¹⁵

10. On 8 November 2021, the SPO provided observations on the KP Submissions ("SPO Observations").¹⁶

11. On 12 November 2021, the Selimi Defence provided observations on the KP Submissions ("Selimi Observations").¹⁷

II. SUBMISSIONS

12. The Selimi Defence submits that, while it does not concede that any of the Rule 41(6)(i)-(iii) risks materialised in relation to Mr Selimi, given the recent findings of the Court of Appeal, and in order to resolve the issue of Mr Selimi's detention in an expeditious manner, no further submissions on these risk are

¹³ KSC-BC-2020-06, F00540, Specialist Prosecutor, *Prosecution Consolidated Response to October 2021 Defence Submissions on Detention Review*, 22 October 2021, confidential. A public redacted version was submitted on 2 November 2021, F00540/RED.

¹⁴ KSC-BC-2020-06, F00513, Pre-Trial Judge, *Order to the Kosovo Police to Provide Information* ("Order to KP"), 8 October 2021, public, with one Annex ("Annex to Order to KP"), confidential.

¹⁵ KSC-BC-2020-06, F00548/eng, Kosovo General Police Directorate, *Answer to the Request Number KSC-BC-2020-06, Dated 13 October 2021*, 26 October 2021, confidential. The translation into English of said submission was filed on 3 November 2021.

¹⁶ KSC-BC-2020-06, F00562, Specialist Prosecutor, *Prosecution Response to Kosovo Police Submissions on Detention*, 8 November 2021, confidential, with Annex 1, public.

¹⁷ KSC-BC-2020-06, F00567, Selimi Defence, *Selimi Defence Submissions on the Kosovo Police Response to the Pre-Trial Judge's Order to Provide Information*, 12 November 2021, confidential.

provided.¹⁸ The Selimi Defence therefore limits its submissions to: (i) whether any conditions deemed necessary and suitable by the Pre-Trial Judge are sufficient to mitigate the Article 41(6)(b) risks and (ii) whether the proceedings have been delayed, and if so, how this delay affects the question of interim release.¹⁹

13. The SPO responds that the Request should be rejected.²⁰ It maintains that the continued detention of Mr Selimi remains necessary as there has been no relevant change in circumstances detracting from the established reasons.²¹ The SPO argues that no conditions of release in Kosovo can mitigate the particular risks at issue.²² The SPO further argues that given, *inter alia*, the scope and complexity of the instant case, the continuing expeditious progress in pre-trial milestones, the lengthy custodial sentence, if convicted, and heightened risks of obstruction, pre-trial detention continues to be reasonable and proportionate.²³

14. In the SPO Observations, the SPO states that the KP Submissions do nothing to change previous findings that conditional release is not effectively enforceable given the risks posed by Mr Selimi.²⁴

15. In the Selimi Observations, the Selimi Defence states that the KP Submissions indicate that, any reasonable conditions on interim release will be effectively enforced.²⁵

III. APPLICABLE LAW

16. Article 41(6) of the Law provides that the Specialist Chambers (“SC”) shall only order the detention of a person when there is a grounded suspicion that the

¹⁸ Request, para. 5.

¹⁹ Request, para. 6.

²⁰ Response, para. 42.

²¹ Response, para. 1.

²² Response, para. 24.

²³ Request, para. 41.

²⁴ SPO Observations, para. 1.

²⁵ Selimi Observations, para. 2.

person has committed a crime within the jurisdiction of the SC, and there are articulable grounds to believe that the person: (i) is a flight risk; (ii) will destroy, hide, change or forge evidence of a crime, or specific circumstances indicate that the person will obstruct the progress of criminal proceedings; or (iii) will repeat the criminal offence, complete an attempted crime, or commit a crime which he or she has threatened to commit.

17. Article 41(10) of the Law and Rule 57(2) of the Rules provide that, until a judgment is final or until release, upon the expiry of two (2) months from the last ruling on detention on remand, the Pre-Trial Judge or Panel seized with the case shall examine whether reasons for detention on remand still exist and render a ruling by which detention on remand is extended or terminated.

18. Article 41(12) of the Law provides that, in addition to detention on remand, the following measures may be ordered to ensure the presence of the accused, to prevent reoffending or ensure successful conduct of criminal proceedings: summons, arrest, bail, house detention, promise not to leave residence, prohibition on approaching specific places or persons, attendance at police station or other venue, and diversion.

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

IV. DISCUSSION

A. APPLICABLE STANDARD

20. The Pre-Trial Judge recalls that he has an obligation, under Article 41(10) of the Law, to examine whether the reasons for detention on remand still exist, including the grounds set out in Article 41(6) of the Law, namely whether: (i) there

is a grounded suspicion that the person has committed the crime(s) and (ii) there are articulable grounds to believe that any of the risks set out in Article 41(6)(b) of the Law has been fulfilled.²⁶ The duty to determine whether the circumstances underpinning detention still exist imposes on the Pre-Trial Judge the task to, *proprio motu*, assess whether he 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.²⁷ Although the automatic bi-monthly review under Rule 57(2) of the Rules is not strictly limited to whether or not a change of circumstances occurred, such a change can nonetheless be determinative and shall be taken into consideration if raised by a Party or *proprio motu*.²⁸ The Pre-Trial Judge is not required to make findings on the factors already decided upon in the initial ruling on detention nor to entertain submissions that merely repeat arguments that have already been addressed in previous decisions.²⁹ What is crucial is that the Pre-Trial Judge is satisfied that, at the time of the review decision, grounds for continued detention still exist.³⁰ The SPO bears the burden of establishing that the detention of the Accused is necessary.³¹

B. GROUNDED SUSPICION

21. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires at the outset a grounded suspicion that the detained person has committed a crime within the jurisdiction of the SC. This is a condition *sine qua non* for the validity of the detained person's continued detention.³²

²⁶ See for example KSC-BC-2020-07, IA002-F00005, Court of Appeals, *Decision on Nasim Haradinaj's Appeal against Decision Reviewing Detention*, 9 February 2021, public ("*Haradinaj Detention Appeal*"), para. 55.

²⁷ Second Court of Appeals Decision, para. 13.

²⁸ Second Court of Appeals Decision, para. 14.

²⁹ *Haradinaj Detention Appeal*, para. 55; Second Court of Appeals Decision, para. 15.

³⁰ *Haradinaj Detention Appeal*, para. 55. See also, Second Court of Appeals Decision, para. 12.

³¹ First Detention Decision, para. 18, with further references. Similarly, ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#) ("*Merabishvili v. Georgia* [GC]"), 28 November 2017, para. 234.

³² [Merabishvili v. Georgia](#) [GC], para. 222, with further references.

22. The Selimi Defence has not made submissions as to the existence of a grounded suspicion under Article 41(6)(a) of the Law. The SPO states that the Pre-Trial Judge's finding of grounded suspicion still stands.³³

23. The Pre-Trial Judge recalls that, in the Confirmation Decision, it was determined that, pursuant to Article 39(2) of the Law, there is a well-grounded suspicion that Mr Selimi is criminally liable for a number of crimes against humanity (persecution, imprisonment, other inhumane acts, torture, murder, and enforced disappearance) and war crimes (arbitrary detention, cruel treatment, torture, and murder) under Articles 13(1), 14(1)(c) and 16(1)(a) of the Law.³⁴ These findings were made on the basis of a standard exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a) of the Law.³⁵ There have been no developments in the case negating these findings.

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

C. NECESSITY OF DETENTION

25. Once the threshold in Article 41(6)(a) of the Law is met, the grounds that would justify the deprivation of a person's liberty must be articulable in the sense that they must be specified in detail and based on evidence.³⁶ The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"³⁷ that any of the risks under the three limbs of

³³ Response, para. 4.

³⁴ Confirmation Decision, para. 521(a).

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

³⁶ First Detention Decision, para. 19; First Court of Appeals Decision, paras 43-44; Second Court of Appeals Decision, para. 21.

³⁷ See *chapeau* of Article 41(6)(b) of the Law.

Article 41(6)(b) of the Law exist, denoting an acceptance of the possibility, not the inevitability, of a future occurrence.³⁸ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.³⁹ When deciding on whether a person should be released or detained, the Pre-Trial Judge must consider alternative measures to prevent the risks in Article 41(6)(b) of the Law.⁴⁰

1. Risk of Flight

26. The Selimi Defence, while not conceding that any of Article 41(6)(i)-(iii) risks have materialised, provides no submissions on the question whether the risk of flight continues to exist given the Court of Appeals summary dismissal of his arguments in relation to this risk.⁴¹

27. The SPO argues that the ever increasing amount of disclosure and the possibility of a serious sentence in the event of conviction may provide the necessary incentive for the Accused to abscond. The SPO further argues that the Accused would have the means to abscond through his continued influence in Kosovo due to his former functions.⁴²

28. The Pre-Trial Judge considers that, after having been made aware of the charges against him and the possibility of a serious sentence in the event of a conviction,⁴³ Mr Selimi has gained increased insight into the evidence underpinning these charges on the basis of the ongoing disclosure process. In

³⁸ First Detention Decision, para. 19, with further references.

³⁹ First Court of Appeals Decision, para. 40; Second Court of Appeals Decision, para. 19.

⁴⁰ As regards the obligation to consider “alternative measures”, see KSC-CC-PR-2017-01, F00004, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017*, 26 April 2017, public, para. 114. See also ECtHR, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, [Judgment](#), 5 July 2016, para. 87 *in fine*; *Idalov v. Russia* [GC], no. 5826/03, [Judgment](#), 22 May 2012, para. 140 *in fine*.

⁴¹ Request, para. 5 referring to Second Court of Appeals Decision, para. 30.

⁴² Response, para. 7.

⁴³ First Detention Decision, para. 31; Second Detention Decision, para. 25.

addition, Mr Selimi continues to play a significant role in Kosovo on the basis of the previous positions he occupied, namely a founding member of the Kosovo Liberation Army (“KLA”) General Staff, Head of the KLA Operational Directorate, Minister in the Provisional Government of Kosovo, and member of the Assembly.⁴⁴ The influence he continues to enjoy may assist him in evading SC proceedings by securing access to relevant information and obtaining funds and means to travel.⁴⁵

29. Therefore, notwithstanding the counter-balancing factors identified in the First Detention Decision,⁴⁶ the risk of flight in relation to Mr Selimi continues to exist.

2. Risk of Obstructing the Progress of SC Proceedings

30. The Selimi Defence, while not conceding that any of the Article 41(6)(i)-(iii) risks have materialised, provides no submissions on the question of whether the risk of obstructing the progress of proceedings continues to exist given the Court of Appeals dismissal of his arguments in relation to this risk.⁴⁷

31. The SPO responds that there is a real risk of the Accused obstructing the progress of the SC proceedings.⁴⁸ According to the SPO, there is a persistent climate of intimidation of witnesses and interference with criminal proceedings against former KLA members.⁴⁹ The SPO further asserts that the risk of obstruction is heightened by the Accused’s increasing access to incriminating evidentiary material, as well as [REDACTED], and that the Court of Appeals has found that the protective measures in place are not sufficient to mitigate the inherently high

⁴⁴ First Detention Decision, para. 31; First Court of Appeals Decision, paras 62-63; Second Detention Decision, para. 25.

⁴⁵ Second Detention Decision, para. 25; First Court of Appeals Decision, paras 69-74; Second Court of Appeals Decision, paras 34, 35, 40.

⁴⁶ First Detention Decision, para. 32.

⁴⁷ Request, para. 5; Second Court of Appeals Decision, paras 31-40.

⁴⁸ Response, para. 8.

⁴⁹ Response, para. 8.

risk of witness intimidation or interference.⁵⁰ The SPO further responds that the Court of Appeals has upheld the Pre-Trial Judge's conclusion that there continues to be a risk that Mr Selimi, who continues to enjoy an influential position in Kosovo by virtue of his former functions, will obstruct the progress of criminal proceedings.⁵¹ Separately, the SPO argues that, [REDACTED].⁵²

32. As regards Mr Selimi's ability and willingness to [REDACTED], the Pre-Trial Judge recalls his findings [REDACTED]. To begin with, reference is made to the fact that [REDACTED],⁵³ [REDACTED].⁵⁴ [REDACTED]⁵⁵ [REDACTED].⁵⁶ [REDACTED].⁵⁷ [REDACTED].⁵⁸ [REDACTED].⁵⁹

33. Furthermore, as a former high-ranking KLA member and political figure, having held the position of Minister of Internal Affairs and having been elected to the Kosovo Assembly,⁶⁰ Mr Selimi still holds a position of influence in Kosovo.⁶¹ Considering that, in the past, Mr Selimi has demonstrated [REDACTED], this factor, combined with his position of influence, allows for the reasonable conclusion that it is possible⁶² for Mr Selimi to [REDACTED].⁶³

34. The Pre-Trial Judge also recalls that there is a persisting climate of intimidation of witnesses and interference with criminal proceedings against

⁵⁰ Response, paras 8, 11.

⁵¹ Response, paras 16-18; First Court of Appeals Decision, paras 63, 68; Second Court of Appeals Decision, para. 40.

⁵² Response, para. 19.

⁵³ Second Detention Decision, para. 33.

⁵⁴ Second Detention Decision, para. 37; Second Court of Appeals Decision, para. 37.

⁵⁵ Second Detention Decision, paras 34-36.

⁵⁶ Second Detention Decision, para. 37; Second Court of Appeals Decision, para. 37.

⁵⁷ Second Detention Decision, para. 37; Second Court of Appeals Decision, para. 37.

⁵⁸ Second Detention Decision, para. 39.

⁵⁹ Second Detention Decision, para. 39.

⁶⁰ Indictment, paras 8-9.

⁶¹ First Court of Appeals Decision, paras 62-63; Second Detention Decision, para. 40; Second Court of Appeals Decision, para. 33.

⁶² First Court of Appeals Decision, para. 40.

⁶³ Second Detention Decision, para. 40.

former KLA members.⁶⁴ Even though this factor is, in and of itself, not determinative in relation to the risk of obstructing the progress of the proceedings, it provides the context against which [REDACTED] and his position of influence must be considered. In this regard, the Pre-Trial Judge additionally recalls that this risk need not materialise in an Accused personally tampering with evidence or exerting influence or pressure on witnesses. It suffices that an Accused instigates others or contributes in any way to the materialisation of that risk.⁶⁵

35. The Pre-Trial Judge reiterates, in sum, that the mutually corroborative indications that Mr Selimi has already demonstrated that [REDACTED], together with his still existing position of influence in the context of the general climate of witness intimidation and interference, establish the risk that Mr Selimi will, under any form of responsibility, obstruct the progress of SC proceedings.⁶⁶

36. Finally, the Pre-Trial Judge recalls his finding that Mr Selimi's strong family and professional ties to Kosovo, the statements describing his good character, his co-operation with the SPO's investigations [REDACTED], and his voluntary surrender for arrest must be attributed limited weight in view of the seriousness of the considerations set out above and, as such, do not affect the preceding conclusion.⁶⁷ Furthermore, the Pre-Trial Judge reiterates that, though Mr Selimi has not (been alleged to have) obstructed the present proceedings, the applicable test pertains to a sufficiently real possibility, and not the inevitability, of such obstruction occurring.⁶⁸

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

⁶⁴ First Detention Decision, para. 42; Second Detention Decision, para. 41.

⁶⁵ First Detention Decision, para. 37; First Court of Appeals Decision, para. 59; Second Detention Decision, para. 41.

⁶⁶ Second Detention Decision, para. 42; Second Court of Appeals Decision, para. 38.

⁶⁷ Second Detention Decision, para. 43.

⁶⁸ Second Detention Decision, para. 43.

3. Risk of Committing Further Crimes

38. Mr Selimi, while not conceding that any of the Article 41(6)(i)-(iii) risks have materialised, provides no submissions on the question of whether the risk of committing further crimes continues to exist given the Court of Appeals dismissal of his arguments in relation to this risk.⁶⁹

39. In the Response, the SPO argues that this risk must be considered in light of: (i) a well-established and ongoing climate of witness intimidation and interference; (ii) the increased awareness of incriminatory evidence the Accused has; and (iii) the significant influential position the Accused still retains in Kosovo. The SPO further argues that it suffices that an Accused instigates or assists other to commit crimes, or contributes in any other manner to their commission. The SPO contends that this risk remains high, [REDACTED].⁷⁰

40. The Pre-Trial Judge recalls that, even though the existence of a risk of obstruction does not automatically translate into a risk of committing further crimes, the factors underpinning the former are of relevance to the assessment of the latter in the circumstances of the present case.⁷¹ It is further recalled that it suffices that an Accused instigates or assists others to commit such crimes, or contributes in any other way to their commission; he does not need to physically execute such acts.⁷²

41. The Pre-Trial Judge additionally recalls that, besides Mr Selimi's position of influence in the context of the general climate of witness intimidation and interference, there are specific and mutually corroborative indications that [REDACTED].⁷³ In addition, the Pre-Trial Judge notes that Mr Selimi's knowledge

⁶⁹ Request, para. 5; Second Court of Appeals Decision, para. 41.

⁷⁰ [REDACTED].

⁷¹ First Detention Decision, para. 47; Second Detention Decision, para. 49.

⁷² First Detention Decision, para. 47; Second Detention Decision, para. 49.

⁷³ Second Detention Decision, para. 50.

of the SPO's case against him has increased after the Second Detention Decision in view of the ongoing disclosure of material underpinning the serious charges against him.

42. The Pre-Trial Judge further recalls his finding that Mr Selimi's strong family and professional ties to Kosovo, the statements describing his good character, his co-operation with the SPO's investigations [REDACTED], and his voluntary surrender for arrest carry limited weight in view of the seriousness of the aforementioned considerations.⁷⁴ Furthermore, the Pre-Trial Judge reiterates that, though Mr Selimi has not (been alleged to have) committed further crimes, the applicable test, pertains to a sufficiently real possibility, and not the inevitability, of such crimes being committed.⁷⁵

43. Lastly, the Pre-Trial Judge recalls that the Confirmation Decision explicitly describes that Mr Selimi personally participated in the commission of crimes⁷⁶ and that he used others to commit crimes as a Joint Criminal Enterprise ("JCE") member,⁷⁷ which adds to the risk that he may commit further crimes.⁷⁸

44. On this basis, the Pre-Trial Judge considers that the risk that Mr Selimi will, under any form of responsibility, commit crimes similar to the underlying acts charged against those perceived as being opposed to the KLA, including witnesses who have provided or could provide evidence in the case and/or are due to appear before the SC continues to exist.

⁷⁴ Second Detention Decision, para. 51.

⁷⁵ Second Detention Decision, para. 51.

⁷⁶ Confirmation Decision, para. 466.

⁷⁷ Confirmation Decision, paras 453-454, 465-467.

⁷⁸ Second Detention Decision, para. 52.

4. Conclusion

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

D. CONDITIONAL RELEASE AND THE REMANDED ISSUE

1. Submissions

(a) Request

46. The Selimi Defence submits that the relevant question before the Pre-Trial Judge, after the Second Court of Appeals Decision, is whether the conditions are sufficiently enforceable in practice.⁷⁹ The Selimi Defence argues that, when assessing the KP Submissions, it cannot be required that every single question posed must receive a specific and detailed answer in order to be countenanced.⁸⁰ Instead, the Pre-Trial Judge must be reasonably satisfied of the willingness of the Kosovo Police to enforce the proposed conditions and their ability in practice to do so.⁸¹ The Selimi Defence further argues that mitigation of flight risk falls outside the scope of the Remanded Issue given that conditions were already found to mitigate this risk.⁸² On the issue of unmonitored communications, it is argued that if the Kosovo Police were able to strictly limit unmonitored visits to immediate family and the Selimi Defence, then there would be no concrete difference between the limitations employed at the SC detention facility and those employed on

⁷⁹ Request, para. 8.

⁸⁰ Request, paras 9-10.

⁸¹ Request, para. 11.

⁸² Request, para. 13.

interim release.⁸³ In addition, the Selimi Defence endorses the submissions of the Veseli Defence regarding the further information provided by the Kosovo Police (“Veseli KP Submissions”)⁸⁴ and asserts that they are equally applicable to Mr Selimi.⁸⁵

(b) Response

47. The SPO responds that no conditions of release in Kosovo can mitigate the particular risks at issue and, even if they could, Kosovo is unwilling and unable to enforce them.⁸⁶ The SPO argues that the Court of Appeals did not reach the question of whether these conditions restrict and monitor communications enough to justify conditional release, instead reasoning that further information is required.⁸⁷ The SPO further argues that in analysing the necessary conditions for interim release regard must be given to the well-recognised climate of witness intimidation in Kosovo – including the interference to date in this case – and the influence the Accused has in Kosovo.⁸⁸

48. The SPO further avers that the Kosovo Police guarantees set out in the Veseli KP Submissions remain insufficient,⁸⁹ since: (i) [REDACTED];⁹⁰ (ii) [REDACTED];⁹¹ (iii) [REDACTED];⁹² and (iv) [REDACTED].⁹³ The SPO further asserts that the Kosovo Police have failed on three prior occasions to provide

⁸³ Request, para. 16.

⁸⁴ KSC-BC-2020-06, F00518, Veseli Defence, *Veseli Defence Submissions on Second Detention Review*, 11 October 2021, confidential, paras 28-37, with Annexes 1-2, confidential. A corrected version was submitted on 14 October 2021, F00518/COR, confidential, with Annexes 1-3, confidential.

⁸⁵ Request, para. 14.

⁸⁶ Response, para. 24.

⁸⁷ Response, para. 24.

⁸⁸ Response, paras 25, 34.

⁸⁹ Response, paras 25, 31.

⁹⁰ [REDACTED].

⁹¹ [REDACTED].

⁹² [REDACTED].

⁹³ [REDACTED].

sufficient answers regarding the conditions of interim release, which calls into question their understanding of the risks, and their willingness and ability to sufficiently enforce the conditions of release.⁹⁴

(c) SPO Observations

49. In the SPO Observations, the SPO asserts that the conditions proposed are not sufficient and, even if they were, the Kosovo Police cannot effectively enforce them.⁹⁵ According to the SPO, the well-established climate of interference with the judicial process in Kosovo is not a historical relic.⁹⁶ It adds that [REDACTED].⁹⁷

50. The SPO submits that corruption within Kosovo's criminal justice system is widely recognised.⁹⁸ The SPO further avers that [REDACTED].⁹⁹

51. The SPO argues that the Kosovo Police add no meaningful assurances beyond the ones addressed by the SPO previously, in particular:¹⁰⁰ (i) [REDACTED];¹⁰¹ (ii) [REDACTED];¹⁰² (iii) [REDACTED];¹⁰³ and (iv) [REDACTED].¹⁰⁴

52. In addition, the SPO contends that the Kosovo Police's failure to demonstrate that they are willing and able to enforce sufficient conditions of release on their fourth attempt is indicative of their inability to effectively deliver what would be required.¹⁰⁵ Furthermore, the SPO argues that prominent figures in the Kosovo Police leadership have connections to the KLA and allegiances to the Accused.¹⁰⁶

⁹⁴ Response, paras 32-33.

⁹⁵ SPO Observations, paras 4, 27.

⁹⁶ SPO Observations, para. 2.

⁹⁷ [REDACTED].

⁹⁸ SPO Observations, para. 7.

⁹⁹ [REDACTED].

¹⁰⁰ SPO Observations, para. 10.

¹⁰¹ [REDACTED].

¹⁰² [REDACTED].

¹⁰³ [REDACTED].

¹⁰⁴ [REDACTED].

¹⁰⁵ SPO Observations, paras 21-22.

¹⁰⁶ SPO Observations, paras 23-24.

Lastly, the SPO argues that Mr Selimi remains enormously influential and releasing him is an “existential threat to this case and the Court”.¹⁰⁷

(d) Selimi Observations

53. In the Selimi Observations, the Selimi Defence argues that the SPO has relied on spurious allegations not the subject of the current Request and carefully crafted such allegations to incite division on tangential issues.¹⁰⁸ The Selimi Defence argues that [REDACTED].¹⁰⁹ As regards allegations of Kosovo Police corruption, [REDACTED].¹¹⁰ [REDACTED].¹¹¹ The Selimi Defence argues that the KP Submissions provide substantial information for monitoring interim release conditions and must not be faulted for a failure to somehow anticipate motivations behind the questions which were not expressed.¹¹² [REDACTED].¹¹³ [REDACTED].¹¹⁴ [REDACTED].¹¹⁵ In addition, it is argued that: (i) [REDACTED];¹¹⁶ (ii) the Kosovo Police confirmed that they have the capability to [REDACTED];¹¹⁷ (iii) the SPO unfairly requires a level of specificity in the KP Submissions which does not comport with the extraordinary set of circumstances and the very short period of time in which the Kosovo Police responded;¹¹⁸ and (iv) the SPO should not use one of Mr Selimi’s fundamental rights “as a battering ram to prevent him from enforcing another”.¹¹⁹ [REDACTED].¹²⁰

¹⁰⁷ SPO Observations, para. 25.

¹⁰⁸ Selimi Observations, paras 3-8.

¹⁰⁹ [REDACTED].

¹¹⁰ [REDACTED].

¹¹¹ [REDACTED].

¹¹² Selimi Observations, paras 18-20.

¹¹³ [REDACTED].

¹¹⁴ [REDACTED].

¹¹⁵ [REDACTED].

¹¹⁶ [REDACTED].

¹¹⁷ [REDACTED].

¹¹⁸ Selimi Observations, paras 27-28.

¹¹⁹ Selimi Observations, para. 30.

¹²⁰ [REDACTED].

2. Discussion

(a) Risk of Flight

54. As regards the risk of flight, the Pre-Trial Judge considers that, as found in the First Detention Decision and the Second Detention Decision, conditions can sufficiently mitigate such a risk in relation to Mr Selimi.¹²¹ In this regard, the Pre-Trial Judge notes favourably that Mr Selimi has previously committed himself to remain at his home, surrender his passport and other travel documents, report regularly to the relevant authorities, return to the SC at a judicially determined date, and comply with any variation or termination of the interim release.¹²²

(b) Risk of Obstruction and Committing further Crimes

55. At the outset, the Pre-Trial Judge notes that the Court of Appeals determined that, while the list of conditions proposed by the Selimi Defence in relation to the Second Detention Decision was detailed and may, in the abstract, restrict and monitor his communications, it remains to be assessed whether such measures can be effectively enforced by the Kosovo Police.¹²³ Accordingly, the Pre-Trial Judge will, on the basis of the information contained in the KP Submissions and the Veseli KP Submissions, assess whether: (i) these conditions sufficiently mitigate these risks; and (ii) the Kosovo Police have the capacity to effectively implement the conditions under consideration in view of the risks that Mr Selimi will obstruct SC proceedings and/or commit further crimes.

¹²¹ First Detention Decision, para. 54; Second Detention Decision, para. 58. *See also*, Second Court of Appeal Decision, para. 30.

¹²² First Detention Decision, para. 54; Second Detention Decision, para. 58.

¹²³ Second Court of Appeals Decision, paras 54-58.

(i) Monitoring Communications with Family Members and Pre-Approved Visitors

56. The Kosovo Police indicate that, [REDACTED].¹²⁴ Furthermore, the Kosovo Police are prepared to [REDACTED].¹²⁵ At the same time, the Kosovo Police specify that [REDACTED].¹²⁶

57. As regards communications with family members in particular, this means that [REDACTED]. In addition, Mr Selimi could use coded or obscure language that, [REDACTED]. Therefore, the conditions do not address the possibility that, [REDACTED], Mr Selimi could ask a family member to pass on a message orally or to use a device belonging to a third person to do so,¹²⁷ or that he could transmit covert messages for the purposes of obstructing SC proceedings or committing further crimes. Such considerations apply similarly for monitored visits with pre-approved visitors, notably the possibility of using coded or obscure language [REDACTED].

58. By contrast, at the SC Detention Facilities, unmonitored communications are strictly limited considering that detainees are only allowed unmonitored “private visits” for certain close family members and within limited time periods.¹²⁸ In addition, in person and video visits are, as a rule, conducted within the sight and general hearing of SC Detention Officers.¹²⁹ The Registrar may also impose additional safeguards for such visits, including active monitoring and after-the-fact-listening.¹³⁰ This allows for visits to be reviewed subsequently, while an actively monitored visit may be terminated immediately in order to, for example, prevent the unauthorised disclosure of confidential information or, if it is

¹²⁴ [REDACTED].

¹²⁵ [REDACTED].

¹²⁶ [REDACTED].

¹²⁷ Second Detention Decision, para. 62.

¹²⁸ Second Court of Appeals Decision, footnote 125.

¹²⁹ Registry Submissions, para. 31; Second Court of Appeals Decision, para. 53, footnote 125.

¹³⁰ Registry Submissions, para. 32.

perceived that a detainee is using coded language, interference with the safe and secure conduct of proceedings.¹³¹

59. Furthermore, under Article 34(8) and (12) of the Law, the SC Registry is responsible for managing and administering the detention function and facilities for the SC, as well as, [REDACTED].¹³² Thus, the SC Registry is in the unique position of managing and administering the SC Detention Facilities [REDACTED]. [REDACTED].¹³³

60. It is also significant that, unlike Mr Selimi's private residence, the SC Detention Facilities are a high-security environment.¹³⁴ Most significantly, the SC Detention Officers are highly qualified, [REDACTED], and receive training on applying the visits and communications regime at the SC Detention Facilities.¹³⁵

61. The Kosovo Police [REDACTED]. Furthermore, in the view of the Pre-Trial Judge, it is decisive that, [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. The Pre-Trial Judge has reached this conclusion on the basis that: (i) [REDACTED]; (ii) [REDACTED];¹³⁶ and (iii) [REDACTED].

62. [REDACTED].¹³⁷ [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

63. Furthermore, the fact that Kosovo Police officers are fluent in Mr Selimi's native language and may be familiar with the general context in Kosovo is insufficient to ensure the effective monitoring of visits and communications given that, [REDACTED].

64. In conclusion, while the risk of illicit messages and instructions cannot be entirely eliminated, the measures in place at the SC Detention Facilities, viewed

¹³¹ Registry Submissions, paras 32-33.

¹³² [REDACTED].

¹³³ [REDACTED].

¹³⁴ Registry Submissions, para. 43.

¹³⁵ [REDACTED].

¹³⁶ [REDACTED].

¹³⁷ Veseli KP Submissions, p. 10; KP Submissions, pp. 12, 18.

as a whole, provide robust assurances against unmonitored visits and communications with family members and pre-approved visitors with a view to minimising the risks of obstruction and commission of further crimes.¹³⁸ In the view of the Pre-Trial Judge, the Kosovo Police have not provided guarantees establishing that they have the capacity to implement corresponding measures that sufficiently minimise the existing risks.

(ii) Contextual Considerations

65. [REDACTED].¹³⁹ In addition, despite the Pre-Trial Judge's request to liaise with any other entity in Kosovo,¹⁴⁰ [REDACTED].¹⁴¹ [REDACTED].¹⁴² As regards the Selimi Defence's argument that a distinction must be made between the Kosovo Police and the Kosovo correctional authorities,¹⁴³ this distinction does not negate the fact that there was a seeming lack of coordination and cooperation between the Ministry of Justice and the Directorate of Police that would be prejudicial to the enforcement of any form of house arrest. The Pre-Trial Judge considers that cooperation between different departments involved in the monitoring of an accused person is an important factor to be weighed when determining whether conditional release could be enforced and these examples of a lack of coordination fail to provide the necessary assurances that house arrest could be effectively enforced.

66. Therefore, the Pre-Trial Judge is of the view that it has been insufficiently demonstrated that the Kosovo Police have established and recognised experience

¹³⁸ Similarly KSC-BC-2020-06, IA010/F00008/RED, Court of Appeals, *Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 27 October 2021, public, para. 68.

¹³⁹ [REDACTED].

¹⁴⁰ Order to KP, para. 9.

¹⁴¹ [REDACTED].

¹⁴² [REDACTED].

¹⁴³ Selimi Observations, paras 16-17.

in enforcing the conditional release of individuals accused of serious crimes (who occupy or have previously occupied high-ranking positions).

67. Lastly, the Pre-Trial Judge recalls that the very reason for establishing the SC was that criminal proceedings against (high-ranking) former KLA members could not be conducted in Kosovo.¹⁴⁴ As a result, these proceedings were relocated away from Kosovo,¹⁴⁵ and the procedural framework and operational practice of the SC have been specifically designed to ensure, to the maximum extent possible, the protection of witnesses, victims and others at risk with a view to implementing the mandate of the SC. Moreover, as mentioned, there is a persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members in Kosovo.¹⁴⁶ In addition, the Pre-Trial Judge further notes that various international organisations have recently documented that corruption continues to affect the criminal justice sector in Kosovo.¹⁴⁷

¹⁴⁴ Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights, *Report: Inhumane treatment of people and illicit trafficking in human organs in Kosovo*, Doc. 12462, 7 January 2011, para. 10.

¹⁴⁵ Law No. 04/L-274, pp. 8-9 (“If the SITF investigation culminates in an indictment and trial proceedings, an environment conducive to the proper administration of justice should be provided. Accordingly, a specialist court within the Kosovo court system and a specialist prosecutor’s office would be used for any trial and appellate proceedings arising from the SITF investigation. This court would have a seat in Kosovo, but sensitive proceedings, including hearing of witnesses, would take place outside of the country in view of the nature of the allegations”); Agreement between the Kingdom of the Netherlands and the Republic of Kosovo concerning the Hosting of the Kosovo Relocated Specialist Judicial Institution in the Netherlands, 15 February 2016, preamble (“Referring to the exchange of letters between the President of the Republic of Kosovo and the High Representative of the European Union for Foreign Affairs and Security Policy dated 14 April 2014, ratified by Kosovo Law No. 04/L-274 of 15 May 2014, containing the commitment of the Republic of Kosovo to establish Specialist Chambers and a Specialist Prosecutor’s Office within the Kosovo judicial system to be used for trial and appellate proceedings arising from the investigation of the Special Investigative Task Force of the Special Prosecution Office of the Republic of Kosovo related to the Council of Europe Parliamentary Assembly Report Doc 12462 of 7 January 2011 and which may be relocated to a third State subject to the conclusion of a Host State Agreement with the Host State”), article 3 (“The Kosovo Relocated Specialist Judicial Institution shall have a seat in the Host State”).

¹⁴⁶ See para. 34 above.

¹⁴⁷ United Nations Interim Administration Mission in Kosovo, *Report of the Secretary-General*, U.N.Doc. S/2020/964, 1 October 2020, para. 30; European Union Rule of Law Mission, *Justice Monitoring Report*, October 2020, p. 21; European Commission, *Kosovo Report 2021*, 19 October 2021, pp. 23, 25.

68. The Pre-Trial Judge considers that the aforementioned considerations are, as such, not determinative of the matter under discussion. However, the assessment of the conditions of house arrest to be enforced by the Kosovo Police cannot be divorced from the context in which the house arrest would take place insofar as it affects the conduct of the proceedings before the SC. On this basis, the Pre-Trial Judge finds that, in view of the compelling indications set out above, the context in which the house arrest would take place strengthens the finding that the proposed measures would not adequately mitigate the risks of obstruction and/or further crimes being committed in relation to Mr Selimi specifically.

(iii) Additional Measures

69. The Pre-Trial Judge is mindful of the fact that the Kosovo Police undertake, in general, to ensure the strict enforcement of any SC decisions.¹⁴⁸ However, this undertaking does not, in and of itself, provide a sufficient basis for the Pre-Trial Judge to *proprio motu* order any additional measures to mitigate the identified risks. In view of the Pre-Trial Judge's order to provide specific information to a list of detailed questions and to add any other relevant information (in particular as to any additional measures that the Kosovo Police would implement),¹⁴⁹ such a general undertaking does not, as such, amount to an acceptance that any measures ordered by the Pre-Trial Judge will be adequately implemented, let alone a guarantee that the fundamental concerns about illicit communications, as elaborated above, can be mitigated.

70. Lastly, the Pre-Trial Judge finds that there is no basis to request any further information from the Kosovo Police. The Kosovo Police have been approached on three separate occasions and the Pre-Trial Judge has formulated a detailed list of

¹⁴⁸ Veseli KP Submissions, p. 8; KP Submissions, pp. 1-2.

¹⁴⁹ Order to KP, para. 8; Annex to Order to KP, para. 12.

questions, which also left room for the Kosovo Police to provide any additional information considered to be relevant for the present determination. Therefore, the Kosovo Police have had ample opportunity to provide the required information and any additional information would not assist the Pre-Trial Judge any further in relation to this matter.

71. Accordingly, the Pre-Trial Judge finds that no additional measures ordered *proprio motu* could sufficiently mitigate the existing risks.

(iv) Conclusion

72. Accordingly, the Pre-Trial Judge concludes that, even with the benefit of the KP Submissions and the Veseli KP Submissions, the conditions proposed remain insufficient to adequately mitigate the risks under Article 41(6)(b)(ii)-(iii) of the Law in relation to Mr Selimi and, in addition, any additional conditions imposed by the Pre-Trial Judge would not affect this conclusion. It follows that, as argued before, Mr Selimi's communications can only be effectively restricted and monitored in a way to sufficiently mitigate the risks of him obstructing SC proceedings or committing further crimes through the monitoring framework at the SC Detention Facilities. Having assessed and weighed the Parties' submissions in their entirety, the Pre-Trial Judge considers that the preceding considerations continue to be decisive in adopting this conclusion and, as a result, it is not necessary to further address the Parties' remaining arguments for the present purposes – without any prejudice as to the outcome of any assessment of such arguments.

73. Therefore, having assessed the Second Detention Decision to the extent that it was remanded by the Court of Appeals in accordance with the Second Court of Appeals Decision, the Pre-Trial Judge confirms the Second Detention Decision. By the same token, the aforementioned conclusion applies, for the same reasons, to

the current periodic review of Mr Selimi's detention arising from Article 41(6), (10) and (12) of the Law and Rule 57(2) of the Rules.

E. PROPORTIONALITY OF DETENTION

1. Submissions

74. The Selimi Defence argues that requiring the Accused to demonstrate with more specificity when the trial would commence before the issue of proportionality can even be appropriately raised improperly shifts the burden to the Accused.¹⁵⁰ In addition, requiring the Accused to wait until trial has started or is about to start before any delay can be considered vitiates his rights and cannot be the intention behind Rule 56(2) of the Rules.¹⁵¹ In this regard, the Selimi Defence notes that the SPO would be "hard-pressed to suggest in good faith that the trial will start before the summer of next year" and that a further four months has passed since the Second Detention Decision.¹⁵²

75. The SPO responds that continued detention is proportional.¹⁵³ In its view, estimates, past or present, are not determinative of the proportionality of the pre-trial detention's length, and have not been the basis for prior findings by either the Pre-Trial Judge or the Court of Appeals.¹⁵⁴ Moreover, the SPO avers that the case has further actively progressed towards trial, with the SPO indicating 17 December 2021 as a date to file its pre-trial brief, the SPO's completion of the vast majority of Rule 102(1)(b) disclosure, the Parties' filing of appeals in relation to preliminary motions, and the filing of a preliminary witness list on 22 October 2021.¹⁵⁵ It adds that, as all necessary pre-trial processes in the case are

¹⁵⁰ Request, para. 22.

¹⁵¹ Request, para. 22.

¹⁵² Request, paras 19-21.

¹⁵³ Response, paras 36, 41.

¹⁵⁴ Response, para. 38.

¹⁵⁵ Response, para. 39.

advancing expeditiously and in parallel, any suggestion that the extension of disclosure deadlines for a relatively small number of remaining Rule 102(1)(b) materials has either delayed the start of trial or prolonged the detention of the Accused is without merit.¹⁵⁶ The SPO concludes that given the scope and complexity of the case, expeditious progress towards pre-trial milestones, lengthy custodial sentence, if convicted, and heightened risks of obstruction, pre-trial detention continues to be reasonable and proportionate.¹⁵⁷

2. Discussion

76. At the outset, the Pre-Trial Judge recalls the importance of the proportionality principle in the determination of the reasonableness of pre-trial detention – as reflected in Rule 56(2) of the Rules.¹⁵⁸ The duration of time in detention pending trial is a factor that needs to be considered along with the degree of 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.¹⁵⁹ However, the question whether a period of time spent in pre-trial detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed on the facts of each case and according to its specific features.¹⁶⁰

77. Mr Selimi was arrested on 5 November 2020 and, as a result, he has been detained for slightly more than one year at the time of the present review of his detention. Accordingly, the Pre-Trial Judge will assess whether this period of time is reasonable in the specific circumstances relating to Mr Selimi.

¹⁵⁶ Response, para. 40.

¹⁵⁷ Response, paras 37, 41.

¹⁵⁸ KSC-BC-2020-07, IA001/F00005, Court of Appeals, *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention*, 9 December 2020, public, paras 72-73.

¹⁵⁹ *Similarly* First Court of Appeals Decision, para. 79.

¹⁶⁰ ECtHR, [Buzadji v. the Republic of Moldova \[GC\]](#), para. 90.

78. First and foremost, the Pre-Trial Judge observes that the charges levelled against Mr Selimi are of the utmost gravity.¹⁶¹ Specifically, Mr Selimi is charged with ten counts of serious international crimes, namely persecution on political and/or ethnic grounds, imprisonment/illegal or arbitrary arrest and detention, other inhumane acts, cruel treatment, torture, murder, and enforced disappearance of persons.¹⁶² It is further alleged that Mr Selimi played a significant role in these crimes.¹⁶³ As such, he could be sentenced to a lengthy sentence, including life-long imprisonment, in the event of a conviction.

79. It further follows that the proceedings against Mr Selimi are complex.¹⁶⁴ The purported crimes extended over a lengthy period of time (from at least March 1998 through September 1999), covered a significant geographical area (numerous locations throughout Kosovo and different districts in northern Albania) and involved scores of victims.¹⁶⁵ Furthermore, the SPO preliminarily indicated that it intends to rely upon a significant number of witnesses,¹⁶⁶ [REDACTED].

80. Furthermore, the Pre-Trial Judge considers that it is highly significant that, as established, the risks that Mr Selimi, if released, will obstruct the progress of SC

¹⁶¹ See also ECtHR, *Shabani v. Switzerland*, no. 29044/06, [Judgment](#), 5 November 2009 (“*Shabani v. Switzerland*”), paras 65, 66, 69; ICTY, *Prosecutor v. Delalić et al.*, IT-96-21, [Decision on Motion for Provisional Release Filed by the Accused Zejnil Delalic](#), 25 September 1996, paras 20, 26; *Prosecutor v. Ademi*, IT-01-46-PT, [Order on Motion for Provisional Release](#), 20 February 2002 (“*Ademi Decision*”), para. 25; ICTR, *Prosecutor v. Ndayambaje*, ICTR-98-42-T, [Decision on the Defence Motion for the Provisional Release of the Accused](#), 21 October 2002 (“*Ndayambaje Decision*”), para. 23; *Prosecutor v. Ngirumpatse et al.*, ICTR-98-44-T, Decision on the Motion by Ngirumpatse’s Defence to Find the Accused’s Detention Unlawful or, in the Alternative, to Order his Provisional Release, 18 August 2003 (“*Ngirumpatse Decision*”), para. 25.

¹⁶² Confirmed Indictment, para. 173.

¹⁶³ Confirmed Indictment, paras 8-9, 32, 39, 40-45, 47, 50, 53-55, 172.

¹⁶⁴ See also ECtHR, *Shabani v. Switzerland*, paras 65, 69; ICTY, [Ademi Decision](#), para. 26; ICTR, [Ndayambaje Decision](#), para. 23; *Ngirumpatse Decision*, para. 25.

¹⁶⁵ Confirmed Indictment, paras 16, 32, 57-171, schedules A-C.

¹⁶⁶ KSC-BC-2020-06, F00542, Specialist Prosecutor, *Prosecution Submission of Preliminary Witness List*, 22 October 2021, public (“SPO Preliminary Witness List”), with strictly confidential and *ex parte* Annex 1 and confidential redacted Annex 2.

proceedings or commit further crimes continue to exist, and that these risks cannot be sufficiently mitigated by means of less restrictive measures.

81. In addition, as to the conduct of the Parties,¹⁶⁷ the Pre-Trial Judge observes that, following the Second Detention Decision, substantial procedural steps have been completed with a view to transmitting the case to trial in the future. In more specific terms, several decisions on requests for protective measures have been adopted,¹⁶⁸ preliminary motions have been adjudicated,¹⁶⁹ the date for the SPO's pre-trial brief has been set to 17 December 2021 and for its Rule 109(c) chart to 28 January 2022,¹⁷⁰ the SPO shall complete its disclosure under Rule 102(1)(b) of the Rules by 31 January 2022,¹⁷¹ and the SPO has submitted a preliminary list of witnesses, which will also facilitate any defence investigations.¹⁷² With regard to the delays and the SPO's representations of the projected time limits, the Pre-Trial Judge recalls that the relevant time limits have been extended upon good cause

¹⁶⁷ See also ECtHR, *Shabani v. Switzerland*, paras 67-68.

¹⁶⁸ KSC-BC-2020-06, F00373, Pre-Trial Judge, *Sixth Decision on Specialist Prosecutor's Request for Protective Measures*, 25 June 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same date, F00373/CONF/RED); F00407, Pre-Trial Judge, *Seventh Decision on Specialist Prosecutor's Request for Protective Measures*, 21 July 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00407/CONF/RED); F00438, Pre-Trial Judge, *Eighth Decision on Specialist Prosecutor's Request for Protective Measures*, 24 August 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00438/CONF/RED); F00466, Pre-Trial Judge, *Ninth Decision on Specialist Prosecutor's Request for Protective Measures*, 13 September 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00466/CONF/RED); F00467, Pre-Trial Judge, *Tenth Decision on Specialist Prosecutor's Request for Protective Measures*, 13 September 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00467/CONF/RED); F00559, Pre-Trial Judge, *Eleventh Decision on Specialist Prosecutor's Request for Protective Measures*, 5 November 2021, strictly confidential and *ex parte*; F00571, Pre-Trial Judge, *Twelfth Decision on Specialist Prosecutor's Request for Protective Measures*, 17 November 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day F00571/CONF/RED).

¹⁶⁹ KSC-BC-2020-06, F00412, Pre-Trial Judge, *Decision on Motions Challenging the Jurisdiction of the Specialist Chambers*, 22 July 2021, public; F00413/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Defence Motions Alleging Defects in the Form of the Indictment*, 22 July 2021, public; F00450, Pre-Trial Judge, *Decision on Motions Challenging the Legality of the SC and SPO and Alleging Violations of Certain Constitutional Rights of the Accused*, 31 August 2021, public.

¹⁷⁰ 29 October 2021 Transcript, p. 752, line 20 – p. 753, line 5.

¹⁷¹ 29 October 2021 Transcript, p. 752, line 20 – p. 753, line 5, p. 753, line 6 – p. 754, line 4.

¹⁷² SPO Preliminary Witness List.

being demonstrated. In any event, the Pre-Trial Judge considers that, for the purposes of assessing the proportionality of Mr Selimi's detention, the actual length of time spent in pre-trial detention must be assessed as opposed to any estimates by the SPO that proved to be inaccurate. This is especially so considering that, notwithstanding the delays regarding particular time limits, progress continues to be made towards completing the pre-trial phase in the foreseeable future.

82. In conclusion, the Pre-Trial Judge finds that, in the specific circumstances of the present case, the period that Mr Selimi has spent in pre-trial detention, which slightly exceeds one year, is not unreasonable given: (i) the extreme gravity of the crimes with which Mr Selimi is charged and his allegedly important role in the commission of these crimes; (ii) the possibility of a serious sentence in the event of a conviction; (iii) the complexity of the case against Mr Selimi; (iv) the continued existence of risks under Article 41(6)(b)(ii)-(iii) of the Law and the impossibility to sufficiently mitigate these risks by means of less restrictive measures; and (v) the progress achieved in the present proceedings notwithstanding the delays regarding particular time limits.

83. The Pre-Trial Judge further finds that, to the extent the Selimi Defence is arguing that an undue delay has been caused by the SPO within the meaning of the second sentence of Rule 56(2) of the Rules, such an argument also fails given that, as mentioned, good cause has been demonstrated for delays regarding particular time limits and progress continues to be made towards completing the pre-trial proceedings in the foreseeable future.

84. Lastly, insofar as the Selimi Defence is requesting that the expected total length of Mr Selimi's pre-trial detention be reviewed, the Pre-Trial Judge observes that, while no start date for the trial has been established at this point in time, Mr Selimi's detention shall be reviewed every two months or as soon as a change in circumstances arises pursuant to Article 41(10) of the Law and Rule 57(2) of the

Rules.¹⁷³ In these circumstances, the Pre-Trial Judge finds that, at the present stage, any discussion as to the expected total length of Mr Selimi's pre-trial detention remains premature and speculative.¹⁷⁴

V. DISPOSITION

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

- a) **CONFIRMS** the Second Detention Decision;
- b) **ORDERS** Mr Selimi's continued detention;
- c) **ORDERS** Mr Selimi, if he wishes to do so, to file submissions on the next review of detention by no later than **Friday, 17 December 2021**, with responses and replies following the timeline set out in Rule 76 of the Rules;
- d) **ORDERS** the SPO, should Mr Selimi decide not to file any submissions by the aforementioned time limit, to file submissions on the next review of Mr Selimi's detention by no later than **Friday, 31 December 2021**, and Mr Selimi, if he wishes to do so, to file his submissions by no later than **Monday, 10 January 2022**; and
- e) **ORDERS** the Selimi Defence, SPO and Registry to file public redacted versions of, or indicate whether, their respective submissions (the Request, SPO Observations, Selimi Observations or Registry Submissions) may be reclassified as public, by **Monday, 6 December 2021**.

¹⁷³ Similarly ECtHR, *Ereren v. Germany*, no. 67522/09, [Judgment](#), 6 November 2014, para. 64.

¹⁷⁴ First Court of Appeals Decision, paras 80-81; Second Court of Appeals Decision, para. 47.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Friday, 26 November 2021

At The Hague, the Netherlands.