



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: 18 November 2022

Language: English

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Public Redacted Version of
Decision on Periodic Review of Detention of Rexhep Selimi

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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, strictly confidential and *ex parte* (F00789/A01), with confidential redacted (F00789/A02) and public redacted (F00789/A05) versions. On 30 September 2022, the SPO submitted a confirmed further amended indictment ("Confirmed Indictment"), strictly confidential and *ex parte* (F00999/A01), with confidential redacted (F00999/A02) and public redacted versions (F00999/A03), as ordered by the Pre-Trial Judge (F00895, Pre-Trial Judge, *Decision on Motion Alleging Defects in the Form of the Amended Indictment*, 22 July 2022, public, para. 49(e); F00993, Pre-Trial Judge, *Decision on the Prosecution Request to Amend the Indictment*, 29 September 2022, confidential, para. 24(b); a public redacted version was filed on the same day, F00993/RED).

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)*, 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 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 19 September 2022, the Pre-Trial Judge ordered Mr Selimi's continued detention ("Fifth Detention Decision").¹⁸
9. On 24 October 2022, the Specialist Prosecutor's Office ("SPO") filed its submissions on the review of Mr Selimi's detention ("SPO Submissions").¹⁹
10. The Defence did not file a response to the SPO Submissions.

II. SUBMISSIONS

11. 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 Fifth Detention Review and 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

¹⁸ KSC-BC-2020-06, F00979, Pre-Trial Judge, *Decision on Periodic Review of Detention of Rexhep Selimi*, 19 September 2022, confidential. A public redacted version was filed on 30 September 2022, F00979/CONF/RED.

¹⁹ KSC-BC-2020-06, F01054, Specialist Prosecutor, *Prosecution Submissions on Detention Review of Mr Selimi*, 24 October 2022, confidential. A public redacted version was filed on 27 October 2022, F01054/RED.

²⁰ SPO Submissions, paras 2, 15.

²¹ SPO Submissions, para. 6.

²² SPO Submissions, paras 1, 8-9.

duly considered;²³ and (iv) the continued detention of Mr Selimi remains proportionate.²⁴

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.

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

²³ SPO Submissions, paras 10-11.

²⁴ SPO Submissions, paras 12-13.

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.²⁵

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.²⁶

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.²⁷

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 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.²⁸

²⁵ See, among many others, Third Detention Decision, para. 20, with further references.

²⁶ ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222, with further references.

²⁷ SPO Submissions, para. 6.

²⁸ Confirmation Decision, para. 521(a)(i)-(ii).

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.²⁹ 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.³⁰

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.³¹ The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"³² 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.³³ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.³⁴ Lastly, when deciding on whether a person should be released or detained, the Pre-Trial Judge

²⁹ 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.

³⁰ 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.

³¹ 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.

³² See *chapeau* of Article 41(6)(b) of the Law.

³³ First Detention Decision, para. 19, with further references.

³⁴ First Court of Appeals Decision, para. 40; Second Court of Appeals Decision, para. 19.

must consider alternative measures to prevent the risks in Article 41(6)(b) of the Law.³⁵

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.³⁶

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;³⁷ and (ii) continues to play a significant role in Kosovo on the basis of the previous positions he occupied.³⁸ 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.

24. On this basis, and notwithstanding the counter-balancing factors identified in the First Detention Decision,³⁹ the Pre-Trial Judge finds that a moderate risk of flight in relation to Mr Selimi continues to exist.

³⁵ 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*.

³⁶ SPO Submissions, paras 8-9.

³⁷ First Detention Decision, para. 31; Second Detention Decision, para. 25; Third Detention Decision, para. 28; Fourth Detention Decision, para. 27; Fifth Detention Decision, para. 23.

³⁸ 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; Fifth Detention Decision, para. 23.

³⁹ First Detention Decision, para. 32.

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.⁴⁰

26. The Pre-Trial Judge recalls that [REDACTED],⁴¹ and the fact that [REDACTED].⁴² In this connection, the Pre-Trial Judge found that Mr Selimi has, [REDACTED],⁴³ [REDACTED].⁴⁴ [REDACTED].⁴⁵ [REDACTED].⁴⁶ In this regard, the Pre-Trial Judge still considers that, [REDACTED].⁴⁷

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,⁴⁸ Mr Selimi still holds a position of influence in Kosovo.⁴⁹

⁴⁰ SPO Submissions, paras 8-9.

⁴¹ Second Detention Decision, para. 33; Third Detention Decision, para. 32; Fourth Detention Decision, para. 30; Fifth Detention Decision, para. 26.

⁴² Second Detention Decision, para. 37; Second Court of Appeals Decision, para. 37; Third Detention Decision, para. 32; Fourth Detention Decision, para. 30; Fifth Detention Decision, para. 26.

⁴³ Second Detention Decision, paras 34-36; Third Detention Decision, para. 32; Fourth Detention Decision, para. 30; Fifth Detention Decision, para. 26.

⁴⁴ Second Detention Decision, para. 37; Second Court of Appeals Decision, para. 37; Third Detention Decision, para. 32; Fourth Detention Decision, para. 30; Fifth Detention Decision, para. 26.

⁴⁵ 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; Fifth Detention Decision, para. 26.

⁴⁶ Second Detention Decision, para. 39; Third Detention Decision, para. 32; Fourth Detention Decision, para. 30; Fifth Detention Decision, para. 26.

⁴⁷ Second Detention Decision, para. 39; Third Detention Decision, para. 32; Fourth Detention Decision, para. 30; Fifth Detention Decision, para. 26.

⁴⁸ 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; Fifth Detention Decision, para. 27.

⁴⁹ 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; Fifth Detention Decision, para. 27.

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 possible⁵⁰ for Mr Selimi to [REDACTED].⁵¹

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.⁵² 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.⁵³ 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.⁵⁴ In particular, the Pre-Trial Judge recalls that the risk of obstruction need not materialise in an Accused personally tampering with evidence or exerting influence or pressure on witnesses. It suffices that an Accused instigates others or contributes in any way to the materialisation of that risk.⁵⁵

29. Lastly, the Pre-Trial Judge recalls that the advancement of the pre-trial proceedings in particular, the filing of the SPO's pre-trial brief and witness list,⁵⁶

⁵⁰ First Court of Appeals Decision, para. 40; Third Detention Decision, para. 33; Fourth Detention Decision, para. 31; Fifth Detention Decision, para. 27.

⁵¹ Second Detention Decision, para. 40; Third Detention Decision, para. 33; Fourth Detention Decision, para. 31; Fifth Detention Decision, para. 27.

⁵² First Detention Decision, para. 42; Second Detention Decision, para. 41; Third Detention Decision, para. 34; Fourth Detention Decision, para. 32; Fifth Detention Decision, para. 28.

⁵³ 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.

⁵⁴ 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.

⁵⁵ 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; Fifth Detention Decision, para. 28.

⁵⁶ 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.

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.⁵⁷ Furthermore, Mr Selimi has been or will soon be provided with further details as to the case against him, in particular following the filing of a lesser redacted version of the witness list,⁵⁸ the witness list including the mode of questioning and presentation times,⁵⁹ the amended witness and exhibit lists,⁶⁰ and the provisional list of the first 40 witnesses the SPO intends to call at trial, which is due on 18 November 2022.⁶¹

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 others to commit crimes continues.⁶²

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

A corrigendum with two strictly confidential *and ex parte* Annexes and one confidential Annex was submitted on 24 February 2022, F00709.

⁵⁷ Fifth Detention Decision, para. 29.

⁵⁸ 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.

⁵⁹ 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.

⁶⁰ KSC-BC-2020-06, F01078, Specialist Prosecutor, *Prosecution Submission of Amended Witness and Exhibit Lists*, 2 November 2022, confidential, with Annexes 1 and 3, strictly confidential and *ex parte*, and Annexes 2 and 4, confidential.

⁶¹ KSC-BC-2020-06, Transcript of Hearing, 8 September 2022, public, p. 1584, lines 9-12.

⁶² SPO Submissions, paras 8-9.

the latter in the circumstances of the present case.⁶³ 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.⁶⁴

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].⁶⁵ 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, 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, the witness list including the mode of questioning and presentation times, the amended witness and exhibit lists, and the provisional list of the first 40 witnesses the SPO intends to call at trial, which is due on 18 November 2022.⁶⁶

34. Lastly, the Pre-Trial Judge recalls that the Confirmation Decision explicitly describes Mr Selimi's personal participation in the commission of crimes⁶⁷ and his use of others to commit crimes as a joint criminal enterprise member,⁶⁸ which adds to the risk that he may commit further crimes.⁶⁹

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,

⁶³ First Detention Decision, para. 47; Second Detention Decision, para. 49; Third Detention Decision, para. 40; Fourth Detention Decision, para. 36; Fifth Detention Decision, para. 32.

⁶⁴ First Detention Decision, para. 47; Second Detention Decision, para. 49; Third Detention Decision, para. 40; Fourth Detention Decision, para. 36; Fifth Detention Decision, para. 32.

⁶⁵ Second Detention Decision, para. 50; Third Detention Decision, para. 41; Fourth Detention Decision, para. 37; Fifth Detention Decision, para. 33.

⁶⁶ See *supra* para. 29.

⁶⁷ Confirmation Decision, para. 466.

⁶⁸ Confirmation Decision, paras 453-454, 465-467.

⁶⁹ Second Detention Decision, para. 52; Third Detention Decision, para. 43; Fourth Detention Decision, para. 38; Fifth Detention Decision, para. 34.

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 been found to not sufficiently mitigate the risks posed by the Accused.⁷⁰ 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.⁷¹

⁷⁰ SPO Submissions, para. 10.

⁷¹ SPO Submissions, para. 11.

2. Discussion

39. 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.⁷² 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 judicially determined date, and comply with any variation or termination of the interim release.⁷³

40. Turning to the risks of obstructing the progress of SC proceedings and committing further crimes, the Pre-Trial Judge recalls, at the outset: (i) his previous finding that neither previously proposed conditions nor any additional measures ordered *proprio motu* could sufficiently mitigate the existing risks;⁷⁴ and (ii) that this finding was recently upheld by the Court of Appeals.⁷⁵

41. 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,⁷⁶ 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.⁷⁷

42. 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

⁷² First Detention Decision, para. 54; Second Detention Decision, para. 58; Third Detention Decision, para. 54; Fourth Detention Decision, para. 53; Fifth Detention Decision, para. 44.

⁷³ First Detention Decision, para. 54; Second Detention Decision, para. 58; Third Detention Decision, para. 54; Fourth Detention Decision, para. 53; Fifth Detention Decision, para. 44.

⁷⁴ Fourth Detention Decision, para. 59; Fifth Detention Decision, para. 56.

⁷⁵ Fourth Court of Appeals Decision, para. 25.

⁷⁶ Third Court of Appeals Decision, para. 50; Fifth Detention Decision, para. 55.

⁷⁷ Third Court of Appeals Decision, para. 50; Fifth Detention Decision, para. 55.

minimising the risks of obstruction and commission of further crimes.⁷⁸ Moreover, they offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented.⁷⁹ 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,⁸⁰ 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.

43. Accordingly, the Pre-Trial Judge finds that neither the conditions previously proposed by the Defence⁸¹ nor any other conditions imposed by the Pre-Trial Judge are sufficient to mitigate the risk of Mr Selimi obstructing the progress of SC proceedings or committing further crimes.

E. PROPORTIONALITY OF DETENTION

44. 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 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 it has supplemented 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.⁸²

⁷⁸ Third Detention Decision, para. 67; Fourth Detention Decision, para. 59; Fifth Detention Decision, para. 56.

⁷⁹ Third Court of Appeals Decision, para. 42; Fifth Detention Decision, para. 56.

⁸⁰ Third Court of Appeal Decision, para. 35; Fifth Detention Decision, para. 56.

⁸¹ See Fifth Detention Decision, para. 56.

⁸² SPO Submissions, paras 12-13.

45. 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.⁸³ 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.⁸⁴ 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.⁸⁵

46. Mr Selimi was arrested on 5 November 2020 and, as a result, he has been detained for slightly more than two years 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.

47. 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;⁸⁶ (ii) it is alleged that he played a significant role in these crimes;⁸⁷ (iii) he could be sentenced to a lengthy sentence, if convicted; (iv) proceedings against Mr Selimi

⁸³ Fourth Detention Decision, para. 61; Fifth Detention Decision, para. 58; 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.

⁸⁴ Fourth Detention Decision, para. 61; Fifth Detention Decision, para. 58; *Similarly*, First Court of Appeals Decision, para. 79.

⁸⁵ Fourth Detention Decision, para. 61; Fifth Detention Decision, para. 58; ECtHR, [Buzadji v. the Republic of Moldova \[GC\]](#), para. 90.

⁸⁶ Confirmed Indictment, para. 177.

⁸⁷ Confirmed Indictment, paras 7-9, 32, 39-40, 44-47, 49, 52, 55-57, 176.

are complex;⁸⁸ 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.⁸⁹

48. Moreover, all required procedural steps relating to the pre-trial phase of the present case have been, are being or will be completed, and thus, the case will be transmitted for trial before the end of the year.⁹⁰ In particular, following the Fourth Detention Decision and Fifth Detention Decision, respectively: (i) the SPO filed a revised list of witnesses, pursuant to Rule 95(4)(b) of the Rules, on 2 September 2022;⁹¹ (ii) according to the SPO, it has secured clearance for the majority of the Rule 107 material;⁹² (iii) the SPO supplemented its Rule 109(c) chart on 30 September 2022;⁹³ (iv) in relation to currently pending Defence requests for the disclosure of Rule 102(3) material, the SPO finalised its processing of these requests, requested protective measures or submitted materiality challenges, and disclosed all material not subject to protective measures requests or materiality challenges on 30 September 2022 and 13 October 2022 respectively,⁹⁴ and supplemented its Rule 102(3) notice on 7 October 2022 (“Supplemental Rule 102(3) Notice”);⁹⁵ (v) the Defence filed its pre-trial briefs on 21 and

⁸⁸ 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.

⁸⁹ See *supra* para. 43.

⁹⁰ 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.

⁹¹ See *supra* fn. 60 above.

⁹² KSC-BC-2020-06, F01071, Specialist Prosecutor, *Prosecution Submissions for Fifteenth Status Conference*, 31 October 2022, public, paras 2-3.

⁹³ KSC-BC-2020-06, F01000, Specialist Prosecutor, *Prosecution Submission of Supplemental Rule 109(c) Chart*, 30 September 2022, public, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential.

⁹⁴ See KSC-BC-2020-06, F01005, Specialist Prosecutor, *Prosecution Notification of Compliance*, 3 October 2022, public; F01034, Specialist Prosecutor, *Prosecution Notification of Disclosure*, 13 October 2022, public.

⁹⁵ KSC-BC-2020-06, F01021, Specialist Prosecutor, *Prosecution Supplemental Rule 102(3) Notice*, 7 October 2022, public, with Annex 1, confidential.

22 October 2022;⁹⁶ and (vi) the Defence filed notices of alibi or grounds for excluding responsibility on 28 October 2022.⁹⁷

49. In addition, the Pre-Trial Judge ordered: (i) the SPO to file a provisional list of the first 40 witnesses it intends to call at trial by 18 November 2022;⁹⁸ (ii) the Defence to provide, by the same date, any objections regarding the admissibility of evidentiary material disclosed (to the extent possible);⁹⁹ (iii) the Parties to file, by the same date, notices on points of agreement reached on issues of law and/or fact are also due on the same date;¹⁰⁰ and (iv) the SPO to finalise, by the same date, its processing of requests related to Rule 102(3) material made by the Defence after 20 May 2022, by requesting protective measures, submitting materiality challenges, or disclosing all material not subject to protective measures requests of materiality challenges;¹⁰¹ (v) the SPO to review its Supplemental Rule 102(3) Notice for exculpatory material and to disclose this material under Rule 103 of the Rules or request protective measures by 16 December 2022;¹⁰² and (vi) the SPO to finalise its processing of requests related to material from the Supplemental Rule 102(3) Notice, by requesting protective

⁹⁶ KSC-BC-2020-06, F01049, Specialist Counsel, *Selimi Defence Pre-Trial Brief*, 21 October 2022, confidential; F01050, Specialist Counsel, *Pre-Trial Brief of Mr Hashim Thaçi*, 21 October 2022, confidential; F01051, Specialist Counsel, *Pre-Trial Brief of Jakup Krasniqi*, 21 October 2022, confidential; F01052, Specialist Counsel, *Corrected Version of the Pre-Trial Brief on Behalf of Kadri Veseli*, 25 October 2022 (the original version was filed on 22 October 2022), confidential, with Annexes 1-5, confidential.

⁹⁷ KSC-BC-2020-06, F01065, Specialist Counsel, *Thaçi Defence Notice of Alibi*, 28 October 2022, public; F01066, Specialist Counsel, *Veseli Defence Notice of Alibi*, 28 October 2022, public; F01067, Specialist Counsel, *Selimi Defence Notice of Alibi*, 28 October 2022, public. In its pre-trial brief, the Defence for Mr Krasniqi submits, with respect to one allegation in the Indictment, that the SPO's failure to plead the date of this allegation with any precision has prevented the Defence for Mr Krasniqi from being able to present an alibi, see KSC-BC-2020-06, F01051, Specialist Counsel, *Pre-Trial Brief of Jakup Krasniqi*, 21 October 2022, confidential, para. 79.

⁹⁸ KSC-BC-2020-06, Transcript of Hearing, 8 September 2022, public, p. 1584, lines 9-12.

⁹⁹ KSC-BC-2020-06, Transcript of Hearing, 8 September 2022, public, p. 1583, line 21 to p. 1584, line 2.

¹⁰⁰ KSC-BC-2020-06, Transcript of Hearing, 8 September 2022, public, p. 1583, lines 14-20.

¹⁰¹ KSC-BC-2020-06, Transcript of Hearing, 4 November 2022, public, p. 1690, lines 11-18 (first oral order).

¹⁰² KSC-BC-2020-06, Transcript of Hearing, 4 November 2022, public, p. 1691, lines 2-7 (third oral order).

measures, submitting materiality challenges, or disclosing all material not subject to protective measures requests or materiality challenges by 13 January 2023.¹⁰³

50. 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.

51. 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.

¹⁰³ KSC-BC-2020-06, Transcript of Hearing, 4 November 2022, public, p. 1690, line 19 to p. 1691, line 1 (second oral order).

VI. DISPOSITION

52. 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 **Thursday, 22 December 2022**, with responses and replies following the timeline set out in Rule 76 of the Rules; and
- 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 **Thursday, 29 December 2022**, and Mr Selimi, if he wishes to do so, to file his submissions by no later than **Monday, 9 January 2023**.



Judge Nicolas Guillou

Pre-Trial Judge

Dated this Friday, 18 November 2022

At The Hague, the Netherlands.