

**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:** Counsel for Rexhep Selimi

**Date:** 23 September 2022

**Language:** English

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**Public Redacted Version of Selimi Defence Response to Prosecution  
Submissions on Detention Review of Mr. Selimi**

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## I. INTRODUCTION

1. Extensive, reasonable, realistic and enforceable conditions of interim release can, sufficiently mitigate the likelihood of the risks identified by the Pre-Trial Judge pursuant to Article 41(6)(b) materialising in relation to Mr. Selimi.<sup>1</sup>
2. In these circumstances, the Pre-Trial Judge should reject the SPO Request for the continued pre-trial detention of Mr. Selimi,<sup>2</sup> notwithstanding the Appeals Panel Decision<sup>3</sup> which upheld the continued detention of Mr. Selimi ordered by the Pre-Trial Judge.<sup>4</sup>

## II. SUBMISSIONS

### A. Unmonitored visits of Mr. Selimi

3. The SPO erroneously contends that:

“All reasonable, realistic alternatives to detention in the controlled environment of the Detention Facilities in The Hague have been duly considered and rightfully rejected.”<sup>5</sup>

4. However, the Pre-Trial Judge has only explicitly considered measures specifically proposed by the Defence. Although he has found in general terms that, “on the basis of the available information as to the capacity of the Kosovo Police to implement monitoring measures, no additional measures, which could

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<sup>1</sup> The present Defence submissions are limited to addressing whether possible conditions of interim release would be sufficient to mitigate the Article 41(6) risks identified by the Pre-Trial Judge. The Defence neither concedes nor accepts that the conditions for ongoing detention under Article 41(6) of the KSC Law have been met, nor that detention remains proportionate, and reserves its right to make further and fuller submissions on all aspects of the detention review regime in subsequent filings.

<sup>2</sup> KSC-BC-2020-06/F00933, Prosecution Submissions on Detention Review of Mr. Selimi, 22 August 2022 (“SPO Response”).

<sup>3</sup> KSC-BC-2020-06/IA021/F00005, Decision on Selimi Appeal Against “Decision on Periodic Review of Detention of Rexhep Selimi”, 29 July 2022 (“Fourth Appeals Detention Decision”).

<sup>4</sup> KSC-BC-2020-06/F00802, Decision on Periodic Review of Detention of Rexhep Selimi, 13 May 2022 (“Fourth PTJ Detention Order”).

<sup>5</sup> SPO Response, para. 11.

be reasonably considered, could sufficiently mitigate the identified risks,”<sup>6</sup> without a specific and thorough analysis of every condition in the Fourth Detention Order, there can be no presumption that it can have been duly considered and rejected. Therefore, new or amended conditions of release can be raised at any time and must be duly assessed by the Pre-Trial Judge.

5. The Pre-Trial Judge has previously held that, between Mr. Selimi and his Close Family Members, [REDACTED], unmonitored visits would allow Mr. Selimi to “use his family to convey messages to the exterior”<sup>7</sup> and consequently:

(i) “while it is possible for Mr. Selimi to have unmonitored communications at the SC Detention Facilities, these are strictly limited considering that detainees are only allowed unmonitored “private visits” for certain close family members and within limited time periods, namely once every three months for a period of up to three hours;”<sup>8</sup> and,

(ii) “[REDACTED] is not comparable to the limited, yet regular visits Mr. Selimi receives [REDACTED] at the SC Detention Facilities”.<sup>9</sup>

6. Pursuant to Article 10(2) of the Registry Practice Direction on Detainees (“Registry Practice Direction”), “Visits and Communication”, Mr. Selimi may receive “visits from family members and other persons with whom the Detainee has a pre-existing personal relationship.” Section 11 of the Detention Management Unit Instruction “Visiting Procedures for Family Members and Other Personal Visitors” (“DMU Instruction”) further provides that “a Detainee shall be allowed a maximum of 10 visiting days in any 30-day period,” while

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<sup>6</sup> Fourth PTJ Detention Order, para. 58.

<sup>7</sup> Ibid, para. 54.

<sup>8</sup> Ibid, para. 55.

<sup>9</sup> Ibid, para. 55 referring to AI015-F00005, Decision on Rexhep Selimi’s Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, 25 March 2022, para. 37, footnote 90 (“Third Appeal Panel Decision”). Emphasis added.

Section 12 sets out the applicable visiting hours for such visits. Article 24(1) of the same Registry Practice Direction, provides, as recognised by the Pre-Trial Judge and the Appeals Panel, for “a private visit at least once every three (3) months for a period of up to three (3) hours.”

7. Therefore, reading the KSC legal framework as whole, the only upper limit of visits at the KSC Detention facility appears to be the overall maximum of 10 days set out by Section 11 of the DMU Instruction each of which may include a private visit of up to 3 hours. As such, while detained under the KSC Legal Framework, Mr. Selimi may receive private, unmonitored visits from his Close Family Members, up to ten days per month.
8. Replicating this system of limited private visits for Mr. Selimi if granted interim release, would be relatively straightforward. Mr. Selimi would simply need to be in a secure, private residence, separate from where his Close Family Members normally reside and where he would be able to receive visits on up to ten days a month, from his Close Family Members, each for a maximum of three hours. This would be markedly different from the “[REDACTED] that the Pre-Trial Judge considered would be insufficient to mitigate the likelihood of the Article 41(6)(b) risk materialising.<sup>10</sup>
9. Under these conditions, there would be absolutely no difference from the regularity and duration of unmonitored contact that Mr. Selimi currently enjoys under the KSC legal framework while detained at the KSC Detention Facilities.
10. The only other potential differences between the current regime of private visits at the KSC Detention Facilities and the Proposed Visitation Condition, was identified by the Appeals Panel, namely that visits at the KSC “have certain limitations with respect, for example, to [REDACTED], and the Chief Detention

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<sup>10</sup> Ibid, para. 55.

Officer maintains under all circumstances the authority to take any urgent security measure.”<sup>11</sup> Yet nothing would prevent the Pre-Trial Judge from imposing the same rules and regulations to be applied by the guard or guards responsible for monitoring visits to Mr. Selimi, especially, as set out below, if a member of the KSC Detention Facilities Staff was responsible for monitoring such visits.

**B. Remote monitoring of visits and involvement of KSC Detention Facilities Staff**

11. The Appeals Panel had previously endorsed the Pre-Trial Judge’s finding that “the virtual monitoring of pre-approved visitors would not be adequate to remedy the fact that the [REDACTED]”<sup>12</sup> based on the duration of unmonitored contact between Mr. Selimi and his Close Family Members previously proposed by the Defence. However, if the above limitations on unmonitored contact was strictly applied to Mr. Selimi if granted interim release, there would therefore be no difference from the unmonitored contact between Mr. Selimi and his Close Family Members that he currently is entitled to. This concern would no longer apply. Instead, the remote monitoring of visits would have to be assessed in and of itself, to verify whether it would be sufficient to adequately supervise visits of Mr. Selimi.
12. The Appeals Panel found no error in the Pre-Trial Judge’s findings that [REDACTED]<sup>13</sup> and the [REDACTED] means that such monitoring would not be sufficient.<sup>14</sup>

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<sup>11</sup> Fourth Appeals Detention Decision, para. 15 citing to Articles 8, 13 & 14 of the Registry Practice Direction and Sections 16, 18-21 of the DMU Instruction.

<sup>12</sup> Ibid, para. 21.

<sup>13</sup> Ibid, para. 23 citing to Fourth PTJ Detention Order, para. 54.

<sup>14</sup> Ibid, para. 23 citing to Fourth PTJ Detention Order, para. 54.

13. The Defence reiterates that strictly controlled, remote monitoring of visits by those other than Close Family Members enjoying private visits, subject to the same maximum number of ten visitation days in a month, would be sufficient to ensure that the Article 41(6)(b) risks do not materialise. However, to assuage the concerns of the Pre-Trial Judge and Appeals Panel, the employment and use of personnel who are directly employed by, and answerable to, the KSC during any visits to Mr. Selimi's residence would be sufficient.
14. Under Section 11 of the DMU Instruction, Mr. Selimi would be entitled to ten days of visits per month, from the hours of 9:00 to 16:45 from Monday to Friday or between 9:00 and 16:00 on Saturday and Sunday. Visits, whether from Close Family Members, or indeed other family members and friends, could only take place during these limited hours. Therefore, the KSC Detention Staff would only be required to supervise the visits of Mr. Selimi, during these specific ten days, each month.
15. Article 34(10) of the Law, provides that:

“The Registry shall include officers of the court and may also rely on the assistance of police in Kosovo, to carry out orders or serve documents on behalf of the Specialist Chambers. The Specialist Chambers officers of the court shall have the authority and responsibility to exercise powers given to Kosovo Police under Kosovo law in accordance with the modalities established by this Law.”
16. Article 41(12) and Rule 56(5) specifically allows for the Pre-Trial Judge to impose conditions on interim release. Taken together with Article 34(10), the Pre-Trial Judge is therefore provided with the specific legal basis to use KSC personnel, including KSC Detention Facilities Staff, to implement and enforce the conditions of release, including but not limited to the supervision of visits of Mr. Selimi while released.

17. The Defence notes the recent findings by the Appeals Panel, in relation to a previous request for redeployment of KSC Detention Staff, that: (1) the Pre-Trial Judge's characterisation of the required resources to redeploy KSC personnel to monitor an accused's interim release as "significant" is reasonably based on the estimate of the resources the Kosovo Police would require for the implementation of house arrest;<sup>15</sup> (2) "staff may not be redeployed simply because the Specialist Chambers also have a seat in Kosovo according to Article 3(6) of the Law"<sup>16</sup>; and, (3) "additional Detention Officers would almost certainly be required."<sup>17</sup> The Defence also notes the Pre-Trial Judge's assessment that such use of KSC Detention Facilities Staff would mean that "additional resources would be required to ensure that any SC Detention Facilities staff that would be dispatched to Kosovo are adequately replaced."<sup>18</sup>
18. However, the proposed regime of limited visits set out above, imposing a maximum of ten days per month on which visits could occur, and only between working hours, would substantially limit any additional resources that would be required. Round-the-clock monitoring by KSC Detention Staff would not be necessary. Mr. Selimi would be guarded at all other times by the Kosovo Police and visits to him would not take place outside the limited hours set out above. At most, one KSC Detention Facilities Staff Member would be required to supervise each visit on ten separate days each month, equating to, at most, half the normal amount of twenty working days each month.
19. Further, given the role of the Kosovo Government in funding the defence of the Accused, it is very likely, that if additional resources are required by the Registry

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<sup>15</sup> KSC-BC-2020-06/IA022/F00005, Decision on Hashim Thaçi's Appeal Against Decision on Periodic Review of Detention, 22 August 2022, para. 25.

<sup>16</sup> Ibid, para. 25.

<sup>17</sup> Ibid, para. 26.

<sup>18</sup> KSC-BC-2020-06/F00818, Decision on Periodic Review of Detention of Hashim Thaçi, 26 May 2022, para. 62.

to implement this regime, the Government may be willing and able to reimburse the KSC directly for such additional costs. If the issue of resources is therefore determinative, it is vital that the Kosovo Government is heard on this question before the Pre-Trial Judge decides upon it.

20. In terms of the effectiveness of using KSC Detention Staff to supervise visits to Mr. Selimi, the Pre-Trial Judge has previously considered that “the functions of SC Detention Facilities staff are exercised at the seat of the SC in the Host State,”<sup>19</sup> that “SC Detention Facilities staff would have to operate outside of the high-security environment of the SC Detention Facilities.”<sup>20</sup>
21. The Defence recognises that using KSC Detention Facilities Staff to monitor visits of Mr. Selimi in Kosovo would be different from doing so at the KSC Detention Facility. However, these differences are relatively minor and do not impact upon the ability of the KSC Detention Staff member to adequately supervise the visits.
22. The KSC Detention Facilities Staff member, directly employed by the KSC, would be provided specifically with the relevant [REDACTED], which would allow them to directly supervise the visit. This would place that individual in the same position, [REDACTED], as that of the guards at the KSC Detention Facilities. They would be aware of the processes and procedures that apply to visits in the KSC Detention Facilities and would apply them directly. No additional training would be required.
23. In this regard, it is worth recalling that before any visitors enter the location where Mr. Selimi would be residing, the following checks would be performed:

(i) [REDACTED]; and,

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<sup>19</sup> Ibid, para. 63.

<sup>20</sup> Ibid, para. 63.



(ii) [REDACTED].

24. This would effectively create a high-security environment. The only further condition that current applies to visits to Mr. Selimi is the requirement to pass through a metal detector before entering the KSC Detention Facilities. Nothing would prevent such a requirement being imposed on the interim release of Mr. Selimi. Nor is it specified exactly what other “operational practices”<sup>21</sup> could not be applied outside the KSC Detention Facilities.
25. Finally, the concern of the Appeals Panel and Pre-Trial Judge that “the required coordination with the Chief Detention Officer and the measures to be adopted in response would necessarily be delayed as a result of the physical distance between the location of house arrest and the Host State”<sup>22</sup> would be resolved by the direct communication that the KSC Detention Staff Member would have with the Chief Detention Officer. The latter does not need to be physically located with the KSC Detention Staff Member to provide direct instruction or advice. This can be done by phone, or through the remote monitoring of visits of Mr. Selimi. Both are instantaneous. The perception of a potential delay in dealing with any security concerns is therefore not borne out by reality.
26. In this regard, establishing a system whereby KSC personnel would work together with the Kosovo Police to monitor the visits to Mr. Selimi, would also address the concerns of the Appeals Panel<sup>23</sup> that one individual member of the Kosovo Police, may be unable to simultaneously guard the premises where Mr. Selimi was located and also supervise any visits to him. Working in conjunction, the KSC Detention Staff would be responsible for monitoring and supervising the visit in accordance with the KSC rules on visits referred to above, while the Kosovo Police would be responsible to guarding the residence and assisting the

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<sup>21</sup> Ibid, para. 63.

<sup>22</sup> Ibid, para. 63.

<sup>23</sup> Fourth Appeals Detention Decision, para. 17, fn. 52.

KSC Detention Staff to implement any required measures to ensure the security of the visit directly, or those ordered by the Chief Detention Officer.

### III. CLASSIFICATION

27. The present Response is filed confidentially pursuant to Rule 82(4). The Defence intends to file a public redacted version of the Request in due course.

### IV. RELIEF REQUESTED

28. The Defence recalls that the Appeals Panel endorsed the approach of the Pre-Trial Judge when assessing the proposed conditions of release which:

“did not set a standard that would be satisfied **only** when the protection offered by the Kosovo Police was equivalent to that of the Detention Facilities, but used it as a method to assess the adequacy of the proposed conditions in terms of mitigating the identified risks.”<sup>24</sup>

29. To grant interim release subject to conditions, the Pre-Trial Judge need not be convinced that the conditions would precisely replicate those at the KSC Detention Facility, but instead that, assessed holistically, the combined conditions of release would sufficiently mitigate the Article 41(6)(b) risks. The combined conditions set out herein, which would impose severe and extensive restrictions on Mr. Selimi’s liberty, would meet that standard.

30. Therefore, the Defence hereby requests the Pre-Trial Judge to:

(i) Reject the SPO Request for the continued detention of Mr. Selimi; and,

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<sup>24</sup> KSC-BC-2020-06/IA017/F00011, Decision on Hashim Thaçi’s Appeal Against Decision on Review of Detention, 5 April 2022, para. 27. Emphasis added.

(ii) Release Mr. Selimi, until 30 days before the commencement of trial, subject to necessary conditions.

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Respectfully submitted on 23 September 2022,



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