



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, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

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Public Redacted Version of

Decision on Periodic Review of Detention of Rexhep Selimi

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TRIAL PANEL II of the Kosovo Specialist Chambers (“Panel”), pursuant to Article 41(6), (10) and (12) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office and Rules 56(2) and 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, 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 seventh review of Mr Selimi’s detention on 17 January 2023 (“Seventh Detention Decision”) include the below.¹
2. On 15 February 2023, the Panel granted an unopposed Defence request for a postponement of commencement of trial and ordered that the trial in this case shall start on 3 April 2023.²
3. On 24 February 2023, the Specialist Prosecutor’s Office (“SPO”) filed its submissions on the continued detention of Mr Selimi (“SPO Submissions”).³
4. The Defence for Mr Selimi (“Selimi Defence”) did not respond to the SPO Submissions.

¹ F01213, Panel, *Decision on Periodic Review of Detention of Rexhep Selimi*, 17 January 2023, confidential. A public redacted version was issued on 18 January 2023, F01213/RED.

² Transcript of Hearing, 15 February 2023, p. 2038, lines 8 to 17.

³ F01321, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Rexhep Selimi*, 24 February 2023, confidential. A public redacted version was issued on the same day, F01321/RED.

II. SUBMISSIONS

5. The SPO requests that the detention of Mr Selimi continues as the Pre-Trial Judge and the Court of Appeals Panel have repeatedly found that Mr Selimi's detention is justified. According to the SPO, since the last review of Mr Selimi's detention, there has been no change in circumstances that would warrant a different conclusion.⁴ Specifically, the SPO submits that the setting of a trial date, and other significant developments that show steady progress which will give Mr Selimi further access to information regarding sensitive witnesses and the case against him, adds to the necessity and reasonableness of his detention.⁵

III. APPLICABLE LAW

6. The law applicable to deciding the present matter is set out in Article 41(6), (10), and (12) and Rules 56 and 57, and has been laid out extensively in earlier decisions.⁶ The Panel will apply the same standards to the present decision.

IV. DISCUSSION

7. The purpose of the bi-monthly review of detention pending trial pursuant to Article 41(10) is to determine whether the reasons for detention still exist.⁷

⁴ SPO Submissions, para. 1.

⁵ SPO Submissions, para. 1.

⁶ 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.

⁷ IA022/F00005, Court of Appeals Panel, *Decision on Hashim Thaçi's Appeal Against Decision on Periodic Review of Detention*, 22 August 2022, confidential, para. 37. A public redacted version was issued on the same date, IA022/F00005/RED.

A change in circumstances, while not determinative, shall be taken into consideration if raised before the relevant panel or *proprio motu*.⁸

A. ARTICLE 41 CRITERIA

1. Grounded Suspicion

8. As regards the threshold for continued detention, Article 41(6)(a) requires 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.⁹

9. The SPO submits that the criterion in Article 41(6)(a) 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.¹⁰

10. The Panel notes that, pursuant to Article 39(2), the Pre-Trial Judge determined that there was a well-grounded suspicion that Mr Selimi is criminally liable for a number of crimes against humanity (persecution, imprisonment, other inhumane acts, torture, murder and enforced disappearance) and war crimes (arbitrary detention, cruel treatment, torture and murder) under Articles 13, 14(1)(c) and 16(1)(a).¹¹ Moreover, the Pre-Trial Judge found that a well-grounded suspicion has

⁸ IA007/F00005, Court of Appeals Panel, *Decision on Rexhep Selimi's Appeal Against Decision on Review of Detention*, 1 October 2021, confidential, para. 14. A public redacted version was issued on the same day, IA007/F00005/RED.

⁹ Similarly ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222.

¹⁰ SPO Submissions, para. 7.

¹¹ 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,

also been established with regard to the new charges brought by the SPO against Mr Selimi with the requested amendments to the indictment.¹² These findings were made on the basis of a standard exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a).¹³

11. Absent any new material circumstances affecting the above finding, the Panel finds that there continues to be a grounded suspicion that Mr Selimi has committed crimes within the subject-matter jurisdiction of the SC for the purposes of Article 41(6)(a) and (10).

2. Necessity of Detention

12. With respect to the grounds for continued detention, Article 41(6)(b) 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.¹⁴ These grounds must be “articulable” in the sense that they

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).

¹² 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.

¹³ 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.

¹⁴ 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,

must be specified in detail by reference to the relevant information or evidence.¹⁵ In determining whether any of the grounds under Article 41(6)(b) 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.¹⁶

(a) Risk of Flight

13. The SPO submits that Mr Selimi continues to satisfy the applicable risk of flight standard. Specifically, the SPO asserts that Mr Selimi: (i) has been made aware of the charges against him and the possibility of a serious sentence, if convicted; and (ii) through the ongoing disclosure process, he is constantly gaining more knowledge about the evidence against him. The SPO adds that these conclusions take on increased significance due to the trial commencement date and the recent conviction of the accused in the *Mustafa* case to 26 years of imprisonment.¹⁷

14. The Panel has examined the arguments of the SPO, in light of the present stage of the proceedings, and reaffirms that it does not find any additional factor sufficiently persuasive to change its previous finding regarding the risk of flight.

15. As regards the SPO argument relating to the advancement of the proceedings, the Panel notes that the SPO's general argument that the risk of flight increases in the context of the confirmation and setting of the trial commencement date is unpersuasive here. The Panel considers that the SPO has failed to establish its

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.

¹⁵ 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.

¹⁶ First Appeals Decision on Selimi's Detention, para. 40.

¹⁷ SPO Submissions, para. 9.

claim of a “sufficiently real possibility” that the Accused will abscond if released based on the stage of the proceedings.¹⁸

16. With respect to the SPO’s argument that the judgment in the *Mustafa* case would increase the possibility of a lengthier sentence for Mr Selimi, the Panel finds that this does not constitute evidence of a heightened flight risk. The risk of a long sentence is no greater today than it was earlier and the SPO has not demonstrated that this factor outweighs the other factors that the Panel considered in the previous decision. In any event, Mr Selimi is presumed to be innocent.

17. In addition, as already determined there is evidence that Mr Selimi has cooperated with the relevant authorities at all points during his detention and transfer.¹⁹

18. The Panel has examined the arguments of the SPO in light of the current stage of the proceedings, and while the risk of flight can never be completely ruled out, it reaffirms that it does not find any additional factor sufficiently compelling to persuade the Panel to change its previous finding regarding the risk of flight.

19. 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).

(b) Risk of Obstructing the Progress of SC Proceedings

20. The SPO submits that Mr Selimi continues to pose a risk of obstructing proceedings. It submits that the risk factors observed by the Pre-Trial Judge, as confirmed by the Panel, remains and that no new circumstances have arisen that would justify different findings, namely: (i) Mr Selimi’s past and present influential positions in Kosovo, including as Minister of Internal Affairs and

¹⁸ First Appeals Decision on Selimi’s Detention, para. 44.

¹⁹ Seventh Detention Decision, para. 19.

having been elected to the Kosovo Assembly, would enable him to influence and mobilise his support network; (ii) [REDACTED]; (iii) persisting climate of intimidation of witnesses and interference with criminal proceedings against former Kosovo Liberation Army (“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.²⁰

21. The SPO adds that this conclusion is only more forceful as the trial date has formally been set which will result in further highly sensitive information having been, or will be disclosed to the Selimi Defence.²¹

22. Lastly, the SPO submits that there continues to be a climate of witness intimidation and interference with the criminal proceedings against KLA members in Kosovo, as recently confirmed: (i) in the *Mustafa* case and the *Gucati and Haradinaj* case;²² and (ii) by the recent news that a millionaire from Skenderaj is offering a €50,000 bounty to any person who brings him accurate information about protected witnesses testifying before the SC.²³

23. The Panel calls attention to the standard utilized in assessing the risks under Article 41(6)(b), which does not require a “concrete example” of a situation in which Mr Veseli has personally intimidated or harassed a witness.

24. The Panel has already determined and reiterates that: (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

²⁰ SPO Submissions, paras 11-12.

²¹ SPO Submissions, para. 13.

²² SPO Submissions, paras 14-17.

²³ SPO Submissions, para. 18.

and mobilise his support network;²⁴ (ii) Mr Selimi's [REDACTED];²⁵ (iii) the persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members;²⁶ and (iv) the advancement of the proceedings through which Mr Selimi continues to gain insight into the evidence underpinning the serious charges against him.²⁷

25. As previously noted, in light of the near commencement of trial, the names and personal details of certain highly sensitive witnesses have been and will continue to be disclosed to the Selimi Defence, and will therefore become known to a broader range of persons, including the Accused. This, in turn, increases the risk that sensitive information pertaining to witnesses becomes 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.²⁸

²⁴ F00179, Pre-Trial Judge, *Decision on Rexhep Selimi's Application for Interim Release* ("First Detention Decision"), 22 January 2021, confidential, para. 37. A public redacted version was issued on 26 January 2021, F00179/RED; 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; F01111, Pre-Trial Judge, *Decision on Periodic Review of Detention of Rexhep Selimi* ("Sixth Detention Decision"), 18 November 2022, confidential, para. 27. A public redacted version was issued on the same day, F01111/RED; Seventh Detention Decision, paras 23-24.

²⁵ 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; Seventh Detention Decision, paras 23-24.

²⁶ 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; Seventh Detention Decision, paras 23-24.

²⁷ Fourth Detention Decision, para. 33; Fifth Detention Decision, para. 29; Sixth Detention Decision, para. 29; Seventh Detention Decision, paras 23-24.

²⁸ Seventh Detention Decision, para. 24.

26. Additionally, the Panel is adjudicating this matter against a background of information that a general climate of witness interference persists in Kosovo regarding this case and others before the SC. As held in the *Mustafa* Trial Judgment:

[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.²⁹

27. 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), continues to exist.

(c) Risk of Committing Further Crimes

28. The SPO submits that Mr Selimi continues to present a risk of committing further crimes. Specifically, the SPO asserts that 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 Mr Selimi to be released.³⁰ The SPO submits that this risk has taken on additional significance due to the sensitive information that Mr Selimi continues to receive.³¹

29. The Panel recalls its finding in the Seventh Detention Decision that the risk of Mr Selimi committing further crimes continues to exist.³² The Panel finds that the same factors that were taken into account in relation to the risk of obstruction are

²⁹ KSC-BC-2020-05, F00494/RED, Trial Panel I, *Public redacted version of Trial Judgment* (“*Mustafa* Trial Judgment”), 19 January 2023, para. 57. A corrected version was filed on 24 January 2023, F00494/REDCOR).

³⁰ SPO Submissions, paras 21-22.

³¹ SPO Submissions, paras 22-23.

³² Seventh Detention Decision, para. 31.

relevant to the analysis of the risk of Mr Selimi committing further crimes.³³ In light of those, the Panel considers that no new circumstances have arisen since the last detention review that would justify a different finding in respect of this matter.

30. The Panel highlights the fact that the trial in this case will begin in approximately three weeks, that the identities of sensitive witnesses have been disclosed to the Selimi Defence, and that any risk of the further commission of crimes must be avoided

31. The Panel considers that, taking all factors together, there continues to be a risk that Mr Selimi will commit further crimes as set out in Article 41(6)(b)(iii)

3. Conclusion

32. The Panel concludes that at this time there continues to be 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 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.

B. MEASURES ALTERNATIVE TO DETENTION

33. The SPO submits that no alternative measures sufficiently mitigate the Article 41(6)(b) risks posed by Mr Selimi. The SPO recalls that the Panel has previously concluded that the risks of obstructing the proceedings and

³³ See *supra*, paras 24-26; Seventh Detention Decision, para. 29.

committing further offences can only be effectively managed at the SC's detention facilities.³⁴ The SPO adds that nothing has occurred since the Seventh Detention Decision warranting a different assessment.³⁵

34. 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).³⁶ Article 41(12) 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).³⁷ 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.³⁸

35. As regards the risks of obstructing the progress of SC proceedings and committing further crimes, the Panel finds that none of the proposed conditions nor any additional measures foreseen in Article 41(12) ordered, *proprio motu*, could at this stage in the proceedings sufficiently mitigate the existing risks.³⁹ Further, the Panel finds that the measures in place at the SC detention facilities, viewed as

³⁴ SPO Submissions, paras 24-25.

³⁵ SPO Submissions, para. 26.

³⁶ 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 Judgment"), 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*.

³⁷ 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*.

³⁸ First Appeals Decision on Selimi's Detention, para. 86.

³⁹ 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; Seventh Detention Decision, para. 39.

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.⁴⁰ Moreover, they offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented.⁴¹

36. In light of the foregoing, the Panel concludes 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.⁴² In these circumstances, the Panel finds that there are no alternatives to Mr Selimi's continued detention capable of adequately averting the risks in Article 41(6)(b)(ii) and (iii).

C. REASONABLENESS OF DETENTION

37. The SPO submits that, taking all factors into consideration, Mr Selimi's detention continues to be reasonable.⁴³ To that end, the SPO refers to the Panel's finding that: (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) cannot be adequately mitigated

⁴⁰ Third Detention Decision, para. 72; Third Appeals Decision on Selimi's Detention, 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; Seventh Detention Decision, para. 38.

⁴¹ 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; Seventh Detention Decision, para. 38.

⁴² 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; Seventh Detention Decision, para. 38.

⁴³ SPO Submissions, para. 27.

by measures short of detention; (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 In addition, the SPO submits that, as noted by the Panel, the commencement date of the trial is now imminent and further sensitive information will be disclosed to the Selimi Defence which adds to the reasonableness of the continued detention and that the short postponement of the trial commencement – requested by the Defence – has no impact on the reasonableness of the detention.⁴⁵

38. The Panel recalls that reasonableness of an accused's continued detention must be assessed on the facts of each case and according to its special features.⁴⁶ In the Panel's estimation, the special features in this case include: (i) Mr Selimi is charged with ten counts of serious international crimes in which he is alleged to play a significant role;⁴⁷ (ii) if convicted, Mr Selimi could face a lengthy sentence; (iii) the risks under Article 41(6)(b)(ii) and (iii) cannot be mitigated by any proposed conditions and/or any other conditions;⁴⁸ (iv) the case against Mr Selimi is complex;⁴⁹ (v) the climate of witness intimidation outlined above; and (vi) the fact that progress continues to be made towards the start of trial, now set to begin in less than three weeks.

39. 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.

⁴⁴ SPO Submissions, para. 28.

⁴⁵ SPO Submissions, paras 30-31.

⁴⁶ Seventh Detention Decision, para. 42 (with further references).

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

⁴⁸ *See supra*, para. 36; Seventh Detention Decision, para. 43.

⁴⁹ Third Detention Decision, para. 79 (with further references); Seventh Detention Decision, para. 43.

40. The Panel notes, however, that Mr Selimi has already been in detention for a significant period of time, and the trial in this case is likely to be lengthy. As the Panel previously indicated, 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

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

- a) **ORDERS** Mr Selimi's continued detention; and
- b) **ORDERS** the SPO to file submissions on the next review of Mr Selimi's detention by no later than **Wednesday, 26 April 2023 (at 16:00 hours)**, with subsequent written submissions following the timelines set out in Rule 76.



Judge Charles L. Smith, III
Presiding Judge

Dated this Friday, 17 March 2023

At The Hague, The Netherlands.