



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi,
and Jakup Krasniqi**

Before: Pre-Trial Judge

Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 19 September 2022

Language: English

Classification: Public

Public Redacted Version of

Decision on Periodic Review of Detention of Rexhep Selimi

Specialist Prosecutor

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 41(6), (10) and (12) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 56(2) and 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 5 November 2020, further to the confirmation of an indictment ("Confirmation Decision"),² Rexhep Selimi ("Mr Selimi" or "Accused") was arrested pursuant to a decision and an arrest warrant issued by the Pre-Trial Judge.³

¹ KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

² KSC-BC-2020-06, F00026, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, strictly confidential and *ex parte*. A confidential redacted version was filed on 19 November 2020, F00026/CONF/RED. A public redacted version was filed on 30 November 2020, F00026/RED. The Specialist Prosecutor submitted the confirmed indictment in F00034, Specialist Prosecutor, *Submission of Confirmed Indictment and Related Requests*, 30 October 2020, confidential, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential; F00045/A03, Specialist Prosecutor, *Further Redacted Indictment*, 4 November 2020, public; F00134, Specialist Prosecutor, *Lesser Redacted Version of Redacted Indictment*, KSC-BC-2020-06/F00045/A02, 4 November 2020, 11 December 2020, confidential. A further corrected confirmed indictment was submitted on 3 September 2021, strictly confidential and *ex parte* (F00455/A01), with confidential redacted (F00455/CONF/RED/A01) and public redacted (F00455/RED/A01) versions. On 17 January 2022, the Specialist Prosecutor submitted a confidential, corrected, and lesser redacted version of the Confirmed Indictment, F00647/A01. A confirmed amended indictment was filed on 29 April 2022 ("Confirmed Indictment"), strictly confidential and *ex parte* (F00789/A01), with confidential redacted (F00789/A02) and public redacted (F00789/A05) versions.

³ KSC-BC-2020-06, F00027/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders*, 26 October 2020, public; F00027/A05/RED, *Public Redacted Version of Arrest Warrant for Rexhep Selimi*, 26 October 2020, public; F00049, Registrar, *Notification of Arrest of Rexhep Selimi Pursuant to Rule 55(4)*, 5 November 2020, public.

2. On 22 January 2021, the Pre-Trial Judge rejected Mr Selimi's application for interim release ("First Detention Decision"),⁴ which was upheld by the Court of Appeals ("First Court of Appeals Decision").⁵
3. On 25 June 2021, the Pre-Trial Judge ordered Mr Selimi's continued detention ("Second Detention Decision").⁶ The Court of Appeals, pursuant to its decision on Mr Selimi's appeal against the Second Detention Decision, remanded to the Pre-Trial Judge for further consideration in order to assess whether the Kosovo Police can effectively enforce the conditions proposed by the Accused or any further condition identified by the Pre-Trial Judge as necessary to mitigate the identified risks ("Second Court of Appeals Decision").⁷
4. On 13 October 2021, the Pre-Trial Judge ordered the Registrar to provide information on the detention regime applicable to Mr Selimi at the Detention Facilities of the Specialist Chambers ("Registrar Order").⁸ On 20 October 2021, the Registrar provided the information requested pursuant to the Registrar Order.⁹
5. On 26 October 2021, the Kosovo Police, further to an order by the Pre-Trial Judge,¹⁰ provided information regarding: (i) the authority and capability of the Kosovo Police to restrict the movements of individuals subject to conditional

⁴ KSC-BC-2020-06, F00179, Pre-Trial Judge, *Decision on Rexhep Selimi's Application for Interim Release*, 22 January 2021, confidential. A public redacted version was issued on 26 January 2021, F00179/RED.

⁵ KSC-BC-2020-06, IA003/F00005, Court of Appeals, *Decision on Rexhep Selimi's Appeal Against Decision on Interim Release*, 30 April 2021, confidential. A public redacted version was issued on the same day, IA003/F00005/RED.

⁶ KSC-BC-2020-06, F00372, Pre-Trial Judge, *Decision on Review of Detention of Rexhep Selimi*, 25 June 2021, confidential. A public redacted version was issued on 30 June 2021, F00372/RED.

⁷ KSC-BC-2020-06, IA007/F00005, Court of Appeals, *Decision on Rexhep Selimi's Appeal Against Decision on Review of Detention*, 1 October 2021, confidential, paras 56-58. A public redacted version was issued on the same day, IA007/F00005/RED.

⁸ KSC-BC-2020-06, F00522, Pre-Trial Judge, *Order to the Registrar to Provide Information on the Detention Regime*, 13 October 2021, confidential, para. 7.

⁹ KSC-BC-2020-06, F00536, Registrar, *Registry Submissions Pursuant to the Order to Provide Information on the Detention Regime (F00522)* ("Registry Submissions"), 20 October 2021, confidential. A public redacted version was issued on 29 November 2021, F00536/RED.

¹⁰ KSC-BC-2020-06, F00513, Pre-Trial Judge, *Order to the Kosovo Police to Provide Information*, 8 October 2021, public, with one Annex, confidential.

release, monitor and restrict such individuals' communications, administer house arrest, and the enforceability of conditions attaching to interim release; and (ii) previous instances of enforcing conditions attaching to the interim release or detention of persons accused of severe crimes.¹¹

6. On 26 November 2021, the Pre-Trial Judge issued a decision whereby he confirmed the Second Detention Decision and ordered Mr Selimi's continued detention ("Third Detention Decision"),¹² which was upheld by the Court of Appeals ("Third Court of Appeals Decision").¹³

7. On 13 May 2022, the Pre-Trial Judge ordered Mr Selimi's continued detention ("Fourth Detention Decision"),¹⁴ which, following an appeal by the Defence for Mr Selimi ("Defence")¹⁵ and notification of that Mr Selimi waived his right to have his detention reviewed before the expiry of the two-month limit,¹⁶ was upheld by the Court of Appeals ("Fourth Court of Appeals Decision").¹⁷

¹¹ KSC-BC-2020-06, F00548, Kosovo General Police Directorate, *Answer to the Request Number KSC-BC-2020-06, Dated 13 October 2021, 26 October 2021*, confidential. The translation into English of said submission was issued on 3 November 2021, F00548/eng.

¹² KSC-BC-2020-06, F00580, Pre-Trial Judge, *Decision on Remanded Detention Review and Periodic Review of Detention of Rexhep Selimi*, 26 November 2021, confidential. A public redacted version was issued on 8 December 2021, F00580/RED.

¹³ 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, confidential. A public redacted version was issued on the same day, IA015/F00005/RED.

¹⁴ KSC-BC-2020-06, F00802, Pre-Trial Judge, *Decision on Periodic Review of Detention of Rexhep Selimi*, 13 May 2022, confidential. A public redacted version was issued on 24 May 2022, F00802/RED.

¹⁵ KSC-BC-2020-06, IA021/F00001, Specialist Counsel, *Selimi Defence Appeal Against Decision on Periodic Review of Detention of Rexhep Selimi*, 25 May 2022, confidential. A public redacted version was filed on 9 August 2022, IA021/F00001/RED.

¹⁶ KSC-BC-2020-06, F00851, Pre-Trial Judge, *Decision on Defence Requests for Extension of Time for Submissions on Fourth Review of Detention*, 21 June 2022, public, para. 10.

¹⁷ KSC-BC-2020-06, IA021/F00005, Court of Appeals, *Decision on Selimi Appeal Against "Decision on Periodic Review of Detention of Rexhep Selimi"*, 29 July 2022, confidential. A public redacted version was issued on 2 August 2022, IA021/F00005/RED.

8. On 22 August 2022, the Specialist Prosecutor's Office ("SPO") filed its submissions on the review of Mr Selimi's detention ("SPO Submissions").¹⁸

9. On 2 September 2022, the Defence filed its response to the SPO Submissions ("Response").¹⁹

II. SUBMISSIONS

10. The SPO requests that the Pre-Trial Judge order the continued detention of Mr Selimi as there has been no change in circumstance since the Fourth Court of Appeals Decision upholding the Fourth Detention Decision and since Mr Selimi's detention remains necessary and proportionate.²⁰ In particular, the SPO submits that: (i) the Pre-Trial Judge's finding of a continued 'well-grounded' suspicion that Mr Selimi has committed crimes within the Specialist Chambers' ("SC") subject-matter jurisdiction continues to stand;²¹ (ii) the risks previously identified, namely of flight, obstruction to progress of proceedings of the SC and/or committing further crimes similar to those charged, continue to exist;²² (iii) no alternative measures to detention exist that would sufficiently mitigate these risks and all reasonable realistic alternatives to detention in the controlled environment of the SC Detention Facilities have been duly considered;²³ and (iv) the continued detention of Mr Selimi remains proportionate.²⁴

11. The Defence responds that the Pre-Trial Judge should reject the SPO's request for the continued pre-trial detention of Mr Selimi, notwithstanding the Fourth

¹⁸ KSC-BC-2020-06, F00933, Specialist Prosecutor, *Prosecution Submissions on Detention Review of Mr Selimi*, 22 August 2022, confidential. A public redacted version was issued on 6 September 2022, F00933/RED.

¹⁹ KSC-BC-2020-06, F00946, Specialist Counsel, *Selimi Defence Response to Prosecution Submissions on Detention Review of Mr. Selimi*, 2 September 2022, confidential.

²⁰ SPO Submissions, paras 2, 15.

²¹ SPO Submissions, para. 6.

²² SPO Submissions, paras 1, 8-9.

²³ SPO Submissions, paras 10-11.

²⁴ SPO Submissions, paras 12-13.

Court of Appeals Decision upholding the Fourth Detention Decision.²⁵ The Defence requests that the Pre-Trial Judge grant Mr Selimi interim release subject to a set of conditions which has not previously been explicitly considered by the Pre-Trial Judge (collectively, “Additional Conditions”), which it avers can sufficiently mitigate the likelihood of any Article 41(6)(b) risks materialising.²⁶

III. APPLICABLE LAW

12. Article 41(6) of the Law provides that the SC shall only order the detention of a person when there is a grounded suspicion that the person has committed a crime within the jurisdiction of the SC, and there are articulable grounds to believe that the person: (i) is a flight risk; (ii) will destroy, hide, change or forge evidence of a crime, or specific circumstances indicate that the person will obstruct the progress of criminal proceedings; or (iii) will repeat the criminal offence, complete an attempted crime, or commit a crime which he or she has threatened to commit.

13. Article 41(10) of the Law and Rule 57(2) of the Rules provide that, until a judgment is final or until release, upon the expiry of two (2) months from the last ruling on detention on remand, the Pre-Trial Judge or Panel seized with the case shall examine whether reasons for detention on remand still exist and render a ruling by which detention on remand is extended or terminated.

14. Article 41(12) of the Law provides that, in addition to detention on remand, the following measures may be ordered to ensure the presence of the accused, to prevent reoffending or ensure successful conduct of criminal proceedings: summons, arrest, bail, house detention, promise not to leave residence, prohibition on approaching specific places or persons, attendance at police station or other venue, and diversion.

²⁵ Response, paras 2, 30(i).

²⁶ Response, paras 1, 30(ii).

15. Pursuant to Rule 56(2) of the Rules, the Panel shall ensure that a person is not detained for an unreasonable period prior to the opening of the case and, in case of an undue delay caused by the Specialist Prosecutor, the Panel, having heard the Parties, may release the person under conditions as deemed appropriate.

IV. DISCUSSION

A. APPLICABLE STANDARD

16. In examining whether the reasons for detention on remand still exist, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, the Pre-Trial Judge adopts the standard established in previous decisions.²⁷

B. GROUNDED SUSPICION

17. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires at the outset a grounded suspicion that the detained person has committed a crime within the jurisdiction of the SC. This is a *conditio sine qua non* for the validity of the detained person's continued detention.²⁸

18. The SPO submits that the Pre-Trial Judge's finding that there is a well-grounded suspicion that Mr Selimi is criminally liable for the crimes within the subject-matter jurisdiction of the SC stands.²⁹ The Defence has not made any submissions regarding this criterion in the Response.

19. The Pre-Trial Judge recalls that, in the Confirmation Decision, it was determined that, pursuant to Article 39(2) of the Law, there is a well-grounded suspicion that Mr Selimi is criminally liable for a number of crimes against

²⁷ See, among many others, Third Detention Decision, para. 20, with further references.

²⁸ ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222, with further references.

²⁹ SPO Submissions, para. 6.

humanity (persecution, imprisonment, other inhumane acts, torture, murder and enforced disappearance) and war crimes (arbitrary detention, cruel treatment, torture and murder) under Articles 13, 14(1)(c) and 16(1)(a) of the Law.³⁰ Moreover, the Pre-Trial Judge recalls that a well-grounded suspicion has also been established with regard to the new charges brought by the SPO against Mr Selimi with the requested amendments to the indictment.³¹ 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.³²

20. Accordingly, the Pre-Trial Judge finds that the requirement set forth in Article 41(6)(a) and (10) of the Law continues to be met.

C. NECESSITY OF DETENTION

21. Once the threshold in Article 41(6)(a) of the Law is met, the grounds that would justify the deprivation of a person's liberty must be articulable in the sense that they must be specified in detail.³³ The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"³⁴ that any of the risks under the three limbs of Article 41(6)(b) of the Law exist, denoting an acceptance of the possibility, not the inevitability, of a future occurrence.³⁵ In other words, the standard to be applied is less than

³⁰ Confirmation Decision, para. 521(a)(i)-(ii).

³¹ KSC-BC-2020-06, F00777, Pre-Trial Judge, *Decision on the Confirmation of Amendments to the Indictment*, 22 April 2022, strictly confidential and *ex parte*, para. 183. A confidential redacted version (F00777/CONF/RED), a public redacted version (F00777/RED) and a confidential lesser redacted version (F00777/CONF/RED2) were filed, respectively, on 22 April 2022, 6 May 2022 and 16 May 2022. The requested amendments are detailed at para. 11.

³² See for example, KSC-BC-2020-04, F00007/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on the Confirmation of the Indictment Against Pjetër Shala*, 12 June 2020, public, para. 35.

³³ KSC-BC-2020-06, IA001/F00005, Court of Appeals, *Decision on Kadri Veseli's Appeal Against Decision on Interim Release*, 30 April 2021, public, paras 18-19; First Detention Decision, para. 19.

³⁴ See *chapeau* of Article 41(6)(b) of the Law.

³⁵ First Detention Decision, para. 19, with further references.

certainty, but more than a mere possibility of a risk materialising.³⁶ Lastly, when deciding on whether a person should be released or detained, the Pre-Trial Judge must consider alternative measures to prevent the risks in Article 41(6)(b) of the Law.³⁷

1. Risk of Flight

22. The SPO submits that the Pre-Trial Judge's prior finding of a risk of flight remains as Mr Selimi has an incentive and means to evade proceedings and maintains a position of influence that may assist him in evading proceedings.³⁸ The Defence does not provide any specific submissions regarding the risk of flight in the Response.

23. Having examined the factors and circumstances invoked in the decisions reviewing Mr Selimi's detention, the Pre-Trial Judge remains satisfied that they continue to exist. More specifically, the Pre-Trial Judge considers that Mr Selimi: (i) has been made aware of the charges against him and the possibility of a serious sentence in the event of a conviction;³⁹ and (ii) continues to play a significant role in Kosovo on the basis of the previous positions he occupied.⁴⁰ Hence, the influence he continues to derive may assist him in evading SC proceedings by, for instance, securing access to relevant information, and obtaining funds and means to travel.

³⁶ First Court of Appeals Decision, para. 40; Second Court of Appeals Decision, para. 19.

³⁷ As regards the obligation to consider "alternative measures", see 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*, 26 April 2017, public, para. 114. See also ECtHR, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, [Judgment](#), 5 July 2016, para. 87 *in fine*; *Idalov v. Russia* [GC], no. 5826/03, [Judgment](#), 22 May 2012, para. 140 *in fine*.

³⁸ SPO Submissions, paras 8-9.

³⁹ First Detention Decision, para. 31; Second Detention Decision, para. 25; Third Detention Decision, para. 28; Fourth Detention Decision, para. 27.

⁴⁰ First Detention Decision, para. 31; First Court of Appeals Decision, paras 62-63; Second Detention Decision, para. 25; Third Detention Decision, para. 28; Fourth Detention Decision, para. 27.

24. On this basis, and notwithstanding the counter-balancing factors identified in the First Detention Decision,⁴¹ the Pre-Trial Judge finds that a moderate risk of flight in relation to Mr Selimi continues to exist.

2. Risk of Obstructing the Progress of SC Proceedings

25. The SPO submits that the Pre-Trial Judge's prior finding of a risk of obstruction of the SC proceedings continues to exist. In particular, the SPO reiterates the Pre-Trial Judge's reasons that: (i) Mr Selimi has [REDACTED]; (ii) this risk should be viewed in the context of a persistent climate of intimidation of witnesses and interference with criminal proceedings; and (iii) 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.⁴² The Defence does not provide any specific submissions regarding the risk of obstruction in the Response.

26. The Pre-Trial Judge recalls that [REDACTED],⁴³ and the fact that [REDACTED].⁴⁴ In this connection, the Pre-Trial Judge found that Mr Selimi has, [REDACTED]⁴⁵ [REDACTED].⁴⁶ [REDACTED].⁴⁷ [REDACTED].⁴⁸ In this regard, the Pre-Trial Judge still considers that, [REDACTED].⁴⁹

⁴¹ First Detention Decision, para. 32.

⁴² SPO Submissions, paras 8-9.

⁴³ Second Detention Decision, para. 33; Third Detention Decision, para. 32; Fourth Detention Decision, para. 30.

⁴⁴ Second Detention Decision, para. 37; Second Court of Appeals Decision, para. 37; Third Detention Decision, para. 32; Fourth Detention Decision, para. 30.

⁴⁵ Second Detention Decision, paras 34-36; Third Detention Decision, para. 32; Fourth Detention Decision, para. 30.

⁴⁶ Second Detention Decision, para. 37; Second Court of Appeals Decision, para. 37; Third Detention Decision, para. 32; Fourth Detention Decision, para. 30.

⁴⁷ Second Detention Decision, para. 37; Second Court of Appeals Decision, para. 37; Third Detention Decision, para. 32; Third Detention Decision, para. 32; Fourth Detention Decision, para. 30.

⁴⁸ Second Detention Decision, para. 39; Third Detention Decision, para. 32; Fourth Detention Decision, para. 30.

⁴⁹ Second Detention Decision, para. 39; Third Detention Decision, para. 32; Fourth Detention Decision, para. 30.

27. Furthermore, as a former high-ranking KLA member and political figure, having held the position of Minister of Internal Affairs and having been elected to the Kosovo Assembly,⁵⁰ Mr Selimi still holds a position of influence in Kosovo.⁵¹ Considering that, in the past, Mr Selimi has demonstrated [REDACTED], this factor, combined with his position of influence, allows for the reasonable conclusion that it is possible⁵² for Mr Selimi to [REDACTED].⁵³

28. The Pre-Trial Judge also recalls that there is a persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members.⁵⁴ Even though this factor is, in and of itself, not determinative in relation to the risk of obstructing the progress of the proceedings, it provides the context against which Mr Selimi's [REDACTED] and his position of influence must be considered.⁵⁵ In this regard, the Pre-Trial Judge further considers that whether the Accused has not been previously accused of involvement in witness interference does not alleviate the identified risks.⁵⁶ In particular, the Pre-Trial Judge recalls that the risk of obstruction need not materialise in an Accused personally tampering with evidence or exerting

⁵⁰ First Detention Decision, para. 31; First Court of Appeals Decision, paras 62-63; Second Detention Decision, para. 25; Third Detention Decision, para. 33; Fourth Detention Decision, para. 31.

⁵¹ First Court of Appeals Decision, paras 62-63; Second Detention Decision, para. 40; Second Court of Appeals Decision, para. 33; Third Detention Decision, para. 33; Fourth Detention Decision, para. 31.

⁵² First Court of Appeals Decision, para. 40; Third Detention Decision, para. 33; Fourth Detention Decision, para. 31.

⁵³ Second Detention Decision, para. 40; Third Detention Decision, para. 33; Fourth Detention Decision, para. 31.

⁵⁴ First Detention Decision, para. 42; Second Detention Decision, para. 41; Third Detention Decision, para. 34; Fourth Detention Decision, para. 32.

⁵⁵ Third Detention Decision, para. 34. In relation to the assessment of previously proposed conditions of interim release, the Court of Appeals confirmed that the persisting climate of witness intimidation and interference in Kosovo are relevant "contextual considerations", see Third Court of Appeals Decision, para. 43.

⁵⁶ KSC-BC-2020-06, IA016/F00005, Court of Appeals, *Decision on Jakup Krasniqi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention*, 25 March 2022, confidential, footnote 73. A public redacted version was issued on the same day, IA016/F00005/RED.

influence or pressure on witnesses. It suffices that an Accused instigates others or contributes in any way to the materialisation of that risk.⁵⁷

29. Lastly, the Pre-Trial Judge considers that the advancement of the pre-trial proceedings in particular, the filing of the SPO's pre-trial brief and witness list,⁵⁸ as well as the disclosure of the identities of witnesses with in-court protective measures has increased the risk of obstruction considering that it will provide Mr Selimi with more details as to the case against him. Furthermore, following the Fourth Detention Decision, Mr Selimi has been provided with further details as to the case against him, in particular following the filing of a lesser redacted version of the witness list⁵⁹ and the witness list including the mode of questioning and presentation times.⁶⁰

30. Accordingly, the Pre-Trial Judge concludes that the risk that Mr Selimi will obstruct the progress of SC proceedings continues to exist.

3. Risk of Committing Further Crimes

31. The SPO submits that the Pre-Trial Judge's prior finding that the risk of Mr Selimi committing further crimes continues to exist considering his alleged personal participation in the commission of charged crimes and his alleged use of

⁵⁷ First Detention Decision, para. 37; First Court of Appeals Decision, para. 59; Second Detention Decision, para. 41; Third Detention Decision, para. 34; Fourth Detention Decision, para. 32.

⁵⁸ KSC-BC-2020-06, F00631, Specialist Prosecutor, *Submission of Pre-Trial Brief with Witness and Exhibit Lists*, 17 December 2021, confidential, with Annexes 1-3, strictly confidential and *ex parte*. A public redacted version with confidential redacted Annexes 1-3 was issued on 21 December 2021, F00631/RED. A corrigendum with two strictly confidential and *ex parte* Annexes and one confidential Annex was submitted on 24 February 2022, F00709.

⁵⁹ KSC-BC-2020-06, F00885, Specialist Prosecutor, *Prosecution Submission of Corrected and Lesser Redacted Witness List*, 18 July 2022, public, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential.

⁶⁰ KSC-BC-2020-06, F00948, Specialist Prosecutor, *Prosecution Submission of Revised Witness List*, 2 September 2022, public, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential.

others to commit crimes continues.⁶¹ The Defence does not provide any specific submissions regarding the risk of committing further crimes in the Response.

32. The Pre-Trial Judge recalls that, even though the existence of a risk of obstruction does not automatically translate into a risk of committing further crimes, the factors underpinning the former are of relevance to the assessment of the latter in the circumstances of the present case.⁶² It is further recalled that it suffices that an Accused instigates or assists others to commit such crimes, or contributes in any other way to their commission; he does not need to physically execute such acts.⁶³

33. The Pre-Trial Judge additionally recalls that, besides the climate of witness intimidation and Mr Selimi's position of influence, there are specific and mutually corroborative indications that [REDACTED].⁶⁴ In addition, the Pre-Trial Judge notes that Mr Selimi has an increased account of the SPO's case against him in view of the advancement of the pre-trial proceedings since the Fourth Detention Decision, in particular following the submission of the SPO's lesser redacted witness list, which disclosed the identities and identifying information of witnesses whose delayed disclosure period had ended, and the witness list including the mode of questioning and presentation times.⁶⁵

34. Lastly, the Pre-Trial Judge recalls that the Confirmation Decision explicitly describes Mr Selimi's personal participation in the commission of crimes⁶⁶ and his

⁶¹ SPO Submissions, paras 8-9.

⁶² First Detention Decision, para. 47; Second Detention Decision, para. 49; Third Detention Decision, para. 40; Fourth Detention Decision, para. 36.

⁶³ First Detention Decision, para. 47; Second Detention Decision, para. 49; Third Detention Decision, para. 40; Fourth Detention Decision, para. 36.

⁶⁴ Second Detention Decision, para. 50; Third Detention Decision, para. 41; Fourth Detention Decision, para. 37.

⁶⁵ See *supra* para. 29.

⁶⁶ Confirmation Decision, para. 466.

use of others to commit crimes as a joint criminal enterprise member,⁶⁷ which adds to the risk that he may commit further crimes.⁶⁸

35. On this basis, the Pre-Trial Judge considers that there continues to be a risk that Mr Selimi will, under any form of responsibility, commit crimes similar to the underlying acts charged against those perceived as being opposed to the KLA, including witnesses who have provided or could provide evidence in the case and/or are due to appear before the SC.

36. Accordingly, the Pre-Trial Judge concludes that the risk that Mr Selimi will commit further crimes continues to exist.

4. Conclusion

37. The Pre-Trial Judge concludes that the risks that Mr Selimi will abscond, obstruct the progress of SC proceedings, and/or commit further crimes against those perceived as being opposed to the KLA, including witnesses who have provided or could provide evidence in the case and/or are due to appear before the SC continue to exist. The Pre-Trial Judge will assess below whether these risks can be adequately addressed by any conditions for his release.

D. CONDITIONAL RELEASE

1. Submissions

38. The SPO submits that no conditions sufficiently mitigate the risks established pursuant to Article 41(6)(b) of the Law. The SPO submits that past proposals for conditional release, such as house detention, monitored visits, surrender of passport and other travel documents, and regular reporting to authorities have

⁶⁷ Confirmation Decision, paras 453-454, 465-467.

⁶⁸ Second Detention Decision, para. 52; Third Detention Decision, para. 43; Fourth Detention Decision, para. 38.

been found to not sufficiently mitigate the risks posed by the Accused.⁶⁹ The SPO adds that all reasonable, realistic alternatives to detention in the controlled environment of the SC Detention Facilities have been duly considered and rightfully rejected.⁷⁰

39. The Defence argues that replicating the system of limited private visits for Mr Selimi in place at the SC Detention Facilities⁷¹ would be straightforward as Mr Selimi would simply need to: (i) be in a secure, private residence, separate from where his family normally resides (“First Additional Condition”); and (ii) be able to receive visits on up to ten days a month from his family, each for a maximum of three hours (“Second Additional Condition”).⁷² The Defence avers that this condition is markedly different from the [REDACTED] that the Pre-Trial Judge considered in the Third Detention Decision.⁷³ The Defence adds that the only difference from the visits at the SC Detention Facilities is that visits at the SC Detention Facilities have certain limitations with respect to, for example, [REDACTED] and the Chief Detention Officer’s authority to take any urgent security measure.⁷⁴ It avers, however, that that this risk can be mitigated by the Pre-Trial Judge imposing the same rules and regulations as those applicable at the SC Detention Facilities (including putting in place a metal detector), especially if a member of the SC Detention Facilities was responsible for monitoring such visits (“Third Additional Condition”).⁷⁵

40. Additionally, the Defence argues that, despite the Pre-Trial Judge’s and the Court of Appeals’ prior finding of the inadequacy of remote monitoring, if the

⁶⁹ SPO Submissions, para. 10.

⁷⁰ SPO Submissions, para. 11.

⁷¹ The Defence argues that the only upper limit for visits at the SC Detention Facilities appears to be the overall maximum ten days each of which may include a private visit of up to three hours. *See* Response, paras 6-7.

⁷² Response, para. 8.

⁷³ Response, para. 8.

⁷⁴ Response, paras 9-10.

⁷⁵ Response, paras 10, 24.

abovementioned measures on unmonitored contact would be strictly applied to Mr Selimi, if granted interim release, there would be no difference from the unmonitored visits between Mr Selimi and his family that he is currently entitled to.⁷⁶ Accordingly, the Defence submits that the abovementioned measures alleviate previous concerns based on the duration of unmonitored contact between Mr Selimi and his family. It avers that, as a result, the Pre-Trial Judge would have to assess remote monitoring of visits to verify whether these measures would be sufficient to adequately supervise visits of Mr Selimi.⁷⁷

41. The Defence submits that to assuage the concerns of the Pre-Trial Judge and the Court of Appeals, the employment and use of personnel who are directly employed by, and answerable to, the SC during any visits to Mr Selimi's residence would be sufficient.⁷⁸ It avers that such SC Detention Facilities staff member would only be required to supervise the visits of Mr Selimi during the ten abovementioned days, which would substantially limit any additional resource required ("Fourth Additional Condition").⁷⁹ As the Kosovo Government funds the defence of the Accused, the Defence requests that the Pre-Trial Judge hear whether the Kosovo Government would be willing to reimburse the SC for any additional expense incurred.⁸⁰

42. The Defence recognises that using SC Detention Facilities staff to monitor Mr Selimi in Kosovo would be different from doing so in the SC Detention Facilities. It avers, however, that these differences are relatively minor and do not impact upon the ability of the SC Detention Facilities staff to adequately supervise the visits.⁸¹ The Defence submits that the SC Detention Facilities staff member would: (i) be provided with relevant [REDACTED]; and

⁷⁶ Response, para. 11.

⁷⁷ Response, para. 11.

⁷⁸ Response, para. 13.

⁷⁹ Response, paras 14, 18.

⁸⁰ Response, para. 19.

⁸¹ Response, paras 20-21.

(ii) be aware of the processes and procedures that apply to visits at the SC Detention Facilities.⁸² It avers, that together with previous conditions, this would effectively create a high-security environment.⁸³

43. Lastly, the Defence avers that any concerns about the required coordination with the Chief Detention Officers and necessary measures due to the physical distance, would be resolved by the direct communication between the SC Detention Facilities staff member and the Chief Detention Officers, which, it avers, can be done by phone, or through remote monitoring, as both are instantaneous.⁸⁴ Additionally, it avers that establishing a system whereby SC Detention Facilities staff and the Kosovo Police work together to monitor visits of Mr Selimi would address the concerns of the Court of Appeals that one individual member of the Kosovo Police may be unable to simultaneously guard the premises and Mr Selimi; the Kosovo Police would be responsible for guarding the residence and assisting the SC Detention Facilities staff member.⁸⁵

2. Discussion

44. As found in previous detention decisions, the Pre-Trial Judge considers that conditions can sufficiently mitigate the risk of flight in relation to Mr Selimi.⁸⁶ In this regard, the Pre-Trial Judge notes favourably that Mr Selimi has previously committed himself to remain at his home, surrender his passport and other travel documents, report regularly to the relevant authorities, return to the SC at a

⁸² Response, para. 22.

⁸³ Response, paras 23-24.

⁸⁴ Response, para. 25.

⁸⁵ Response, para. 26.

⁸⁶ First Detention Decision, para. 54; Second Detention Decision, para. 58; Third Detention Decision, para. 54; Fourth Detention Decision, para. 53.

judicially determined date, and comply with any variation or termination of the interim release.⁸⁷

45. Turning to the risks of obstructing the progress of SC proceedings and committing further crimes, the Pre-Trial Judge will now assess whether the Additional Conditions sufficiently mitigate the identified risks.

46. With regard to the Fourth Additional Condition, the Pre-Trial Judge recalls that the Court of Appeals has found that it was reasonable for the Pre-Trial Judge to not deploy SC Detention Facilities staff to Kosovo given: (i) the limited number of Registry officers;⁸⁸ (ii) the fact that their main functions are at the seat of the SC in the Host State;⁸⁹ (iii) that the SC were established remotely due to the sensitivity of the proceedings and the nature of the allegations;⁹⁰ (iv) that staff may not be redeployed simply because the SC also have a seat in Kosovo according to Article 3(6) of the Law;⁹¹ (v) that the SC Detention Facilities staff would have to operate outside the high-security environment of the SC Detention Facilities;⁹² and (vi) when addressing a potential breach of conditions, physical remoteness between staff in Kosovo and The Hague could cause difficulties, for example, in ensuring [REDACTED] and the Chief Detention Officer in The Hague with the authority to take measures, and would deprive the Chief Detention Officer from attending in person to appropriately assess the situation, if needed.⁹³ The Pre-Trial Judge, accordingly, finds that these measures would undermine the timeliness and efficiency of any response to a

⁸⁷ First Detention Decision, para. 54; Second Detention Decision, para. 58; Third Detention Decision, para. 54; Fourth Detention Decision, para. 53.

⁸⁸ KSC-BC-2020-06, IA022/F00005, Court of Appeals, *Decision on Hashim Thaçi's Appeal Against Decision on Periodic Review of Detention* ("22 August 2022 Thaçi Detention Appeal"), 22 August 2022, confidential, para. 25. A public redacted version was issued on the same day, IA022/F00005.

⁸⁹ 22 August 2022 Thaçi Detention Appeal, para. 25.

⁹⁰ 22 August 2022 Thaçi Detention Appeal, para. 25.

⁹¹ 22 August 2022 Thaçi Detention Appeal, para. 25.

⁹² 22 August 2022 Thaçi Detention Appeal, para. 28.

⁹³ 22 August 2022 Thaçi Detention Appeal, para. 28.

potential breach of the conditions of Mr Selimi's interim release and that the Fourth Additional Condition does not adequately mitigate the Article 41(6)(b) risks.

47. With regard to the Defence's argument that the above risk is mitigated by the Second and Third Additional Conditions, the Pre-Trial Judge considers that [REDACTED].⁹⁴ Insofar as the Defence proposes the replication of the system of limited private visits in place at the SC Detention Facilities to mitigate the likelihood of Article 41(6)(b) risks materialising, the Pre-Trial Judge notes that the assessment is not only a matter of a numerical identification of the [REDACTED] but that: (i) even private visits at the SC Detention Facilities have certain limitations with respect, for example, to [REDACTED];⁹⁵ (ii) the Chief Detention Officer must maintain under all circumstances the authority to take any urgent security measures;⁹⁶ and (iii) as noted above, the physical remoteness between staff in Kosovo and The Hague could cause issues in addressing any breach.

48. Additionally, the Pre-Trial Judge recalls that the visitation regime at the SC Detention Facilities, in addition to the rule on maximum visitation allowance, include many other rules and procedures that would have to be implemented, such as: (i) that visits, whether in-person or over video, are as a rule supervised, meaning that they are conducted within the sight and general hearing of Detention Officers; (ii) the recording, listening to, summarising, and transcribing of the visits of a specific visitor to a Detainee, if considered necessary and proportionate; (iii) the imposition of specific restrictions on in-person and video visits, including both active monitoring and after-the-fact listening; and (iv) the ability to apply urgent security measures

⁹⁴ Third Detention Decision, para. 64; Fourth Detention Decision, para. 54; Fourth Court of Appeals Decision, para. 21.

⁹⁵ 22 August 2022 Thaçi Detention Appeal, para. 22; *See also* KSC-BD-09-Rev1, Registry Practice Direction on Detainees, Visits and Communications, 23 September 2020 ("Practice Direction on Visits"), Articles 13-14; DMU Instruction on Visits, Sections 18-21.

⁹⁶ 22 August 2022 Thaçi Detention Appeal, para. 22; *See also* KSC-BD-33, Detention Management Unit Instruction on Visiting Procedures for Family Members and Other Personal Visitors, 23 September 2020, Section 16, referring to Practice Direction on Visits, Article 8.

during both privileged and non-privileged visits and communication, including immediate termination of the visit and relocation of the visitor, or Detainee.⁹⁷

49. As acknowledged by the Defence in its Third Additional Condition, the procedures and processes in place at the SC Detention Facilities include many additional to the rule on maximum visitation allowance, which would equally have to be implemented in Kosovo. In this respect, the Pre-Trial Judge disagrees with the Defence's submission that there is nothing preventing him from implementing these measures in Kosovo and recalls the Registry's submissions that, in the SC Detention Facilities: (i) the Chief Detention Officer takes all decisions concerning the daily management of the SC Detention Facilities, including the maintenance of safety, security, and good order; (ii) there is a restrictions regime, which can be imposed generally, or in a specific case, to achieve a legitimate aim; (iii) all correspondence, including telephone conversations, is subjected to security controls of the SC Detention Facilities; (iv) the Chief Detention Officer can withhold non-privileged correspondence, if necessary and proportionate; and (v) urgent security measures can be applied during both privileged and non-privileged visits and communications.⁹⁸ The Pre-Trial Judge considers that replicating these procedures and processes outside the SC Detention Facilities would not create an high-security environment as these are linked to the secure environment of the SC Detention Facilities.⁹⁹

50. In light of the foregoing, insofar as the Defence submits that implementation of the Fourth Additional Condition would not require additional resources due to the Second and Third Additional Conditions, the Pre-Trial Judge disagrees as: (i) any SC Detention Facilities staff deployed to Kosovo would have to be adequately replaced; and (ii) given the wide range of procedures and processes in place at the SC Detention Facilities¹⁰⁰ he considers, even assuming the feasibility of implementing

⁹⁷ Registry Submissions, paras 31-32, 40-42.

⁹⁸ Registry Submissions, paras 15, 17, 26-30, 35-36, 40-42.

⁹⁹ 22 August 2022 *Thaçi Detention Appeal*, para. 29.

¹⁰⁰ *See supra* paras 48-49.

the Second and the Third Additional Conditions, that it would likely require more than the one SC Detention Facilities staff member as suggested by the Defence.¹⁰¹

51. With regard to the First Additional Condition, the Pre-Trial Judge notes that, even assuming the feasibility of locating a suitable alternative property in Kosovo, since he has found that the Second, Third and Fourth Additional Conditions would not mitigate the identified risks, he need not consider further the First Additional Condition.

52. As the Pre-Trial Judge does not consider that the Additional Conditions sufficiently mitigate the Article 41(6)(b) risks, he will not assess whether remote monitoring of visits would be sufficient to adequately supervise visits of Mr Selimi.¹⁰²

53. Lastly, although not determinative, the Pre-Trial Judge considers that, when considering the Additional Conditions holistically, the time and resources required to implement the Additional Conditions would be significant as the Additional Conditions include, locating a suitable property in Kosovo where Mr Selimi can be released, implementing procedures and processes, deploying SC Detention Facilities staff to Kosovo, remote monitoring of all non-private visits, and the acquisition and installation of a metal detector.

54. As the Pre-Trial Judge does not consider that the Additional Conditions sufficiently mitigate the Article 41(6)(b) risks, the Pre-Trial Judge does not find it necessary, as the Defence requests,¹⁰³ to order the presence of the Kosovo Government to answer whether it would be willing to reimburse the SC for any additional costs considering that the available information enables him to make an informed decision.¹⁰⁴

¹⁰¹ See Response, para. 18.

¹⁰² Response, para. 11.

¹⁰³ Response, para. 19.

¹⁰⁴ See Third Court of Appeals Decision, para. 49; See also KSC-BC-2020-06, IA017/F00011, Court of Appeals, *Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 5 April 2022, confidential, para. 59. A public redacted version was issued on the same day, IA017/F00011/RED.

55. With regard to potential additional measures, and recalling that the obligation for the Pre-Trial Judge to inquire and evaluate, *proprio motu*, all reasonable conditions and not just those raised by the Defence, is not limitless,¹⁰⁵ the Pre-Trial Judge considers 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 be reasonably considered, could sufficiently mitigate the identified risks.¹⁰⁶

56. The Pre-Trial Judge recalls that the measures in place at the SC Detention Facilities, viewed as a whole, provide robust assurances against unmonitored visits and communications with family members and pre-approved visitors with a view to minimising the risks of obstruction and commission of further crimes.¹⁰⁷ Moreover, they offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented.¹⁰⁸ Recalling that it is within the Pre-Trial Judge's discretion to compare the conditions proposed by the Defence with the conditions in the SC Detention Facilities,¹⁰⁹ the Pre-Trial Judge remains persuaded that it is only through the communication monitoring framework applicable at the SC Detention Facilities that Mr Selimi's communications can be restricted in a manner to sufficiently mitigate the aforementioned risks. Accordingly, the Pre-Trial Judge finds that the Additional Conditions and any other conditions imposed by the Pre-Trial Judge are insufficient to mitigate the risk of Mr Selimi obstructing the progress of SC proceedings or committing further crimes.

E. PROPORTIONALITY OF DETENTION

57. The SPO submits that continued detention is reasonable and proportionate as: (i) Mr Selimi is charged with ten counts of war crimes and crimes against

¹⁰⁵ Third Court of Appeals Decision, para. 50.

¹⁰⁶ Third Court of Appeals Decision, para. 50.

¹⁰⁷ Third Detention Decision, para. 67; Fourth Detention Decision, para. 59.

¹⁰⁸ Third Court of Appeals Decision, para. 42.

¹⁰⁹ Third Court of Appeal Decision, para. 35.

humanity; (ii) the custodial sentence would be lengthy, if convicted; (iii) Article 41(6) risks cannot be adequately managed outside SC Detention Facilities; (iv) key milestones in the pre-trial stage have been met, or will be met imminently (the SPO has submitted its pre-trial brief and an updated witness list to the Accused and will supplement its Rule 102(3) notice and the Rule 109(c) chart); and (v) the case is progressing towards trial and given its scope and complexity.¹¹⁰ The Defence does not accept that detention remains proportionate.¹¹¹

58. At the outset, the Pre-Trial Judge recalls the importance of the proportionality principle in the determination of the reasonableness of pre-trial detention – as reflected in Rule 56(2) of the Rules.¹¹² The duration of time in detention pending trial is a factor that needs to be considered along with the degree of the risks that are described in Article 41(6)(b) of the Law, in order to determine whether, all factors being considered, the continued detention “stops being reasonable” and the individual needs to be released.¹¹³ However, the question whether a period of time spent in pre-trial detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed on the facts of each case and according to its specific features.¹¹⁴

59. Mr Selimi was arrested on 5 November 2020 and, as a result, he has been detained for slightly more than twenty-two months at the time of the present review of his detention. Accordingly, the Pre-Trial Judge will assess whether this period of time is reasonable in the specific circumstances relating to Mr Selimi.

¹¹⁰ SPO Submissions, paras 12-13.

¹¹¹ Response, fn. 1.

¹¹² KSC-BC-2020-07, IA001/F00005, Court of Appeals, *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention*, 9 December 2020, public, paras 72-73.

¹¹³ *Similarly*, First Court of Appeals Decision, para. 79.

¹¹⁴ ECtHR, [Buzadji v. the Republic of Moldova \[GC\]](#), para. 90.

60. The Pre-Trial Judge recalls that: (i) Mr Selimi is charged with ten counts of serious international crimes, namely persecution on political and/or ethnic grounds, imprisonment/illegal or arbitrary arrest and detention, other inhumane acts, cruel treatment, torture, murder, and enforced disappearance of persons;¹¹⁵ (ii) it is alleged that he played a significant role in these crimes;¹¹⁶ (iii) he could be sentenced to a lengthy sentence, if convicted; (iv) proceedings against Mr Selimi are complex;¹¹⁷ and (v) the risks under Article 41(6)(b)(ii) and (iii) of the Law cannot be mitigated by the proposed conditions and/or any additional conditions.¹¹⁸

61. Moreover, all required procedural steps relating to the pre-trial phase of the present case have been, are being or will be completed with a view to transmitting the case for trial at a point in the foreseeable future¹¹⁹ – in particular, following the Fourth Detention Decision: (i) the parties have engaged in *inter partes* discussions and made proposals on ways to streamline the case;¹²⁰ (ii) as regards Rule 103 material, the SPO provided notification of its completion of its review of materials

¹¹⁵ Confirmed Indictment, para. 179.

¹¹⁶ Confirmed Indictment, paras 8-9, 32, 39, 40, 44-47, 49, 52, 55-57, 178.

¹¹⁷ Third Detention Decision, paras 78-79, *citing* ECtHR, *Shabani v. Switzerland*, no. 29044/06, [Judgment](#), 5 November 2009, paras 65, 69; ICTY, *Prosecutor v. Ademi*, IT-01-46-PT, [Order on Motion for Provisional Release](#), 20 February 2002, para. 26; ICTR, *Prosecutor v. Ndayambaje*, ICTR-98-42-T, [Decision on the Defence Motion for the Provisional Release of the Accused](#), 21 October 2002, para. 23; *Prosecutor v. Ngirumpatse*, ICTR-98-44-T, [Decision on the Motion by Ngirumpatse's Defence to Find the Accused's Detention Unlawful or, in the Alternative, to Order his Provisional Release](#), 18 August 2003, para. 25.

¹¹⁸ *See supra* para. 56.

¹¹⁹ In this regard the Pre-Trial Judge recalls that, for the purposes of assessing the proportionality of Mr Selimi's detention, the actual length of time spent in pre-trial detention must be assessed as opposed to any estimates by the SPO that proved to be inaccurate, *see* Third Detention Decision, para. 84.

¹²⁰ KSC-BC-2020-06, F00804, Specialist Counsel, *Thaçi Defence Submissions for the Twelfth Status Conference*, 18 May 2022, public, paras 22-27; F00805, Specialist Prosecutor, *Prosecution Submissions for Twelfth Status Conference*, 18 May 2022, public, paras 13-17; F00806, Specialist Counsel, *Veseli Defence Submissions for Twelfth Status Conference*, 18 May 2022, public, paras 32-34, with Annexes 1-2, confidential; F00807, Specialist Counsel, *Krasniqi Defence Submissions for Twelfth Status Conference*, 18 May 2022, public, paras 12-14; F00810, Specialist Counsel, *Krasniqi Defence Proposals for Streamlining the Case*, 20 May 2022, confidential; Transcript of Hearing, 20 May 2022, public, p. 1301, lines 19-22; p. 1302, lines 13-15; p. 1303, lines 7-9, lines 18-25; p. 1306, lines 5-7, lines 14-17; p. 1307, lines 4-12; p. 1312, lines 12-23.

registered between 31 January 2022 and 16 June 2022;¹²¹ (iii) the SPO filed a revised list of witnesses, pursuant to Rule 95(4)(b) of the Rules, on 2 September 2022;¹²² (iv) according to the SPO, significant progress on securing clearance for Rule 107 material has been made and will be made by the end of September;¹²³ (v) the Pre-Trial Judge ordered the SPO to supplement its Rule 109(c) chart by 30 September 2022;¹²⁴ (vi) in relation to currently pending Defence requests for the disclosure of Rule 102(3) material, the Pre-Trial Judge ordered the SPO to finalise its processing of these requests, to request protective measures or submit materiality challenges, and to disclose all material not subject to protective measures requests or materiality challenges by 30 September 2022,¹²⁵ and to supplement its Rule 102(3) notice by 7 October 2022;¹²⁶ (vii) the Defence's pre-trial briefs are due on 21 October 2022;¹²⁷ (viii) the Defence's notices of alibi or grounds for excluding responsibility are due on 28 October 2022;¹²⁸ (ix) the Pre-Trial Judge ordered the SPO to file a provisional list of the first 40 witnesses it intends to call at trial by 18 November 2022;¹²⁹ (x) the Pre-Trial Judge ordered the Defence to

¹²¹ KSC-BC-2020-06, F00861, Specialist Prosecutor, *Third Prosecution Request for Protective Measures for Items Containing Rule 103 Information*, 30 June 2022, para. 1, strictly confidential and *ex parte*, with Annexes 1-9, strictly confidential and *ex parte*. A confidential redacted version was filed on 1 July 2022, F00861/CONF/RED. On 26 August 2022, the Pre-Trial Judge found that: (i) while disclosure for some exculpatory items could have taken place earlier, the disclosure effectuated in Disclosure Batches 160, 170, 174, 175 and 176 did not amount to a non-compliance of the SPO disclosure obligations under Rule 103 of the Rules warranting the adoption of measures; and (ii) thus, the threshold of non-compliance, within the meaning of Rule 110 of the Rules, had not been met, *see* KSC-BC-2020-06, F00936, Pre-Trial Judge, *Decision on Thaçi and Krasniqi Defence Motions Seeking Remedies for Non-Compliance with Disclosure Obligations*, 26 August 2022, confidential, para. 36. A public redacted version was issued on 13 September 2022, F00936/RED.

¹²² *See supra* fn. 60 above.

¹²³ KSC-BC-2020-06, F00952, Specialist Prosecutor, *Prosecution Submissions for Fourteenth Status Conference ("SPO Submissions for Fourteenth Status Conference")*, 5 September 2022, public, para. 7; Transcript of Hearing, 8 September 2022, public, p. 1507, lines 5-13.

¹²⁴ KSC-BC-2020-06, Transcript of Hearing, 13 July 2022, public, p. 1328, lines 18-24.

¹²⁵ KSC-BC-2020-06, Transcript of Hearing, 20 May 2022, public, p. 1323, lines 16-25. According to the SPO, up until 5 September 2022, 80% of the total number of selected Rule 102(3) items have been resolved, *see* SPO Submissions for Fourteenth Status Conference, para. 3.

¹²⁶ KSC-BC-2020-06, Transcript of Hearing, 13 July 2022, public, p. 1474, line 24 to p. 1475, line 2.

¹²⁷ KSC-BC-2020-06, Transcript of Hearing, 20 May 2022, public, p. 1324, lines 1-6.

¹²⁸ KSC-BC-2020-06, Transcript of Hearing, 8 September 2022, public, p. 1583, lines 7-13.

¹²⁹ KSC-BC-2020-06, Transcript of Hearing, 8 September 2022, public, p. 1584, lines 9-12.

provide, by the same date, any objections regarding the admissibility of evidentiary material disclosed (to the extent possible);¹³⁰ and (xi) the Parties' notices on points of agreement reached on issues of law and/or fact are also due on the same date.¹³¹

62. Furthermore, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, Mr Selimi's detention shall be reviewed every two months or as soon as a change in circumstances arises.

63. On this basis, the Pre-Trial Judge concludes that, for the purposes of the periodic review of the detention of Mr Selimi pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, the time Mr Selimi has spent in pre-trial detention is not disproportionate.

V. CLASSIFICATION

64. The Pre-Trial Judge orders the Defence to file a public redacted version of the Response by no later than **Friday, 23 September 2022**.

¹³⁰ KSC-BC-2020-06, Transcript of Hearing, 8 September 2022, public, p. 1583, line 21 to p. 1584, line 2.

¹³¹ KSC-BC-2020-06, Transcript of Hearing, 8 September 2022, public, p. 1583, lines 14-20.

VI. DISPOSITION

65. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a) **ORDERS** Mr Selimi's continued detention;
- b) **ORDERS** Mr Selimi, if he wishes to do so, to file submissions on the next review of detention by no later than **Monday, 17 October 2022**, with responses and replies following the timeline set out in Rule 76 of the Rules;
- c) **ORDERS** the SPO, should Mr Selimi decide not to file any submissions by the aforementioned time limit, to file submissions on the next review of Mr Selimi's detention by no later than **Monday, 24 October 2022**, and Mr Selimi, if he wishes to do so, to file his submissions by no later than **Monday, 31 October 2022**; and
- d) **ORDERS** the Defence to submit a public redacted version of the Response by no later than **Friday, 23 September 2022**.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Monday, 19 September 2022
At The Hague, the Netherlands.