



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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

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

Registrar: Fidelma Donlon

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Decision on Review of Detention of Nasim Haradinaj

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TRIAL PANEL II (“Panel”), pursuant to Articles 21(3) and 40-41 of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

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

2. On 27 October 2020, the Single Judge rejected Mr Haradinaj’s request for his immediate release from detention.² The Pre-Trial Judge reviewed and extended Mr Haradinaj’s detention at regular intervals, namely on 24 December 2020,³ which was upheld by the Court of Appeals Panel,⁴ and on 24 February, 23 April and 23 June 2021.⁵

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

² F00058, Single Judge, *Decision on Request for Immediate Release of Nasim Haradinaj* (“First Detention Decision”), 27 October 2020.

³ F00094, Pre-Trial Judge, *Decision on Review of Detention of Nasim Haradinaj* (“Second Detention Decision”), 24 December 2020.

⁴ IA002/F00005, Court of Appeals Panel, *Decision on Nasim Haradinaj’s Appeal Against Decision Reviewing Detention* (“Haradinaj Appeal Detention Review Decision”), 9 February 2021, para. 66.

⁵ F00144, Pre-Trial Judge, *Decision on Review of Detention of Nasim Haradinaj* (“Third Detention Decision”), 24 February 2021; F00189/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on*

3. On 16 July 2021, the Pre-Trial Judge transmitted the case to the Panel.⁶ The Panel reviewed and extended Mr Haradinaj's detention on 23 August 2021,⁷ 22 October 2021,⁸ 21 December 2021,⁹ and 21 February 2022.¹⁰ The latter two decisions were upheld by the Court of Appeals Panel in a consolidated decision issued on 6 April 2022 ("Consolidated Appeal Detention Review Decision").¹¹

4. On 7 April 2022, the SPO filed its consolidated submissions for review of detention ("SPO Submission").¹²

5. On 14 April 2022, the Haradinaj Defence responded to the SPO Submission ("Haradinaj Submission").¹³

II. SUBMISSIONS

6. The SPO avers that the continued detention of Mr Haradinaj remains necessary as all established reasons for detention continue to exist.¹⁴ The SPO submits that, in light of the closing of the evidence in the case and the impending trial judgment,

Review of Detention of Nasim Haradinaj ("Fourth Detention Decision"), 23 April 2021; F00246, Pre-Trial Judge, *Decision on Review of Detention of Nasim Haradinaj* ("Fifth Detention Decision"), 23 June 2021.

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

⁷ F00280, Panel, *Decision on Review of Detention of Nasim Haradinaj* ("Sixth Detention Decision"), 23 August 2021.

⁸ F00391, Panel, *Decision on Review of Detention of Nasim Haradinaj* ("Seventh Detention Decision"), 22 October 2021.

⁹ F00507/RED, Panel, *Public Redacted Version of Decision on Review of Nasim Haradinaj* ("Eighth Detention Decision"), 21 December 2021.

¹⁰ F00563, Panel, *Decision on Review of Detention of Nasim Haradinaj* ("Ninth Detention Decision"), 21 February 2022.

¹¹ IA007/F00004, Court of Appeals Panel, *Consolidated Decision on Nasim Haradinaj's Appeals Against Decisions on Review of Detention*, 6 April 2022; IA008/F00004, Court of Appeals Panel, *Consolidated Decision on Nasim Haradinaj's Appeals Against Decisions on Review of Detention*, 6 April 2022.

¹² F00586, Specialist Prosecutor, *Prosecution Consolidated Submissions for Review of Detention* ("SPO Submission"), 7 April 2022.

¹³ F00591, Haradinaj Defence, *Defence Reply to Prosecution Consolidated Submissions for Review of Detention* ("Haradinaj Submission"), 14 April 2022.

¹⁴ SPO Submission, paras 1, 3-16.

the Article 41(6)(b) risks justifying detention remain as high as ever and no conditions can sufficiently mitigate them.¹⁵

7. The Haradinaj Defence asserts that Mr Haradinaj's continuing detention is unnecessary and disproportionate.¹⁶ In its view, the SPO has failed to identify the risk factors posed by Mr Haradinaj and there has been no evidence disclosed that would preclude him from being granted provisional release, either with appropriate and reasonable conditions or without conditions.¹⁷ Therefore, the Haradinaj Defence submits that there exists no proper basis upon which to further extend the detention of Mr Haradinaj.¹⁸

III. APPLICABLE LAW

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

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

10. Pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, until a judgment is final or until release, upon the expiry of two months from the last

¹⁵ SPO Submission, paras 1, 17-19.

¹⁶ Haradinaj Submission, para. 4.

¹⁷ Haradinaj Submission, para. 24.

¹⁸ Haradinaj Submission, para. 25.

ruling on detention on remand, the Panel shall examine whether the reasons for detention on remand still exist, and extend or terminate it.¹⁹

11. While it is not required to make findings on the factors already decided upon in the initial ruling on detention, the Panel must examine these reasons or circumstances, and determine whether they still exist to satisfy itself that, at the time of the review decision, grounds for continued detention still exist.²⁰ The Panel must therefore assess, *proprio motu*, whether it 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.²¹ In any event, the Panel should not be expected to entertain submissions that merely repeat arguments that have already been addressed in its previous decisions.²²

12. Although the two-month review is not strictly limited to whether or not a change of circumstances occurred in the case, such a change can nonetheless be determinative and shall be taken into consideration if raised before the Panel or *proprio motu*.²³

IV. DISCUSSION

13. At the outset, the Panel recalls that, in line with Article 21(3) of the Law, any analysis of continued detention must accept the presumption of innocence as its starting point.²⁴ Detention cannot be maintained lightly and the burden to

¹⁹ See also Haradinaj Appeal Detention Review Decision, para. 55.

²⁰ Haradinaj Appeal Detention Review Decision, para. 55.

²¹ KSC-BC-2020-06, IA008-F00004, Court of Appeals Panel, *Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Review of Detention* ("Veseli Appeals Detention Review Decision"), 1 October 2021, para. 14.

²² KSC-BC-2020-06, IA006/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention*, 1 October 2021, para. 17.

²³ Veseli Appeals Detention Review Decision, para. 15.

²⁴ Ninth Detention Decision, para. 22; Eighth Detention Decision, para. 20; Seventh Detention Decision, para. 13. See also, albeit in relation to pre-trial detention, KSC-BC-2020-06, IA004-F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Interim*

demonstrate that detention is necessary is on the SPO.²⁵ It is not incumbent upon Mr Haradinaj to demonstrate the existence of reasons warranting his release.²⁶

14. The Panel further notes the developments that occurred in the trial proceedings since its last detention review decision (the submission of the Parties' final trial briefs, the presentation of their closing statements, and the closing of the case), and has taken them into consideration for the purpose of the present decision.

A. GROUNDED SUSPICION

15. The SPO submits that the Panel has previously found there to be grounded suspicion within the meaning of Article 41(6)(a) of the Law, following the Pre-Trial Judge's finding of an even higher "well-grounded suspicion" in the Confirmation Decision as corroborated by the Panel's decision under Rule 130 of the Rules.²⁷ The SPO adds that, since the last detention review, all remaining evidence has been presented and nothing in that evidence vitiates the conclusion that a grounded suspicion continues to exist within the meaning of Article 41(6)(a) of the Law.²⁸

16. The Haradinaj Defence submits that the European Court of Human Rights ("ECtHR") has made it clear that, after a certain lapse of time, the persistence of reasonable suspicion no longer suffices and continued detention can be justified only if there are actual indications of a genuine requirement of public interest

Release ("Thaçi Appeal Decision"), 30 April 2021, para. 17. *See also* KSC-BC-2020-05, F00158, Trial Panel I, *Fifth Decision on Review of Detention*, 23 July 2021, para. 14.

²⁵ Ninth Detention Decision, para. 22; Eighth Detention Decision, para. 20; Seventh Detention Decision, para. 13. *See also* Thaçi Appeal Decision, para. 17.

²⁶ Ninth Detention Decision, para. 22; Eighth Detention Decision, para. 20; Seventh Detention Decision, para. 13. *See also* KSC-CC-PR-2017-01, F00004, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017* ("SCCC 26 April 2017 Judgment"), 26 April 2017, para. 115.

²⁷ SPO Submission, para. 3.

²⁸ SPO Submission, para. 4.

which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty.²⁹ The Haradinaj Defence adds that, in the jurisprudence of the ICTY, additional evidence as to “irrefutable facts” adduced by the Accused in the course of the trial is to be included among the facts and circumstances to be considered within the context of the review of the continued necessity for detention, though this is done “in a cursory manner, keeping in mind that this is not the proper time to consider the merits of the case”.³⁰ In the view of the Haradinaj Defence, the SPO has provided neither relevant nor sufficient reasons for the continued detention of Mr Haradinaj, and it continues to make submissions that are worded in abstract, repetitive and formulaic terms.³¹

17. In relation to the Haradinaj Defence’s submission on the basis of ECtHR jurisprudence, the Panel has previously determined that, in advancing the same submission, the Haradinaj Defence overlooked that the two prongs of Article 41(6) of the Law are consistent with the ECtHR’s jurisprudence in that Article 41(6) requires, first, a persisting “reasonable suspicion” and, second, “relevant” and “sufficient” reasons for continued detention.³² The Panel previously found that the Haradinaj Defence disregarded the fact that this Panel has consistently applied and reviewed these two prongs in its previous detention decisions.³³ The Panel will maintain the same approach in the present decision. With regard to the Haradinaj Defence’s reference to ICTY jurisprudence regarding “irrefutable facts” adduced by the Accused in the course of the trial, the Panel has, where applicable, taken into consideration the developments that occurred in the trial proceedings since its preceding detention review decisions and maintains this approach in relation to the present decision.³⁴

²⁹ Haradinaj Submission, para. 6.

³⁰ Haradinaj Submission, para. 7.

³¹ Haradinaj Submission, para. 8.

³² Ninth Detention Decision, para. 26.

³³ Ninth Detention Decision, para. 26.

³⁴ Ninth Detention Decision, para. 23; Eighth Detention Decision, para. 21.

18. The Panel recalls that the Pre-Trial Judge confirmed the Indictment against Mr Haradinaj on the basis that a “well-grounded suspicion” within the meaning of Article 39(2) of the Law existed that he committed offences falling within the jurisdiction of the SC. It is further recalled that the “well-grounded suspicion” threshold for the confirmation of an indictment is higher than the “grounded suspicion” required for continued detention.³⁵ Moreover, the Court of Appeals Panel has confirmed that the Panel’s conclusion that the Accused had a case to answer in relation to all counts in the Indictment,³⁶ suitably corroborates the finding that a grounded suspicion within the meaning of Article 41(6)(a) of the Law continues to exist.³⁷ The Panel also reiterates that, without prejudice to its final determination regarding the charges, the evidence presented by the Parties until the closing of the evidentiary proceedings does not appear to invalidate the finding that a grounded suspicion within the meaning of Article 41(6)(a) of the Law still exists.³⁸ According to the Court of Appeals Panel, the Panel’s reliance on its decision adopted under Rule 130 of the Rules, coupled with the latter finding, reflects that it considered all of the evidence which had been presented at the time of its two previous detention review decisions.³⁹ In the view of the Panel, no new circumstances have intervened that would affect the aforementioned findings.

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

³⁵ Consolidated Appeal Detention Review Decision, para. 29; Ninth Detention Decision, para. 27; Eighth Detention Decision, para. 24. *See also* Veseli Appeal Detention Review Decision, para. 21; F00074/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on the Confirmation of the Indictment* (“Confirmation Decision”), 11 December 2020, para. 28.

³⁶ F00450, Panel, *Decision on the Defence Motions to Dismiss Charges*, 26 November 2021, paras 41, 49, 58, 67, 76, 84, 88.

³⁷ Consolidated Appeal Detention Review Decision, paras 29-30, Ninth Detention Decision, para. 27, Eighth Detention Decision, para. 25.

³⁸ Ninth Detention Decision, para. 27.

³⁹ Consolidated Appeal Detention Review Decision, paras 29-30.

B. NECESSITY OF DETENTION

20. With respect to the grounds for continued detention, Article 41(6)(b) of the Law sets out three alternative bases (risks) on which detention may be found to be necessary.⁴⁰ These grounds must be “articulable” in the sense that they must be specified in detail by reference to the relevant information or evidence.⁴¹ The SPO must accordingly demonstrate the existence of any of these risks against the threshold of articulable grounds to believe.⁴² A Panel must provide specific reasoning and rely on concrete grounds when authorising continued detention.⁴³ In determining whether any of the grounds under Article 41(6)(b) of the Law allowing for a person’s detention exist, the standard to be applied is less than certainty, but more than a mere possibility, of a risk materialising.⁴⁴

1. Risk of Flight

21. The SPO submits that a risk of flight exists for Mr Haradinaj, who testified that he made public the batches because he is opposed to the SC and does not recognise it.⁴⁵ The SPO asserts that, in his capacity as former Deputy Head of the Kosovo Liberation Army War Veterans Association (“KLA WVA”), Mr Haradinaj can call

⁴⁰ Ninth Detention Decision, para. 29; Eighth Detention Decision, para. 27; Seventh Detention Decision, para. 17. *See also* ECtHR, *Buzadji v. the Republic of Moldova* [GC], [no. 23755/07](#), 5 July 2016, para. 88; ECtHR, *Zohlandt v. the Netherlands*, [no. 69491/16](#), 9 February 2021, para. 50; ECtHR, *Grubnyk v. Ukraine*, [no. 58444/15](#), 17 September 2020, para. 115; ECtHR, *Korban v. Ukraine*, [no. 26744/16](#), 4 July 2019, para. 155.

⁴¹ Ninth Detention Decision, para. 29; Eighth Detention Decision, para. 27; Seventh Detention Decision, para. 17. *See also* Article 19.1.30 of the Kosovo Criminal Procedure Code 2012, Law No. 04/L-123, which defines “articulable” as: “the party offering the information or evidence must specify in detail the information or evidence being relied upon”; *Thaçi Appeal Decision*, para. 23.

⁴² Ninth Detention Decision, para. 29; Eighth Detention Decision, para. 27; Seventh Detention Decision, para. 17. *See also* KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, para. 15.

⁴³ Ninth Detention Decision, para. 29; Eighth Detention Decision, para. 27; Seventh Detention Decision, para. 17. *See also* *Thaçi Appeal Decision*, para. 22.

⁴⁴ Ninth Detention Decision, para. 29; Eighth Detention Decision, para. 27; Seventh Detention Decision, para. 17. *See also* *Thaçi Appeal Decision*, para. 22.

⁴⁵ SPO Submission, para. 7.

upon the resources of the organisation to assist in any attempt to flee.⁴⁶ The SPO also asserts that Mr Haradinaj knows that the trial judgment is imminent and the prospect of a conviction gives the highest incentive yet to flee.⁴⁷ Moreover, the SPO claims that Mr Haradinaj's uncooperative behaviour during his arrest further suggests he is a flight risk.⁴⁸

22. The Haradinaj Defence submits that the SPO should take under scrutiny that the danger of absconding cannot be inferred solely on the grounds of the severity of the sentence risked.⁴⁹ It adds that there are a significant number of protective factors that preclude Mr Haradinaj from absconding: first, he has a family; second, he is of good character; third, he is a notable figure in Kosovo; and fourth, he has a network of close associates both within and outside of the KLA WVA.⁵⁰ As to the fourth factor, the Haradinaj Defence further argues that he has served as its Vice President in a manner consistent with the application of the rule of law, and that he is entitled to freely express his opinions with regards to the operation of the SC.⁵¹ Furthermore, the Haradinaj Defence refers to the case law of the ECtHR, which has found that the risk of flight decreases with the passage of time spent in detention, and that the expression "the state of evidence" alone cannot justify lengthy detention.⁵² Lastly, the Haradinaj Defence contends that the SPO fails to consider Mr Haradinaj's demeanour throughout the trial and that he continues to deny the assertion regarding evasive manoeuvres and uncooperative conduct upon arrest.⁵³

⁴⁶ SPO Submission, para. 8.

⁴⁷ SPO Submission, paras 9, 11.

⁴⁸ SPO Submission, para. 10.

⁴⁹ Haradinaj Submission, paras 10, 12.

⁵⁰ Haradinaj Submission, para. 11.

⁵¹ Haradinaj Submission, paras 11, 14.

⁵² Haradinaj Submission, para. 13.

⁵³ Haradinaj Submission, paras 15-16.

23. The Panel recalls that, in its Ninth Detention Decision and Eighth Detention Decision, it found that the risk of Mr Haradinaj fleeing could be mitigated by a set of alternative measures.⁵⁴ The Panel has already rejected the SPO's argument that Mr Haradinaj's testimony regarding his reasons for making the batches public, and his opinion of the SC, show an increased risk of flight.⁵⁵ Furthermore, the Panel has also previously determined that, even though it accepts that proximity to judgment has been found to be a factor raising the risk of flight, it is not in a position to evaluate how Mr Haradinaj may see his prospects at this stage and, thus, does not consider that the proximity of judgment increases the risk of Mr Haradinaj fleeing.⁵⁶ In the absence of further submissions by the SPO in relation to the present decision, the Panel, although not completely excluding the risk that Mr Haradinaj could flee if released, remains satisfied that such a potential risk may be sufficiently mitigated by a set of alternative measures.

24. Therefore, the Panel finds that Mr Haradinaj's continued detention may not be justified on the ground of the risk of flight.

2. Risk of Obstructing the Proceedings

25. The SPO submits that the evidence led on the conduct of Mr Haradinaj in September 2020 shows that his willingness and ability to obstruct the progress of SC proceedings is real.⁵⁷ It adds that Mr Haradinaj is now aware of all confidential information received at trial.⁵⁸ The SPO also asserts that, when this is considered against the climate of intimidation of witnesses in previous Kosovo cases, the risk of the Accused disseminating confidential information has never been higher.⁵⁹

⁵⁴ Ninth Detention Decision, para. 32; Eighth Detention Decision, para. 31.

⁵⁵ Ninth Detention Decision, para. 32.

⁵⁶ Ninth Detention Decision, para. 32.

⁵⁷ SPO Submission, para. 12.

⁵⁸ SPO Submission, para. 13.

⁵⁹ SPO Submission, para. 14.

26. The Haradinaj Defence responds that the danger of the accused hindering the proper conduct of the proceedings has to be supported by factual evidence.⁶⁰ It submits that the SPO fails in this regard in that it merely refers to the “climate of intimidation of witnesses in previous Kosovo cases”, without taking into account the discrepancies presented by Witness W04842.⁶¹

27. The Panel recalls the Pre-Trial Judge’s finding that there was a well-grounded suspicion, *inter alia*, that Mr Haradinaj: (i) intentionally participated in the unauthorised dissemination of protected information and threatened (potential) information providers;⁶² (ii) published on repeated occasions SPO/SITF-related documents received by the KLA WVA,⁶³ which contained, *inter alia*, names of (potential) information providers;⁶⁴ (iii) made various accusations regarding such persons for having allegedly interacted with the SITF/SPO;⁶⁵ (iv) encouraged others to disseminate such information and declared that he sought to discredit the work of the SC;⁶⁶ and (v) repeatedly stated that he would continue to disseminate SPO/SITF-related documents, despite the Single Judge’s orders to the KLA WVA forbidding such dissemination.⁶⁷ In view of the nature of the well-grounded suspicion in the context of the present case,⁶⁸ the Panel, while recalling

⁶⁰ Haradinaj Submission, para. 17.

⁶¹ Haradinaj Submission, para. 18.

⁶² Confirmation Decision, paras 100, 102-103, 105, 108-109, 111-113, 115-117.

⁶³ Confirmation Decision, paras 101-102, 106, 108. *See also* F00009/RED/A01, Specialist Prosecutor, *Annex 1 to Request for Arrest Warrants and Related Orders* (“Annex 1 to SPO Request for Arrest Warrants”), 1 October 2020, pp. 8-9, 11; Second Detention Decision, para. 38; Third Detention Decision, para. 34; Fifth Detention Decision, para. 21.

⁶⁴ Confirmation Decision, para. 106.

⁶⁵ Confirmation Decision, paras 111, 115.

⁶⁶ Confirmation Decision, paras 101, 108, 120. *See also* Annex 1 to SPO Request for Arrest Warrants, pp. 10-11, 14-17, 20, 24; Second Detention Decision, para. 38; Third Detention Decision, para. 34; Fifth Detention Decision, para. 21.

⁶⁷ Confirmation Decision, paras 101-102, 106-108. *See also* F00005, Single Judge, *Urgent Decision Authorising a Seizure*, 7 September 2020, para. 22; F00007, Single Judge, *Decision Authorising a Seizure*, 17 September 2020, para. 22; Annex 1 to SPO Request for Arrest Warrants, pp. 5-6; F00009/RED/A02, Specialist Prosecutor, *Annex 2 to Request for Arrest Warrants and Related Orders*, 1 October 2020, p. 8.

⁶⁸ Consolidated Appeal Detention Review Decision, para. 45.

that any analysis of continued detention must take as a starting point the Accused's presumption of innocence, takes into consideration these findings when determining whether there are articulable grounds to believe that there is a risk of Mr Haradinaj obstructing the present proceedings.

28. In addition, the Panel has previously found that Mr Haradinaj, by virtue of his participation in the trial, is aware of the details of a large body of confidential information.⁶⁹ Moreover, in relation to Mr Haradinaj's testimony that he would make public any SITE, SPO or SC materials that would arrive at the KLA WVA, the Panel has already determined that, while the weight to be attached to this statement will have to be assessed with the totality of evidence at the end of the trial, it confirms, for the purpose of ascertaining the risk under Article 41(6)(b)(ii) of the Law, the vows expressed earlier by Mr Haradinaj and noted by the Pre-Trial Judge and this Panel.⁷⁰ The Panel further confirms its finding that, as the former Deputy Head of the KLA WVA, Mr Haradinaj, if released, would have the means to disseminate information that he received through the disclosure process, or any other protected material he may obtain after release, by communicating with the media or with the assistance of others within the KLA WVA.⁷¹

29. In the view of the Panel, the SPO Submission does not, contrary to the submission of the Haradinaj Defence, consist of a mere reference to the climate of intimidation of witnesses in previous Kosovo cases since it primarily relies on Mr Haradinaj's willingness and ability to disseminate confidential information. In any event, as is evident from the preceding considerations, the Panel has not grounded its analysis concerning the risk under Article 41(6)(b)(ii) of the Law exclusively on the climate of intimidation of witnesses in previous Kosovo cases. It further follows that, any alleged issue regarding the reliability of W04842's

⁶⁹ Consolidated Appeal Detention Review Decision, paras 43, 46-47; Ninth Detention Decision, para. 37.

⁷⁰ Ninth Detention Decision, para. 37.

⁷¹ Ninth Detention Decision, para. 38; Seventh Detention Decision, para. 23; Sixth Detention Decision, paras 27-28; Fifth Detention Decision, para. 17; First Detention Decision, para. 17.

evidence would not be capable of affecting the Panel's determination for the purposes of the present decision, which is without prejudice to any determination it will make in relation to this witness in the trial judgment. Furthermore, insofar as the Haradinaj Defence is challenging the evidence underpinning the confirmed charges presented by the SPO at trial, the Panel recalls that detention review is not the proper forum to address the merits of the case and the totality of the evidence submitted at trial.⁷²

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

3. Risk of Committing Offences

31. The SPO submits that the vow of Mr Haradinaj to continue to disseminate SITF/SPO information demonstrates that such incidents would continue if he were to be released.⁷³ It argues that, considering Mr Haradinaj's previous conduct when given confidential information, there is every reason to believe that detention remains necessary to prevent the commission of further offences.⁷⁴

32. The Haradinaj Defence responds that the continued detention of Mr Haradinaj based on the risk of committing further crimes should entail a danger that is plausible in the light of the circumstances of the case.⁷⁵ It avers that the SPO merely repeats its abstract concerns regarding the risk that Mr Haradinaj will disseminate information to which he has no access.⁷⁶

⁷² Consolidated Appeal Detention Review Decision, para. 44.

⁷³ SPO Submission, para. 15.

⁷⁴ SPO Submission, para. 16.

⁷⁵ Haradinaj Submission, para. 19.

⁷⁶ Haradinaj Submission, para. 20.

33. The Panel recalls its findings regarding the risk of obstructing the proceedings and, more specifically, Mr Haradinaj's past conduct, including his recent vow during his testimony to continue to publish SITF/SPO/SC-related information. Moreover, contrary to the Haradinaj Defence's submission that Mr Haradinaj has no access to information that could be disseminated, Mr Haradinaj has become aware of the details of a large body of confidential information by virtue of his participation in the trial, as already set out above. On this basis, the Panel finds that there remain articulable grounds to believe that, if released, Mr Haradinaj will commit offences either in repetition of those charged or which he has previously threatened to commit. The Panel reiterates that this finding, based on the threshold of articulable grounds to believe, is without prejudice to the determination it will make in relation to the charges after having assessed all relevant evidence and arguments put forth by the Parties at trial.⁷⁷

4. Conclusion

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

C. MEASURES ALTERNATIVE TO DETENTION

35. Article 41(12) of the Law sets out a number of options to consider in order to ensure the Accused's presence at trial, to prevent reoffending, or to ensure the successful conduct of proceedings.⁷⁸ The Panel recalls that detention should only

⁷⁷ Ninth Detention Decision, para. 43; Eighth Detention Decision, para. 40; Seventh Detention Decision, para. 26; Sixth Detention Decision, para. 29.

⁷⁸ Article 41(12) of the Law; Sixth Detention Decision, para. 25.

be continued if there are no alternative, more lenient measures reasonably available that could sufficiently mitigate the risks set out in Article 41(6)(b) of the Law.⁷⁹ The Panel must therefore consider *proprio motu* all reasonable alternative measures that could be imposed, and not only those raised by the Defence or the SPO.⁸⁰

36. As held by the Court of Appeals Panel, when assessing: (i) whether alternative measures can be effectively enforced and (ii) whether any proposed conditions can sufficiently mitigate the identified Article 41(6)(b) risks, the competent Panel must enquire into the enforceability of the alternative measures.⁸¹

1. Parties' Submissions

37. The SPO recalls its previous submissions that the conditions of detention in Kosovo proposed by the Kosovo Police⁸² remain insufficient and the Kosovo Police cannot effectively enforce them.⁸³ The SPO asserts that, since the last review, nothing has changed that would affect these considerations, or the conclusion that the proposed conditions are insufficient to mitigate the risks presented under Article 41(6)(b) of the Law.⁸⁴ According to the SPO, it is only through the

⁷⁹ Ninth Detention Decision, para. 45; Eighth Detention Decision, para. 42; Seventh Detention Decision, para. 28; Sixth Detention Decision, para. 31. *See also* SCCC 26 April 2017 Judgment, para. 114; KSC-CC-PR-2020-09, F00006, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020* ("SCCC 22 May 2020 Judgment") 22 May 2020, para. 70. *See also* ECtHR, *Buzadji v. the Republic of Moldova* [GC], [no. 23755/07](#), 5 July 2016, para. 87 *in fine*; ECtHR, *Idalov v. Russia* [GC], [no. 5826/03](#), 22 May 2012, para. 140 *in fine*.

⁸⁰ Ninth Detention Decision, para. 45; Eighth Detention Decision, para. 42; Seventh Detention Decision, para. 28; Sixth Detention Decision, para. 31. *See also* KSC-BC-2020-06, IA003/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Interim Release* ("Selimi Appeal Decision"), 30 April 2021, para. 86; KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, para. 24.

⁸¹ Veseli Appeals Detention Review Detention, paras 48-53.

⁸² F00449, *Reply to Request number KSC-BC-2020-07, dated 22 October 2021*, 25 November 2021, confidential.

⁸³ SPO Submission, para. 18.

⁸⁴ SPO Submission, para. 19.

communication monitoring framework applicable at the SC's detention facilities that the communications of Mr Haradinaj could be effectively controlled with a view to sufficiently mitigate the risks.⁸⁵

38. The Haradinaj Defence asserts that Mr Haradinaj is of good character and that the SPO's reasons are merely insufficient.⁸⁶ The Haradinaj Defence, therefore, reiterates its submissions regarding the ECtHR's jurisprudence.⁸⁷

2. The Panel's Findings

39. The Panel shall consider whether any measures could mitigate the aforementioned risks.

(a) Risks

40. As regards the risk of flight, the Panel found in the Ninth Detention Decision and the Eighth Detention Decision that any remaining risk of Mr Haradinaj fleeing could be sufficiently mitigated by the regime proposed by the Kosovo Police ("Proposed Regime").⁸⁸ The Panel reiterates its findings that the guarantees provided by the Proposed Regime could ensure that Mr Haradinaj would report to the relevant police station, would surrender travel documents, would be prevented from leaving the country, and would return to the SC whenever ordered to do so to be present during proceedings.⁸⁹ The Panel remains accordingly satisfied that Mr Haradinaj would remain in house arrest if ordered so and would comply with measures aimed at monitoring his whereabouts. The Panel considers that, since the last detention review, no circumstances have intervened that would affect the aforementioned findings.

⁸⁵ SPO Submission, para. 19.

⁸⁶ Haradinaj Submission, para. 21.

⁸⁷ Haradinaj Submission, para. 21.

⁸⁸ See *supra* para. 23. See also Ninth Detention Decision, paras 32, 50; Eighth Detention Decision, paras 31, 52.

⁸⁹ Ninth Detention Decision, para. 50; Eighth Detention Decision, para. 52.

41. As regards the risk of obstructing proceedings, the Panel found in the Ninth Detention Decision and the Eighth Detention Decision that no alternative measures, including the Proposed Regime, would sufficiently mitigate the risk of Mr Haradinaj obstructing the proceedings by disseminating or facilitating the dissemination of confidential or otherwise protected information and thereby threatening or influencing witnesses, victims or accomplices.⁹⁰ These findings have been upheld by the Court of Appeals Panel.⁹¹ The Haradinaj Defence's reference to Mr Haradinaj's character is, as such, insufficient to depart from these findings and its arguments regarding ECtHR jurisprudence have been addressed above. The Panel further considers that, since the last detention review, no new circumstances have intervened that would affect these findings. The Panel, thus, reiterates that it is only through the communication monitoring framework applicable at the SC's detention facilities that the communications of Mr Haradinaj could be effectively controlled with a view to sufficiently mitigating the risks.⁹²

42. As regards the risk of committing offences, the Panel reiterates its view that, considering the above findings regarding the mitigation of the risk of obstructing the proceedings, no alternative measures, including the Proposed Regime, can sufficiently mitigate the risk that Mr Haradinaj will commit offences either in repetition of those charged or which he has previously threatened to commit.⁹³ The Panel considers that, since the last review, no new circumstances have intervened that would affect these findings.

(b) Additional Measures

43. The Panel previously considered that no further additional measures could be imposed that would (i) ensure the effectiveness of the specific measures of the

⁹⁰ Ninth Detention Decision, para. 51; Eighth Detention Decision, para. 77.

⁹¹ Consolidated Appeal Detention Review Decision, paras 54-57.

⁹² Ninth Detention Decision, para. 51; Eighth Detention Decision, paras 86-87.

⁹³ Ninth Detention Decision, para. 52; Eighth Detention Decision, para. 78.

Proposed Regime, (ii) while appropriately safeguarding the rights of a significant number of individuals, including family members and acquaintances of the Accused as well as hospital or other personnel.⁹⁴

44. The Panel finds that, since the last review, no new circumstances have intervened that would affect these considerations or the conclusion that any additional measure is insufficient to mitigate the risks presented under Article 41(6)(b).

45. Therefore, the Panel finds that there are no additional measures that it could order *proprio motu* that could sufficiently mitigate the existing risks.

(c) Conclusion

46. The Panel accordingly finds that no alternative measure is sufficient to adequately mitigate the risks under Article 41(6)(b)(ii)-(iii) of the Law in relation to Mr Haradinaj and that any additional conditions imposed by the Panel would not affect this conclusion.

47. As the Panel has previously found, it is only through the communication monitoring framework applicable at the SC's detention facilities that Mr Haradinaj's communications could be effectively controlled with a view to sufficiently mitigating the risks of him obstructing SC proceedings or committing further crimes.

D. REASONABLENESS OF DETENTION

48. The SPO submits that, since the last review, this trial continued to move expeditiously, the case closed and the trial judgment is expected shortly.⁹⁵ It is of the view that, given, *inter alia*, the closing of the case, the lengthy custodial

⁹⁴ Ninth Detention Decision, paras 53-55; Eighth Detention Decision, para. 83.

⁹⁵ SPO Submission, para. 21.

sentence requested for a conviction, and the heightened risks if released, the detention of Mr Haradinaj continues to be reasonable and proportionate.⁹⁶

49. The Haradinaj Defence submits that Mr Haradinaj's detention is disproportionate and unreasonable.⁹⁷ It is of the view that the SPO, instead of providing substance, perpetually carries out a predictive assessment as to the length of the final sentence, thereby implying a judgment of guilt and disregarding the presumption of innocence.⁹⁸ The Haradinaj Defence claims that there is nothing that indicates a high probability that Mr Haradinaj would take any steps to interfere with the legitimate interest pursued.⁹⁹

50. As regards the length of detention, the Panel recalls that it must consider the duration of time spent in detention along with the risks in Article 41(6)(b) of the Law, in order to determine whether, all factors being considered, the continued detention is unreasonable and the person needs to be released.¹⁰⁰ The Panel is accordingly under an obligation to ensure that the time spent in detention is reasonable, including during trial.¹⁰¹

51. The Panel observes that Mr Haradinaj has been in detention for almost nineteen months since his arrest. The Panel further notes that significant developments occurred in the case during the time that Mr Haradinaj spent in detention, including in the past two months. Specifically, since the last detention review, the Parties have filed their final trial briefs¹⁰² and presented their closing arguments.¹⁰³ The Panel expects to render a judgment as soon as practicable.

⁹⁶ SPO Submission, para. 22.

⁹⁷ Haradinaj Submission, para. 22.

⁹⁸ Haradinaj Submission, para. 22.

⁹⁹ Haradinaj Submission, para. 23.

¹⁰⁰ Selimi Appeal Decision, para. 79.

¹⁰¹ SCCC 22 May 2020 Judgment, para. 63.

¹⁰² F00565, Specialist Prosecutor, *Prosecution Final Brief*, 3 March 2022; F00566, Haradinaj Defence, *Final Trial Brief on Behalf of Nasim Haradinaj*, 3 March 2022; F00567, Gucati Defence, *Final Trial Brief on behalf of Hysni Gucati*, 4 March 2022.

¹⁰³ Transcript, 14-17 March 2022, pp 3420-3855.

Furthermore, as already recalled above, the present assessment does not impinge on Mr Haradinaj's presumption of innocence. The Panel has also determined that, contrary to the Haradinaj Defence's assertion, the risks under Article 41(6)(b)(ii)-(iii) of the Law persist at present and cannot be sufficiently mitigated.

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

V. DISPOSITION

53. For the above-mentioned reasons, the Panel hereby **ORDERS** Mr Haradinaj's continued detention until the pronouncement of the Trial Judgment.



Judge Charles L. Smith, III

Presiding Judge

Dated this Thursday, 21 April 2022

At The Hague, the Netherlands