

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

**Before:** Court of Appeals Panel  
Judge Michèle Picard  
Judge Emilio Gatti  
Judge Kai Ambos

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Counsel for Rexhep Selimi

**Date:** 9 August 2022

**Language:** English

**Classification:** Public

---

**Public Redacted Version of Selimi Defence Reply to SPO Response to Selimi  
Defence Appeal against Decision on Periodic Review of Detention**

---

**Specialist Prosecutor**

Jack Smith

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Victims**

Simon Laws

**Counsel for Kadri Veseli**

Ben Emmerson

**Counsel for Rexhep Selimi**

David Young

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

## I. INTRODUCTION

1. The Selimi Defence files this brief Reply to the Specialist Prosecutor's Office ("SPO") Response<sup>1</sup> to the Appeal<sup>2</sup> filed pursuant to Article 45(1) of the Law<sup>3</sup> and Rule 170(2) of the Rules<sup>4</sup> against the Decision on Remanded Detention Review and Periodic Review of Detention of Rexhep Selimi, issued by the Pre-Trial Judge on 13 May 2022 ("Impugned Decision"),<sup>5</sup> which denied Mr. Selimi's request for interim release, filed on 7 April 2022 ("Defence Request").<sup>6</sup>
2. This reply is limited to addressing two new issues raised in the Response, namely relating to: (1) the nature and consequence of the Pre-Trial Judge's error relating to the regularity of family visits; and (2) the appropriate manner for assessing whether proposed conditions effectively mitigate identified risks.
3. The Defence also maintains its original submissions in full. Further, the absence of a specific submission in reply to any aspect of the Response is not indicative of a concession as to the validity of that submission.

---

<sup>1</sup> KSC-BC-2020-06/IA021/F00003, Response to Selimi Defence Appeal against Decision on Periodic Review of Detention of 25 May 2022, 7 June 2022 ("SPO Response").

<sup>2</sup> KSC-BC-2020-06/IA021/F00001, Selimi Defence Appeal against Decision on Periodic Review of Detention of Rexhep Selimi, 25 May 2022 ("Appeal").

<sup>3</sup> Law No.05/L-053 on SC and SPO, 3 August 2015 ("Law"). All references to 'Article' or 'Articles' herein refer to articles of the Law, unless otherwise specified.

<sup>4</sup> Rules of Procedure and Evidence before the KSC, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

<sup>5</sup> KSC-BC-2020-06/F00802, Decision on Periodic Review of Detention of Rexhep Selimi, 13 May 2022 ("Impugned Decision").

<sup>6</sup> KSC-BC-2020-06/F00763, Selimi Defence Submissions on Review of Detention, 7 April 2022 ("Defence Request").

## II. SUBMISSIONS

### a. Nature and impact of Pre-Trial Judge's error relating to private visits

4. The Appeal did not challenge whether the Pre-Trial Judge erred in comparing the detention regime with that proposed for interim release as it is recognised that the Appeals Panel has previously held that such a comparison was “permissible to identify whether the latter remains necessary at this stage.”<sup>7</sup> The Defence simply required that if the Pre-Trial Judge compared the two regimes and in so doing relied on Mr. Selimi's current right to unmonitored communication in detention as a “fact it found to be relevant in coming to its conclusion”<sup>8</sup> in this comparison, this fact relied upon must be accurately identified and described by the Pre-Trial Judge. It was not.
5. In this regard, the SPO's attempts to explain that the Pre-Trial Judge's error in relation to the number of permitted private visits in the KSC Detention Facilities is “not an error at all”<sup>9</sup> simply serves to fully illustrate and compound that error.
6. While the Pre-Trial Judge does indeed correctly refer to the relevant provision of the relevant Practice Direction as the SPO suggests,<sup>10</sup> he then proceeds to erroneously summarise this provision by missing out the two crucial words “at least.” The clear interpretation of this provision given in the Impugned Decision is that while detained, the maximum amount of family visits that Mr. Selimi can enjoy is one every three months. Missing

---

<sup>7</sup> KSC-BC-2020-06/IA015/F00005, Court of Appeals, Decision on Rexhep Selimi's Appeal against Decision on Remanded Detention Review and Periodic Review of Detention, 25 March 2022, para. 35 (“Third Appeals Detention Decision”).

<sup>8</sup> SPO Response, para. 16 citing to Gucati Appeal Decision, KSC-BC-2020-07/IA001/F00005, para. 61.

<sup>9</sup> SPO Response, para. 12

<sup>10</sup> Ibid.

out the words “at least” in Article 24 thus constitutes an erroneous interpretation of that provision. For the SPO to claim the opposite beggars belief.

7. Moreover, this is not a minor or inconsequential error. The central factor in the Impugned Decision is the proposed [REDACTED] if granted interim release, as compared with the amount he enjoys now while in detention. The precise amount of unmonitored contact that Mr. Selimi currently enjoys is therefore far from “irrelevant” as the SPO mistakenly surmises,<sup>11</sup> but crucial to a fair and impartial assessment of this relevant factor. This is of even more importance when determining whether a lesser than [REDACTED] would be sufficient as the Defence has suggested.<sup>12</sup>
8. The Impugned Decision thus contained a crucial and demonstrable error that permeated the rest of the Pre-Trial Judge’s findings on this factor.

**b. Applicable standard for mitigating Article 41(6)(b) risks**

9. The SPO’s assertion that the Appeal “mis-frames the risk assessment made in the Impugned Decision”<sup>13</sup> demonstrates a misunderstanding by the SPO of the process for identifying risk and then determining whether it can be sufficiently mitigated by conditions of release.
10. According to the SPO, it is only when identifying the existence of an Article 41(6)(b) risk that the Pre-Trial Judge must find “articulable grounds to believe” but when this risk has been identified, the proposed conditions must simply be “assessed.”<sup>14</sup> However, no explanation is given by the SPO

---

<sup>11</sup> SPO Response, para. 14.

<sup>12</sup> Appeal, para. 23.

<sup>13</sup> SPO Response, para. 19.

<sup>14</sup> Ibid.

or indeed by the Pre-Trial Judge as to how this assessment must actually be carried out.

11. As set out in the Appeal,<sup>15</sup> having purportedly identified the risk of Mr. Selimi obstructing proceedings or committing crimes up to the relevant standard, the Pre-Trial Judge was then obliged to have analysed the impact of the proposed conditions to see if they sufficiently mitigated these risks or whether, effectively, the risk was still present. The impact of the relevant conditions in relation to [REDACTED]. All other contact with third parties would have to occur through a designated room which would be subject to audio and video surveillance.
12. The actual likelihood, in terms of ability and motivation, of Mr. Selimi passing on illicit message to [REDACTED], and [REDACTED] agreeing to pass them on, is thus directly relevant to whether allowing Mr. Selimi [REDACTED] while released would sufficiently mitigate the Article 41(6)(b) risks.
13. When assessing this likelihood, of the risk occurring despite the proposed conditions of release, the Pre-Trial Judge must therefore apply the same standard for initially identifying an Article 41(6)(b) risk, namely articulable grounds to believe that a risk would still occur rather than the hypothetical possibility that it would. To apply a lower standard is not envisaged by the Statute or Rules and would be wholly inconsistent with the envisaged regime for interim release.

---

<sup>15</sup> Appeal, para. 21.

### III. CONCLUSION & RELIEF REQUESTED

14. For the reasons set out herein, the Defence therefore requests the Appeals Panel to:

- a. REVERSE the Impugned Decision; and,
- b. ORDER the immediate release of Mr. Selimi, subject to the Consolidated Conditions set out herein or any other conditions deemed necessary and appropriate to effectively mitigate the Article 41(6)(b) risks identified by the Pre-Trial Judge.

Word count: 1,104

Respectfully submitted on 9 August 2022,



---

DAVID YOUNG  
Lead Counsel for Rexhep Selimi



---

GEOFFREY ROBERTS  
Co-counsel for Rexhep Selimi



---

ERIC TULLY  
Co-counsel for Rexhep Selimi



---

RUDINA JASINI  
Co-counsel for Rexhep Selimi