



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-07/IA007 & IA008

Before: **A Panel of the Court of Appeals Chamber**
Judge Michèle Picard
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Fidelma Donlon

Date: 6 April 2022

Original language: English

Classification: Public

**Consolidated Decision on Nasim Haradinaj's Appeals Against Decisions on
Review of Detention**

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THE PANEL OF THE COURT OF APPEALS CHAMBER of the Kosovo Specialist Chambers (“Court of Appeals Panel”, “Appeals Panel” or “Panel” and “Specialist Chambers”, respectively),¹ acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 169 of the Rules of Procedure and Evidence (“Rules”), is seised of two appeals filed respectively on 31 December 2021 and 2 March 2022 by Nasim Haradinaj (“First Appeal”, “Second Appeal”, together “Appeals”, and “Haradinaj” or “Accused”, respectively)² against the “Decision[s] on Review of Detention of Nasim Haradinaj” dated 21 December 2021 and 21 February 2022 (“First Impugned Decision” and “Second Impugned Decision”).³ The Specialist Prosecutor’s Office (“SPO”) responded to the First Appeal on 14 January 2022 and to the Second Appeal on 11 March 2022, requesting the Appeals Panel to reject the Appeals (“First Response” and “Second Response”, respectively).⁴ In light of the overlapping matters addressed in the Appeals,⁵ and considering the rights of the Accused as well as the interests of judicial economy and expeditiousness, the Panel will address the Appeals together.

¹ F00002, Decision Assigning a Court of Appeals Panel, 5 January 2022 (confidential, reclassified as public on 5 April 2022); F00002, Decision Assigning a Court of Appeals Panel, 7 March 2022.

² F00001, Appeal against Decision F00507 Denying Provisional Release of Nasim Haradinaj, 31 December 2021 (confidential) (“First Appeal”); F00001, Appeal against Decision F00563 Denying Provisional Release of Nasim Haradinaj, 2 March 2022 (“Second Appeal”).

³ F00507/RED, Public Redacted Version of Decision on Review of Detention of Nasim Haradinaj, 21 December 2021 (confidential version filed on 21 December 2021) (“First Impugned Decision”); F00563, Decision on Review of Detention of Nasim Haradinaj, 21 February 2022 (“Second Impugned Decision”).

⁴ F00003, Response to Haradinaj Defence Appeal of December 2021 Detention Decision, 14 January 2022 (confidential) (“First Response”); F00003, Response to Haradinaj Defence Appeal of February 2022 Detention Decision, 11 March 2022 (“Second Response”).

⁵ For example, in the Second Appeal, Haradinaj indicates that he continues to rely on his previous submissions relating to the existence and application of a well-grounded suspicion. See Second Appeal, paras 17-18, 29. In both Appeals, Haradinaj submits that the risk of obstructing the proceedings was affected by the closure of the SPO’s case. Compare First Appeal, para. 9, with Second Appeal, paras 38-39. See also Second Response, paras 1, 10-12.

I. BACKGROUND

1. On 25 September 2020, Haradinaj was arrested in Kosovo pursuant to an arrest warrant issued by a Single Judge.⁶ He was transferred to the detention facilities of the Specialist Chambers in The Hague (“Detention Facilities”) on 26 September 2020.⁷
2. On 27 October 2020, the Single Judge rejected Haradinaj’s request for immediate release.⁸
3. On 11 December 2020, the Pre-Trial Judge confirmed the indictment,⁹ concluding that there is a well-grounded suspicion that Haradinaj is responsible for criminal offences against the administration of justice and public administration and for criminal offences against public order (“Confirmation Decision”).¹⁰ On 14 December 2020, the SPO submitted the confirmed indictment.¹¹ On 5 July 2021, further to the Court of Appeals Panel’s Decision on the Defence Appeals Against Decision on Preliminary Motions¹² and pursuant to the Pre-Trial Judge’s Order for the

⁶ F00016, Notification of Arrest Pursuant to Rule 55(4), 25 September 2020 (strictly confidential and *ex parte*, reclassified as public on 15 October 2020); F00012/A03/COR/RED, Public Redacted Version of Corrected Version of Arrest Warrant for Nasim Haradinaj, 26 September 2020 (strictly confidential and *ex parte* version filed on 24 September 2020, reclassified as confidential and *ex parte* on the same day). See also F00012, Decision on Request for Arrest Warrants and Transfer Orders, 24 September 2020 (strictly confidential and *ex parte*, reclassified as public on 9 October 2020).

⁷ F00020, Notification of the Reception of Nasim Haradinaj in the Detention Facilities of the Specialist Chambers, 26 September 2020 (strictly confidential and *ex parte*, reclassified as public on 15 October 2020).

⁸ F00058, Decision on Request for Immediate Release of Nasim Haradinaj, 27 October 2020 (*First Detention Decision*), para. 33; F00030, Initial appearance, preliminary motion to dismiss the charges and motion for immediate release, 29 September 2020.

⁹ F00074/RED, Public Redacted Version of Decision on the Confirmation of the Indictment, 22 December 2020 (strictly confidential and *ex parte* version filed on 11 December 2020, reclassified twice as strictly confidential on 22 December 2020 and as confidential on 24 February 2021) (“Confirmation Decision”).

¹⁰ Confirmation Decision, paras 128, 132, 137, 141, 145, 149.

¹¹ F00075/A02, Annex 2 to Submission of confirmed Indictment, Redacted Version, 14 December 2020 (strictly confidential and *ex parte* version filed on 14 December 2020). See also, for the non-redacted version, F00075/A01, Annex 1 to Submission of confirmed Indictment, Indictment, 14 December 2020 (strictly confidential, reclassified as confidential on 24 February 2021).

¹² F00007, Decision on the Defence Appeals Against Decision on Preliminary Motions, 23 June 2021 (“Appeal Decision on Preliminary Motions”).

Submission of a Corrected Indictment,¹³ the SPO filed a corrected version of the confirmed indictment.¹⁴

4. The Pre-Trial Judge reviewed and extended Haradinaj's detention on 24 December 2020¹⁵ – a decision which was upheld by the Court of Appeals Panel on 9 February 2021¹⁶ – and on 24 February, 23 April and 23 June 2021.¹⁷ Subsequently, the Trial Panel reviewed and extended Haradinaj's detention on 23 August and 22 October 2021.¹⁸

5. On 26 November 2021, the Trial Panel denied the Defence motions to dismiss the charges pursuant to Rule 130 of the Rules ("Rule 130 Decision").¹⁹

6. On 25 November 2021, the Kosovo Police, further to an order by the Trial Panel,²⁰ 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, ensure that individuals subject to conditional release do not contact and/or interfere with witnesses, victims or persons connected with the case, and administer house arrest, as well as regarding the enforceability of conditions attached to interim release; and (ii) previous instances in

¹³ F00244, Order for the Submission of a Corrected Indictment and for a Second Revised Calendar for the Remainder of the Pre-Trial Proceedings, 23 June 2021.

¹⁴ F00251/A01/RED, Lesser Redacted Indictment, 4 October 2021 (confidential version filed on 5 July 2021) ("Indictment").

¹⁵ F00094, Decision on Review of Detention of Nasim Haradinaj, 24 December 2020 (*Second Detention Decision*), para. 51.

¹⁶ F00005, Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention, 9 February 2021 ("First Appeal Decision"), para. 66.

¹⁷ F00144, Decision on Review of Detention of Nasim Haradinaj, 24 February 2021 (*Third Detention Decision*), para. 45; F00189/RED, Public Redacted Version of the Decision on Review of Detention of Nasim Haradinaj, 23 April 2021 (*Fourth Detention Decision*) (confidential version filed on 23 April 2021), para. 39; F00246, Decision on Review of Detention of Nasim Haradinaj, 23 June 2021 (*Fifth Detention Decision*), para. 40.

¹⁸ F00280, Decision on Review of Detention of Nasim Haradinaj, 23 August 2021 ("Sixth Detention Decision"), para. 40; F00391, Decision on Review of Detention of Nasim Haradinaj, 22 October 2021 ("Seventh Detention Decision"), para. 41.

¹⁹ F00450, Decision on the Defence Motions to Dismiss Charges, 26 November 2021 ("Rule 130 Decision").

²⁰ F00392, Order to the Kosovo Police, 22 October 2021.

which the Kosovo Police enforced the conditional release of persons accused of offences against the administration of justice.²¹

7. On 26 November 2021, the Registrar, further to an order by the Trial Panel,²² provided information on the detention regime applicable to Haradinaj at the Detention Facilities.²³

8. On 10 and 15 December 2021, the SPO and Haradinaj, respectively, filed their submissions on detention.²⁴

9. On 21 December 2021, the Trial Panel issued the First Impugned Decision, ordering Haradinaj's continued detention on the basis that the risks that he will abscond, obstruct the progress of the proceedings or commit further offences, continue to exist and that the risks of obstruction and of reoffending cannot be sufficiently mitigated by the application of reasonable alternative measures at this stage.²⁵ Haradinaj appealed this decision on 31 December 2021.²⁶

10. On 14 February 2022, the SPO filed consolidated submissions for review of detention,²⁷ to which the Defence responded on 17 February 2022.²⁸

²¹ F00449/eng, Reply to Request number KSC-BC-2020-07 dated 22 October 2021, 25 November 2021 (confidential). The translation into English of this submission was filed on 2 December 2021.

²² F00393, Order to the Registrar to Provide Information on the Detention Regime, 22 October 2021.

²³ F00452/RED, Public Redacted Version of "Registry Submissions Pursuant to the Trial Panel's Order to Provide Information on the Detention Regime (F00393)", filing F00452, 24 January 2022 (confidential version filed on 26 November 2021).

²⁴ F00490, Prosecution consolidated submissions for review of detention, 10 December 2021 (confidential); F00500, Defence Submissions on Detention, 15 December 2021 (confidential) ("Haradinaj Submissions dated 15 December 2021").

²⁵ First Impugned Decision, paras 42, 77-78, 86, 92.

²⁶ First Appeal.

²⁷ F00558, Prosecution Consolidated Submissions for Review of Detention, 14 February 2022. On 28 January 2022, the Panel issued an order varying the time limit for submissions set out in the First Impugned Decision and directed *inter alia* the SPO to file its submissions on detention within three days of the decision of the Court of Appeals Panel or at the latest by 14 February 2022, and the Defence to respond by 17 February 2022, if they so wished. See F00537/COR, Panel, Corrected Version of the Order Varying the Time Limit for Submissions for the Next Detention Review, 28 January 2022, para. 12.

²⁸ F00560, Defence Response to Prosecution Consolidated Submissions for Review of Detention, 17 February 2022 ("Haradinaj Submissions dated 17 February 2022"). On 15 February 2022, the Panel

11. On 21 February 2022, the Trial Panel issued the Second Impugned Decision, ordering Haradinaj's continued detention on the basis that, since the last review, in relation to the identified risks "no new circumstances have intervened" that would affect the findings made in the First Impugned Decision.²⁹ Haradinaj appealed this decision on 2 March 2022.³⁰

12. In the First Appeal, Haradinaj develops five grounds of appeal consisting of alleged errors of law and fact, and abuse of discretion committed by the Trial Panel.³¹ In the Second Appeal, Haradinaj develops three grounds of appeal consisting of alleged errors of law and fact.³² Haradinaj requests that the Court of Appeals Panel grant the Appeals and remand the matters to the Trial Panel to review its findings and reassess the requirements of Article 41(6)(a) and (b) of the Law.³³

II. STANDARD OF REVIEW

13. The Court of Appeals Panel adopts the standard of review for interlocutory appeals established in its first decision and applied subsequently.³⁴

III. PRELIMINARY MATTERS

A. PUBLIC FILINGS

14. The Appeals Panel notes that while the Trial Panel issued a public redacted version of the First Impugned Decision,³⁵ Haradinaj and the SPO have not yet filed public redacted versions of the First Appeal and First Response.³⁶ The Panel recalls

instructed Haradinaj to respond to the SPO Submission by 17 February 2022. See F00559, Scheduling Order on Defence Submissions on Detention Review, 15 February 2022.

²⁹ See above, para. 9; Second Impugned Decision, paras 50-52.

³⁰ Second Appeal.

³¹ First Appeal, paras 2, 34.

³² Second Appeal, paras 19, 57.

³³ First Appeal, para. 34; Second Appeal, para. 57.

³⁴ F00005, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, 9 December 2020, paras 4-14. See also First Appeal Decision, paras 11-14.

³⁵ See above, fn. 3.

³⁶ See above, fns 2, 4.

that all submissions filed before the Specialist Chambers shall be public unless there are exceptional reasons for keeping them confidential, and that filings must be made public as soon as possible.³⁷ The Panel also observes that Haradinaj indicates in his First Appeal that it can be classified as public with no redactions required³⁸ and that the SPO requests that the First Response be reclassified as public.³⁹ In light of these submissions, the Panel instructs the Registry to reclassify the First Appeal and the First Response as public.⁴⁰

15. Furthermore, the Panel reminds the Parties, and in particular Haradinaj, where no reason for a confidential classification exists in the first place, to file their submissions as public.

B. FORMAL REQUIREMENTS ON APPEAL

16. Despite issuing warnings on a number of occasions in previous decisions,⁴¹ the Court of Appeals Panel notes that in several instances in both Appeals, Haradinaj again fails to comply with the formal requirements on appeal.⁴² The Panel therefore finds it necessary to recall them.

17. For the Court of Appeals Panel to assess a party's arguments on appeal, the party is expected to present its case clearly, logically and exhaustively. In addition, the Panel may dismiss submissions as unfounded without further reasoning, if a party's submissions are "obscure, contradictory, vague or suffer from other formal and

³⁷ See e.g. KSC-BC-2020-06, F00004/RED, Public Redacted Version of Kadri Veseli's Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021) ("*Veseli Second Appeal Decision*"), paras 8-9.

³⁸ First Appeal, para. 35.

³⁹ First Response, fn. 36.

⁴⁰ See Rule 82(5) of the Rules.

⁴¹ See First Appeal Decision, paras 28-29; Appeal Decision on Preliminary Motions, paras 14-17; F00008, Public Redacted Version of Decision on the Appeals Against Disclosure Decision, 29 July 2021 (confidential version filed on 29 July 2021), para. 16.

⁴² See below, para. 19. See also First Response, para. 8; Second Response, paras 9-11, 20.

obvious insufficiencies”.⁴³ The Panel recalls that “an appellant is obliged not only to set out the alleged error, but also to indicate, with sufficient precision, how this error would have materially affected the impugned decision”.⁴⁴ The Panel’s functions cannot be effectively and efficiently carried out without focused, structured, clear and well-reasoned submissions by the parties.

18. When applying these basic principles, the Panel has identified, as a general matter, the following arguments as warranting summary dismissal: (i) arguments irrelevant to the Impugned Decision or arguments raised for the first time on appeal; (ii) arguments that fail to identify the challenged findings or misrepresent the findings; and (iii) mere assertions unsupported by any evidence, undeveloped assertions, or failures to articulate errors.⁴⁵ The Panel will identify within its discussion which of Haradinaj’s arguments are to be summarily dismissed on this basis.

19. Additionally, the Court of Appeals Panel notes several instances in both Appeals in which Haradinaj does not substantiate his arguments with any specific reference to the applicable law, case-law or filings,⁴⁶ provides incorrect or irrelevant references,⁴⁷ does not use any footnotes,⁴⁸ and/or fails to refer to the decision he is challenging.⁴⁹

⁴³ See e.g. First Appeal Decision, para. 28 and jurisprudence cited therein; Appeal Decision on Preliminary Motions, para. 14.

⁴⁴ See e.g. First Appeal Decision, para. 28 and jurisprudence cited therein; Appeal Decision on Preliminary Motions, para. 14.

⁴⁵ See e.g. First Appeal Decision, para. 29 and jurisprudence cited therein; Appeal Decision on Preliminary Motions, para. 15.

⁴⁶ See, in particular, Second Appeal (wherein the three grounds of appeal are not supported by any jurisprudence).

⁴⁷ See e.g. First Appeal, fns 16 (the paragraph of the decision referred to does not exist), 17, 29 and 33 (the decisions referred to are irrelevant to the arguments developed therein); Second Appeal, fn. 16 (the paragraph of the filing referred to does not exist).

⁴⁸ See e.g. First Appeal, paras 31-33 (under Ground 5, the First Impugned Decision is quoted without any references in the footnotes); Second Appeal (which contains almost no footnotes generally).

⁴⁹ See e.g. Second Appeal, paras 51-53 (under Ground 3, no reference is made to the Impugned Decision).

20. The Panel recalls that pursuant to the Registry Practice Direction “Files and Filings before the Kosovo Specialist Chambers” (“Practice Direction”), interlocutory appeals shall notably contain the grounds of appeal and the arguments in support of the grounds “with specific reference to applicable law relied upon”.⁵⁰ Furthermore, Article 32(2) of the Practice Direction provides that “[r]eferences to a Filing, transcript or other authority shall be placed in footnotes.” However, in the interests of justice, the Panel will consider Haradinaj’s submissions in the Appeals, but the Panel again reminds the Parties, especially Haradinaj, to abide strictly by the Practice Direction in any future filing and warns them that next time it may summarily dismiss their submissions accordingly.

IV. DISCUSSION

A. ALLEGED ERRORS REGARDING THE ASSESSMENT OF GROUNDED SUSPICION UNDER ARTICLE 41(6)(A) OF THE LAW (GROUND 2 OF FIRST APPEAL)

1. Submissions of the Parties

21. In the First Appeal, Haradinaj submits that the Trial Panel, as a matter of law, was not entitled to rely on the Pre-Trial Judge’s findings in the Confirmation Decision or on its own findings in the Rule 130 Decision to conclude that there is a grounded suspicion that Haradinaj committed a criminal offence.⁵¹ Haradinaj argues that the Trial Panel should have proceeded “to a *de novo* assessment of *all* of the evidence adduced in the case to date”.⁵² He submits that such an assessment is required under Article 41(10) of the Law and that, given that the SPO had closed its case at the time of the review, the Trial Panel was in a “better position than the Pre-Trial Judge” to

⁵⁰ KSC-BD-15, Registry Practice Direction, Files and Filings before the Kosovo Specialist Chambers, 17 May 2019 (“Practice Direction”), Article 46(1).

⁵¹ First Appeal, para. 12, referring to First Impugned Decision, para. 38. See also First Appeal, paras 21-22.

⁵² First Appeal, paras 12-14. See also First Appeal, paras 20-21.

assess the existence of a *grounded suspicion* that a person has committed a crime pursuant to Article 41(6)(a) of the Law.⁵³

22. Haradinaj further submits that a re-evaluation is required regardless of the Trial Panel's findings in the Rule 130 Decision because the legal threshold is different from the standard established under Article 41(6)(a) of the Law, which is "to '*satisfy an objective observer*' that a person is '*more likely than not*' to have committed an offence".⁵⁴ Therefore, the fact that the Trial Panel found that Haradinaj has a case to answer on the charges does not mean that there is a grounded suspicion that he has committed a crime under Article 41(6)(a) of the Law.⁵⁵

23. The SPO submits preliminarily that Haradinaj did not argue before the Trial Panel that it would be improper to rely on the Confirmation Decision or Rule 130 Decision, and in fact, the Trial Panel consistently relied upon the Pre-Trial Judge's findings in previous decisions which Haradinaj did not appeal.⁵⁶ In the SPO's view, these arguments should be summarily dismissed.⁵⁷ In the event the Panel considers these arguments on their merits, the SPO responds that Haradinaj's position that the Trial Panel should provide a "full complement of preliminary factual findings" in its decisions on detention review overstates the required standard.⁵⁸ The SPO further argues that the Rule 130 Decision corroborated and supported the Trial Panel's findings on grounded suspicion and demonstrates that the Trial Panel considered all of the evidence before it.⁵⁹

⁵³ First Appeal, paras 13, 15.

⁵⁴ First Appeal, paras 17-19, referring to the Kosovo Criminal Procedure Code, Article 19.

⁵⁵ First Appeal, para. 20.

⁵⁶ First Response, para. 11, referring to Seventh Detention Decision, paras 15, 22, 24.

⁵⁷ First Response, paras 8, 11.

⁵⁸ First Response, para. 12.

⁵⁹ First Response, para. 13. See also First Response, para. 14.

24. In the Second Appeal, Haradinaj indicates that he “continues to rely” on the arguments formulated in the First Appeal with regard to the existence and application of a well-grounded suspicion.⁶⁰

25. The SPO responds that even though Haradinaj indicated that it would not repeat the arguments formulated in the First Appeal, many of his arguments under Ground 1 of the Second Appeal repeat the same arguments made in Ground 2 of the First Appeal. In the SPO’s view, the Appeals Panel should not be expected to entertain these duplicative arguments.⁶¹

2. Assessment of the Court of Appeals Panel

26. The Panel observes preliminarily that although Haradinaj did not refer to the Confirmation Decision in his submissions on detention review to the Trial Panel, he did argue that the Trial Panel did not make a determination on “suspicion” in the Rule 130 Decision.⁶²

27. The Panel recalls that arguments raised for the first time on appeal warrant summary dismissal, when these arguments could reasonably have been raised at first instance.⁶³ In the present case, the Panel notes that the Trial Panel has consistently relied upon the findings in the Confirmation Decision on well-grounded suspicion.⁶⁴ Therefore, Haradinaj could have reasonably challenged the reliance on the Confirmation Decision before the Trial Panel.

28. In any event, the Panel recalls that within the context of detention related challenges, the Trial Panel is only required to determine whether, at the time of the review decision, “a grounded suspicion that [the Accused] has committed a crime

⁶⁰ Second Appeal, paras 17-18, 29.

⁶¹ Second Response, paras 9-11, comparing First Appeal, paras 2(b), 12-21 with Second Appeal, paras 32-35.

⁶² Haradinaj Submissions dated 15 December 2021, para. 3.

⁶³ First Appeal Decision, paras 29, 38. See also above, para. 18.

⁶⁴ See Sixth Detention Decision, paras 16, 25; Seventh Detention Decision, paras 14-15, 22.

within the jurisdiction of the Specialist Chambers”, as required under Article 41(6)(a) of the Law, continues to exist.⁶⁵ The competent panel is not required to proceed to a *de novo* assessment of factors already decided upon in the initial ruling on detention, but must examine these reasons or circumstances and determine whether they still exist.⁶⁶ The Panel further recalls that, although the automatic review every two-months under Rule 57(2) of the Rules is not strictly limited to whether or not a change of circumstances occurred in the case,⁶⁷ such a change can nonetheless be determinative and shall be taken into consideration if raised before the Panel or *proprio motu*.⁶⁸

29. As the Trial Panel correctly noted, the standard of a “well-grounded suspicion” which is necessary to confirm an indictment pursuant to Article 39(2) of the Law is higher than the “grounded suspicion” standard required under Article 41(6)(a) of the Law.⁶⁹ Furthermore, and contrary to Haradinaj’s assertion, the Panel considers that in assessing the *capability* of the evidence to support a conviction beyond reasonable doubt in its Rule 130 Decision, the Trial Panel did not apply a lower standard than that which is applied to assess the existence of a grounded suspicion.⁷⁰ This question is, in any event, irrelevant to the Trial Panel’s finding. In fact, the conclusion at the end of the prosecution case that the evidence the Trial Panel received would be capable, if accepted, of supporting a conviction for the charged offence, does not undermine the existence of a well-grounded or grounded suspicion, but, on the contrary, confirms it.

30. Therefore, the Appeals Panel finds that the Trial Panel was correct in concluding that the findings in the Rule 130 Decision corroborate and support the

⁶⁵ See e.g. *Veseli* Second Appeal Decision, para. 21.

⁶⁶ See First Appeal Decision, para. 55. Contra First Appeal, paras 12-13.

⁶⁷ Contra First Appeal, para. 13.

⁶⁸ *Veseli* Second Appeal Decision, para. 14.

⁶⁹ See First Impugned Decision, para. 24; Second Impugned Decision, para. 27. See also *Veseli* Second Appeal Decision, para. 21.

⁷⁰ See Rule 130 Decision, paras 18-19. Contra First Appeal, paras 17-20.

finding that grounded suspicion under Article 41(6)(a) of the Law still exists.⁷¹ The Trial Panel's reliance on this decision was entirely appropriate.

31. Turning to Haradinaj's arguments that the Trial Panel was required to assess the grounded suspicion based on *all* of the evidence before it at the time of the review, and to consider whether the SPO has adduced sufficient evidence to prove all the elements of the crimes even before the presentation of the Defence case,⁷² the Panel understands that Haradinaj challenges the evidence presented by the SPO at trial. The Panel recalls that under the framework of Article 41(6) of the Law and the determination of applications for interim release or reviews of detention, neither the Trial Panel nor the Court of Appeals Panel can be expected to examine the merits of the case and the overall evidence submitted by the SPO, or in general by the Parties, during the trial.⁷³ The Appeals Panel therefore agrees with the Trial Panel that "[t]he full evaluation of the evidence admitted at trial takes place at the conclusion of the trial".⁷⁴

32. Notwithstanding the above findings, the Panel finds that the Trial Panel's reliance on the Rule 130 Decision shows that it considered *all* of the evidence which had been presented at the time of the review.⁷⁵ This is confirmed by the Trial Panel's finding, in the Second Impugned Decision, that "the evidence presented by the Parties until the closure of the evidentiary proceedings does not appear to invalidate the finding that grounded suspicion within the meaning of Article 41(6)(a) of the Law still exists."⁷⁶

⁷¹ First Impugned Decision, paras 25, 27; Second Impugned Decision, paras 27-28.

⁷² First Appeal, paras 12, 14-16.

⁷³ See in the context of the pre-trial stage, *Veseli* Second Appeal Decision, para. 23 and jurisprudence cited therein.

⁷⁴ First Impugned Decision, para. 26. Contra First Appeal, para. 16.

⁷⁵ First Impugned Decision, para. 25.

⁷⁶ Second Appeal Decision, para. 27.

33. In light of the above, the Panel dismisses Haradinaj's arguments under Ground 2 of the First Appeal.

B. ALLEGED ERRORS REGARDING ASSESSMENT OF ARTICLE 41(6)(B) OF THE LAW

1. Article 41(6)(b)(ii) of the Law (Grounds 1 and 3 of First Appeal, Ground 1 of Second Appeal)

(a) Submissions of the Parties

34. In the First Appeal, Haradinaj submits that in the First Impugned Decision, the Trial Panel erred in fact and abused its discretion by finding that, if released, he will obstruct the present proceedings.⁷⁷ Haradinaj argues that this conclusion is unreasonable and illogical as even in the event of dissemination of any information disclosed to him, he "would not be able to destroy, hide, change or forge the evidence already submitted before the Trial Panel", and the SPO case would proceed, regardless of any action or inaction by him or any alleged accomplice.⁷⁸ Haradinaj further submits that the SPO has failed to adduce evidence demonstrating that he has threatened, interfered with or contacted any witnesses or victims.⁷⁹ Haradinaj recalls that it is not incumbent on the accused to demonstrate the reasons warranting release, but rather on the SPO, and the risk of an accused hindering proceedings must be supported by factual evidence.⁸⁰

35. Haradinaj also submits that the Trial Panel, as a matter of law, was not entitled to rely on the Pre-Trial Judge's findings in the Confirmation Decision to conclude that there are articulable grounds to believe that, if released, he will obstruct the proceedings.⁸¹ Haradinaj argues that the Trial Panel should have proceeded "to a *de novo* assessment of *all* of the evidence adduced in the case to date" pursuant to

⁷⁷ First Appeal, Ground 1, para. 9.

⁷⁸ First Appeal, para. 9.

⁷⁹ First Appeal, para. 10. See also First Appeal, para. 24.

⁸⁰ First Appeal, para. 11.

⁸¹ First Appeal, Ground 3, para. 22, referring to First Impugned Decision, para. 38. See also First Appeal, para. 24.

Article 41(10) of the Law,⁸² and that, after the SPO closed its case, the Trial Panel was in a “better position than the Pre-Trial Judge” to assess the existence of *articulable grounds to believe* that the accused will obstruct the proceedings.⁸³ Furthermore, Haradinaj submits that in relying on the Pre-Trial Judge’s findings, the Trial Panel failed to consider relevant facts that materially affect the decision, namely whether the SPO submitted admissible, reliable and credible evidence to prove that Haradinaj has interfered with or threatened witnesses, as alleged.⁸⁴

36. Preliminarily, the SPO responds that Haradinaj’s argument that the risk of obstructing the proceedings was affected by the closure of the SPO’s case was never argued before the Trial Panel and therefore should be summarily dismissed.⁸⁵ Should this argument be considered on the merits, the SPO argues that the risk of obstruction can continue to exist throughout the proceedings, including after the conclusion of the SPO’s case, and in particular in light of highly sensitive information acquired by the Accused recently.⁸⁶ Finally, the SPO submits that Haradinaj does not assert an error by arguing that the SPO failed to establish that he has threatened or interfered with witnesses or victims; he merely disagrees with the well-grounded suspicion that the Accused committed the crimes charged.⁸⁷

37. In the Second Appeal, Haradinaj submits that the Trial Panel failed to identify concrete reasons supporting the existence of a risk that Haradinaj will obstruct the proceedings if released.⁸⁸ First, Haradinaj argues that the Trial Panel erred in using the existence of a well-grounded suspicion to satisfy the requirements of both

⁸² First Appeal, paras 22, 25.

⁸³ First Appeal, para. 23.

⁸⁴ First Appeal, paras 24-25.

⁸⁵ First Response, paras 8-9.

⁸⁶ First Response, para. 9. See also Second Response, para. 16.

⁸⁷ First Response, para. 10. In response to Haradinaj’s argument on the Trial Panel’s reliance on the Confirmation Decision, the SPO develops the same arguments as concerning the grounded suspicion. See above, para. 23; First Response, paras 11-14.

⁸⁸ Second Appeal, paras 19(a), 30(a), 38, 43, 57(a).

Article 41(6)(a) and (b)(ii) of the Law.⁸⁹ In his view, this “double counting” makes the existence of a well-grounded suspicion sufficient to maintain the Accused in detention and renders the detention review process meaningless.⁹⁰ Second, Haradinaj submits that there is no demonstrable concrete risk of obstruction given that (i) the only relevant documents alleged to have been in his possession were all seized; and (ii) the Prosecution and Defence have now closed the evidential aspects of their cases, and all witnesses have been heard and all documents and exhibits have been tendered.⁹¹ Finally, Haradinaj submits that his right to participate in the proceedings against him should not be used to interfere with his right to liberty⁹² and he is concerned that the Trial Panel’s approach and his continued detention undermines his presumption of innocence.⁹³

38. The SPO responds that the factors considered by the Trial Panel in its assessment of the risk of obstruction, in particular Haradinaj’s testimony during which he stated that he would disseminate more documents if he receives them, were concrete, specific and reasonable.⁹⁴ In the SPO’s view, the same facts supporting that a well-grounded suspicion exists in the present case also show a clear risk under Article 41(6)(b)(ii) of the Law.⁹⁵ The SPO further responds that regardless of whether documents underlying the alleged crimes were taken from Haradinaj, the risk of obstruction continues to exist throughout the proceedings, as highly sensitive information has been disclosed to him during the trial.⁹⁶

⁸⁹ Second Appeal, paras 31-33, referring to Second Impugned Decision, para. 26.

⁹⁰ Second Appeal, paras 33-36.

⁹¹ Second Appeal, paras 37-39, challenging Second Impugned Decision, para. 37.

⁹² Second Appeal, para. 40.

⁹³ Second Appeal, paras 31-32, 41-42.

⁹⁴ Second Response, paras 13-15, referring notably to Second Impugned Decision, paras 36-40, 43.

⁹⁵ Second Response, para. 15.

⁹⁶ Second Response, paras 16-17.

(b) Assessment of the Court of Appeals Panel

39. At the outset, the Panel recalls that the Trial Panel, in assessing the risk that Haradinaj would obstruct the conduct of the proceedings, found that: (i) there was a well-grounded suspicion that Haradinaj *inter alia* participated in and encouraged the dissemination of protected information and threatened (potential) information providers, and repeatedly stated that he would continue to do so, despite the Single Judge's orders;⁹⁷ (ii) Haradinaj has recently received highly sensitive information through disclosure and he is also aware of a large body of confidential evidence due to his participation in the trial, the dissemination of which would jeopardise witness security and ongoing SPO investigations;⁹⁸ (iii) Haradinaj, as a deputy chair of the KLA War Veterans Association ("KLA WVA"), has the means to disseminate information via the media or with the assistance of others within the KLA WVA;⁹⁹ and finally, (iv) during his testimony, Haradinaj stated that he would publicise any materials from the Special Investigative Task Force ("SITF"), SPO or Specialist Chambers sent to the KLA WVA.¹⁰⁰

40. Turning first to Haradinaj's arguments that the risk of obstruction was affected by the SPO's case closing, the Appeals Panel observes that, as argued by the SPO, Haradinaj indeed failed to include this argument in his Submissions dated 15 December 2021 before the Trial Panel.¹⁰¹ Summary dismissal of this argument in the First Appeal is therefore warranted as it could have reasonably been raised in the first instance.¹⁰² However, given that Haradinaj raised this argument in his Submissions

⁹⁷ First Impugned Decision, para. 35; Second Impugned Decision, para. 36.

⁹⁸ First Impugned Decision, para. 36; Second Impugned Decision, paras 37, 40.

⁹⁹ First Impugned Decision, para. 36; Second Impugned Decision, para. 38.

¹⁰⁰ Second Impugned Decision, para. 37, referring to Transcript, 13 January 2022, p. 3024, lines 3-4: "[...] I will act the same, because I am convinced that I acted rightly [...]".

¹⁰¹ Compare First Appeal, para. 9 with Haradinaj Submissions dated 15 December 2021, paras 8-11. See also First Response, para. 9.

¹⁰² See above, para. 27.

dated 17 February 2022, and subsequently in the Second Appeal,¹⁰³ the Panel finds it appropriate to consider it in the context of both Appeals.

41. The Panel first recalls that Article 41(6)(b) of the Law does not include any statutory or temporal limit on the assessment of the risks, and in particular for the risk of obstruction.¹⁰⁴ Specifically, under Article 41(6)(b)(ii) of the Law, the competent panel shall assess whether there exists a risk of obstructing the “progress of the criminal proceedings”, not only the progress of the trial.

42. The Panel notes that, while the Specialist Chambers are not bound to follow the jurisprudence of other courts and tribunals, some chambers at the ICTY and ICC have considered that following the conclusion of evidence at trial, the accused no longer posed a danger to witnesses or victims.¹⁰⁵ However, in other cases, chambers have also found that the end of the trial did not eliminate the risk of obstruction by an accused.¹⁰⁶ In the Panel’s view, in the normal course of events, the risk of obstruction shall diminish with the passing of time as the investigations are finalised, witnesses have testified and the evidence is submitted.¹⁰⁷ However, such risk may not always be reduced significantly, depending on the circumstances of the case.

¹⁰³ Haradinaj Submissions dated 17 February 2022, para. 38; Second Appeal, para. 39.

¹⁰⁴ See First Response, para. 9.

¹⁰⁵ See e.g. ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15-1733-Corr, Corrected version of Decision on the Defence Request for Immediate Release and the Communication Restrictions Applying to the Accused, 17 April 2020, para. 25; ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-T, Decision on Jadranko Prlić’s Motion for Provisional Release, 24 November 2011, para. 32. The Panel notes however that in those cases, the conclusion of evidence at trial was only one factor among several supporting such conclusion.

¹⁰⁶ See e.g. ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-3221, Decision on “Defence Urgent Motion for Provisional Release”, 23 December 2014, paras 38-51, confirmed on appeal in ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-3249-Red, Public redacted version of Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 23 December 2014 entitled “Decision on ‘Defence Urgent Motion for Provisional Release’”, 20 May 2015, paras 66-71. The Panel also observes that in the *Nzabonimpa et al.* case, a Judge of the International Residual Mechanism for Criminal Tribunals found some of the accused guilty of having interfered with the administration of justice at the stage of the review proceedings in the *Ngirabatware* case. See IRMCT, *Prosecutor v. Nzabonimpa et al.*, MICT-18-116-T, Judgment, 25 June 2021, paras 2-6, 409.

¹⁰⁷ See e.g. ECtHR, *W. v. Switzerland*, no. 14379/88, Judgment, 26 January 1993, para. 35; ECtHR, *Clooth v. Belgium*, no. 12718/87, Judgment, 12 December 1991, para. 43; ECtHR, *Letellier v. France*, no. 12369/86, Judgment, 26 June 1991, para. 39.

43. In the present case, the Trial Panel considered that, in particular in light of the Accused's alleged past behaviour and repeated statements that he will continue to disseminate SITF/SPO-related documents, there was an ongoing risk that Haradinaj would obstruct the proceedings by disseminating confidential or otherwise protected information and thereby threatening or influencing witnesses, victims or accomplices.¹⁰⁸ Contrary to Haradinaj's assertion, the fact that the documents he allegedly disclosed have now been seized by the SPO is irrelevant.¹⁰⁹ As the Trial Panel clearly acknowledged, Haradinaj is now aware of, by virtue of his participation in the trial, a large body of incriminating evidence and confidential information, including highly sensitive material disclosed to the Defence in November 2021. Potential disclosure of this evidence or material would jeopardise witness security.¹¹⁰ The Panel therefore finds that the Trial Panel did not err in finding that the risk of obstruction may continue after the conclusion of the SPO's case, and even more generally until the end of the trial.¹¹¹

44. With regard to Haradinaj's arguments on the SPO's alleged failure to adduce any evidence of threat, interference or contact with witnesses or victims,¹¹² and moreover on the Trial Panel's reliance on the Confirmation Decision,¹¹³ the Panel finds that Haradinaj is in fact challenging the evidence underpinning the confirmed charges which the SPO presented at trial.¹¹⁴ The Panel notes that Haradinaj failed to submit

¹⁰⁸ First Impugned Decision, paras 35-38; Second Impugned Decision, paras 36-40.

¹⁰⁹ Contra Second Appeal, paras 46, 48.

¹¹⁰ See First Impugned Decision, para. 36, referring to F00413/RED, Public Redacted Version of Decision on the Prosecution Challenges to Disclosure of Items in the Updated Rule 102(3) Notice, 16 December 2021 (confidential version filed on 3 November 2021), para. 95(b); F00435/RED, Public Redacted Version of Decision on the Prosecution Request Related to Rule 102(3) Notice Item 201, 16 December 2021 (confidential version filed on 15 November 2021), para. 26. See also Second Impugned Decision, para. 37.

¹¹¹ The Panel notes that the Trial Panel also recalled its findings on the risk of obstructing the proceedings when finding that the risk of committing further offences still existed. See First Impugned Decision, para. 41; Second Impugned Decision, para. 43.

¹¹² First Appeal, para. 10.

¹¹³ First Appeal, paras 22-25.

¹¹⁴ See similarly above, para. 31.

these arguments before the Trial Panel, which warrants summary dismissal.¹¹⁵ Furthermore, the Panel recalls its findings above that (i) the standard of “well-grounded suspicion” is higher than the standard of “grounded suspicion”; (ii) the Trial Panel’s Rule 130 Decision corroborates and supports the finding that a grounded suspicion under Article 41(6)(a) of the Law still exists; and (iii) detention review is not the proper forum to address the merits of the case and the overall evidence submitted at trial.¹¹⁶ The Panel therefore dismisses Haradinaj’s arguments accordingly.

45. Turning now to Haradinaj’s related argument that the Trial Panel should not have used the existence of a well-ground suspicion to satisfy both Article 41(6)(a) and (b)(ii) requirements, the Panel observes that Haradinaj failed again to address this issue before the Trial Panel when it could reasonably have been raised in the first instance.¹¹⁷ Nevertheless, and as found above,¹¹⁸ the Panel does not find any error in the Trial Panel’s reliance on the existence of a well-grounded suspicion that Haradinaj *inter alia* disseminated protected information and threatened (potential) information providers, and therefore allegedly obstructed the Specialist Chambers proceedings, to find that there exists a risk that Haradinaj would obstruct the present proceedings. The very specific nature of this well-grounded suspicion, and thus of the confirmed charges, makes it a relevant factor in the Trial Panel’s assessment of the existence of a risk of obstruction to the proceedings, and justifies what Haradinaj calls “double

¹¹⁵ See also above, paras 26-27.

¹¹⁶ See above, paras 28-33.

¹¹⁷ See Haradinaj Submissions dated 17 February 2022. The Trial Panel relied on this factor in the Sixth Detention Decision, at para. 25, and in the Seventh Detention Decision, at para. 22.

¹¹⁸ See above, para. 44.

counting”.¹¹⁹ Furthermore, the Panel observes that the existence of a well-grounded suspicion was only one factor considered by the Trial Panel.¹²⁰

46. Turning to Haradinaj’s argument concerning his knowledge of the evidence due to his participation in the trial,¹²¹ the Panel recalls that while disclosure of evidence may be a relevant factor, it is but one factor that may be taken into account when determining whether continued detention is necessary.¹²² Furthermore, it is not sufficient in itself to justify the denial of provisional release. The Panel observes that in the Second Impugned Decision, the Trial Panel considered this factor together with other factors to determine the existence of a risk of obstruction.¹²³

47. Haradinaj fails to show that it was unreasonable for the Trial Panel to rely on his knowledge of confidential information disclosed to him, and to conclude that, in view of the other factors considered, it contributes to the risks identified under Article 41(6)(b)(ii) of the Law. For these reasons, and contrary to Haradinaj’s assertions,¹²⁴ the Panel finds that the Trial Panel’s assessment does not undermine the presumption of innocence and is not inconsistent with his fundamental procedural rights.¹²⁵

¹¹⁹ The Panel further considers that such argument is irrelevant in the context of detention review. In fact, the prohibition of “double counting” applies in the context of sentencing where the same (incriminating) factors cannot be counted twice (or more) as the basis of a charge and subsequently again in the context of sentencing to the detriment of the accused. In other words, “any factor— not merely a constituting element of the offence— already taken into account with regard to the definition of the offence must not be considered (‘counted’) again as an aggravating circumstance in the course of sentencing”. See Ambos, K. *Treatise on International Criminal Law: Volume II: The Crimes and Sentencing*, (First Edition) 2014, pp. 288-289; (Second Edition) 2022, pp. 329-330 with further references therein.

¹²⁰ See above, para. 39; Second Impugned Decision, paras 36-39. See also First Impugned Decision, paras 35-37.

¹²¹ Second Appeal, para. 40.

¹²² Second Appeal, Second Appeal Decision, para. 31.

¹²³ See above, para. 39; Second Impugned Decision, paras 36-39. See also First Impugned Decision, paras 35-37.

¹²⁴ Second Appeal, paras 40-42.

¹²⁵ The Panel notes that the Trial Panel made express reference to Haradinaj’s presumption of innocence. See Second Impugned Decision, paras 22, 36.

48. Consequently, the Panel dismisses Haradinaj's Grounds 1 and 3 of the First Appeal and Ground 1 of the Second Appeal.

2. Article 41(6)(b)(iii) of the Law (Ground 4 of First Appeal and Ground 2 of Second Appeal)

49. The Panel recalls that the conditions set forth in Article 41(6)(b) of the Law are alternative to one another.¹²⁶ If one of those conditions is fulfilled, the other conditions do not have to be addressed in order for detention to be maintained. The Panel notes that under Ground 4 of the First Appeal and Ground 2 of the Second Appeal, Haradinaj makes arguments which address the risk of committing further offences under Article 41(6)(b)(iii) of the Law.¹²⁷ Given that the Panel has found no error in the Trial Panel's conclusion that a risk of obstruction existed under Article 41(6)(b)(ii) of the Law, making continued detention necessary, it does not need to address the alleged errors with regard to Article 41(6)(b)(iii) of the Law.¹²⁸ The Panel therefore dismisses Ground 4 of the First Appeal and Ground 2 of the Second Appeal.

C. ALLEGED ERRORS REGARDING ASSESSMENT OF CONDITIONS OF RELEASE (GROUND 5 OF FIRST APPEAL AND GROUND 3 OF SECOND APPEAL)

1. Submissions of the Parties

50. In the First Appeal, Haradinaj submits that the Trial Panel erred in fact in finding that there is a possibility that certain individuals within or associated with the Kosovo Police, who are, or may be, connected to the Accused may resort to corrupt or questionable practices to interfere with the course of justice.¹²⁹ Haradinaj further submits that, in reaching its findings, the Trial Panel relied on unverified secondary sources and instead, Haradinaj highlights several public sources which praise the

¹²⁶ See e.g. F00005, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Interim Release, 30 April 2021 (confidential version filed on 30 April 2021) ("*Thaçi* First Appeal Decision"), para. 78.

¹²⁷ First Appeal, paras 26-30; Second Appeal, paras 44-50.

¹²⁸ See e.g. *Thaçi* First Appeal Decision, para. 78.

¹²⁹ First Appeal, paras 31, 33.

professionalism of the Kosovo Police.¹³⁰ Moreover, Haradinaj argues that, even if the alleged incidents of corruption were considered credible, both the SPO and the Trial Panel failed to attribute them to Haradinaj.¹³¹

51. The SPO responds that there was ample evidence before the Trial Panel to conclude that certain individuals within or associated with the Kosovo Police, and connected to Haradinaj, may be inclined to resort to corrupt or questionable practices with a view to interfere with the proceedings.¹³² Moreover, the SPO argues that the Trial Panel considered contextually that it could not exclude the possibility of such practices but that it was not dispositive in its assessment.¹³³

52. In the Second Appeal, Haradinaj submits that any risk he poses if released on bail would be negligible, in light of the resources and information available to him.¹³⁴ Furthermore, he argues that by overstating the extent of the risk he would pose if released, the Trial Panel did not properly consider the potential merit of the release conditions, in particular that of restricting Haradinaj's contacts.¹³⁵

53. The SPO responds that Haradinaj does not identify any error in the Trial Panel's assessment of the conditions of release and that his allegations are unsubstantiated.¹³⁶

2. Assessment of the Court of Appeals Panel

54. Turning first to Haradinaj's arguments with regard to any alleged corruption within the Kosovo Police, the Panel observes that the Trial Panel, in the First Impugned Decision, did not find that the Kosovo Police employ corrupt or questionable practices with a view to interfere with the course of justice, but rather

¹³⁰ First Appeal, para. 32.

¹³¹ First Appeal, para. 33.

¹³² First Response, para. 16. See also First Response, para. 17.

¹³³ First Response, para. 16.

¹³⁴ Second Appeal, para. 51.

¹³⁵ Second Appeal, paras 52-53. See also Second Appeal, para. 56.

¹³⁶ Second Response, para. 20.

found that *it could not exclude* the possibility of such practices, based on the reports of international and regional organisations and media articles.¹³⁷

55. The Panel observes that the Trial Panel explicitly noted that while this contextual consideration is not “determinative, in itself, of the matter under discussion [...] the assessment of the effectiveness of the Proposed Regime [i.e. the regime proposed by the Kosovo Police] cannot be completely divorced from [this] context.”¹³⁸ The Panel agrees with the Trial Panel that such context may be relevant to assessing whether the Proposed Regime was sufficient to mitigate the identified risks, and considers that, contrary to what Haradinaj infers, this factor was not decisive in the Trial Panel’s assessment of the Kosovo Police’s capacity to implement conditions.¹³⁹ Therefore, any findings by the Panel on this issue would not have an impact on the outcome of the First Impugned Decision. The Appeals Panel notes that following a thorough assessment of the submissions filed by the Kosovo Police, the Registry and the Parties, the Trial Panel considered that the conditions listed in the Proposed Regime could not sufficiently mitigate the risk of Haradinaj obstructing the proceedings or committing further offences.¹⁴⁰

56. The Panel turns now to Haradinaj’s arguments with respect to the Second Impugned Decision that the Trial Panel, in overstating the extent of risk he posed, did not properly consider the possibility of bail or other release conditions proposed by the Defence.¹⁴¹ At the outset, the Panel notes that Haradinaj fails to identify the challenged findings as well as to clearly identify and develop the alleged errors committed by the Trial Panel.¹⁴² In any event, the Panel recalls that it has not found any error in the Trial Panel’s risk assessment.¹⁴³ Furthermore, the Panel considers that

¹³⁷ First Impugned Decision, para. 80. See also First Response, para. 16.

¹³⁸ First Impugned Decision, para. 81.

¹³⁹ Contra Appeal, para. 33.

¹⁴⁰ First Impugned Decision, paras 56-78.

¹⁴¹ Second Appeal, paras 51-53.

¹⁴² See above, paras 18-19.

¹⁴³ See above, paras 39-49.

the Trial Panel found that the Proposed Regime, which includes more extensive measures than bail and restricting contacts as proposed by Haradinaj,¹⁴⁴ was insufficient to mitigate the risks of Haradinaj obstructing the proceedings or committing further crimes.¹⁴⁵ As such, the Panel finds that the Trial Panel did not err in rejecting the conditions proposed by the Defence.

57. In light of the above, the Panel finds that Haradinaj has failed to demonstrate that the Trial Panel erred in its assessment of the conditions of release. The Court of Appeals Panel, accordingly, dismisses Ground 5 of the First Appeal and Ground 3 of the Second Appeal.

¹⁴⁴ See Second Appeal, paras 51-52.

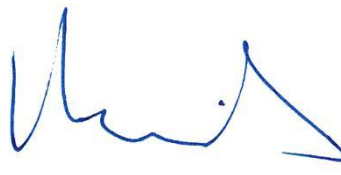
¹⁴⁵ Second Impugned Decision, paras 51-52. See also First Impugned Decision, paras 77-78.

V. DISPOSITION

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

DENIES the First and Second Appeals; and

DIRECTS the Registry to reclassify Haradinaj's First Appeal and the SPO's First Response as public.



**Judge Michèle Picard,
Presiding Judge**

Dated this Wednesday, 6 April 2022

At The Hague, the Netherlands