



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: Trial Panel II
Judge Charles L. Smith III
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

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Decision on Periodic Review of Detention of Rexhep Selimi

Acting Specialist Prosecutor
Alex Whiting

Counsel for Victims
Simon Laws

Counsel for Hashim Thaçi
Gregory Kehoe

Counsel for Kadri Veseli
Ben Emmerson

Counsel for Rexhep Selimi
David Young

Counsel for Jakup Krasniqi
Venkateswari Alagendra

TRIAL PANEL II (“Panel”), 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. The procedural background concerning the periodic reviews of the detention of Rexhep Selimi (“Mr Selimi” or “Accused”) has been set out extensively in previous decisions concerning the same. Relevant events since the sixth review of Mr Selimi’s detention on 18 November 2022 include the below.¹

2. On 16 December 2022, the Panel held a status conference in KSC-BC-2020-06, during which it indicated the tentative start date for the trial of 1 March 2023.²

3. On 22 December 2022, the Defence for Mr Selimi (“Selimi Defence”) filed its submissions on the seventh review of Mr Selimi’s detention (“Selimi Submissions”).³ Therein, the Selimi Defence sought to expedite the review of Mr Selimi’s detention and requested that the Panel order the Specialist Prosecutor’s Office (“SPO”) to respond to the Selimi Submissions by 27 December 2022.⁴

4. On 28 December 2022, the Panel issued an order rejecting the Selimi Defence’s request for the SPO to respond by 27 December 2022 and ordered the SPO to respond by 6 January 2023.⁵

¹ F01111, Pre-Trial Judge, *Decision on Periodic Review of Detention of Rexhep Selimi* (“Sixth Detention Decision”), 18 November 2022, confidential. A public redacted version was issued on the same day, F01111/RED.

² Transcript of Hearing, 16 December 2022, p. 1773, lines 5-6.

³ F01180, Specialist Counsel, *Selimi Defence Submissions on Review of Detention*, 22 December 2022 (notified on 27 December 2022), confidential. A public redacted version was filed on 27 December 2022, F01180/RED.

⁴ Selimi Submissions, paras 4, 36(a).

⁵ F01183, Panel, *Order Setting the Deadline for the Response to F01180*, 28 December 2022, paras 7-8.

5. On 6 January 2023, the SPO responded to the Selimi Submissions (“SPO Response”).⁶

II. SUBMISSIONS

6. The Selimi Defence requests that the Panel order the provisional release of Mr Selimi, or in the alternative, interim release for a limited duration of four weeks from 1 to 29 January 2023, on two grounds.⁷ First, the Selimi Defence submits that risks do not materialise in relation to Mr Selimi under Article 41 of the Law.⁸ Second, in the alternative, the Selimi Defence submits that the imposition of conditions sufficiently eliminates the identified risks.⁹

7. The SPO responds maintaining that Mr Selimi should remain detained as the Selimi Defence has not identified any change in circumstance since the most recent detention review that merits deviating from that determination.¹⁰ Rather the SPO submits that the transfer of the case to the Panel will give the Accused further access to information about sensitive witnesses and the case against him, which supports the necessity and reasonableness of the detention.¹¹

III. APPLICABLE LAW

8. The law applicable to deciding the present matter is set out in Article 41 of the Law, and Rules 56 and 57 of the Rules, and has been laid out extensively in

⁶ F01189, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Rexhep Selimi*, 6 January 2023, confidential. A public redacted version was filed on 16 January 2023, F01189/RED.

⁷ Selimi Submissions, paras 2-3.

⁸ Selimi Submissions, paras 13-28.

⁹ Selimi Submissions, paras 29-32.

¹⁰ SPO Response, paras 1, 10-11.

¹¹ SPO Response, para. 1.

earlier decisions.¹² The Panel will apply the same standards to the present decision.

IV. DISCUSSION

A. PRELIMINARY ISSUE

9. At the outset, the Panel observes that in the Sixth Detention Decision, the Pre-Trial Judge ordered the Selimi Defence, if it so wished, to file submissions on the present review of detention first, with submissions from the SPO thereafter.¹³ The Panel considers that such a procedural arrangement does not displace the onus that rests exclusively upon the SPO to establish, in every instance, that the conditions for detention continue to be met.¹⁴ Nonetheless, the Panel decides that, going forward, it will receive first the submissions of the SPO and thereafter submissions from the Defence. The Panel will therefore order the SPO to file any application for continued detention at least 21 days before the date of review, with responses, if any, to be filed no later than 14 days before such review. No replies will be entertained.

B. ARTICLE 41 CRITERIA

10. The Court of Appeals Panel has held that a panel has an obligation to review the reasons or circumstances underpinning detention and determine whether these reasons continue to exist under Article 41(6) of the Law. The Panel is not required to make findings on the factors already decided upon in the initial ruling

¹² See for example, F00580, Pre-Trial Judge, *Decision on Remanded Detention Review and Periodic Review of Detention of Rexhep Selimi* ("Third Detention Decision"), 26 November 2021, confidential, para. 20, with further references. A public redacted version was issued on 8 December 2021, F00580/RED.

¹³ Sixth Detention Decision, para. 52(b).

¹⁴ IA004-F00005, Court of Appeals Panel, *Decision on Hashim Thaçi's Appeal Against Decision on Interim Release* ("Thaçi Appeals Decision on Detention"), 30 April 2021, confidential, para. 17. A public redacted version was filed on the same day, IA004/F00005/RED; KSC-BC-2020-07, F00279, Trial Panel II, *Decision on Review of Detention of Hysni Gucati*, 23 August 2021, para. 12.

on detention but must examine these reasons or circumstances and determine whether they still exist. What is crucial is that the Panel is satisfied that, at the time of the review decision, grounds for continued detention still exist.¹⁵ Moreover, a review of detention under Rule 57(2) of the Rules is not strictly limited to whether or not a change of circumstances occurred in the case. However, such a change can nonetheless be determinative and shall be taken into consideration if raised before the relevant panel or *proprio motu*.¹⁶

1. Grounded Suspicion

11. 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 Specialist Chambers (“SC”). This is a condition *sine qua non* for the validity of the detained person’s continued detention.¹⁷

12. The Selimi Defence made no submissions on the criterion in Article 41(6)(a) of the Law.

13. The SPO submits that the criterion in Article 41(6)(a) of the Law remains met. In its view, nothing has occurred that could detract from the Pre-Trial Judge’s findings that there remains a well-grounded suspicion that Mr Selimi has committed a crime within the jurisdiction of the SC.¹⁸

14. The Panel notes that, pursuant to Article 39(2) of the Law, the Pre-Trial Judge determined that there was a well-grounded suspicion that Mr Selimi is criminally

¹⁵ KSC-BC-2020-07, IA002/F00005, Court of Appeals, *Decision on Nasim Haradinaj’s Appeal Against Decision Reviewing Detention*, 9 February 2021, para. 55.

¹⁶ IA010/F00008, Court of Appeals Panel, *Decision on Hashim Thaçi’s Appeal Against Decision on Review of Detention*, 27 October 2021, confidential, para. 19. A public redacted version was issued on the same day, IA010/F00008/RED.

¹⁷ *Similarly* ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222.

¹⁸ SPO Response, para. 12.

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.¹⁹ Moreover, the Pre-Trial Judge found 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.²⁰ The Panel further recalls that 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.²¹

15. Absent any new material circumstances affecting the above finding, the Panel finds that there continues to be a grounded suspicion that Mr Selimi has

¹⁹ 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*, para. 521(a)(i)-(ii). 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; 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, 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).

²⁰ 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.

²¹ See for example, F00372, Pre-Trial Judge, *Decision on Review of Detention of Rexhep Selimi* (“Second Detention Decision”), 25 June 2021, confidential, para. 19. A public redacted version was issued on 30 June 2021, F00372/RED.

committed crimes within the subject-matter jurisdiction of the SC for the purposes of Article 41(6)(a) and (10) of the Law.

2. Necessity of Detention

16. With respect to the grounds for continued detention, Article 41(6)(b) of the Law sets out three alternative bases (risks) on which detention may be found to be necessary: (i) risk of flight; (ii) risk of obstruction of the proceedings; or (iii) risk of the further commission of crimes.²² These grounds must be “articulable” in the sense that they must be specified in detail by reference to the relevant information or evidence.²³ The SPO must accordingly articulate grounds to support the belief that one of these risks exists.²⁴ Furthermore, a Panel must provide specific reasoning and rely on concrete grounds when authorising continued detention.²⁵ That being said, in determining whether any of the grounds under Article 41(6)(b) of the Law allowing for a person’s detention exist, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.²⁶

²² Cf. ECtHR, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, [Judgment](#), 5 July 2016 (“*Buzadji v. the Republic of Moldova* [GC]”), para. 88; ECtHR, *Zohlandt v. the Netherlands*, no. 69491/16, 9 February 2021, [Judgment](#), para. 50; ECtHR, *Grubnyk v. Ukraine*, no. 58444/15, 17 September 2020, [Judgment](#), para. 115; ECtHR, *Korban v. Ukraine*, no. 26744/16, 4 July 2019, [Judgment](#), para. 155.

²³ Article 19.1.30 of the Kosovo Criminal Procedure Code 2012, Law No. 04/L-123 defines “articulable” as: “the party offering the information or evidence must specify in detail the information or evidence being relied upon”. See also IA003/F00005, Court of Appeals Panel, *Decision on Rexhep Selimi’s Appeal Against Decision on Interim Release* (“First Appeals Decision on Selimi’s Detention”), 30 April 2021, confidential, para. 43. A public redacted version was issued on the same day, IA003/F00005/RED.

²⁴ F00179, Pre-Trial Judge, *Decision on Rexhep Selimi’s Application for Interim Release* (“First Detention Decision”), 22 January 2021, confidential, para. 19, with further references. A public redacted version was issued on 26 January 2021, F00179/RED.

²⁵ Thaçi Appeals Decision on Detention, para. 22.

²⁶ First Appeals Decision on Selimi’s Detention, para. 40.

(a) Risk of Flight

17. The Selimi Defence submits that the evidence previously used to determine that Mr Selimi is a flight risk, namely that he has been made aware of the charges against him and the possibility of a serious sentence, if convicted, and his purported authority or influence based on his prior roles, is insufficient to justify the existence of this risk.²⁷

18. The SPO responds that Mr Selimi continues to satisfy the applicable risk of flight standard. It submits that Mr Selimi: (i) has been made aware of the charges against him and the possibility of a serious sentence, if convicted; and (ii) continues to play a significant role in Kosovo based on previous positions he occupied.²⁸

19. The Panel has examined the factors and circumstances invoked in the previous decisions of the Pre-Trial Judge ordering and reviewing Mr Selimi's detention and is not satisfied, to the relevant standard, that Mr Selimi is or remains a flight risk. In particular, the Panel considers that the argument that an Accused's increased knowledge of the charges may create an incentive for him or her to abscond carries only limited weight in the present matter. Moreover, notwithstanding the Pre-Trial Judge's previous finding that Mr Selimi's position of influence may proffer him the means to travel,²⁹ the Panel observes that there is no indication that Mr Selimi considered or made preparations to evade arrest. Instead, there are indications that he was cooperative with the relevant authorities at all points during his detention and transfer.³⁰ Therefore, the Panel considers

²⁷ Selimi Submissions, paras 14-15.

²⁸ SPO Response, para. 15.

²⁹ See for example, Sixth Detention Decision, paras 23-24.

³⁰ See for example, F00071, Registrar, *Report on the Arrest and Transfer of Rexhep Selimi to the Detention Facilities*, 10 November 2020, confidential and *ex parte*, para. 4. A public redacted version was issued on 18 November 2020, F00071/RED; F00124, Specialist Counsel, *Defence Application for Interim Release* ("7 December 2020 Defence Application for Interim Release"), 7 December 2020, confidential, paras 19-20. A public redacted version was issued on 12 December 2020, F00124/RED.

that, while the risk of flight can never be completely eliminated, the required concrete grounds have not been shown at this time to exist that would support a finding that Mr Selimi is a flight risk.

20. The Panel therefore finds that Mr Selimi's continued detention may not be justified at this time on the ground of the risk of flight as set out in Article 41(6)(b)(i) of the Law.

(b) Risk of Obstructing the Progress of SC Proceedings

21. The Selimi Defence submits that the Pre-Trial Judge relied on various factors which are insufficient to support the existence of any risk under Article 41(6)(b)(ii) of the Law. First, the Selimi Defence submits that the [REDACTED] do not demonstrate this risk as: (i) [REDACTED]; and (ii) [REDACTED].³¹ Second, the Selimi Defence submits that the finding, in November 2020, that he holds a position of influence in Kosovo should be afforded less weight since any residual authority he might have held has since waned.³² Third, the Selimi Defence submits that updated evidence of a climate of witness interference in Kosovo is necessary as evidence of the current situation in Kosovo is lacking.³³ Fourth, the Selimi Defence submits that it is difficult to see how the disclosure of the mode of testimony will increase the risk of Mr Selimi obstructing the proceedings.³⁴

22. The SPO responds that Mr Selimi continues to pose a risk of obstructing proceedings. It submits that the risk factors observed by the Pre-Trial Judge remains, namely that an [REDACTED],³⁵ as well as [REDACTED].³⁶ The SPO

³¹ Selimi Submissions, paras 17-20.

³² Selimi Submissions, paras 21-22.

³³ Selimi Submissions, paras 23-24.

³⁴ Selimi Submissions, paras 25-26.

³⁵ SPO Response, paras 17-18.

³⁶ SPO Response, para. 19.

submits that [REDACTED],³⁷ a risk which increases due to Mr Selimi's influence³⁸ and due to the climate of witness intimidation and interference in criminal proceedings against Kosovo Liberation Army ("KLA") members in Kosovo.³⁹ Concerning the latter, the SPO submits, contrary to the Selimi Defence's submission, that updated evidence of such climate is available. Specifically, the SPO submits that the trial judgements in KSC-BC-2020-07 and KSC-BC-2020-05 observed the climate of fear and intimidation that persist in Kosovo.⁴⁰ Lastly, the SPO submits that Mr Selimi has recently received, *inter alia*, the provisional list of the first 40 witnesses the SPO intends to call and will receive further information as protective measures are lifted, increasing the risk of obstruction.⁴¹

23. The Panel recalls that the Pre-Trial Judge considered the following under Article 41(6)(b)(ii) of the Law: (i) Mr Selimi's past and present influential positions in Kosovo, including as Minister of Internal Affairs and having been elected to the Kosovo Assembly, would enable him to influence and mobilise his support network;⁴² (ii) [REDACTED];⁴³ (iii) the persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members;⁴⁴ and (iv) the advancement of the proceedings through which Mr Selimi

³⁷ SPO Response, paras 18, 20.

³⁸ SPO Response, para. 21.

³⁹ SPO Response, para. 22.

⁴⁰ SPO Response, paras 22-25.

⁴¹ SPO Response, para. 26.

⁴² First Detention Decision, para. 37; Second Detention Decision, para. 40; Third Detention Decision, para. 33; F00802, Pre-Trial Judge, *Decision on Periodic Review of Detention of Rexhep Selimi* ("Fourth Detention Decision"), 13 May 2022, confidential, para. 31. A public redacted version was issued on 24 May 2022, F00802/RED; F00979, Pre-Trial Judge, *Decision on Periodic Review of Detention of Rexhep Selimi* ("Fifth Detention Decision"), 19 September 2022, confidential, para. 27. A public redacted version was filed on 30 September 2022, F00979/CONF/RED; Sixth Detention Decision, para. 27.

⁴³ First Detention Decision, para. 42; Second Detention Decision, paras 33-39; IA007/F00005, Court of Appeals Panel, *Decision on Rexhep Selimi's Appeal Against Decision on Review of Detention*, 1 October 2021, confidential, paras 37-38. A public redacted version was issued on the same day, IA007/F00005/RED; Third Detention Decision, para. 32; Fourth Detention Decision, para. 30; Fifth Detention Decision, para. 26; Sixth Detention Decision, para. 26.

⁴⁴ 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; Sixth Detention Decision, para. 28.

continues to gain insight into the evidence underpinning the serious charges against him.⁴⁵

24. The Panel has examined the reasons given and agrees with the Pre-Trial Judge's consideration of these factors and considers that no new circumstances have arisen since the last detention review that would justify different findings. Instead, the proximity of trial reinforces the validity of these findings. 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 will become 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.

25. The Panel recalls that the [REDACTED] has been established.⁴⁶ There is no indication before the Panel that such findings were erroneous or unreasonable. Second, there is no evidence before the Panel to suggest that Mr Selimi's political influence, as established in earlier decisions, has materially eroded to the point of being irrelevant to the present matter.⁴⁷ Third, regarding the climate of witness interference in Kosovo, the SPO relies upon the findings of panels in KSC-BC-2020-05 and KSC-BC-2020-07. The Panel observes that the findings were made on 18 May 2022 and 16 December 2022 respectively⁴⁸ and suggest that issues of witness interference have been going on for some time and was ongoing until

⁴⁵ Fourth Detention Decision, para. 33; Fifth Detention Decision, para. 29; Sixth Detention Decision, para. 29.

⁴⁶ See for example, First Detention Decision, para. 38; First Appeals Decision on Selimi's Detention, paras 61, 69; See also [REDACTED].

⁴⁷ See First Appeals Decision on Selimi's Detention, paras 62-63; See also 7 December 2020 Defence Application for Interim Release, para. 18

⁴⁸ See KSC-BC-2020-07, F00611, Trial Panel II, *Public Redacted Version of Trial Judgement*, 18 May 2022, paras 577-581, 593, 646-645, 968; KSC-BC-2020-05, Transcript of Hearing, 16 December 2022, p. 4863, lines 16 to 17, p. 4864, lines 3 to 6, p. 4866, lines 18 to 20, p. 4878, lines 23 to 25.

most recently. Furthermore, the Panel notes that Mr Selimi has in the past [REDACTED].⁴⁹ Fourth, the Panel recalls, contrary to the Selimi Defence's submissions, that the Pre-Trial Judge, in reaching his finding that disclosure of further information to Mr Selimi increases the risk under Article 41(6)(b)(ii) of the Law, referred to several documents, in addition to the provisional list of the first 40 witnesses, which taken together increased such risk.⁵⁰ Thus, the Selimi Defence's submission that the Pre-Trial Judge unduly relied upon the availability of "information on the mode of testimony" to find an increased risk of obstruction is rejected.⁵¹

26. Accordingly, the Panel concludes that the risk that Mr Selimi will obstruct the progress of SC proceedings, as set out in Article 41(6)(b)(ii) of the Law, continues to exist.

(c) Risk of Committing Further Crimes

27. The Selimi Defence submits, based on the same arguments as set out above,⁵² that there is no Article 41(6)(b)(iii) risk.⁵³ Additionally, the Selimi Defence submits that the Pre-Trial Judge's reliance on Mr Selimi's alleged personal participation in the commission of crimes and use of others to commit crimes subverts the proper functioning of Article 41(6) of the Law.⁵⁴

28. The SPO responds that the factors assessed as to whether there is a risk of obstructing proceedings under Article 41(6)(b)(ii) of the Law⁵⁵ are also relevant when considering whether there is a risk of further crimes were Mr Selimi to be

⁴⁹ See First Appeals Decision on Selimi's Detention, para. 61.

⁵⁰ See for example, Sixth Detention Decision, para. 33.

⁵¹ See Selimi Submissions, para. 26.

⁵² See *supra*, para. 21.

⁵³ Selimi Submissions, para. 28.

⁵⁴ Selimi Submissions, para. 27.

⁵⁵ See *supra*, para. 22.

released.⁵⁶ The SPO recalls the Pre-Trial Judge's earlier findings and submits that there continues to be a risk that Mr Selimi may commit additional crimes.⁵⁷

29. The Panel recalls that the Pre-Trial Judge found that the same factors that were taken into account in relation to the risk of obstruction were relevant to the analysis of the risk of Mr Selimi committing further crimes and Mr Selimi's participation in the commission of crimes and his use of others to commit crimes as a joint criminal enterprise member.⁵⁸ The Panel concurs, notes that no new circumstances have arisen since the last detention review and recalls its findings above concerning the Selimi Defence's submissions on the reasons underpinning the findings under Article 41(6)(b)(ii) of the Law.⁵⁹

30. Lastly, the Panel rejects the Selimi Defence's argument that an accused's alleged participation in a crime is not relevant in considering risks pursuant to Article 41(6)(b) of the Law.⁶⁰ To the contrary, the Panel recalls that one of the considerations in article 41(6)(b)(iii) of the Law is the "manner or circumstances in which [the alleged crime] was committed".

31. Accordingly, the Panel concludes that the risk that Mr Selimi will commit further crimes, as set out in Article 41(6)(b)(iii) of the Law, continues to exist.

3. Conclusion

32. The Panel concludes that at this time there is insufficient information before it justifying a finding that Mr Selimi may abscond from justice. However, the Panel is satisfied, based on the relevant standard, that there is a risk that Mr Selimi will

⁵⁶ SPO Response, paras 29-30.

⁵⁷ SPO Response, para. 31.

⁵⁸ First Detention Decision, paras 47-48; Second Detention Decision, paras 49-50, 52; Third Detention Decision, paras 40-41, 43; Fourth Detention Decision, paras 36-38; Fifth Detention Decision, paras 32-34; Sixth Detention Decision, paras 32-34.

⁵⁹ See *supra*, para. 25.

⁶⁰ See for example, ECtHR, *Idalov v. Russia* [GC], no. 5826/03, [Judgment](#), 22 May 2012 ("*Idalov v. Russia* [GC]"), para. 140.

obstruct the progress of SC proceedings 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. The Panel will assess below whether these risks can be adequately addressed by any conditions for his release.

C. MEASURES ALTERNATIVE TO DETENTION

33. The Selimi Defence submits in the alternative that, if the Panel finds that one or more of the risks under Article 41(6)(b) of the Law are demonstrated, the following conditions mitigate such risks: (i) Mr Selimi surrenders his passport and other valid travel documents; (ii) Mr Selimi remains in house arrest [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED]; (v) [REDACTED]; (vi) [REDACTED]; (vii) [REDACTED]; (viii) a specific room is designated in the house where all non-family visits shall take place; (ix) enhanced monitoring of Mr Selimi's family members; and (x) a formal request is submitted to European Union Rule of Law Mission in Kosovo or United Nations Mission in Kosovo to designate specific police officers to guard Mr Selimi's house.⁶¹ Furthermore, the Selimi Defence also proposes, as an alternative to unconditional interim release, that Mr Selimi's interim release take place for a four-week period between 1 and 29 January 2023 only, which it avers is limited and will mitigate any risk of any acts of obstruction from having access to unredacted statements of SPO witnesses thereafter as well as reduce the cost and organisation of any release.⁶²

34. The SPO responds that no alternative measures sufficiently mitigate the Article 41(6)(b) risks posed by Mr Selimi.⁶³ The SPO recalls that the Pre-Trial Judge has previously considered a range of proposed conditions but determined that

⁶¹ Selimi Submissions, para. 30.

⁶² Selimi Submissions, paras 31-32.

⁶³ SPO Response, para. 33.

none of the proposed conditions, or any additional measures ordered *proprio motu*, could mitigate the existing risks except continued detention at the SC Detention Facilities.⁶⁴ According to the SPO, since the last decision on detention review there has been no change that would warrant a different assessment on conditions, either generally or for a discrete period of time.⁶⁵

35. When deciding on whether a person should be released or detained, the Panel must consider alternative measures to prevent the risks in Article 41(6)(b) of the Law.⁶⁶ Article 41(12) of the Law sets out a number of options to be considered in order to ensure the accused's presence at trial, to prevent reoffending or to ensure successful conduct of proceedings. In this respect, the Panel recalls that detention should only be continued if there are no alternative, more lenient measures reasonably available that could sufficiently mitigate the risks set out in Article 41(6)(b) of the Law.⁶⁷ The Panel must therefore consider all reasonable alternative measures that could be imposed and not only those raised by the Selimi Defence or the SPO.⁶⁸

36. As regards flight risk, the Panel recalls its finding above that Mr Selimi's continued detention may not be justified at this time on the ground of the risk of flight.⁶⁹ The question of alternative measures that could address such a risk is therefore moot.

⁶⁴ SPO Response, paras 34-36.

⁶⁵ SPO Response, para. 37.

⁶⁶ 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 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office* ("SCCC 26 April 2017 Judgement"), 26 April 2017, para. 114. See also ECtHR, *Buzadji v. the Republic of Moldova* [GC], para. 87 *in fine*; ECtHR, *Idalov v. Russia* [GC], para. 140 *in fine*.

⁶⁷ SCCC 26 April 2017 Judgment, para. 114; KSC-CC-PR-2020-09, F00006, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020*, 22 May 2020, para. 70. See also ECtHR, *Buzadji v. the Republic of Moldova* [GC], para. 87 *in fine*; ECtHR, *Idalov v. Russia* [GC], para. 140 *in fine*.

⁶⁸ First Appeals Decision on Selimi's Detention, para. 86.

⁶⁹ See *supra*, para. 20.

37. Turning to the risks of obstructing the progress of SC proceedings and committing further crimes, the Panel concurs with the Pre-Trial Judge's finding that none of the proposed conditions nor any additional measures foreseen in Article 41(12) of the Law ordered, *proprio motu*, could at this stage in the proceedings sufficiently mitigate the existing risks.⁷⁰ The Panel agrees with the Pre-Trial Judge's finding 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 that would sufficiently mitigate the risks of obstruction and commission of further crimes.⁷¹ In the absence of any intervening developments regarding this matter, this conclusion continues to hold true up to this point.

38. The Panel is further not persuaded by the Selimi Defence's submission that the abovementioned conditions would mitigate the risks under Article 41(6)(b) of the Law if interim release is ordered for a four-week period between 1 and 29 January 2023. Though this alternative request is "limited" in duration and Mr Selimi would return to the detention facilities before receiving further disclosure of witness information, the Panel finds that the same reasons apply and the proposed conditions are insufficient to mitigate the existing risks at this point in the proceedings. The fact that the existing risks will only increase after January 2023 does not negate the above finding that the risks as they exist now, coupled with the insufficiency of the alternative measures, justify continuing Mr Selimi's detention.

⁷⁰ Third Detention Decision, para. 72; IA015/F00005, Court of Appeals Panel, *Decision on Rexhep Selimi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention* ("Third Appeals Decision on Selimi's Detention"), 25 March 2022, confidential, paras 33-44, 48-52, 61. A public redacted version was issued on the same day, IA015/F00005/RED; Fourth Detention Decision, para. 59; Fifth Detention Decision, para. 56; Sixth Detention Decision, para. 43.

⁷¹ Third Detention Decision, para. 61; Third Appeals Decision on Selimi's Detention, para. 42.; Fourth Detention Decision, para. 59; Fifth Detention Decision, para. 56; Sixth Detention Decision, para. 42.

39. In light of the foregoing, the Panel finds that the risks of obstructing the proceedings and committing further offences can only be effectively managed at this stage of the proceedings if Mr Selimi remains at the SC Detention Facilities. In these circumstances, the Panel finds that Mr Selimi's continued detention is necessary in order to avert the risks in Article 41(6)(b)(ii) and (iii) of the Law.

D. REASONABLENESS OF DETENTION

40. The Selimi Defence did not make any submissions on the reasonableness of Mr Selimi's continued detention.

41. The SPO submits that, taking all factors into consideration, Mr Selimi's detention continues to be reasonable.⁷² To that end, the SPO refers to: (i) that Mr Selimi has been charged with ten counts of serious international crimes, and it is alleged that he played a significant role in their preparation; (ii) the lengthy sentence, if convicted; (iii) that the proceedings are complex; (iv) that the risks under Article 41(6)(b) of the Law cannot be adequately mitigated by measures short of detention; and (v) the fact that progress continues to be made towards trial.⁷³

42. The Panel 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.⁷⁴ 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.⁷⁵ However, the question whether a period of time spent in

⁷² SPO Response, para. 39.

⁷³ SPO Response, paras 39-40.

⁷⁴ KSC-BC-2020-07, IA001/F00005, Court of Appeals Panel, *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention*, 9 December 2020, paras 72-73.

⁷⁵ First Appeals Decision on Selimi's Detention, para. 79.

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.⁷⁶

43. The Panel notes that Mr Selimi was arrested on 5 November 2020 and, as a result, has now been in detention for more than two years. The Panel recalls that: (i) Mr Selimi is charged with ten counts of serious international crimes in which he is alleged to play a significant role;⁷⁷ (ii) if convicted, Mr Selimi could face a lengthy sentence; (iii) the risks under Article 41(6)(b)(ii) and (iii) of the Law cannot be mitigated by any proposed conditions and/or any other conditions;⁷⁸ (iv) the case against Mr Selimi is complex;⁷⁹ (v) significant steps were taken for the preparation of the case for trial;⁸⁰ and (vi) following the 15 December 2022 transmission of the case file from the Pre-Trial Judge to the Panel, the Panel promptly held a preparatory conference on 16 December 2022 and scheduled further preparatory conferences to be held on 18 January 2023 and in February 2023, with a view to starting the trial on 1 March 2023.⁸¹ As the commencement of trial is now imminent, information of increasing sensitivity will be disclosed to the Selimi Defence, including unredacted personal details and statements of protected witnesses.⁸²

44. In light of the above developments, as well as the fact that there are continuing risks of obstructing the proceedings and of committing further crimes, neither of which can be sufficiently mitigated by the application of reasonable alternative measures, the Panel finds that Mr Selimi's detention for a further two months is necessary and reasonable in the specific circumstances of the case.

⁷⁶ ECtHR, *Buzadji v. the Republic of Moldova* [GC], para. 90.

⁷⁷ Confirmed Indictment, paras 7-9, 32, 39-40, 44-47, 49, 52, 55-57, 176-177.

⁷⁸ *See supra*, para. 39.

⁷⁹ Third Detention Decision, para. 79 with further references.

⁸⁰ Sixth Detention Decision, para. 48.

⁸¹ Transcript of Hearing, 16 December 2022, p. 1699, line 24 to p. 1700, line 6 and p. 1773, lines 5-6.

⁸² *See, inter alia*, [REDACTED].

45. The Panel notes, however, that the Accused has already been in detention for a significant period of time, and the trial in this case is likely to be lengthy. This will require the Panel as well as all Parties to be particularly mindful of the need to ensure that the trial proceeds as expeditiously as possible. The Panel will continue to monitor at every stage in these proceedings whether continued detention is necessary and reasonable.

VI. DISPOSITION

46. For the above-mentioned reasons, the Panel hereby:

- a) **ORDERS** Mr Selimi's continued detention;
- b) **ORDERS** the SPO to file, unless otherwise ordered, submissions on all future reviews of Mr Selimi's detention **no later than 21 days before** the next scheduled review of detention with the Defence being ordered to file their responses, if any, **no later than 14 days before** such review. No replies will be entertained; and
- c) **ORDERS** accordingly the SPO to file its submissions on the next review of detention by **Friday, 24 February 2023 (at 16:00 hrs)** and the Defence to file its response by **Friday, 3 March 2023 (at 16:00 hrs)**.



Judge Charles L. Smith, III

Presiding Judge

Dated this Tuesday, 17 January 2023

At The Hague, The Netherlands.