



**SPECIALIST PROSECUTOR'S OFFICE**  
**ZYRA E PROKURORIT TË SPECIALIZUAR**  
**SPECIJALIZOVANO TUŽILAŠTVO**

**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 Guénaël Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor

**Date:** 21 January 2022

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**Public redacted version of**

**Prosecution consolidated submissions for review of detention**

**with one public annex**

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## I. INTRODUCTION

1. The continued detention of Hysni Gucati and Nasim Haradinaj (collectively, the 'Accused') remains necessary.<sup>1</sup> The established reasons for detention all continue to exist.<sup>2</sup> No conditional release regime, including the one proposed by the Kosovo Police ('KP'),<sup>3</sup> can sufficiently mitigate the risks involved or be effectively enforced by the KP. Following the Rule 130 Decision<sup>4</sup> and in light of the impending conclusion of this trial, the Article 41(6)(b) risks justifying detention<sup>5</sup> are at their highest point and no conditions can sufficiently mitigate them.

## II. SUBMISSIONS

2. For purposes of a detention review under Rule 57(2), the reasons or circumstances underpinning detention must be reviewed in order to determine whether these reasons continue to exist under Article 41(6) of the Law.<sup>6</sup> That

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<sup>1</sup> This submission is filed in accordance with the briefing schedule set by the Trial Panel in the Order for Submissions on the Kosovo Police and Registry Reports and on Detention Review, KSC-BC-2020-07/F00472, 6 December 2021.

<sup>2</sup> See Article 41(10) of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Rule 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020; Decision on Nasim Haradinaj's Appeal on Decision Reviewing Detention, KSC-BC-2020-07/IA002/F00005, 9 February 2021, para.55 ('[t]he competent panel has an obligation to review the reasons or circumstances underpinning detention and determine whether these reasons continue to exist under Article 41(6) of the Law. The competent panel is not required to make findings on the factors already decided upon in the initial ruling on detention but must examine these reasons or circumstances and determine whether they still exist. What is crucial is that the competent panel is satisfied that, at the time of the review decision, grounds for continued detention still exist'). See also *Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA008/F00004/RED, 1 October 2021, paras 13-16. All references to 'Article' or 'Articles' herein refer to articles of the Law, unless otherwise specified.

<sup>3</sup> Reply to Request number KSC-BC-2020-07, dated 22 October 2021, KSC-BC-2020-07/F00449/eng, 2 December 2021 (Albanian version notified 25 November 2021) ('KP Reply').

<sup>4</sup> Decision on the Defence Motions to Dismiss Charges, KSC-BC-2020-07/F00450, 26 November 2021 ('Rule 130 Decision').

<sup>5</sup> Decision on Review of Detention of Hysni Gucati, KSC-BC-2020-07/F00390, 22 October 2021 ('October 2021 Gucati Decision'); Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00391, 22 October 2021 ('October 2021 Haradinaj Decision').

<sup>6</sup> Decision on Nasim Haradinaj's Appeal on Decision Reviewing Detention, KSC-BC-2020-07/IA002/F00005, 9 February 2021, para.55.

determination inevitably concerns what has changed, if anything, since the previous ruling on detention. The Trial Panel should not be expected to entertain submissions that merely repeat arguments that have already been addressed in previous decisions.<sup>7</sup>

#### A. GROUNDED SUSPICION UNDER ARTICLE 41(6)(A)

3. The Trial Panel has previously found there to be grounded suspicion within the meaning of Article 41(6)(a),<sup>8</sup> following the Pre-Trial Judge's finding of an even higher 'well-grounded suspicion' in the Confirmation Decision.<sup>9</sup>

4. Since the last detention review, the SPO completed its evidence presentation and the Trial Panel held in its Rule 130 Decision that the evidence, if accepted, is capable of supporting a conviction beyond reasonable doubt on all six counts charged.<sup>10</sup> These developments further confirm that a grounded suspicion continues to exist within the meaning of Article 41(6)(a).

#### B. NECESSITY OF DETENTION

5. Articulate grounds remain for the continued detention of the Accused. The applicable standard is less than certainty, but more than a mere possibility of a risk materialising.<sup>11</sup> Thus, based on the evidence available, the specific articulable grounds must support the belief that any of the risks under Article 41(6)(b) of the Law exists. It

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<sup>7</sup> *Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA006/F00005/RED, 1 October 2021 ('Krasniqi Appeal Decision'), para.17.

<sup>8</sup> October 2021 Gucati Review Decision, KSC-BC-2020-07/F00390, paras 14-16; October 2021 Haradinaj Review Decision, KSC-BC-2020-07/F00391, paras 14-16.

<sup>9</sup> Public Redacted Version of the Decision on the Confirmation of the Indictment, KSC-BC-2020-07/F00074/RED, 11 December 2020 (redacted version notified 22 December 2020).

<sup>10</sup> Rule 130 Decision, KSC-BC-2020-07/F00450, para.88.

<sup>11</sup> *Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA007/F00005/RED, 1 October 2021, para.19.

is sufficient for one of the risks to be met for detention to be maintained, as the conditions set forth in Article 41(6)(b) are alternative to one another.<sup>12</sup>

6. All risks under Article 41(6)(b) continue to be met for the reasons set forth below.

### 1. Risk of flight

7. Noting the Trial Panel's previous findings,<sup>13</sup> a risk of flight exists for both Accused. Each does not to recognise the KSC.<sup>14</sup> This is most recently illustrated by Mr Gucati's testimony, where he testified that he made public the batches charged in this case because he is opposed to the special court,<sup>15</sup> he does not trust the KSC,<sup>16</sup> and the reason why is because the KSC is 'is collaborating with criminals who have been against my nation and country'.<sup>17</sup> In their capacity as former Head and Deputy head of the KLA WVA – estimated as having over 10,000 members<sup>18</sup> - each can call upon the resources of the organisation to assist in any attempt to flee. Each Accused now has full knowledge of the details of the SPO's case against them, and is further aware that there is a case to answer against them. All these considerations give them means, incentive and opportunity to flee.

8. For Mr Haradinaj in particular, his behaviour during his arrest further suggests he is a flight risk. Haradinaj's evasive manoeuvres and uncooperative conduct upon arrest are recounted in the Registry's report previously given weight by the Trial

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<sup>12</sup> Krasniqi Appeal Decision, KSC-2020-06/IA006/F00005/RED, para.37.

<sup>13</sup> October 2021 Gucati Review Decision, KSC-BC-2020-07/F00390, paras 19-20; October 2021 Haradinaj Review Decision, KSC-BC-2020-07/F00391, paras 19-21.

<sup>14</sup> See 081991-02-TR-ET, pp.1-2.

<sup>15</sup> Transcript of Hearing, 6 December 2021, at pp.2174-75, 2179, 2181, 2195 ('[w]e are not investigators. We are not police. We don't work in the Special Court, and it's not our duty to protect the documentation of anyone').

<sup>16</sup> Transcript of Hearing, 6 December 2021, at pp.2210.

<sup>17</sup> Transcript of Hearing, 6 December 2021, at pp.2206.

<sup>18</sup> Transcript of Hearing, 9 December 2021, at pp.2529-30.

Panel.<sup>19</sup> Mr Haradinaj's characterisation of his own conduct during arrest in the summary of his statement merely repeats arguments raised by his counsel and rejected in previous detention reviews.<sup>20</sup>

9. These considerations, in conjunction with the trial concluding soon and the possibility of a serious sentence of up to 10 years in the event of a conviction,<sup>21</sup> may provide the necessary incentive for the Accused to obtain funds and means to travel and eventually evade KSC proceedings. Risk of flight exists for both Accused, and at this point in the proceedings this risk cannot be mitigated by conditions for either of them.

## **2. Risk of obstructing the progress of KSC proceedings**

10. The Trial Panel has found a risk of obstructing the progress of KSC proceedings exists for both Accused.<sup>22</sup> Since the last detention review, the Trial Panel has found that there is evidence capable of supporting a conviction that the Accused obstructed KSC/SPO officials, intimidated witnesses, retaliated against them, and violated the secrecy of KSC proceedings. The determination of the guilt or innocence of the Accused must wait until the Trial Panel's judgment, but the evidence led on the conduct of the Accused in September 2020 shows that their willingness and ability to obstruct the progress of KSC proceedings is real.

11. The Accused are now aware of the full case against them, including all confidential information received to date in this trial through the disclosure process. Since the last review, the Defence have received disclosure of particularly sensitive

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<sup>19</sup> October 2021 Haradinaj Review Decision, KSC-BC-2020-07/F00391, para.20.

<sup>20</sup> See Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00280, 23 August 2021, paras 21-24.

<sup>21</sup> Article 387 of Code No.06/L-074, Criminal Code of the Republic of Kosovo, 14 January 2019 (charged in Count 3).

<sup>22</sup> October 2021 Gucati Review Decision, KSC-BC-2020-07/F00390, paras 21-24; October 2021 Haradinaj Review Decision, KSC-BC-2020-07/F00391, paras 22-25.

information concerning the SPO's investigations into the process by which the batches of materials charged in this case arrived at the KLA WVA.<sup>23</sup> This gives the Accused additional means and opportunity to obstruct the proceedings.

12. The fate of witnesses in former KLA trials further demonstrate the risks posed by the easily mobilised supporters and sympathisers of the Accused.<sup>24</sup> When these factors are considered against the climate of intimidation of witnesses in previous Kosovo cases,<sup>25</sup> the risk of the Accused disseminating confidential information in this case has never been higher.

### 3. Risk of committing further crimes

13. There remains a risk that the Accused will commit further crimes, as previously found by the Trial Panel.<sup>26</sup> The conduct charged in this case amounts to obstruction of the proceedings, and the vow of both Accused to continue to disseminate SITF/SPO information<sup>27</sup> demonstrates that such incidents would continue if the Accused are released. Considering what the Accused have done previously when given confidential information, there is every reason to believe detention remains necessary to prevent the commission of further offences.

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<sup>23</sup> Decision on the Prosecution Request Related to Rule 102(3) Notice Item 201, KSC-BC-2020-07/F00435, 15 November 2021, Confidential, *following* Decision on the Prosecution Challenges to Disclosure of Items in the Updated Rule 102(3) Notice, KSC-BC-2020-07/F00413, 3 November 2021, Confidential.

<sup>24</sup> See Prosecution consolidated submissions for review of detention, KSC-BC-2020-07/F00356, 8 October 2021, para.3 (and further citations therein).

<sup>25</sup> See Transcript of Hearing, 7 December 2021, p.2310-18. See generally, *egs*, ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84-T, Judgement, 3 April 2008, para. 6; ICTY, *Prosecutor v. Beqaj*, IT-03-66-T-R77, Judgement on Contempt Allegations, 27 May 2005; ICTY, *Prosecutor v. Haxhiu*, IT-04-84-R77.5, Judgement on Allegations of Contempt, 24 July 2008; ICTY, *Prosecutor v. Haraqija and Morina*, IT-04-84-R77.4-A, Judgement, 23 July 2009; UNMIK, *Prosecutor v. Balaj et al.*, PN.222/2002, Detention Decision of Supreme Court of Kosovo, 13 September 2002, p.3 (upholding an extension of detention in light of '[t]he long list of threats directed mainly against the life and safety of witnesses'); OSCE, Kosovo's War Crimes Trials: An Assessment Ten Years On (1999-2009), May 2010, at <https://www.osce.org/kosovo/68569?download=true>, p.26.

<sup>26</sup> October 2021 Gucati Review Decision, KSC-BC-2020-07/F00390, para.25; October 2021 Haradinaj Review Decision, KSC-BC-2020-07/F00391, para.26.

<sup>27</sup> Transcript of Hearing, 6 December 2021, p.2219; 081344-02-TR-ET Revised, p.4.

### C. NO CONDITIONS SUFFICIENTLY MITIGATE THE RISKS IDENTIFIED

14. The Trial Panel has now enquired into the enforceability of measures alternative to detention. Following the latest submissions of the Registry<sup>28</sup> and the KP, it remains clear that no conditions of release in Kosovo can mitigate the particular risks at issue. In light of the high risks which exist and the specific circumstances of the Accused, the Trial Panel should determine that the conditions proposed are insufficient to justify release and, even if they were, Kosovo cannot effectively enforce them.

#### 1. The conditions proposed are insufficient

15. Analysing the conditions necessary to mitigate the severe risks identified must reflect the well-recognised climate of witness intimidation in Kosovo – including the interference of the Accused giving rise to this case - and the influence the Accused have in Kosovo. The potential of the Accused to communicate protected information into this environment is manifestly dangerous. The Accused in this case have a demonstrated track record of not following the directions of the KSC, and there is no reason to believe they would genuinely follow the conditions proposed.

16. The conditions proposed to combat such risks remain defective in key areas, as can be seen from the similar conditions proposed by the Veseli Defence and Kosovo Police in the *Thaçi et al.* case which were recently rejected by the Pre-Trial Judge.<sup>29</sup> Whatever disparity in influence exists between Kadri Veseli and these Accused – though noting that the Accused were still the Head and Deputy Head of the KLA

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<sup>28</sup> Registry Submissions Pursuant to the Trial Panel's Order to Provide Information on the Detention Regime (F00393), KSC-BC-2020-07/F00452, 26 November 2021, Confidential.

<sup>29</sup> *Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00576/RED, 23 November 2021 (public redacted version notified 8 December 2021). See also Submissions on the Sixth Review of Detention, KSC-BC-2020-07/F00375, 15 October 2021, para.36 (seeking to be released under the same conditions proposed by the Veseli Defence).

WVA - is offset by the amply demonstrated motivation and propensity of the Accused to obstruct justice and disregard the orders of the court.

17. First, the KP’s responses to the surveillance of residence conditions foresee a use of limited resources that is clearly not proportionate to the gravity of the risks. [REDACTED]<sup>30</sup> [REDACTED].<sup>31</sup> [REDACTED]. [REDACTED]. [REDACTED].

18. Second, and relatedly, visits cannot be meaningfully monitored under these conditions. [REDACTED]. [REDACTED]<sup>32</sup> [REDACTED]. [REDACTED].<sup>33</sup> [REDACTED].<sup>34</sup> [REDACTED]. [REDACTED].

19. Monitoring activity inside the residence is simply not addressed with any specificity. [REDACTED].<sup>35</sup> [REDACTED]. [REDACTED].<sup>36</sup> [REDACTED].<sup>37</sup> [REDACTED].

20. To isolate one aspect of the KP proposal in particular, the KP’s repeated reliance on [REDACTED]<sup>38</sup> [REDACTED]. [REDACTED].<sup>39</sup> [REDACTED]. [REDACTED]. [REDACTED].<sup>40</sup>

21. Third, the communication device restrictions are both incomplete and ineffective. [REDACTED],<sup>41</sup> [REDACTED]. [REDACTED].<sup>42</sup> [REDACTED].

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<sup>30</sup> [REDACTED].

<sup>31</sup> [REDACTED].

<sup>32</sup> [REDACTED].

<sup>33</sup> [REDACTED].

<sup>34</sup> [REDACTED]. [REDACTED].

<sup>35</sup> [REDACTED].

<sup>36</sup> [REDACTED].

<sup>37</sup> [REDACTED].

<sup>38</sup> [REDACTED].

<sup>39</sup> [REDACTED].

<sup>40</sup> [REDACTED]. [REDACTED].

<sup>41</sup> [REDACTED].

<sup>42</sup> [REDACTED].



22. Fourth, the conditions proposed provide no information on the training of the officers concerned. The Registry has access to all the confidential filings in the case record, and is capable of providing information to Detention Officers as needed in order to at least mitigate the risk of potential coded language in the context of these proceedings. KP officers will never be able to approximate that same detailed understanding, calling into question whether measures like random searches will be reliably executed.<sup>43</sup>

## 2. The KP cannot effectively enforce the conditions proposed

23. The KP has not provided adequate guarantees to mitigate the serious risks posed by the Accused. This failure betrays a simple inability to enforce sufficient measures. Some of the answers given call into question the KP's understanding of the risks and necessary measures, casting doubt as to whether even basic measures like the proposed restrictions on the movements of the Accused could be enforced,<sup>44</sup> noting that Kosovo is a small country with multiple land borders that could be crossed in a short amount of time.

24. [REDACTED].<sup>45</sup> [REDACTED],<sup>46</sup> [REDACTED].<sup>47</sup> [REDACTED].<sup>48</sup>  
[REDACTED]:

[REDACTED]

[REDACTED].<sup>49</sup>

25. The SPO does not doubt that there are well-intentioned and able officers within the KP. However, corruption within Kosovo's criminal justice system is widely

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<sup>43</sup> KP Reply, KSC-BC-2020-07/F00449/eng, pp.15, 18.

<sup>44</sup> See KP Reply, KSC-BC-2020-07/F00449/eng, pp.2-6.

<sup>45</sup> [REDACTED]. [REDACTED].

<sup>46</sup> [REDACTED].

<sup>47</sup> [REDACTED].

<sup>48</sup> [REDACTED].

<sup>49</sup> [REDACTED].

recognised. The United Nations,<sup>50</sup> EULEX,<sup>51</sup> the European Commission,<sup>52</sup> and the Council of Europe<sup>53</sup> have all reported recent findings to this effect. In the words of the United States State Department in 2020: '[s]ecurity forces did not ensure compliance with court orders when local officials failed to carry them out. Although some police officers were arrested on corruption charges during the year, impunity remained a problem'.<sup>54</sup> Media and NGOs have reached similar conclusions.<sup>55</sup>

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<sup>50</sup> United Nations Interim Administration Mission in Kosovo, 'Report of the Secretary-General', U.N.Doc. S/2020/964, 1 October 2020, accessed at [https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2020\\_964.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2020_964.pdf), para.30 ('[a]t the same time, local civil society organizations continued to report slow progress in addressing corruption and organized crime, expressing concern over the often-lenient sentences imposed').

<sup>51</sup> EULEX, 'EU Rule of Law Mission Justice Monitoring Report', October 2020, accessed at [https://www.eulex-kosovo.eu/eul/repository/docs/19102020\\_EU%20Rule%20of%20Law%20Mission%20Justice%20\\_EN.pdf](https://www.eulex-kosovo.eu/eul/repository/docs/19102020_EU%20Rule%20of%20Law%20Mission%20Justice%20_EN.pdf), p.21 ('[i]t was generally recognised that many suspects and defendants in corruption trials were considerably wealthy and influential, with powerful political connections or financial links, which could arguably lead to pressure or interference into these criminal proceedings').

<sup>52</sup> European Commission, Kosovo Report 2021, 19 October 2021, accessed at [https://ec.europa.eu/neighbourhood-enlargement/kosovo-report-2021\\_en](https://ec.europa.eu/neighbourhood-enlargement/kosovo-report-2021_en), pp.23, 25 ('[o]verall, corruption is widespread and remains an issue of serious concern. Despite efforts made, there is a need for strong and continual political will to effectively address systemic corruption risks, as well as a robust criminal justice response to high-level corruption. [...] 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, raised serious concerns about Kosovo's commitment to the fight against corruption and organised crime').

<sup>53</sup> Council of Europe, 'Report to the United Nations Interim Administration Mission in Kosovo (UNMIK) on the visit to Kosovo\* carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)', 23 September 2021, accessed at <https://rm.coe.int/1680a3ea32>, p.30 ('[...] further action is required to tackle the phenomenon of corruption and to gain the trust of prisoners in the proper functioning and fairness of the prison system and, more generally, the criminal justice system. The Committee emphasises in this respect that the existence of a widespread belief among prisoners that anything can be bought inevitably undermines attempts to create order within a prison and to develop positive staff-prisoner relations. Moreover, corruption brings in its wake discrimination, violence, insecurity and, ultimately, a loss of respect for authority').

<sup>54</sup> U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, '2020 Country Reports on Human Rights Practices: Kosovo', 2020, accessed at <https://www.state.gov/wp-content/uploads/2021/03/KOSOVO-2020-HUMAN-RIGHTS-REPORT.pdf>, p.5.

<sup>55</sup> 21 Media, Egzona Mehmeti, 27 police officers arrested this year, 65 others suspended, July 2021, accessed at <https://en.rtv21.tv/27-police-officers-arrested-this-year-and-65-others-suspended/> ('[f]or six months in Kosovo, 27 police officers were arrested, while 65 other employees were suspended. Ill-treatment in the exercise of official duty and abuse of official authority are the two most common offenses for which members of the Kosovo Police are being investigated'); Kosovar Centre for Security

26. [REDACTED],<sup>56</sup> [REDACTED].<sup>57</sup> [REDACTED].<sup>58</sup>
27. The KP are evasive on key points necessary to effectively enforce sufficient conditions, [REDACTED].<sup>59</sup> [REDACTED]. [REDACTED]. [REDACTED]<sup>60</sup> [REDACTED].
28. [REDACTED].<sup>61</sup> [REDACTED].<sup>62</sup> [REDACTED]. [REDACTED].
29. The KSC/SPO's existence is predicated on the reality that high profile former KLA members could not have a trial in Kosovo without justice being obstructed. By virtue of their responsibilities in the KLA WVA and its over 10,000 members, the Accused remain highly influential in Kosovo. Given their previous conduct, releasing

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Studies, Plator Avdiu and Shpat Balaj, State Of Play Of Integrity Policies In The Kosovo Police, December 2020, accessed at [http://www.qkss.org/repository/docs/State\\_of\\_play\\_of\\_integrity\\_policies\\_in\\_the\\_Kosovo\\_Police\\_English\\_Version\\_13188.pdf](http://www.qkss.org/repository/docs/State_of_play_of_integrity_policies_in_the_Kosovo_Police_English_Version_13188.pdf), p.3 ('[i]n recent years, Kosovo's security sector integrity practices, in particular Kosovo Police ones, have run into severe challenges, which have been exacerbated by the current Covid-19 pandemic the country is dealing with. Numerous police officers are subjected to criminal investigations by relevant rule-of-law mechanisms (Police Inspectorate of Kosovo and State Prosecution) for alleged criminal offenses related to breaches of legal procedures governing their official duties. On the other hand, the Prime Minister's decision of October 2020 to discharge the former General Director of the Kosovo Police, has both directly and indirectly paved the way for political influence over the Kosovo Police by ruling parties. Furthermore, this may have a significant impact on discouraging structural reforms in the police, particularly in human resource management'); Pointpulse Network, Assessment of Police Integrity in Kosovo, 2015, accessed at [http://www.qkss.org/repository/docs/Assessment-of-Police-Integrity-in-Kosovo\\_779436.pdf](http://www.qkss.org/repository/docs/Assessment-of-Police-Integrity-in-Kosovo_779436.pdf), p.12 ('[i]t is worth mentioning that citizens of Kosovo believe that political influence on the KP is quite strong. According to an opinion poll conducted during [...] mid-2015 within the POINTPULSE project, 91 percent of the citizens are of the opinion that the police are politicized and under the political control of the Kosovo institutions'); Prison Insider, Kosovo: "corruption cases have destroyed the prison system", 24 September 2019, accessed at <https://www.prison-insider.com/en/articles/kosovo-les-affaires-de-corruption-ont-mis-a-mal-le-systeme-penitentiaire> ('[h]opes for an improved prison system were undermined by corruption cases and ties between some prisoners and influential politicians').

<sup>56</sup> [REDACTED].

<sup>57</sup> [REDACTED].

<sup>58</sup> [REDACTED].

<sup>59</sup> [REDACTED].

<sup>60</sup> [REDACTED].

<sup>61</sup> [REDACTED].

<sup>62</sup> [REDACTED].

the Accused to Kosovo is an existential threat to the fair and expeditious conduct of this case and others before this Court.

30. Given the risks posed by these Accused and a trial which will shortly go into deliberations, this is not the moment to experiment with the KP's capabilities. There are no conditions which can mitigate the risks entailed, and the KP Reply reinforces that conclusion.

#### D. DETENTION REMAINS PROPORTIONATE

31. The length of detention must be balanced against the Article 41(6) risks and the circumstances of the case as a whole, including the potential penalties for the crimes charged.<sup>63</sup>

32. The Trial Panel previously found in October 2021 that detention was proportionate,<sup>64</sup> and that this trial continues to move expeditiously since then is clear. The Defence evidence is set to finish in January 2022, and the Trial Panel has set a projected date of 1 March 2022 to close the case.

33. Nothing indicates that detention thus far is or is approaching being unreasonable. This trial will conclude soon, such that significant further detention will not be necessary in order to resolve the charges against the Accused. There have not been any unjustified delays, and the rights of the Accused have been fully respected. Given, *inter alia*, the continuing expeditious progress in trial milestones, the lengthy custodial sentence if convicted, and the heightened risks of obstruction if released, detention continues to be reasonable and proportionate.

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<sup>63</sup> See ICC, *Prosecutor v. Bemba et al.*, Judgment on the appeals against Pre-Trial Chamber II's decision regarding interim release in relation to Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu, and Narcisse Arido and order for reclassification, ICC-01/05-01/13-969, 29 May 2015, para.45.

<sup>64</sup> October 2021 Gucati Review Decision, KSC-BC-2020-07/F00390, paras 35-37; October 2021 Haradinaj Review Decision, KSC-BC-2020-07/F00391, paras 37-39.

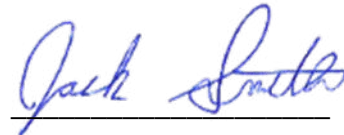
### III. CLASSIFICATION

34. The present submission is filed confidentially in order to protect SPO investigations and the interests of witnesses and third parties. A public redacted version of this submission will be filed.

### IV. RELIEF REQUESTED

35. For the foregoing reasons, the detention of the Accused should be extended.

**Word count: 3582**



**Jack Smith**

**Specialist Prosecutor**

Friday, 21 January 2022

At The Hague, the Netherlands