



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

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 6 September 2022

Language: English

Classification: Public

Public Redacted Version of

Prosecution Submissions on Detention Review of Mr Selimi

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I. Introduction

1. Mr Selimi has been repeatedly found to pose a risk of flight, of obstruction to the progress of proceedings at the Kosovo Specialist Chambers and/or of committing further crimes against those perceived as being opposed to the KLA, including (potential) witnesses.¹ The requirements under Article 41(6) of the Law² remain satisfied and no alternative, reasonable measures to detention exist that sufficiently mitigate the risks identified.

2. There has been no change in circumstances since the Appeals Panel decision of 29 July 2022,³ upholding the Pre-Trial Judge's order for the continued detention of Mr Selimi of 13 May 2022.⁴ Mr Selimi's detention remains necessary and proportional.

II. Procedural background

3. The Accused went into custody on 5 November 2020 and was transferred to the seat of the Kosovo Specialist Chambers in The Hague. The Pre-Trial Judge issued

¹ See for example Decision on Rexhep Selimi's Application for Interim Release, KSC-BC-2020-06/F00179, 22 January 2021 (public redacted version notified on 26 January 2021) ('First PTJ Detention Decision'), para.50; Decision on Rexhep Selimi's Appeal against Decision on Interim Release, KSC-BC-2020-06/IA003/F00005, 30 April 2021 (public redacted version notified on 30 April 2020) ('First Appeals Panel Detention Decision'), paras 74-75; Decision on Rexhep Selimi's Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA007/F00005, 1 October 2021 (public redacted version notified on 1 October 2021) ('Second Appeals Panel Detention Decision'), para.40; Decision on Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F00802/RED, 13 May 2022 (public redacted version notified 25 May 2022) ('Fourth PTJ Detention Decision'), para.41.

² Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

³ Decision on Selimi Appeal Against "Decision on Periodic Review of Detention of Rexhep Selimi", KSC-BC-2020-06/IA021/F00005, 29 July 2022 (public redacted version notified on 2 August 2022) ('Fourth Appeals Panel Detention Decision').

⁴ Fourth PTJ Detention Decision, KSC-BC-2020-06/F00802/RED, disposition.

orders for his continued detention on 22 January 2021,⁵ 25 June 2021,⁶ 26 November 2021,⁷ and 13 May 2022.⁸

4. The Appeals Panel confirmed orders for Mr Selimi's continued detention on 30 April 2021,⁹ 25 March 2022,¹⁰ and most recently on 29 July 2022.¹¹ The Appeals Panel further reiterated that there is a risk that Mr Selimi, if released, will obstruct the progress of the proceedings in its decision of 1 October 2021.¹²

III. Submissions

5. For purposes of a detention review under Rule 57(2),¹³ the reasons or circumstances underpinning detention must be reviewed in order to determine whether these reasons continue to exist under Article 41(6) of the Law.¹⁴ That determination inevitably concerns what has changed, if anything, since the previous ruling on detention. The Pre-Trial Judge is not required to make findings on the factors already decided upon in the initial ruling on detention.¹⁵ The Defence has not

⁵ First PTJ Detention Decision, KSC-BC-2020-06/F00179/RED.

⁶ Decision on Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F00372, 25 June 2021 (public redacted version notified on 30 June 2021).

⁷ Decision on Remanded Detention Review and Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F00580, 26 November 2021 (public version notified 8 December 2021) ('Third PTJ Detention Decision').

⁸ Fourth PTJ Detention Decision, KSC-BC-2020-06/F00802/RED.

⁹ First Appeals Panel Detention Decision, KSC-BC-2020-06/IA003/F00005/RED.

¹⁰ Decision on Rexhep Selimi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA015/F00005, 25 March 2022 (public redacted version notified on 25 March 2022) ('Third Appeals Panel Detention Decision').

¹¹ Fourth Appeals Panel Detention Decision, KSC-BC-2020-06/IA021/F00005/RED.

¹² While confirming the risk of obstruction, the Appeals Panel remanded back to the Pre-Trial Judge his 25 June 2021 decision, to receive further information on conditional release. The Pre-Trial Judge maintained the detention after receiving the relevant submissions, and the Appeals Panel upheld the Pre-Trial Judge's decision on remand. Second Appeals Panel Detention Decision, KSC-BC-2020-06/IA007/F00005, para.40; Second PTJ Detention Decision, KSC-BC-2020-06/F00580/RED; Third Appeals Panel Detention Decision, KSC-BC-2020-06/IA003/F00005.

¹³ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

¹⁴ *Prosecutor v. Gucati and Haradinaj*, Decision on Nasim Haradinaj's Appeal on Decision Reviewing Detention, KSC-BC-2020-07/IA002/F00005, 9 February 2021, para.55.

¹⁵ KSC-BC-2020-07/IA002/F00005, para.55.

identified any relevant change in circumstances since the last ruling on detention, and indeed, no changes have occurred.

A. EXISTENCE OF A GROUNDED SUSPICION

6. The Pre-Trial Judge has determined that there is a ‘well-grounded’ suspicion that Mr Selimi is criminally liable for the crimes contained in the confirmed indictment.¹⁶ These findings were ‘made on the basis of a standard exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a) of the Law’.¹⁷ There has been no development capable of changing this finding or warranting its re-examination by the Pre-Trial Judge. The Article 41(6)(a) criteria are met.

B. THERE ARE ARTICULABLE GROUNDS TO BELIEVE THAT THE ARTICLE 41(6) RISKS EXIST

7. In assessing the Article 41(6)(b) criteria, the panel must consider whether there exists a *risk*, in other words whether it is *possible* – rather than inevitable - for the person to abscond, destroy, hide, change or forge evidence of a crime, obstruct the progress of criminal proceedings, or repeat the criminal offence, complete an attempted crime, or commit a crime that the person threatened to commit.¹⁸

8. The Article 41(6)(b) criteria are in the alternative. While only one of the criteria needs to be met for a person to be detained,¹⁹ it is established that all three Article 41(6)(b) criteria exist with respect to Mr Selimi. As recently as 13 May 2022, the Pre-

¹⁶ Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00026, 26 October 2020 (public redacted version notified on 30 November 2020); Decision on the Confirmation of Amendments to the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00777, 22 April 2022 (public redacted version notified 6 May 2022); Decision on Motion Alleging Defects in the Form of the Amended Indictment, KSC-BC-2020-06/F00895, 22 July 2022.

¹⁷ Fourth PTJ Detention Decision, KSC-BC-2020-06/F00802/RED, para.23.

¹⁸ *Prosecutor v. Gucati and Haradinaj*, Decision on Hysni Gucati’s Appeal on Matters Related to Arrest and Detention, KSC-BC-2020-07/F00005, 9 December 2020, para.67. *See also* Fourth PTJ Detention Decision, KSC-BC-2020-06/F00802/RED, para.25.

¹⁹ First PTJ Detention Decision, KSC-BC-2020-06/F00179/RED, para.25; First Appeals Panel Detention Decision, KSC-BC-2020-06/IA003/F00005/RED, para.76.

Trial Judge identified the following articulable reasons to believe that these criteria have been met:

- a. Mr Selimi has an incentive and the means to evade proceedings. Relatedly, Mr Selimi maintains a position of influence that may assist him in evading proceedings;²⁰
- b. Mr Selimi has, [REDACTED]. [REDACTED]²¹ shows this. This is correctly viewed in the context of a persistent climate of intimidation of witnesses and interference with criminal proceedings.²² Notably, the filing of the SPO's pre-trial brief and witness list, as well as disclosure of identities of witnesses, increase the risk of obstruction;²³
- c. There is a risk that Mr Selimi commits further crimes, considering his alleged personal participation in the commission of charged crimes and his alleged use of others to commit crimes.²⁴

9. Each of the enumerated, articulable grounds are still relevant and continue to necessitate Mr Selimi's detention.

C. NO CONDITIONS SUFFICIENTLY MITIGATE THE ESTABLISHED RISKS

10. No alternative measures sufficiently mitigate the Article 41(6)(b) risks. Past proposals for conditional release, such as house detention, monitored visits, surrender

²⁰ Fourth PTJ Detention Decision, KSC-BC-2020-06/F00802/RED, para.27.

²¹ Fourth PTJ Detention Decision, KSC-BC-2020-06/F00802, paras 30-31. *See also* First Appeals Panel Detention Decision, KSC-BC-2020-06/IA003/F00005, paras 74-75; Second Appeals Panel Detention Decision, KSC-BC-2020-06/IA007/F00005, para.40.

²² Fourth PTJ Detention Decision, KSC-BC-2020-06/F00802, para.32. *See also* Third Appeals Panel Detention Decision, KSC-BC-2020-06/IA003/F00005, para.43.

²³ Fourth PTJ Detention Decision, KSC-BC-2020-06/F00802, paras 33 and 37.

²⁴ Fourth PTJ Detention Decision, KSC-BC-2020-06/F00802/RED, paras 39-40.

of passport and other travel documents, and regular reporting to authorities have been found to not sufficiently mitigate the risks posed by the Accused.²⁵

11. The Selimi Defence has not made submissions as part of the current round of detention review. Although the Pre-Trial Judge must *proprio motu* consider ‘all reasonable mitigation measures beyond those raised by the Defence’, the list of reasonable measures is not unlimited²⁶ and measures need to be realistic.²⁷ All reasonable, realistic alternatives to detention in the controlled environment of the Detention Facilities in The Hague have been duly considered and rightfully rejected.

D. MR SELIMI’S CONTINUED DETENTION IS REASONABLE

12. In addition to being necessary, the continued detention of the Accused is reasonable. Mr Selimi is charged with 10 counts of war crimes and crimes against humanity and, if convicted, could face a lengthy sentence. The risks under Article 41(6) cannot be adequately managed outside of the Detention Facilities. Key milestones in the pre-trial stage have either been met or will be met imminently. Importantly, the SPO has submitted its pre-trial brief and witness list to the Accused, and is also on track to submit an updated witness list, supplement its Rule 102(3) notice, complete the disclosure of items requested from the original Rule 102(3) notice, and supplement its Rule 109(c) chart in accordance with ordered deadlines.

13. The continued detention of Mr Selimi is reasonable considering the progress of this case towards trial, its scope and complexity, the lengthy custodial sentence in the event of a conviction, and the risks posed.

²⁵ Fourth PTJ Detention Decision, KSC-BC-2020-06/F0080, paras 53-59; Fourth Appeals Panel Detention Decision, KSC-BC-2020-06/IA021/F00005/RED.

²⁶ Fourth Appeals Panel Detention Decision, KSC-BC-2020-06/IA021/F00005, para.17.

²⁷ Decision on Jakup Krasniqi’s Appeal Against Decision on Periodic Review of Detention, KSC-BC-2020-06/IA020/F00005, 2 August 2022 (public redacted version notified 2 August 2022), para.33.


IV. Classification

14. The present submission is filed confidentially in accordance with Rule 82(4). A public redacted version of this submission will be filed.

V. Relief Requested

15. For the foregoing reasons, the Pre-Trial Judge should order the continued detention of Mr Selimi.

Word count: 1606



Jack Smith

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Tuesday, 6 September 2022

At The Hague, the Netherlands.