



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

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

**Before:** Trial Panel II  
Judge Charles Smith III, Presiding  
Judge Christoph Barthe  
Judge Guénaél Mettraux  
Judge Fergal Gaynor, Reserve

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Acting Specialist Prosecutor

**Date:** 16 January 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of 'Prosecution Submission Pertaining to Periodic Detention Review of Rexhep Selimi'**

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## I. INTRODUCTION

1. Pursuant to Article 41 of the Law<sup>1</sup> and Rule 57 of the Rules,<sup>2</sup> the Specialist Prosecutor's Office ('SPO') makes the following submissions in support of the need for the continued detention of the accused Rexhep Selimi ('Selimi'). The Pre-Trial Judge and the Court of Appeals have repeatedly held that Selimi's detention is justified on multiple bases, that no conditions short of detention in the Kosovo Specialist Chamber's ('KSC') detention centre would be sufficient to minimize the risks, and that the detention period—taking all relevant circumstances into account—is reasonable. Since the most recent of these determinations on 18 November 2022, and contrary to the Selimi Submissions,<sup>3</sup> there has been no change in circumstances that merits deviating from that determination. Indeed, the transfer of the case to the Trial Panel, and other significant developments that show steady progress and will give Selimi further access to information regarding sensitive witnesses and the case against him, buttress the necessity and reasonableness of detention.

## II. PROCEDURAL HISTORY

2. The procedural history regarding Selimi's detention is collected in the Pre-Trial Judge's most recent detention decision.<sup>4</sup>
3. The Pre-Trial Judge issued the Sixth Detention Decision on 18 November 2022.
4. On 30 November 2022, the Pre-Trial Judge notified the President of the KSC that a complete case file would be ready to transfer to a Trial Panel on 15 December 2022.<sup>5</sup>

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<sup>1</sup> Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

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

<sup>3</sup> Public Redacted Version of Selimi Defence Submissions on Review of Detention, KSC-BC-2020-06/F01180/RED, 22 December 2022, Confidential ('Selimi Submissions').

<sup>4</sup> Decision on Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F01111, 18 November 2022, paras 1-10 ('Sixth Detention Decision').

<sup>5</sup> Notification Pursuant to Rule 98(3) of the Rules of Procedure and Evidence, KSC-BC-2020-06/F01131, 30 November 2022.

5. Also on 30 November 2022, the President assigned a Trial Panel,<sup>6</sup> and on 15 December 2022 the Trial Panel elected a President.<sup>7</sup>
6. On 15 December 2022, the case was transferred to the Trial Panel.<sup>8</sup>
7. On 22 December 2022, the Selimi Submissions were filed.<sup>9</sup>

### III. SUBMISSIONS

8. Preliminarily, the part of the Selimi Submissions seeking an urgent response deadline<sup>10</sup> has been rejected by the Trial Panel<sup>11</sup> and is therefore not addressed further.
9. Article 41 of the Law permits the detention of an accused person until final judgment where there is a grounded suspicion that the person has committed a crime within the jurisdiction of the KSC, 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, (iii) will repeat the criminal offence, complete an attempted crime, or commit a crime which he or she has threatened to commit.<sup>12</sup> A broad range of circumstances may merit consideration in this analysis according to the particular case:

These factors may be individual, such as the nature and scope of the crimes allegedly committed by the Accused and the potential punishment he or she is facing, his or her age, (past) position(s), occupation, family ties, health condition, assets, conduct and statements, international contacts and ties, and the existence of support networks that may facilitate the materialisation of a risk. Relevant factors may also be contextual, such as the environment and conditions in which the Accused lives, or the particular stage of the ongoing proceedings.<sup>13</sup>

10. Pursuant to Article 41(10) and Rule 57(2), the relevant chamber will review the detention of an accused every two months at a minimum in order to examine whether

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<sup>6</sup> Decision Assigning Trial Panel II, KSC-BC-2020-06/F01132, 30 November 2022.

<sup>7</sup> Notification of Election of a Presiding Judge, KSC-BC-2020-06/F01167, 15 December 2022.

<sup>8</sup> Decision Transmitting the Case File to Trial Panel II, KSC-BC-2020-06/F01166, 15 December 2022.

<sup>9</sup> The submissions were notified on 27 December 2022.

<sup>10</sup> Selimi Submissions, KSC-BC-2020-06/F01180/RED, paras 33-34.

<sup>11</sup> Order Setting the Deadline for the Response to F01180, KSC-BC-2020-06/F01183, 28 December 2022.

<sup>12</sup> Article 41(6); *see also* Sixth Detention Decision, KSC-BC-2020-06/F01111, para.12.

<sup>13</sup> Decision on Rexhep Selimi's Application for Interim Release, KSC-BC-2020-06/F00179, 22 January 2021, para.21 ('First Detention Decision').

reasons for detention still exist.<sup>14</sup> In assessing whether detention remains warranted, the relevant judicial chamber will consider both whether there has been any change in circumstances since the last determination, and ‘assess whether [it] is still satisfied that, at the time of the review and under specific circumstances of the case when the review takes place, the detention of the Accused remains warranted.’<sup>15</sup> In making its determination, the chamber is neither required to make findings on the factors already decided upon in the initial ruling on detention nor to entertain submissions that merely repeat arguments that have already been addressed in previous decisions.<sup>16</sup> This remains true when a case passes from the Pre-Trial Judge to the Trial Panel; the Trial Panel is not required to proceed to a *de novo* assessment of factors already decided upon, but must examine the reasons or circumstances to determine if they still exist.<sup>17</sup>

11. Selimi has been detained since his arrest on 4 November 2020 following the confirmation of the indictment (‘Confirmed Indictment’<sup>18</sup>).<sup>19</sup> Since then, the Pre-Trial Judge has reviewed Selimi’s detention six times, and every time has held that Selimi merited continued detention.<sup>20</sup> The Appeals Chamber has also repeatedly upheld the Pre-

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<sup>14</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.13; Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F01171, 19 December 2022, para.15 (‘Veseli Detention Decision’).

<sup>15</sup> Public Redacted Version of Decision on Review of Detention of Hysni Gucati, KSC-BC-2020-07/F00506/RED, 21 December 2021, para.19.

<sup>16</sup> Decision on Rexhep Selimi’s Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA007/F00005, 1 October 2021, para.15 (‘Second Appeals Decision’); Decision on Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F00372, 25 June 2021, para.16 (‘Second Detention Decision’); Decision on Remanded Detention Review and Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F00580, 26 November 2021, para.20 (‘Third Detention Decision’).

<sup>17</sup> See Consolidated Decision on Nasim Haradinaj’s Appeals Against Decisions on Review of Detention, KSC-BC-2020-07/IA007/F00004, 6 April 2022, para.28 (‘Consolidated Decision’); Public Redacted Version of Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00507/RED, 21 December 2021, para.19; Decision on Review of Detention of Hysni Gucati, KSC-BC-2020-07/F00562, 21 February 2022, para.20.

<sup>18</sup> Submission of Confirmed Amended Indictment, KSC-BC-2020-06/F00999/A02, 30 September 2022.

<sup>19</sup> See Sixth Detention Decision, KSC-BC-2020-06/F01111, fn.2. (explaining procedural history of the indictments).

<sup>20</sup> First Detention Decision, KSC-BC-2020-06/F00179; Second Detention Decision, KSC-BC-2020-06/F00372; Third Detention Decision, KSC-BC-2020-06/F00580; Decision on Periodic Review of Detention of Rexhep

Trial Judge's assessments that Selimi merited detention.<sup>21</sup> There have been no developments that diminish the factors supporting the need and reasonableness of detention. Indeed, the transfer of the case to the Trial Panel and other developments in the case augment the necessity of detention.

#### A. GROUNDED SUSPICION

12. Article 41(6)(a) requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the KSC.<sup>22</sup> There remains a grounded suspicion that Selimi has done so.<sup>23</sup> Based on a thorough review of the Indictment and supporting evidence provided by the SPO, the Confirmation Decision held that there is a 'well-grounded suspicion'<sup>24</sup> that Selimi is liable for crimes against humanity (persecution, imprisonment, other inhumane acts, torture, murder, and enforced disappearance) and war crimes (arbitrary detention, cruel treatment, torture, and murder) as identified in Articles 13, 14, and 16.<sup>25</sup> The Pre-Trial Judge later also confirmed amendments to the Indictment that added further, similar charges against Selimi.<sup>26</sup> The 'well-grounded

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Selimi, KSC-BC-2020-06/F00802, 13 May 2022 ('Fourth Detention Decision'); Decision on Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F00979, 19 September 2022 ('Fifth Detention Decision'); Sixth Detention Decision, KSC-BC-2020-06/F01111.

<sup>21</sup> Decision on Rexhep Selimi's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA003/F00005, 30 April 2021 ('First Appeals Decision'); Decision on Rexhep Selimi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA015/F00005, 25 March 2022 ('Third Appeals Decision'); Decision on Selimi Appeal Against "Decision on Periodic Review of Detention of Rexhep Selimi", KSC-BC-2020-06/IA021/F00005, 29 July 2022.

<sup>22</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.17.

<sup>23</sup> See Article 41(6)(a); Sixth Detention Decision, KSC-BC-2020-06/F01111, paras 17-20.

<sup>24</sup> Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00026/CONF/RED, 26 October 2020, para.18 ('Confirmation Decision').

<sup>25</sup> Confirmation Decision, KSC-BC-2020-06/F00026/CONF/RED, para.521(a); see also Sixth Detention Decision, KSC-BC-2020-06/F01111, para.19.

<sup>26</sup> Public Redacted Version of Decision on the Confirmation of Amendments to the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00777/RED, 22 April 2022, para.185; see also Sixth Detention Decision, KSC-BC-2020-06/F01111, para.19.

suspicion' standard exceeds that of 'grounded suspicion' required for detention.<sup>27</sup> Nothing has occurred since the confirmation decisions that would detract from this determination. Indeed, the Pre-Trial Judge has repeatedly confirmed that there remains a well-grounded suspicion that Selimi has committed crimes within the KSC's jurisdiction.<sup>28</sup>

#### B. DETENTION IS JUSTIFIED UNDER ALL ARTICLE 41(6)(B) FACTORS

13. The Court of Appeals has been clear that, once a grounded suspicion under Article 41(6)(a) is identified, an articulable basis of a single ground under Article 41(6)(b) is sufficient to support detention.<sup>29</sup> In general terms the three grounds under Article 41(6)(b) justifying detention are: 1) risk of flight; 2) potential obstruction; and, 3) risk of additional crimes. The applicable standard is articulable grounds that support a 'belief' that there is a risk of one of the Article 41(6)(b) grounds occurring.<sup>30</sup> The 'belief' test denotes 'an acceptance of the possibility, not the inevitability, of a future occurrence. In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.'<sup>31</sup> In considering whether an accused should be detained or released, the

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<sup>27</sup> See Confirmation Decision, KSC-BC-2020-06/F00026/CONF/RED, para.46 (identifying 'four progressively higher evidentiary thresholds' contained within the Law including 'grounded suspicion' and, subsequently, 'well-grounded suspicion'); see also Consolidated Decision, KSC-BC-2020-07/IA007/F00004, para.29; Public Redacted Version of Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00507/RED, 21 December 2021, para.24; Veseli Detention Decision, KSC-BC-2020-06/F01171, para.19.

<sup>28</sup> See, e.g., Sixth Detention Decision, KSC-BC-2020-06/F01111, paras 17-20.

<sup>29</sup> See Consolidated Decision, KSC-BC-2020-07/IA007/F00004, para.49; Sixth Detention Decision, KSC-BC-2020-06/F01111, para.21; Veseli Detention Decision, KSC-BC-2020-06/F01171, para.21.

<sup>30</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.21; First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.44.

<sup>31</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111; see also First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.40; Public Redacted Version of Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00507/RED, 21 December 2021, para.28.

relevant chamber must consider whether measures other than detention would sufficiently reduce the risk of the Article 41(6)(b) factors occurring.<sup>32</sup>

14. The Pre-Trial Judge has previously held that all three factors were satisfied in relation to Selimi, and his detention has been upheld on appeal. Since the Pre-Trial Judge's last detention review decision on 18 November 2022,<sup>33</sup> nothing has transpired that would decrease the support for an affirmative finding on any of the factors. Moreover, the progression of the case since that decision, in the form of the significant milestone of the transfer of the case file to the Trial Panel, as well as the SPO's filing of a provisional witness order of its first 40 witnesses, and the gradual lifting of protective measures, increases the risk of Selimi's flight, obstruction, and contribution to additional crimes.

*i. Risk of Flight (Article 41(6)(b)(i))*

15. Selimi continues to satisfy the applicable risk of flight standard.<sup>34</sup> As the Pre-Trial Judge summarised in the Sixth Detention Decision, Selimi: '(i) has been made aware of the charges against him and the possibility of a serious sentence and the possibility of a serious sentence in the event of a conviction; and (ii) continues to play a significant role in Kosovo on the basis of the previous positions he occupied.'<sup>35</sup> Selimi was previously Head of the KLA Operational Directorate, was the Provisional Government of Kosovo Minister of Public Order/Minister of Internal Affairs, was the Kosovo Minister of Internal Affairs, and was elected to the Kosovo Assembly in 2010.<sup>36</sup> Therefore, 'the influence he

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<sup>32</sup> Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of the Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, KSC-CC-PR-2017-1/F00004, 26 April 2017, para.14.

<sup>33</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111.

<sup>34</sup> See Sixth Detention Decision, KSC-BC-2020-06/F01111, para.24; *Contra* Selimi Submissions, KSC-BC-2020-06/F01180/RED, paras 14-15.

<sup>35</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.23.

<sup>36</sup> Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders, KSC-BC-2020-06/F00027, 26 October 2020, paras.36-37 ('Arrest and Detention Order'); First Detention Decision, KSC-BC-

continues to derive may assist him in evading [KSC] proceedings by, for instance, securing access to relevant information, and obtaining funds and means to travel.’<sup>37</sup>

*ii. Risk of Obstruction of Proceedings (Article 41(6)(b)(ii))*

16. The second factor concerns a risk that Selimi will ‘destroy, hide, change or forge evidence of a crime or specific circumstances indicate that he ... will obstruct the progress of the criminal proceedings by influencing witnesses, victims or accomplices.’<sup>38</sup> This assessment considers that such acts could be accomplished by act or omission, and it does not require that Selimi himself physically execute the offending action,<sup>39</sup> but can also extend to instigating others to do so or contributing in any way towards such a risk.<sup>40</sup>

17. Selimi continues to pose a risk of obstructing proceedings.<sup>41</sup> In the Sixth Detention Decision, the Pre-Trial Judge observed that multiple factors indicated this risk. [REDACTED]<sup>42</sup> [REDACTED]<sup>43</sup> [REDACTED]<sup>44</sup> [REDACTED]<sup>45</sup> [REDACTED].<sup>46</sup> Selimi [REDACTED].<sup>47</sup>

18. [REDACTED].<sup>48</sup> The Pre-Trial Judge observed [REDACTED].<sup>49</sup>

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2020-06/F00179, para.31; Sixth Detention Decision, KSC-BC-2020-06/F01111, para.27; First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.63.

<sup>37</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.23.

<sup>38</sup> Article 41(6)(b)(ii).

<sup>39</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.28.

<sup>40</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.28; First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.59.

<sup>41</sup> *Contra* Selimi Submissions, KSC-BC-2020-06/F01180/RED, paras 16-26.

<sup>42</sup> [REDACTED]. First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.71.

<sup>43</sup> See Second Detention Decision, KSC-BC-2020-06/F00372, para.33.

<sup>44</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.26.

<sup>45</sup> First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.71.

<sup>46</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.26.

<sup>47</sup> Second Detention Decision, KSC-BC-2020-06/F00372, para.34.

<sup>48</sup> First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.72.

<sup>49</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.26; see also First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.71 [REDACTED].



19. Moreover, [REDACTED]<sup>50</sup> [REDACTED].<sup>51</sup> Specifically, [REDACTED].<sup>52</sup>

20. [REDACTED].<sup>53</sup>[REDACTED]<sup>54</sup> [REDACTED].<sup>55</sup>

21. Selimi's influence also increases a risk of obstruction.<sup>56</sup> As the Pre-Trial Chamber recognized, Selimi is a former high-ranking, founding member of the KLA General Staff, held other KLA positions of authority such as Head of the KLA Operational Directorate and PGoK Minister of Public Order/Minister of Internal Affairs, was the Kosovo Minister of Internal Affairs, and was elected to the Kosovo Assembly in 2010.<sup>57</sup> Based on these positions he still holds a position of influence in Kosovo.<sup>58</sup> This influence, [REDACTED]<sup>59</sup> Indeed, the Court of Appeals has observed that Selimi in his own filings stated:

Mr. Selimi is a public figure who is well-known throughout Kosovo as the leader of Kosovo's largest political party and former Prime Minister of Kosovo. Selimi's duties have been substantial, starting with the position as Minister of Public Order in the Provisional Government of Kosovo (1999-2000), that of the Commander of the Defense Academy (2000-2003), and most recently that of MP of the Vetëvendosje political party in the Assembly of Kosovo.<sup>60</sup>

22. There also continues to be a climate of witness intimidation and interference with criminal proceedings against KLA members in Kosovo,<sup>61</sup> a factor that the Court of

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<sup>50</sup> See First Detention Decision, KSC-BC-2020-06/F00179, para.38.

<sup>51</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.26.

<sup>52</sup> Second Detention Decision, KSC-BC-2020-06/F00372, para.39.

<sup>53</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.26

<sup>54</sup> First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.73.

<sup>55</sup> First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.74.

<sup>56</sup> See First Appeals Decision, KSC-BC-2020-06/IA003/F00005, paras 21, 62 (observing that the 'Pre-Trial Judge's finding that Selimi has continued to play a significant political role in Kosovo was based on Selimi's own submission in the Application for Interim Release').

<sup>57</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.27; Arrest and Detention Order, KSC-BC-2020-06/F000027/RED, para.37; see also First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.63.

<sup>58</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.27.

<sup>59</sup> See Sixth Detention Decision, KSC-BC-2020-06/F01111, para.27.

<sup>60</sup> First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.62 (internal brackets and ellipses omitted).

<sup>61</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.28; Veseli Detention Decision, KSC-BC-2020-06/F01171, para.28.

Appeals has held is a relevant 'contextual consideration'.<sup>62</sup> Updated evidence of this climate in the past two years is hardly 'lacking'.<sup>63</sup> In the Case 7 Trial Judgment, the Trial Panel observed that the 'evidence points at the existence of a prevalent climate of witness intimidation in Kosovo, in particular in respect of investigations/prosecutions of crimes attributed to ex-KLA members.'<sup>64</sup> It credited the testimony of Defence Expert Witness Robert Reid, who stated:

Witness intimidation in the trials for Kosovo, I've really never seen anything like it before. I was a policeman for 20 years and I've worked here for 23 years, and I have never seen the intimidation like it. It was really quite frightening. And I'm not linking that to any individuals or any organisation. But just the fear that was engendered in the society, I've not seen any -- even in organised crime, I've never seen anything like it.<sup>65</sup>

23. In addition, referring to testimony regarding the SPO's need to institute witness emergency risk management plans in the two years before September 2020, the Case 7 Trial Panel observed that 'witness protection has continued to be a live and critical issue in Kosovo.'<sup>66</sup>

24. Even more recently, the Trial Panel in *The Prosecutor v. Salih Mustafa*, in its pronouncement on the issuance of the Trial Judgment in that case, observed the 'pervasive climate of fear and intimidation that persists in Kosovo to this day.'<sup>67</sup> The Trial Panel continued:

Throughout the course of this trial, the Panel has heard evidence from multiple witnesses indicating that those who cooperate or are believed to cooperate with the Specialist Chambers or with the Specialist Prosecutor are labelled in Kosovo as traitors or collaborators and are subject to threat and intimidation, either themselves or their children.

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<sup>62</sup> Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA015/F00005, 25 March 2022, para.43.

<sup>63</sup> Selimi Submissions, KSC-BC-2020-06/F01180/RED, para.23.

<sup>64</sup> Prosecutor v. Gucati and Haradinaj, Trial Judgment, KSC-BC-2020-07/F00611, para.577 ('Case 7 Judgment').

<sup>65</sup> Case 7 Judgment, KSC-BC-2020-07/F00611, para.577.

<sup>66</sup> Case 7 Judgment, KSC-BC-2020-07/F00611, para.579.

<sup>67</sup> Prosecutor v. Mustafa, KSC-BC-2020-05, Transcript (Judgment), 16 December 2022, p.4863, lines 16-17.

The victims who have come forward as witnesses in this case now live in constant fear that something will happen to them or their families. They are still to this day unable to speak freely about the traumatic events they experienced and the harm they suffered.<sup>68</sup>

25. In such a context, Selimi's [REDACTED], as well as his significant influence, take on heightened concern.<sup>69</sup> The Pre-Trial Judge has held that there is a risk that Selimi 'may resort to physical violence or threats of physical violence against those perceived as being opposed to the KLA, including victims and witnesses.'<sup>70</sup> Selimi himself has acknowledged that, in regards to the climate of intimidation and interference with witnesses against former KLA members, 'certain incidents may have occurred in the past, in relation to different cases involving other former KLA members.'<sup>71</sup>

26. Moreover, Selimi has recently received information concerning, *inter alia*, the first 40 witnesses the SPO intends to call,<sup>72</sup> and as the start of trial approaches (and thereafter proceeds) protective measures in the form of delayed disclosure on the dwindling number of witnesses still subject to them will be lifted, increasing the risk of obstruction.<sup>73</sup>

As the Trial Panel has recently noted in a separate detention decision:

With the commencement of trial, the names and personal details of certain highly sensitive witnesses will be disclosed to the Defence, and will therefore become known to a broader range of people, including the Accused. This, in turn, increases the risk that sensitive information pertaining to witnesses becoming known to members of the public before the witnesses in question give evidence. In this context, the release of an Accused with sensitive information in his possession would not be conducive to the effective protection of witnesses who are yet to testify.<sup>74</sup>

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<sup>68</sup> Prosecutor v. Mustafa, KSC-BC-2020-05, Transcript (Judgment), 16 December 2022, pp.4863-4864. The written Trial Judgment lays out in far greater detail the evidence demonstrating witness intimidation, however as of the date of this filing no public version of that judgment has been released.

<sup>69</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.28.

<sup>70</sup> Arrest and Detention Order, KSC-BC-2020-06/F000027/RED, para.38.

<sup>71</sup> First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.17.

<sup>72</sup> Prosecution Submission of Provisional List of First 40 Witnesses to be Called at Trial, KSC-BC-2020-06/F01117, 18 November 2022.

<sup>73</sup> See Sixth Detention Decision, KSC-BC-2020-06/F01111, para.29.

<sup>74</sup> Veseli Detention Decision, KSC-BC-2020-06/F01171, para.29.

27. In this regard, the SPO notes that, as held by the Trial Panel in Case 7, ‘the mere fact that the Accused is entitled to disclosure of relevant material does not mean that the Panel ought to ignore the risks that come with such disclosure, especially in the context of conditional release.’<sup>75</sup>

*iii. Risk of Criminal Offences (Article 41(6)(b)(iii))*

28. The third factor concerns a risk that

the seriousness of the crime, or the manner or circumstances in which it was committed and his or her personal characteristics, past conduct, the environment and conditions in which he or she lives or other personal circumstances indicate a risk that he or she will repeat the criminal offence, complete an attempted crime or commit a crime which he or she has threatened to commit.<sup>76</sup>

29. The possible future crime need only be similar, not identical, to those included in the charges, and need not be specified in detail.<sup>77</sup> The factors assessed as to whether there is a risk of obstructing proceedings under Article 41(6)(b)(ii) are also relevant when considering whether there is a risk of further crimes were Selimi to be released.<sup>78</sup> Under Article 41(6)(b)(iii), it is sufficient that there is a risk that Selimi will instigate or assist others to commit crimes, or contribute in any other way to their commission. It is not necessary that there is a risk of Selimi committing such crimes himself, although that would also be sufficient.<sup>79</sup>

30. As discussed above in regards to risk of obstruction of proceedings, there is a general climate of witness intimidation in regards to KLA crimes, Selimi wields significant influence, [REDACTED], and there is increasingly more—and more sensitive—

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<sup>75</sup> Public Redacted Version of Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00507, 21 December 2021, para.36

<sup>76</sup> Article 41(6)(b)(iii).

<sup>77</sup> First Detention Decision, KSC-BC-2020-06/F00179, para.23.

<sup>78</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.32.

<sup>79</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.32.

information about the current case available to him.<sup>80</sup> Moreover, the crimes against humanity and war crimes that Selimi is charged with are extremely serious, they are alleged to have been committed in cooperation with others, the Confirmation Decision describes Selimi's personal participation in the commission of crimes, and there is a general climate of intimidation of witnesses.<sup>81</sup>

31. Therefore, there remains a risk, as the Pre-Trial Judge recently found, that Selimi will commit—or contribute to the commission of—crimes similar to the underlying acts charged against those perceived to be opposed to the KLA, including persons who have provided, or will provide evidence to the KSC.<sup>82</sup>

#### C. NO MODALITIES OF CONDITIONAL RELEASE ARE ABLE TO SUFFICIENTLY MITIGATE THE RISKS

32. Article 41(12) sets out various options to consider in order to ensure the accused's presence at trial, to prevent reoffending, or to ensure the successful conduct of the proceedings.<sup>83</sup> In addition, the competent panel should consider reasonable measures *proprio motu*.<sup>84</sup> This inquiry includes an assessment of: (i) whether alternative measures can be effectively enforced; and (ii) whether any proposed conditions can sufficiently mitigate the identified Article 41(6)(b) risks.<sup>85</sup> However, the obligation to consider other

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<sup>80</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.33; *Contra* Selimi Submissions, KSC-BC-2020-06/F01180/RED, para.27.

<sup>81</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.34.

<sup>82</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, paras 35-36.

<sup>83</sup> *See also* Sixth Detention Decision, KSC-BC-2020-06/F01111, para.14 ('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').

<sup>84</sup> *See* First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.86; Sixth Detention Decision, KSC-BC-2020-06/F0111, para.21; Veseli Detention Decision, KSC-BC-2020-06/F01171, para.39.

<sup>85</sup> Public Redacted Version of Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00507/RED, 21 December 2021, para.44, *citing* Decision on Kadri Veseli's Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA008/F00004, 1 October 2021, paras 48-53.

conditions *proprio motu* 'is not limitless, but rather the [panel's] enquiry as to which measures could be reasonable shall be guided by the circumstances of each case.'<sup>86</sup> Conditions that are 'not commonly ordered in the context of an interim release due to, *inter alia*, their complexity and requisite resources' need not be considered.<sup>87</sup> In addition, it is within a chamber's discretion to compare possible alternative conditions to those in the detention centre when assessing whether such alternative conditions are adequate.<sup>88</sup>

33. No modalities of conditional release that the Trial Panel might consider *proprio motu* are sufficient to mitigate the risks under Article 41(6)(b). Regarding the risk of flight, the influence, and means that Selimi would have access to in Kosovo should he be released even under conditions of control make any such conditions insufficient to minimize the risk of flight to the point of acceptability.

34. As for the risks of obstructing the progress of KSC proceedings and/or committing further crimes, the Pre-Trial Judge has previously considered a range of possibilities<sup>89</sup> and determined that 'neither [Selimi's] proposed conditions nor any additional measures ordered *proprio motu* could sufficiently mitigate the existing risks,'<sup>90</sup> a decision that was upheld by the Court of Appeals.<sup>91</sup> This consideration included assessment of the capacity of the Kosovo Police to implement monitoring measures, including 'concrete examples

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<sup>86</sup> Third Appeals Decision, KSC-BC-2020-06/IA015/F00005, para.50; See also Sixth Detention Decision, KSC-BC-2020-06/F01111, para.41.

<sup>87</sup> Third Appeals Decision, KSC-BC-2020-06/IA015/F00005, para.50.

<sup>88</sup> Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA016/F00005, 25 March 2022, para.26.

<sup>89</sup> See, e.g., First Detention Decision, KSC-BC-2020-06/F00179, para.55; Second Detention Decision, KSC-BC-2020-06/F00372, paras 60, 62; Fourth Detention Decision, KSC-BC-2020-06/F00802, paras 54-57; Fourth Appeals Decision, KSC-BC-2020-06/IA021/F00005, paras 16, 21-23; Fifth Detention Decision, KSC-BC-2020-06/F00979, paras 46-54.

<sup>90</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.40; see also Prosecutor v. Gucati and Haradinaj, Public Redacted Version of Decision on Review of Detention of Hysni Gucati, KSC-BC-2020-07/F00506, 21 December 2021, para.78.

<sup>91</sup> Fourth Court of Appeals Decision, KSC-BC-2020-06/IA021/F00005, para.25.

showing that there are grounds to believe that Kosovo's authorities would be limited in their ability to monitor Selimi's activities if released.<sup>92</sup> In this regard, the Court of Appeals has held [REDACTED].<sup>93</sup>

35. In contrast to the inadequacy of possible measures of conditional release, the Court of Appeals has held that it is reasonable and appropriate to compare conditions applicable in detention at the KSC detention centre to those applicable under proposed mitigation measures.<sup>94</sup> To that end, the Pre-Trial Judge has observed:

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. Moreover, they offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented.<sup>95</sup>

36. The Court of Appeals has found no error in the assessment that it is only through the communication monitoring framework at the Specialist Chambers Detention Facilities that Selimi's communications can be effectively restricted and monitored.<sup>96</sup>

37. Nothing has occurred since the Sixth Decision warranting a different assessment on conditions, either generally or for a discrete period of time.<sup>97</sup> Indeed, the obligation to consider additional measures *proprio motu* to mitigate the existing risks means the Pre-Trial Judge necessarily rejected the possibility of release for smaller periods of time than what had been previously requested. The Selimi Submissions simply repeat insufficient

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<sup>92</sup> First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.91; *see also* Sixth Detention Decision, KSC-BC-2020-06/F01111, para.41; Second Detention Decision, KSC-BC-2020-06/F00372, para.61; Third Detention Decision, KSC-BC-2020-06/F00580, paras 56-71; Third Appeals Decision, KSC-BC-2020-06/IA015/F00005, paras 40-44.

<sup>93</sup> First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.89.

<sup>94</sup> Fourth Appeals Decision, KSC-BC-2020-06/IA021/F00005, para.14.

<sup>95</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.42.

<sup>96</sup> First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.92.

<sup>97</sup> *Contra* Selimi Submissions, KSC-BC-2020-06/F01180/RED, paras 29-32.

conditions,<sup>98</sup> and the transfer of the case to the Trial Panel and consequent acceleration towards trial makes the underlying risks higher than ever.

#### D. DETENTION REMAINS PROPORTIONAL

38. Pursuant to Rule 56(2), a panel must ensure that a person is not detained for an unreasonable period.<sup>99</sup> Although Rule 56(2) refers to the reasonableness assessment only being applicable ‘prior to the opening of the case’, it has been interpreted to be applicable after the opening of a case as well.<sup>100</sup> The reasonableness of an accused’s continued detention must be assessed on the facts of each case and according to its specific features.<sup>101</sup> The amount of time spent in detention ‘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.’<sup>102</sup>

39. Here, taking all factors into consideration, Selimi’s detention continues to be reasonable. Selimi has been detained since 5 November 2020.<sup>103</sup> He has been charged with ten counts of serious international crimes, and it is alleged that he played a significant role in their perpetration.<sup>104</sup> Should Selimi be convicted, he could be subject to a lengthy

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<sup>98</sup> This is no more evident than in paragraph 30 of the Selimi Submissions, when many of the conditions posed still envisage an oversight role of the Pre-Trial Judge despite the record now being transferred to the Trial Panel.

<sup>99</sup> See Sixth Detention Decision, KSC-BC-2020-06/F01111, paras 15, 45.

<sup>100</sup> Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020, KSC-CC-PR-2020-09/F00006, 22 May 2020, para.63.

<sup>101</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.45; *see also* Decision on Hashim Thaçi’s Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA017/F00011, 5 April 2022, para.65; Veseli Detention Decision, KSC-BC-2020-06/F01171, para.45.

<sup>102</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.45 (internal quotations omitted).

<sup>103</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.46.

<sup>104</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.47; Confirmed Indictment, KSC-BC-2020-06/F00999/A02, para.177.



sentence.<sup>105</sup> Moreover, the proceedings against Selimi are complex,<sup>106</sup> as shown, *inter alia*, by the presence of three co-accused, a large factual base, complicated witness protection issues, and extensive disclosure. Finally, as discussed above, the risks under Article 41(6)(b) cannot be adequately mitigated by measures short of detention.<sup>107</sup>

40. In addition, there have been significant steps towards the start of trial.<sup>108</sup> First and foremost, the case has been transferred to the Trial Panel.<sup>109</sup> In addition, the SPO has filed a provisional list of its first 40 witnesses,<sup>110</sup> and the parties have filed their notices of agreed facts.<sup>111</sup> In this context, detention continues to be reasonable.

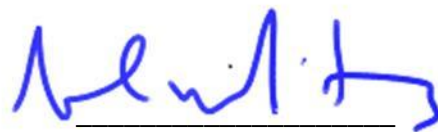
#### IV. CLASSIFICATION

41. This filing is submitted confidentially. A public redacted version will be filed.

#### V. CONCLUSION

42. For the foregoing reasons, the SPO respectfully submits that Selimi should remain detained.

**Word count: 5173**



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<sup>105</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.47.

<sup>106</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.47.

<sup>107</sup> Sixth Detention Decision, KSC-BC-2020-06/F01111, para.47.

<sup>108</sup> See Decision on Review of Detention of Hysni Gucati, KSC-BC-2020-07/F00562, 21 February 2022, paras 60-61 (noting 'significant developments' in the case as relevant).

<sup>109</sup> Decision Transmitting the Case File to Trial Panel II, KSC-BC-2020-06/F01166, 15 December 2022.

<sup>110</sup> Prosecution Submission of Provisional List of First 40 Witnesses to be Called at Trial, KSC-BC-2020-06/F01117, 18 November 2022.

<sup>111</sup> Prosecution Submission on Agreed Facts, KSC-BC-2020-06/F01114, 18 November 2022; Joint Defence Notice Related to Agreement on Facts Pursuant to Rule 95(3), KSC-BC-2020-06/F01116, 18 November 2022.

**Alex Whiting**

**Acting Specialist Prosecutor**

Monday, 16 January 2023

At The Hague, the Netherlands