



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 with Public Annex 1**

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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, the Court of Appeals, and this Panel 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 March 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 commencement of trial, and other significant developments that show steady progress and will give Selimi further access to information regarding sensitive witnesses and the case against him, buttressing 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/F01383, 17 March 2023 ('Eighth Detention Decision').

⁴ Eighth Detention Decision, KSC-BC-2020-06/F01383, paras 1-4.

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

5. On 20 March 2023, the Panel held a further Status Conference, during which the 3 April 2023 starting date of the trial was confirmed.⁷

6. On 3 April 2023, the trial commenced.⁸

III. SUBMISSIONS

7. 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.⁹

8. Since the most recent detention decision, there have been no developments that diminish the factors supporting the need and reasonableness of detention. Indeed, the commencement of trial and other developments in the case augment the necessity of detention.

A. GROUNDED SUSPICION

9. Article 41(6)(a) requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the KSC.¹⁰ There remains a grounded suspicion that Selimi has done so.¹¹ 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 16,¹² to a standard that exceeds that required for detention of

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

⁷ Transcript (Status Conference), 20 March 2023, p.2132, lines 9-14.

⁸ Transcript (Opening Statements), 3 April 2023.

⁹ Eighth Detention Decision, KSC-BC-2020-06/F01383, para.6.

¹⁰ Eighth Detention Decision, KSC-BC-2020-06/F01383, para.8.

¹¹ See Article 41(6)(a); Eighth Detention Decision, KSC-BC-2020-06/F01383, paras 8-11.

¹² 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).

‘grounded suspicion’.¹³ The Pre-Trial Judge later also confirmed amendments to the Indictment that added further, similar charges against Selimi.¹⁴ 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.¹⁵

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

10. 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.¹⁶ 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.¹⁷ 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.¹⁸ The ‘belief’ test denotes ‘an acceptance of the possibility, not the inevitability, of a future occurrence’.¹⁹ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.²⁰ The Panel noted that ‘articulable’ in this context

¹³ 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* Eighth Detention Decision, KSC-BC-2020-06/F01383, para.10.

¹⁴ 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* Eighth Detention Decision, KSC-BC-2020-06/F01383, para.10.

¹⁵ *See, e.g.*, Eighth Detention Decision, KSC-BC-2020-06/F01383, paras 10-11.

¹⁶ *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; Eighth Detention Decision, KSC-BC-2020-06/F01383, para.12.

¹⁷ Eighth Detention Decision, KSC-BC-2020-06/F01383, para.12.

¹⁸ 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’).

¹⁹ First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.25.

²⁰ *See* First Appeals Decision, KSC-BC-2020-06/IA003/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’).

means specified in detail by reference to the relevant information or evidence.²¹ In considering whether an accused should be detained 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.²²

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

11. Selimi is now aware of the serious confirmed charges against him, the possible lengthy prison sentence that may result therefrom, and through the ongoing disclosure process, he is constantly gaining more knowledge about the evidence to be presented in relation to those crimes.²³ However, the commencement of trial takes the risk of flight to an even higher level, as Selimi now sees the evidence against him steadily entering the record. The combination of continuing to gain a fuller knowledge of the case against him, actually seeing inculpatory evidence enter the record, and being put on notice through the *Mustafa* case of the real possibility of a lengthy sentence,²⁴ elevates Selimi's risk of flight to a 'sufficiently real possibility'.²⁵

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

12. 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.²⁶

²¹ Eighth Detention Decision, KSC-BC-2020-06/F01383, para.19 *citing* Article 19.1.30 of the Kosovo Criminal Procedure Code 2012, Law No. 04/L-123 defining "articulable" as: 'the party offering the information or evidence must specify in detail the information or evidence being relied upon'.

²² 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.

²³ Decision on Rexhep Selimi's Application for Interim Release, KSC-BC-2020-06/F00179, 22 January 2021, para.31.

²⁴ *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').

²⁵ See e.g. First Appeals Decision, KSC-BC-2020-06/IA003/F00005, para.44.

²⁶ Eighth Detention Decision, KSC-BC-2020-06/F01383, para.27.

13. The Panel reiterated its previous determination that: (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],²⁷ [REDACTED]; (iii) there exists a persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members; and (iv) the advancement of the proceedings continues, through which Selimi continues to gain insight into the evidence underpinning the serious charges against him.²⁸

14. The Panel also noted that such findings are made against a background of information that a general climate of witness interference persists in Kosovo regarding this case and others before the SC,²⁹ which the Court of Appeals has agreed is a relevant 'contextual consideration'.³⁰ The Panel specifically referenced relevant findings in the *Mustafa* Trial Judgment.³¹ Similar findings were made in the *Gucati and Haradinaj* Appeal Judgment³². The Case 7 Trial Judgement credited the testimony of Defence Expert Robert Reid, who remarked that, in over 20 years in the field, he had never seen witness intimidation on the level that exists in Kosovo.³³

²⁷ [REDACTED]. [REDACTED]. [REDACTED].

²⁸ Eighth Detention Decision, KSC-BC-2020-06/F01383, para.24.

²⁹ Eighth Detention Decision, KSC-BC-2020-06/F01383, paras 26.

³⁰ 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.

³¹ Eighth Detention Decision, KSC-BC-2020-06/F01383, para.26 *citing* Case 5 Judgment, KSC-BC-2020-05/F00494/RED/COR, 24 January 2023, para.57.

³² *Prosecutor v. Guçati 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).

³³ *Prosecutor v. Guçati and Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2022-01/F00611/RED, 18 May 2022, para.577 ('Case 7 Judgment').

15. The Case 7 Trial Panel also considered that ‘witness protection has continued to be a live and critical issue in Kosovo.’³⁴

16. The start of the trial in the instant case has only further amplified this pervasive climate of witness interference. The contents of a Kosovo television talk show that aired on 4 April 2022, starkly present the full extent of this troubling issue.³⁵ A guest on the show, who has expressed the opinion that members of the KLA, including the Accused in this case, may have committed crimes, described the ‘terror’ over free speech in Kosovo relating to this issue. The guest described the labelling of himself, or anyone else who questioned the prevailing KLA narrative, as a collaborator, a spy, a traitor, and/or someone connected with Serbia. The moderator of the show noted that there is wide agreement in the public, at least in online communications, that those labelled as collaborators should be killed. The guest went on to show the reactions to a video that he had recently posted online, which had received over 1,400 comments, most of which were negative, and many of which labelled him with the above terms, some going so far as to threaten physical violence against him.

17. Moreover, Selimi has received information concerning, *inter alia*, the first 40 witnesses the SPO intends to call,³⁶ and the risk of obstruction increases as the remaining delayed disclosure witnesses have their identities lifted in the course of trial.

18. In this regard, the Panel has previously noted that the disclosure of such highly sensitive information to the Selimi Defence necessarily results in it becoming known to a broader range of people, including the Accused.³⁷

³⁴ Case 7 Judgment, KSC-BC-2020-07/F00611/RED, 18 May 2022, para.579.

³⁵ KTV Konfront Show, ‘Is History Being Rewritten?’, 4 April 2023. A full English translation is appended in Annex 1.

³⁶ Prosecution Submission of Provisional List of First 40 Witnesses to be Called at Trial, KSC-BC-2020-06/F01117, 18 November 2022.

³⁷ Eighth Detention Decision, KSC-BC-2020-06/F01383, para.25.

19. 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,³⁸ 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.³⁹ Therefore, there remains a risk that Selimi would interfere with the proceedings.

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.'⁴⁰

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.⁴¹

22. As a preliminary matter, 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.

23. In the last detention review, the Panel reiterated its previous finding that the same factors that were taken into account in relation to the risk of obstruction are relevant to the analysis of the risk of committing further crimes.⁴² In light of those factors, the Panel

³⁸ See Eighth Detention Decision, KSC-BC-2020-06/F01383, para.25.

³⁹ See Eighth Detention Decision, KSC-BC-2020-06/F01383, para.25.

⁴⁰ Haradinaj Decision, KSC-BC-2020-07/F00507/RED, para.36.

⁴¹ Eighth Detention Decision, KSC-BC-2020-06/F01383, para.31.

⁴² Eighth Detention Decision, KSC-BC-2020-06/F01383, para.29.

considered that no new circumstances have arisen since the last detention review that would justify a different finding in respect of this matter.⁴³

24. The Panel highlighted the fact that the trial in this case was about to begin, that the identities of sensitive witnesses had been disclosed to the Selimi Defence, and that any risk of the further commission of crimes must be avoided.⁴⁴

25. This conclusion applies even more forcefully with trial having commenced and such disclosure continuing.

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

26. 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.⁴⁵

27. Regarding the risks of obstructing the progress of SC proceedings and committing further crimes, the Panel found 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.⁴⁶

28. The Panel also found 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.⁴⁷ Moreover, they offer a controlled

⁴³ Eighth Detention Decision, KSC-BC-2020-06/F01383, para.29.

⁴⁴ Eighth Detention Decision, KSC-BC-2020-06/F01383, para.30.

⁴⁵ Eighth Detention Decision, KSC-BC-2020-06/F01383, para.36.

⁴⁶ Eighth Detention Decision, KSC-BC-2020-06/F01383, para.35.

⁴⁷ Eighth Detention Decision, KSC-BC-2020-06/F01383, para.35.

environment where a potential breach of confidentiality could be more easily identified and/or prevented.⁴⁸

29. In light of the above, the Panel 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 these circumstances, there are no alternatives to Selimi's continued detention capable of adequately averting the risks in Article 41(6)(b)(ii) and (iii).⁴⁹

30. Nothing has occurred since the previous determination warranting a different assessment on conditions, either generally or for a discrete period of time, rather, the commencement of trial and attendant further disclosure make the underlying risks higher than ever.

D. DETENTION REMAINS PROPORTIONAL

31. 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.⁵⁰

32. The Panel recalled that that reasonableness of an accused's continued detention must be assessed on the facts of each case and according to its special features, which, in this case, include: (i) Selimi is charged with ten counts of serious international crimes in which he is alleged to play a significant role; (ii) if convicted, 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 Selimi is

⁴⁸ Eighth Detention Decision, KSC-BC-2020-06/F01383, para.35.

⁴⁹ Eighth Detention Decision, KSC-BC-2020-06/F01383, para.36.

⁵⁰ Eighth Detention Decision, KSC-BC-2020-06/F01383, para.39.

complex; (v) the climate of witness intimidation outlined above; and (vi) the fact that progress continues to be made in the case.⁵¹

33. 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.⁵²

34. Here, taking these same, and additional, factors into consideration, Selimi's detention continues to be reasonable, especially in light of trial now being underway, demonstrating reasonable progression of proceedings.⁵³

IV. CLASSIFICATION

35. This filing is submitted confidentially pursuant to Rule 82(4). A public redacted version will be filed.

V. CONCLUSION

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

⁵¹ Eighth Detention Decision, KSC-BC-2020-06/F01383, para.38.

⁵² Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F01302, 17 February 2023, para.47 (*citing* Decision on Kadri Veseli's Appeal Against Decision on Interim Release, IA001/F00005, 30 April 2021, para.57).

⁵³ In this regard, *see* Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F01459, 17 April 2023, para.34; Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F01461, 17 April 2023, para.39.

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At The Hague, the Netherlands