



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

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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 Law¹ and Rule 57 of the Rules,² 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 facilities would be sufficient to minimize the risks, and that the detention period—taking all relevant circumstances into account—is reasonable. Since the most recent determination of this Panel on 17 January 2023,³ there has been no change in circumstances that merits deviating from that determination. Indeed, the transfer of the case to the Panel, the setting of a trial date, 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 relevant procedural history regarding Selimi's detention is referenced in the Panel's most recent detention decision as having been set out extensively in previous decisions.⁴
3. On 18 January 2023, the Panel held its Trial Preparation Conference.⁵

¹ 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.

² 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.

³ Decision on Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F01213, 17 January 2023 ('Seventh Detention Decision').

⁴ Seventh Detention Decision, KSC-BC-2020-06/F01213, paras 1-5.

⁵ Transcript (Trial Preparation Conference), 18 January 2023, p.1904, lines 1-3.

4. On 15 February 2023, the Panel held a its Specialist Prosecutor's Preparation Conference, during which it moved the starting date of the trial to 3 April 2023, pursuant to a Defence request.⁶

III. SUBMISSIONS

5. The Panel has noted that the law applicable to deciding such matters is set out in Article 41 of the Law, and Rules 56 and 57 of the Rules, and has been laid out extensively in earlier decisions.⁷

6. Since the most recent detention decision on 17 January 2023, there have been no developments that diminish the factors supporting the need and reasonableness of detention. Indeed, the setting of a trial date and other developments in the case augment the necessity of detention.

A. GROUNDED SUSPICION

7. Article 41(6)(a) requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the KSC.⁸ There remains a grounded suspicion that Selimi has done so.⁹ The Confirmation Decision determined that there is a suspicion that Selimi is liable for crimes against humanity and war crimes as identified in Articles 13, 14, and 16,¹⁰ to a standard that exceeds that required for detention of 'grounded suspicion'.¹¹ The Pre-Trial Judge later also confirmed amendments to the

⁶ Transcript (Specialist Prosecutor's Preparation Conference), 15 February 2023, p.2038, lines 15-17.

⁷ Seventh Detention Decision, KSC-BC-2020-06/F01213, para.8.

⁸ Seventh Detention Decision, KSC-BC-2020-06/F01213, para.11.

⁹ See Article 41(6)(a); Seventh Detention Decision, KSC-BC-2020-06/F01213, paras 11-15.

¹⁰ Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00026/RED, 26 October 2020, para.521(a).

¹¹ Decision on Remanded Detention Review and Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F00580, 26 November 2021, para.23; see also Seventh Detention Decision, KSC-BC-2020-06/F01213, para.14.

Indictment that added further, similar charges against Selimi.¹² Nothing has occurred since the confirmation decisions that would detract from this determination. Indeed, it has been repeatedly confirmed that there remains a well-grounded suspicion that Selimi has committed crimes within the KSC's jurisdiction.¹³

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

8. 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.¹⁴ 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.¹⁵ The 'belief' test denotes 'an acceptance of the possibility, not the inevitability, of a future occurrence'.¹⁶ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.¹⁷ In considering whether an accused should be detained

¹² 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* Seventh Detention Decision, KSC-BC-2020-06/F01213, para.14.

¹³ *See, e.g.*, Seventh Detention Decision, KSC-BC-2020-06/F01213, paras 11-15.

¹⁴ *See Prosecutor v. Gucati and Haradinaj*, Consolidated Decision on Nasim Haradinaj's Appeals Against Decisions on Review of Detention, KSC-BC-2020-07/IA007/F00004, 6 April 2022, para.49; Seventh Detention Decision, KSC-BC-2020-06/F01213, para.16.

¹⁵ Seventh Detention Decision, KSC-BC-2020-06/F01213, para.15; Decision on Rexhep Selimi's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA003/F00005, 30 April 2021, paras 24-32 ('First Appeals Decision').

¹⁶ First Appeals Decision, KSC-BC-2020-06/IA004/F00005, para.25.

¹⁷ Seventh Detention Decision, KSC-BC-2020-06/F01213, para.16; *see also* First Appeals Decision, KSC-BC-2020-06/IA004/F00005, para.25; *See Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00507/RED, 21 December 2021, para.28 ('Haradinaj Decision').

or released, the relevant chamber must consider whether measures other than detention would sufficiently reduce the risk of the Article 41(6)(b) factors occurring.¹⁸

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

9. More so now than ever, Selimi is not only aware of the serious confirmed charges against him, comprising 10 counts of war crimes and crimes against humanity, and the possible lengthy prison sentence that may result therefrom, but additionally, through the ongoing disclosure process, he is constantly gaining more knowledge about the evidence to be presented in relation to the crimes allegedly committed by him.¹⁹ These conclusions take on increased significance in the context of the setting of the trial commencement date, further accelerating the disclosure of increasingly sensitive information. Regarding the sentence, the recent conviction of the accused in the *Mustafa* case to 26 years' imprisonment²⁰ for crimes also charged in this case cannot help but increase, in the eyes of Selimi, the possibility of a lengthier sentence for himself. Selimi having full knowledge of the scope of the case and the evidence against him significantly elevates his risk of flight.

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

10. The SPO submits that Selimi continues to present a risk of obstructing proceedings. This Panel has previously concluded that the risk that Selimi will obstruct the progress of SC proceedings continues to exist.²¹

¹⁸ 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.

¹⁹ Decision on Rexhep Selimi's Application for Interim Release, KSC-BC-2020-06/F00179, 22 January 2021, para.31.

²⁰ *Prosecutor v. Salih Mustafa*, Corrected version of Public redacted version of Trial Judgment, KSC-BC-2020-05/F00494/RED/COR, 24 January 2023, para.831 ('Case 5 Judgment').

²¹ Seventh Detention Decision, KSC-BC-2020-06/F01213, para.26.

11. The Panel recalled that the Pre-Trial Judge considered the following under Article 41(6)(b)(ii) of the Law: (i) 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; (ii) [REDACTED],²² [REDACTED]; (iii) the persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members; and (iv) the advancement of the proceedings through which Selimi continues to gain insight into the evidence underpinning the serious charges against him.²³

12. The Panel agreed with the Pre-Trial Judge's consideration of these factors and also concluded that no new circumstances have arisen that would justify different findings, rather that the proximity of trial reinforces their validity.²⁴

13. The same conclusion is only more forceful now with the trial date having been formally set since the most recent detention decision, and its imminence resulting in further highly sensitive information having been or soon to be disclosed to the Selimi Defence (and the Accused), including the unredacted personal details and statements of protected witnesses. This continues to amplify the risk of sensitive information pertaining to witnesses becoming known to members of the public before the witnesses in question give evidence,²⁵ which, in the context of the release of an Accused, would not be conducive to the effective protection of witnesses who are yet to testify.²⁶ Therefore, there remains a risk that Selimi could interfere with the proceedings.

14. There also continues to be a climate of witness intimidation and interference with criminal proceedings against KLA members in Kosovo,²⁷ a factor that the Court of

²² [REDACTED]. [REDACTED]. [REDACTED].

²³ Seventh Detention Decision, KSC-BC-2020-06/F01213, para.23.

²⁴ Seventh Detention Decision, KSC-BC-2020-06/F01213, paras 24-25.

²⁵ See Seventh Detention Decision, KSC-BC-2020-06/F01213, para.24.

²⁶ See Seventh Detention Decision, KSC-BC-2020-06/F01213, para.24.

²⁷ Decision on the Periodic Review of Kadri Veseli, KSC-BC-2020-06/F01171, 19 December 2022, para.28.

Appeals has held is a relevant 'contextual consideration'.²⁸ 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.'²⁹ 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.³⁰

15. 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.'³¹

16. Further, the Case 7 Court of Appeals Panel confirmed the importance of these circumstances, upholding the Trial Panel's assessment that there was a serious threat against the 'administration of justice, the integrity and security of proceedings and, crucially, the safety, well-being and freedom from fear of hundreds of persons who have come forward to fulfil their civic duty as witnesses.'³²

²⁸ Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA017/F00011/RED, 5 April 2022, paras 41-48; Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA014/F00008/RED, 31 March 2022, para.50; 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/RED, 25 March 2022, para.43.

²⁹ *Prosecutor v. Gucati and Haradinaj*, Trial Judgment, KSC-BC-2020-07/F00611, 18 May 2022, para.577 ('Case 7 Judgment').

³⁰ Case 7 Judgment, KSC-BC-2020-07/F00611, para.577.

³¹ Case 7 Judgment, KSC-BC-2020-07/F00611, para.579.

³² *Prosecutor v. Gucati and Haradinaj*, Appeal Judgment, KSC-CA-2022-01/F00114, 2 February 2023, para.438 (quoting KSC-BC-2020-07, Transcript, 18 May 2022, pp. 3858-3859).

17. In addition, the Trial Judgment in the *Mustafa* case highlighted the pervasive climate of fear and intimidation in Kosovo:

[T]here is a pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the Specialist Chambers, their families and, more broadly, against those who provide evidence in investigations or prosecutions of crimes allegedly committed by former KLA members. Witnesses are stigmatised as “traitors” or “collaborators”, are unable to speak freely about the events they underwent, are subjected to threats and intimidation and live in constant fear that something will happen to them or their family.³³

18. The full extent of this problem is presented in an even more recent news article touting that a millionaire from Skenderaj is offering a €50,000 bounty to any person who brings him accurate information about ‘traitorous witnesses’, ‘spies’, and ‘false veterans’ who are testifying against ‘the liberators’ in the Hague, and providing a video of the individual making this offer and furnishing his contact information.³⁴

19. Moreover, Selimi has received information concerning, *inter alia*, the first 40 witnesses the SPO intends to call,³⁵ 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.

20. 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.’³⁶

³³ Case 5 Judgment, KSC-BC-2020-05/F00494/RED/COR, para.57.

³⁴ Skenderaj Press, ‘Millionaire from Skenderaj is giving €50,000 to the person who brings him this data, this is what he is looking for (VIDEO)’, 4 February 2023, accessed at <https://skenderajpress.com/?p=9628>. The article provides a link to a video: <https://streamable.com/uxsjzq> (can also be found at https://www.youtube.com/watch?v=f9bBeDx_11E).

³⁵ Prosecution Submission of Provisional List of First 40 Witnesses to be Called at Trial, KSC-BC-2020-06/F01117, 18 November 2022.

³⁶ Haradinaj Decision, KSC-BC-2020-07/F00507/RED, para.36.

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

21. The SPO submits that Selimi continues to present a risk of committing further crimes. This Panel has previously concluded that the risk that Selimi will commit further crimes continues to exist.³⁷

22. The Panel recalled and concurred with the Pre-Trial Judge's finding 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 Selimi committing further crimes, as well as Selimi's participation in the commission of crimes and his use of others to commit crimes as a joint criminal enterprise member.³⁸ For the same reasons as above, in line with previous recognition by this Panel,³⁹ this conclusion has only taken on additional significance in light of imminent trial commencement, continuing disclosure of highly sensitive information, and the imperative of avoiding any risk of interference with witnesses prior to their testimony.

23. Further, the sensitive information Selimi continues to receive must be considered against the general climate of witness intimidation in regards to KLA crimes, discussed above. 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, and the Confirmation Decision describes Selimi's personal participation in the commission of crimes.

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

³⁷ Seventh Detention Decision, KSC-BC-2020-06/F01213, para.31.

³⁸ Seventh Detention Decision, KSC-BC-2020-06/F01213, para.29.

³⁹ See Seventh Detention Decision, KSC-BC-2020-06/F01213, para.29.

24. The relevant risks, including those regarding flight, can only be effectively managed at the SC's detention facilities. This Panel has previously concluded that the risks of obstructing the proceedings and committing further offences can only be effectively managed at the SC's detention facilities.⁴⁰

25. Regarding the risks of obstructing the progress of SC proceedings and committing further crimes, the Panel concurred with the Pre-Trial Judge's finding that none of the proposed conditions, nor any additional measures foreseen in Article 41(12), could sufficiently mitigate the existing risks.⁴¹ The Panel further concluded that it is only through the communication monitoring framework applicable at the SC Detention Facilities that Selimi's communications can be restricted in a manner that would sufficiently mitigate the risks of obstruction and commission of further crimes, and that in the absence of any intervening developments regarding this matter, this conclusion continues to hold true.⁴²

26. Nothing has occurred since the Seventh Decision warranting a different assessment on conditions, either generally or for a discrete period of time, rather, the setting of a trial date and attendant further disclosure make the underlying risks higher than ever.

D. DETENTION REMAINS PROPORTIONAL

27. The SPO submits that detention remains proportional. At the last detention review, this Panel found that Selimi's detention for a further two months was necessary and reasonable in the specific circumstances of the case.⁴³

28. In that regard, the Panel recalled that: (i) Mr Selimi is charged with ten counts of serious international crimes in which he is alleged to play a significant role; (ii) if

⁴⁰ Seventh Detention Decision, KSC-BC-2020-06/F01213, para.39.

⁴¹ Seventh Detention Decision, KSC-BC-2020-06/F01213, para.37.

⁴² Seventh Detention Decision, KSC-BC-2020-06/F01213, para.37.

⁴³ Seventh Detention Decision, KSC-BC-2020-06/F01213, para.44.

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; (iv) the case against Mr Selimi is complex; (v) significant steps were taken for the preparation of the case for trial; and (vi) the prompt scheduling of preparatory conferences (later held), with a view towards starting the trial by a date certain.⁴⁴

29. This Panel has recalled the Court of Appeals Panel upholding the application of various factors in this context, including: (i) the risks identified under Article 41(6)(b); (ii) the finding that some risks could not be mitigated, and (iii) the potential penalty faced by the accused upon conviction based upon the gravity of the charges.⁴⁵

30. Finally, as the Panel noted, that, with the commencement of trial now imminent, further highly sensitive information has or will be disclosed to the Selimi Defence, including the unredacted personal details and statements of protected witnesses.⁴⁶

31. Here, taking these same, and additional, factors into consideration, Selimi's detention continues to be reasonable and the short postponement of the trial commencement - requested by the Defence - has no impact.⁴⁷ Significant and prompt steps continue to be taken, most notably with the setting of the trial commencement date.

IV. CLASSIFICATION

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

⁴⁴ Seventh Detention Decision, KSC-BC-2020-06/F01213, para.43.

⁴⁵ Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F01302, 17 February 2023 ('Seventh Thaçi Detention Decision'), para.47 (*citing* Decision on Kadri Veseli's Appeal Against Decision on Interim Release, IA001/F00005, 30 April 2021, para. 57).

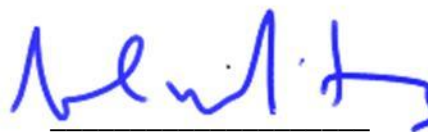
⁴⁶ Seventh Detention Decision, KSC-BC-2020-06/F01213, para.43.

⁴⁷ In this regard, *see* Seventh Thaçi Detention Decision, KSC-BC-2020-06/F01302, paras 45-50; Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F01303, 17 February 2023, paras 39-43.

V. CONCLUSION

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

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Friday, 24 February 2023

At The Hague, the Netherlands