



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-06
The Specialist 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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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 issue. Relevant events since the eleventh review of Mr Selimi’s detention on 15 September 2023 (“Eleventh Detention Decision”) include those set out below.¹
2. On 25 October 2023, the Specialist Prosecutor’s Office (“SPO”) filed its submissions on the continued detention of Mr Selimi (“SPO Submissions”).²
3. On 3 November 2023, the Defence for Mr Selimi (“Selimi Defence”) responded to the SPO Submissions (“Response”).³
4. On 13 November 2023, the SPO replied to the Response (“Reply”).⁴

¹ F01794, Panel, *Decision on Periodic Review of Detention of Rexhep Selimi*, 15 September 2023.

² F01887, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Rexhep Selimi*, 25 October 2023.

³ F01908, Specialist Counsel, *Selimi Defence Response to Prosecution Submission Pertaining to Periodic Detention Review of Rexhep Selimi*, 3 November 2023.

⁴ F01922, Specialist Prosecutor, *Prosecution Reply to Selimi Defence Response to Prosecution Submission Pertaining to Periodic Detention Review of Rexhep Selimi*, 13 November 2023.

II. SUBMISSIONS

5. The SPO requests that the detention of Mr Selimi continues as, since the last review of Mr Selimi's detention, there has been no material change in circumstances that would affect the factors supporting the need and reasonableness of detention.⁵ Specifically, the SPO submits that the transfer of the case to the Panel, the continued progression of the trial, and other significant developments giving Mr Selimi further access to information regarding sensitive witnesses and the case against him, adds to the necessity and reasonableness of his detention.⁶

6. The Selimi Defence responds that the SPO's approach to the scheduling of witnesses in this case calls into question if it has exercised the "special diligence" required to substantiate the reasonableness of Mr Selimi's detention.⁷ Specifically, the Selimi Defence argues that the repeated failure to ensure the successive and timely appearance of witnesses has caused delays, which hamper the expeditiousness of the proceedings and, thereby, also Mr Selimi's right to be tried without undue delay.⁸ The Defence therefore requests that the Panel take all available measures to ensure that Mr Selimi's right to be tried without undue delay is respected.⁹

7. The SPO replies that the Response should be rejected and Mr Selimi remain detained.¹⁰ The SPO contends that the argument that witness scheduling delays will prolong detention is entirely speculative and that the question before the Panel is whether the length of detention is unreasonable now.¹¹ The SPO further

⁵ SPO Submissions, paras 1, 6.

⁶ SPO Submissions, para. 1, 6.

⁷ Response, para. 2, 14-15, 19, 25.

⁸ Response, para. 2, 16-17, 24-25.

⁹ Response, para. 26.

¹⁰ Reply, paras 1, 11.

¹¹ Reply, paras 1, 3, 10.

argues that the Response minimises the extent to which any such delay is caused by the Defence.¹²

III. APPLICABLE LAW

8. 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.¹³ The Panel will apply the same standards to the present decision.

IV. DISCUSSION

9. 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.¹⁴ A change in circumstances, while not determinative, shall be taken into consideration if raised before the relevant panel or *proprio motu*.¹⁵

A. ARTICLE 41 CRITERIA

1. Grounded Suspicion

10. 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

¹² Reply, paras 1, 4-9.

¹³ 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.

¹⁴ 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.

¹⁵ 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.

jurisdiction of the Specialist Chambers (“SC”). This is a condition *sine qua non* for the validity of the detained person’s continued detention.¹⁶

11. 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.¹⁷

12. The Selimi Defence has not made any arguments about this criterion in the Response.

13. 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).¹⁸ 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.¹⁹ These

¹⁶ Similarly, ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222.

¹⁷ SPO Submissions, para. 7.

¹⁸ 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.

¹⁹ 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. A confirmed amended indictment was then filed by the SPO on 29 April 2022,

findings were made on the basis of a standard exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a).²⁰

14. 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

15. 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 further commission of crimes.²¹ These grounds must be “articulable” in the sense that they must be specified in detail by reference to the relevant information or evidence.²² In determining whether any of the grounds under Article 41(6)(b) allowing for a

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 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.

²¹ 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.

²² Article 19.1.31 of the Kosovo Criminal Procedure Code 2022, Law No. 08/L-032 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.

person's detention exist, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.²³

(a) Risk of Flight

16. 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 continuation of the trial through which Mr Selimi is seeing inculpatory evidence enter the record against him.²⁴

17. The Selimi Defence has not made any submissions regarding this criterion in the Response.

18. The Panel has examined the arguments of the SPO, in light of the present stage of the proceedings, and does not consider that the continuation of the trial constitutes a new relevant factor, or that there are any other new relevant factors to consider. The Panel, therefore, reaffirms its prior finding that the SPO has failed to establish its claim of a "sufficiently real possibility" that the Accused will abscond if released.²⁵

²³ First Appeals Decision on Selimi's Detention, para. 40.

²⁴ SPO Submissions, para. 9.

²⁵ See Eleventh Detention Decision, paras 13-15; See also First Appeals Decision on Selimi's Detention, para. 44.

19. 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.²⁶

20. While the risk of flight can never be completely ruled out, the Panel 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

21. The SPO submits that Mr Selimi continues to pose a risk of obstructing the proceedings. It submits that the risk factors observed by the Pre-Trial Judge, as confirmed by the Panel, remain 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 having been elected to the Kosovo Assembly, would enable him to influence and mobilise his support network; (ii) the persisting climate of intimidation of witnesses and interference with criminal proceedings against former Kosovo Liberation Army ("KLA") members; and (iii) the advancement of the proceedings through which Mr Selimi continues to gain insight into the evidence underpinning the serious charges against him.²⁷

22. The SPO adds that a general climate of witness interference persists in Kosovo regarding this case, which the Court of Appeals Panel has agreed is a relevant consideration.²⁸

²⁶ F01213, Panel, *Decision on Periodic Review of Detention of Rexhep Selimi* ("Seventh Detention Decision"), 17 January 2023, confidential, para. 19. A public redacted version was issued on 18 January 2023, F01213/RED.

²⁷ SPO Submissions, paras 10-11.

²⁸ SPO Submissions, para. 12.

23. Lastly, the SPO submits that Mr Selimi has received sensitive information concerning, *inter alia*, the 40 first witnesses that the SPO intends to call, which amplifies the risk of such information becoming known to the public.²⁹

24. The Selimi Defence has not made any submissions regarding this criterion in the Response.

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

26. The Panel has already determined and reiterates that: (i) Mr Selimi’s past and present positions of influence 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;³⁰(ii) there is a persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members;³¹ and (iii) the proceedings continue to advance and Mr Selimi continues to gain insight into the evidence underpinning the serious charges against him.³²

²⁹ SPO Submissions, paras 13-14.

³⁰ 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; F01383, Panel, *Decision on Periodic Review of Detention of Rexhep Selimi*, 17 March 2023, confidential, para. 20. A public redacted version was issued on 20 March 2023, F01383/RED; F01529, Panel, *Decision on Periodic Review of Detention of Rexhep Selimi*, 17 May 2023, confidential. A public redacted version was issued on 22 May 2023, F01529/RED, para. 20; Eleventh Detention Decision, para. 20.

³¹ See for example, First Detention Decision, para. 42; Second Detention Decision, para. 41; Third Detention Decision, para. 34; Fourth Detention Decision, para. 32; Seventh Detention Decision, paras 23-24; Eleventh Detention Decision, para. 20.

³² See for example, Fourth Detention Decision, para. 33; Fifth Detention Decision, para. 29; Sixth Detention Decision, para. 29; Seventh Detention Decision, paras 23-24; Eleventh Detention Decision, para. 20.

27. As previously noted, due to the nature of an ongoing 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.³³

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

(c) Risk of Committing Further Crimes

29. 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.³⁴ The SPO submits that this risk has taken on additional significance due to the sensitive information that Mr Selimi continues to receive and as the trial has started.³⁵ The SPO adds that the crimes against humanity and war crimes that Mr Selimi is charged with are extremely serious, they are alleged to have been committed in cooperation with others as well as personally by Mr Selimi.³⁶

30. The Selimi Defence has not made any submissions regarding this criterion in the Response.

³³ See for example, Seventh Detention Decision, para. 24; Eleventh Detention Decision, para. 21.

³⁴ SPO Submissions, paras 16-17.

³⁵ SPO Submissions, paras 19-20.

³⁶ SPO Submissions, para. 18.

31. The Panel recalls its finding in the Eleventh Detention Decision that the risk of Mr Selimi committing further crimes continues to exist.³⁷ The Panel finds 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 Mr Selimi committing further crimes.³⁸ 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.

32. The Panel highlights the fact that the trial in this case has commenced, that the identities of sensitive witnesses have been disclosed to Mr Selimi, and that any risk of the further commission of crimes must be avoided.

33. 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

34. 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 Mr Selimi's release.

³⁷ Eleventh Detention Decision, para. 24.

³⁸ See *supra*, paras 26-27; Eleventh Detention Decision, para. 24.

B. MEASURES ALTERNATIVE TO DETENTION

35. 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 committing further offences can only be effectively managed at the SC's detention facilities.³⁹ The SPO adds that nothing has occurred since the Eleventh Detention Decision warranting a different assessment.⁴⁰

36. The Selimi Defence has not made any submissions regarding this criterion in the Response.

37. 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).⁴¹ 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).⁴² 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.⁴³

³⁹ SPO Submissions, paras 21-24.

⁴⁰ SPO Submissions, para. 25.

⁴¹ 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*.

⁴² 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*.

⁴³ First Appeals Decision on Selimi's Detention, para. 86.

38. As regards the risks of obstructing the progress of SC proceedings and committing further crimes, the Panel finds that none of the previously 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.⁴⁴ Further, the Panel finds 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.⁴⁵ Moreover, they offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented.⁴⁶

39. 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.⁴⁷ 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).

⁴⁴ See for example, 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; Seventh Detention Decision, para. 39; Eleventh Detention Decision, para. 30.

⁴⁵ See for example, Third Detention Decision, para. 72; Third Appeals Decision on Selimi's Detention, paras 33-44, 48-52, 61; Fourth Detention Decision, para. 59; Seventh Detention Decision, para. 38; Eleventh Detention Decision, para. 30.

⁴⁶ See for example, Third Detention Decision, para. 61; Third Appeals Decision on Selimi's Detention, para. 42; Fourth Detention Decision, para. 59; Seventh Detention Decision, para. 38; Eleventh Detention Decision, para. 30.

⁴⁷ See for example, Third Detention Decision, para. 61; Third Appeals Decision on Selimi's Detention, para. 42; Fourth Detention Decision, para. 59; Seventh Detention Decision, para. 38; Eleventh Detention Decision, para. 31.

C. REASONABLENESS OF DETENTION

40. The SPO submits that, taking all factors into consideration, Mr Selimi's detention continues to be reasonable.⁴⁸ To that end, the SPO refers to the Panel's finding that: (i) 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) there may be a lengthy sentence, if convicted; (iii) the proceedings are complex; (iv) the risks under Article 41(6)(b) cannot be adequately mitigated by measures short of detention; (v) there is a climate of witness intimidation; and (vi) the trial has commenced.⁴⁹

41. The Selimi Defence responds that the reasonableness of the Accused's detention is a corollary of the right to be tried without undue delay,⁵⁰ where the effective time spent in detention alongside the conduct of the authorities is a relevant factor in determining the reasonableness of the detention.⁵¹ The Selimi Defence avers that an assessment of the reasonableness of detention must be made on an ongoing basis and must ensure that any future detention does not become unreasonable.⁵² It further submits that it is the entire breadth of the detention that must be considered in determining its reasonableness⁵³ and that waiting for the detention to become unreasonable during the proceedings, when it is self-evident that it will become so, violates the Accused's rights.⁵⁴

42. The Selimi Defence avers that whether the time spent in detention is reasonable depends on the conduct of the SPO in ensuring that its case is presented efficiently and effectively, a standard which it avers the SPO has failed to meet.⁵⁵ Specifically, the

⁴⁸ SPO Submissions, paras 26, 28.

⁴⁹ SPO Submissions, para. 27.

⁵⁰ Response, paras 3,

⁵¹ Response, para. 5.

⁵² Response, para. 6.

⁵³ Response, para. 6.

⁵⁴ Response, para. 8.

⁵⁵ Response, para. 13.

Selimi Defence argues that the SPO has not exercised “special diligence”, as it is the exclusive responsibility of the calling party to ensure that there are alternative witnesses available so that no court time is wasted.⁵⁶ It submits that the SPO has failed to meet this obligation and that the detention of the Accused during such extended periods of inactivity is unreasonable.⁵⁷ Lastly, the Selimi Defence argues that the SPO may not shift responsibility to the Defence for its delays in scheduling witnesses as the reduction of its cross-examination estimates are contingent upon a number of issues, which cannot be anticipated by the Defence except immediately prior to the start of its cross-examination.⁵⁸

43. The SPO replies that the Panel should extend Mr Selimi’s detention and that the assertion that detention until the end of the trial is disproportionate is premature.⁵⁹ The SPO argues that the Panel only extends detention for a period of two months in each decision, there is no reason to believe that witness scheduling will prolong Mr Selimi’s detention, which is presently necessary and reasonable, and that the “proactive” assessment advanced by the Selimi Defence is contrary to relevant law.⁶⁰ The SPO asserts that it has acted with appropriate diligence in progressing the case and, while aware of its obligation as the calling party, the Defence is contributing to any delay by giving inaccurate cross-examination estimates and significantly reducing such estimates at the last minute.⁶¹

44. The Panel recalls that the reasonableness of an accused’s continued detention must be assessed on the facts of each case and according to its special features at the time when such an assessment is being made.⁶² In the Panel’s estimation, the special features in this case include: (i) Mr Selimi is charged with ten counts of

⁵⁶ Response, paras 14-16 *referring to* F01226/A01, Panel, *Annex 1 to Order on the Conduct of Proceedings* (“Order on the Conduct of Proceedings”), 25 January 2023, para. 81

⁵⁷ Response, paras 18-19.

⁵⁸ Response, paras 20-21, 23.

⁵⁹ Reply, para. 1, 10-11.

⁶⁰ Reply, paras 1-3, 10.

⁶¹ Reply, paras 4-9.

⁶² Seventh Detention Decision, para. 42 (with further references).

serious international crimes in which he is alleged to play a significant role;⁶³ (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;⁶⁴ (iv) the case against Mr Selimi is complex;⁶⁵ (v) the climate of witness intimidation outlined above; and (vi) the fact that the trial has commenced.

45. With regard to the Selimi Defence argument that the SPO has failed to exercise “special diligence”, the Panel is not convinced that the loss of courtroom time constitutes a lack of “special diligence” on the part of the SPO.⁶⁶ In this regard, the Panel observes that in the jurisprudence of the European Court of Human Rights, persons held in detention pending trial are entitled to “special diligence” on the part of the competent authorities. The length of the proceedings may be unreasonable where there are “protracted periods of inactivity” resulting from a lack of diligence.⁶⁷

46. Here, the Panel finds that, while there has been certain loss of courtroom time, this does not amount to “protracted periods of inactivity”. Moreover, the Panel emphasises that the conduct of the Defence is an objective factor which must be taken into account when assessing whether proceedings exceed what is reasonable.⁶⁸ In this respect, the Panel notes that, while the scheduling of witnesses is the obligation of the calling party,⁶⁹ the Defence cross-examination estimates constitute an important factor in the calculation of time required when scheduling witnesses. The Panel understands that the Defence cross-examination estimates may be influenced by last minute factors, but considers, contrary to the Selimi Defence submissions,⁷⁰ that where such estimates are regularly much higher than the time ultimately used, it is bound to

⁶³ Confirmed Indictment, paras 7-9, 32, 39-40, 44-47, 49, 52, 55-57, 176-177.

⁶⁴ See *supra*, para. 39.

⁶⁵ Third Detention Decision, para. 79 (with further references); Eleventh Detention Decision, para. 33.

⁶⁶ Response, paras 14-19.

⁶⁷ See, for example, ECtHR, *Abdoella v. Netherlands*, No. 12728/87, [Judgment](#), para. 24.

⁶⁸ ECtHR, *Eckle v. Germany*, No. 8130/78, [Judgment](#), para. 82.

⁶⁹ See Order on the Conduct of Proceedings, para. 81; See also ECtHR, *Tychko v. Russia*, No. 56097/07, [Judgment](#), para. 68.

⁷⁰ Response, paras 20-23.

influence the scheduling of witnesses. Accordingly, the Panel observes that at least some delay is attributable to the conduct of the Defence.

47. Nevertheless, the Panel acknowledges with concern the delays attributable to the SPO (as well as the Defence) that have contributed to the loss of valuable courtroom time thus far.⁷¹ However, while the Panel has indicated that it may have to take measures in this regard,⁷² it has not determined that such measures are immediately appropriate. Thus, at the present time, it is premature to make any determination that the progress of the trial violates Mr Selimi's right to be tried within a reasonable time, as enshrined in Article 21(4)(d).

48. 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.

49. 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.

⁷¹ Transcript of Hearing, 30 October 2023 ("30 October 2023 Transcript"), confidential, p. 9239, line 20 to p. 3240, line 23 (*see, in particular*, p. 9239, lines 20-23).

⁷² 30 October 2023 Transcript, p. 9240, lines 18-23.

V. NEXT DETENTION REVIEW

50. In light of the upcoming winter judicial recess, the Panel finds it appropriate to abridge the usual briefing schedule under Rule 76 in order to meet the deadline for the next review of Mr Selimi's detention. The Panel orders the SPO, pursuant to Rule 9(5)(a), to file submissions by no later than 16:00 on Friday, 22 December 2023, and the Selimi Defence to file any response by no later than 16:00 on Thursday, 4 January 2024. The SPO must file a reply, if any, by 16:00 on Tuesday, 9 January 2024.

VI. DISPOSITION

51. 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 no later than **Friday, 22 December 2023 (at 16:00 hours)**, any response by **Thursday, 4 January 2024 (at 16:00 hours)** and any reply by **Tuesday, 9 January 2024 (at 16:00 hours)**.



Charles L. Smith, III
Presiding Judge

Dated this Wednesday, 15 November 2023

At The Hague, The Netherlands.