



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-06

Before: A Panel of the Court of Appeals Chamber
Judge Michèle Picard
Judge Emilio Gatti
Judge Nina Jørgensen

Registrar: Fidelma Donlon

Date: 5 April 2022

Original language: English

Classification: Public

**Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision
on Review of Detention**

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THE PANEL OF THE COURT OF APPEALS CHAMBER of the Kosovo Specialist Chambers (“Court of Appeals Panel”, “Appeals Panel” or “Panel” and “Specialist Chambers”, respectively),¹ acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 169 of the Rules of Procedure and Evidence (“Rules”), is seised of an appeal filed on 10 January 2022 by Hashim Thaçi (“Appeal” and “Thaçi” or “Accused”, respectively)² against the Pre-Trial Judge’s “Decision on Review of Detention of Hashim Thaçi” (“Impugned Decision”).³ The Specialist Prosecutor’s Office (“SPO”) responded on 20 January 2022 that the Appeal should be rejected (“Response”).⁴ Thaçi replied on 28 January 2022 (“Reply”).⁵ On 16 February 2022, Thaçi filed additional submissions on appeal (“Additional Submissions”),⁶ of which the SPO requested the dismissal on 18 February 2022.⁷ On 28 February 2022, Thaçi replied to the Request for Dismissal.⁸

¹ F00005, Decision Assigning a Court of Appeals Panel, 11 January 2022 (confidential, reclassified as public on 21 March 2022).

² F00004, Appeal Against the Decision on Review of Detention of Hashim Thaçi, 10 January 2022 (confidential) (“Appeal”). On 16 December 2021, Thaçi requested that the deadline to appeal the Impugned Decision be extended to 17 January 2022. See F00001, Thaçi Defence Request for an Extension of the Time Limit to Submit its Appeal against the Pre-Trial Judge’s Decision on Review of Detention of Hashim Thaçi, 16 December 2021. See also F00002, Decision Assigning a Court of Appeals Panel to Consider Request Regarding Time Limits, 17 December 2021. On 21 December 2021, the Court of Appeals Panel granted Thaçi’s request in part and authorised Thaçi to file his Appeal no later than 10 January 2022. See F00003, Decision on Thaçi’s Request for Variation of Time Limit, 21 December 2021.

³ F00624, Decision on Review of Detention of Hashim Thaçi, 14 December 2021 (confidential) (“Impugned Decision”).

⁴ F00006, Response to Thaçi Defence Appeal of December 2021 Detention Decision, 20 January 2022 (confidential) (“Response”), paras 2, 49.

⁵ F00007, Thaçi Defence Reply to Prosecution ‘Response to Thaçi Defence Appeal of December 2021 Detention Decision’, 28 January 2022 (confidential) (“Reply”).

⁶ F00008, Thaçi Defence Additional Submissions on Appeal against the Decision on Review of Detention of Hashim Thaçi, 16 February 2022 (confidential) (“Additional Submissions”).

⁷ F00009, Request for Dismissal of KSC-BC-2020-06/IA017/F00008, 18 February 2022 (confidential) (“Request for Dismissal”). On 16 February 2022, the SPO informed the Appeals Panel via email that it would respond to the Additional Submissions. See CRSPD87, Email re IA017-F00008, 16 February 2022.

⁸ F00010, Thaçi Submissions in Reply to “Request for Dismissal of KSC-BC-2020-06/IA017/F00008”, 28 February 2022 (confidential) (“Reply to Request for Dismissal”).

I. BACKGROUND

1. Thaçi was arrested on 5 November 2020, pursuant to an arrest warrant issued by the Pre-Trial Judge,⁹ further to the confirmation of an indictment against him.¹⁰
2. On 22 January 2021, the Pre-Trial Judge rejected Thaçi's application for interim release.¹¹
3. On 30 April 2021, the Court of Appeals Panel denied Thaçi's appeal against the First Detention Decision.¹²
4. On 23 July 2021, the Pre-Trial Judge reviewed Thaçi's detention and ordered his continued detention.¹³
5. On 1 October 2021, the Court of Appeals Panel granted in part the appeals submitted by Thaçi's co-Accused against the Pre-Trial Judge's decisions ordering their continued detention and remanded the matter to the Pre-Trial Judge to assess whether

⁹ F00027/RED, Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders, 26 November 2020 (strictly confidential and *ex parte* version filed on 26 October 2020, reclassified as confidential on 25 November 2020); F00027/A01/RED, Public Redacted Version of Arrest Warrant for Hashim Thaçi, 5 November 2020 (strictly confidential and *ex parte* version filed on 26 October 2020); F00051, Notification of Arrest of Hashim Thaçi Pursuant to Rule 55(4), 5 November 2020 (strictly confidential and *ex parte*, reclassified as public on 20 November 2020), para. 4.

¹⁰ F00026/RED, Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, 30 November 2020 (strictly confidential and *ex parte* version filed on 26 October 2020). The operative indictment was filed on 3 September 2021. See F00455/RED/A01, Public Redacted Version of 'Indictment', KSC-BC-2020-06/F00455/A01/RED, dated 3 September 2021, 8 September 2021 (strictly confidential and *ex parte* version filed on 3 September 2021). A confidential lesser redacted version of the corrected indictment was filed on 17 January 2022. See F00647/A01, Confidential Lesser Redacted Version of 'Indictment', KSC-BC-2020-06/F00455/A01, dated 3 September 2021, 17 January 2022 (confidential).

¹¹ F00120/RED, Public Redacted Version of Application for Interim Release on behalf of Mr Hashim Thaçi, 7 December 2020 (confidential version filed on 4 December 2020); F00177/RED, Public Redacted Version of the Decision on Hashim Thaçi's Application for Interim Release, 26 January 2021 (confidential version filed on 22 January 2021) ("First Detention Decision"), para. 61.

¹² F00005/RED, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Interim Release, 30 April 2021 (confidential version filed on 30 April 2021) ("First Appeal Decision"), para. 91.

¹³ F00417/RED, Public Redacted Version of Decision on Review of Detention of Hashim Thaçi, 23 July 2021 (confidential version filed on 23 July 2021) ("Second Detention Decision").

the Kosovo Police can effectively enforce the conditions of release the Defence proposed or any further condition identified by the Pre-Trial Judge as necessary to mitigate the identified risks ("Appeal Decisions dated 1 October 2021").¹⁴

6. On 20 October 2021, the Registrar, further to an order by the Pre-Trial Judge,¹⁵ provided information on the detention regime applicable to Thaçi at the Detention Facilities of the Specialist Chambers ("Detention Facilities").¹⁶

7. On 27 October 2021, the Kosovo Police, further to an order by the Pre-Trial Judge,¹⁷ provided information regarding: (i) the authority and capability of the Kosovo Police to restrict the movements of individuals subject to conditional release, monitor and restrict such individuals' communications, and administer house arrest, as well as regarding the enforceability of conditions attaching to interim release; and (ii) previous instances in which the Kosovo Police enforced either the conditional release or conditions of imprisonment of Kosovo Liberation Army ("KLA") members and other persons accused of severe crimes ("First Kosovo Police Submissions").¹⁸

¹⁴ F00005/RED, Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021) ("*Selimi* Second Appeal Decision"), paras 54, 56-59; F00005/RED, Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention, 1 October 2021, (confidential version filed on 1 October 2021) ("*Krasniqi* Second Appeal Decision"), paras 54-60; F00004/RED, Public Redacted Version of Kadri Veseli's Appeal Against Decision on Review of Detention, 1 October 2021, (confidential version filed on 1 October 2021) ("*Veseli* Second Appeal Decision"), paras 51-54.

¹⁵ F00522, Order to the Registrar to Provide Information on the Detention Regime, 13 October 2021, (confidential reclassified as public on 3 December 2021), paras 7-8.

¹⁶ F00536/RED, Public Redacted Version of Registry Submissions Pursuant to the Order to provide Information on the Detention Regime (F00522), filing F00536 of 20 October 2021, 29 November 2021 (confidential version filed on 20 October 2021) ("Registry Submissions").

¹⁷ F00513, Order to the Kosovo Police to Provide Information, 8 October 2021 ("Order to Kosovo Police"). See also F00513/A01, Confidential Annex to Order to the Kosovo Police to Provide Information, 8 October 2021 (confidential) ("Annex to Order to Kosovo Police").

¹⁸ F00548/eng, Kosovo General Police Directorate, Answer to the Request Number KSC-BC-2020-06, Dated 13 October 2021, 27 October 2021 (confidential) ("First Kosovo Police Submissions"). The translation into English of this submission was filed on 3 November 2021.

8. On the same day, the Court of Appeals denied Thaçi's appeal against the Second Detention Decision.¹⁹

9. On 4 November 2021, Thaçi requested the Kosovo Police to perform a comprehensive security assessment and/or assessment of suitability of his residence, for the implementation, supervision, and enforcement of the conditions addressed in the First Kosovo Police Submissions.²⁰

10. On 8 November 2021, the SPO responded to the First Kosovo Police Submissions.²¹

11. On 15 November 2021, the Registrar transmitted to the Pre-Trial Judge the Kosovo Police response to Thaçi's request ("Second Kosovo Police Submissions").²²

12. On 14 December 2021, after having received submissions from Thaçi and the SPO,²³ the Pre-Trial Judge issued the Impugned Decision ordering Thaçi's continued detention on the basis that the risks that Thaçi will abscond, obstruct the progress of Specialist Chambers proceedings, or commit further crimes against those perceived as being opposed to the KLA, including potential witnesses, continue to exist.²⁴

¹⁹ F00008/RED, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, 27 October 2021 (confidential version filed on 27 October 2021) ("Second Appeal Decision"); F00004/RED, Public Redacted Version of Thaçi Defence Appeal against Decision on Review of Detention of Hashim Thaçi, 14 September 2021 (confidential version filed on 16 August 2021).

²⁰ F00569/A01, Annex 1 to Transmission of Information from Kosovo Police, 15 November 2021 (confidential), pp. 4-5.

²¹ F00562/RED, Public Redacted Version of Prosecution Response to Kosovo Police Submissions on Detention, 29 November 2021 (confidential version filed on 8 November 2021).

²² F00569, Transmission of Information from Kosovo Police, 15 November 2021, (confidential). An English translated version of the annex (F00569/A01) was filed on 18 November 2021, F00569/A01/eng ("Second Kosovo Police Submissions").

²³ F00570/RED, Public Redacted Version of Thaçi Defence Submissions on Second Detention Review, 30 November 2021 (confidential version filed on 16 November 2021) ("Thaçi Submissions on Detention Review"); F00583/RED, Public Redacted Version of Prosecution response to Thaçi Defence Submissions on Second Detention Review, KSC-BC-2020-06/F00583, dated 29 November 2021, 20 December 2021 (confidential version filed on 29 November 2021); F00596/RED, Public Redacted Version of Thaçi Defence Reply to Prosecution Response to Thaçi Defence Submissions on Second Detention Review, 8 December 2021 (confidential version filed on 6 December 2021) ("Thaçi Reply on Detention Review").

²⁴ Impugned Decision, paras 39, 47, 53-54, 103.

13. In the Appeal, Thaçi develops seven grounds of appeal consisting of alleged errors of law and fact, and abuse of discretion committed by the Pre-Trial Judge.²⁵ Thaçi requests that the Court of Appeals Panel reverse the Impugned Decision and order his immediate release subject to appropriate conditions.²⁶

II. STANDARD OF REVIEW

14. The Court of Appeals Panel adopts the standard of review for interlocutory appeals established in its first decision and applied subsequently.²⁷

III. PRELIMINARY MATTERS

A. PUBLIC FILINGS

15. The Appeals Panel notes that while the Pre-Trial Judge issued a public redacted version of the Impugned Decision, Thaçi and the SPO have not yet filed public redacted versions of their respective submissions on appeal.²⁸ Considering that all submissions filed before the Specialist Chambers shall be public unless there are exceptional reasons for keeping them confidential, and that Parties shall file public redacted versions of all non-public submissions filed before the Panel,²⁹ the Panel orders the Parties to file public redacted versions of the above-mentioned filings within ten days of receiving notification of the present Decision.

B. ADDITIONAL SUBMISSIONS

16. The Panel notes that Thaçi filed the Additional Submissions on 15 February 2022—18 days after he filed the Reply and the closing of the briefing

²⁵ Appeal, para. 2.

²⁶ Appeal, para. 43. See also Reply, para. 22.

²⁷ KSC-BC-2020-07, F00005, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, 9 December 2020 ("*Gucati* Appeal Decision"), paras 4-14. See also First Appeal Decision, paras 4-5.

²⁸ It includes the Appeal, the Response, the Reply, the Additional Submissions, the Request for Dismissal, and the Reply to Request for Dismissal.

²⁹ See e.g. *Veseli* Second Appeal Decision, paras 8-9.

schedule pursuant to Rules 58(2) and 170(1) of the Rules.³⁰ Nevertheless, Thači attempts to circumvent these clear provisions by submitting that the Additional Submissions should be accepted “in the interests of justice”.³¹

17. In the Panel’s view, the first question is whether the Appeals Panel is validly seised of the matter raised in the Additional Submissions and Reply to Request for Dismissal, namely whether it falls within the scope of the Appeal. The Panel recalls that it does not have jurisdiction to decide on issues that do not arise from the Impugned Decision.³² The Panel observes that in the Additional Submissions, Thači raises the issue of the SPO’s alleged violation of its disclosure obligations, namely that it failed to disclose exculpatory evidence pursuant to Rule 103 of the Rules in a timely manner, and that such violation warrants immediate release pursuant to Rule 110 of the Rules.³³

18. The Panel notes that the exculpatory material which Thači asks the Panel to consider was disclosed to the Defence after the Impugned Decision was issued,³⁴ and that consequently it was not, and in fact could not have been, considered in the Impugned Decision. Moreover, the Panel notes that Thači did not raise the issue of disclosure violations nor the question of the existence of exculpatory material in the

³⁰ Thači filed his Reply on 28 January 2022.

³¹ Additional Submissions, paras 12-13. The Panel observes that the two decisions cited by Thači in support of this argument were issued under different circumstances and are not relevant to the present situation where Thači seeks to supplement a fully briefed appeal. See Additional Submissions, fn. 19, referring to ICTY, *Prosecutor v. Gotovina et al.*, IT-06-90-AR73.2, Decision on Ivan Čermak’s Interlocutory Appeal against Trial Chamber’s Decision on Conflict of Interest of Attorneys Čedo Prodanović and Jadranka Sloković, 29 June 2007, para. 12 (wherein the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) accepted submissions from the Gotovina Defence when it sought to respond to an appeal brought by a co-accused); ICTY, *Prosecutor v. Milošević*, IT-02-54-A-R77.4, Decision on Prosecution’s Application to Strike Appellant’s Brief, 23 June 2005, para. 5 (wherein the ICTY Appeals Chamber accepted the appellant’s brief filed outside the time limits).

³² See similarly in the context of certified appeals pursuant to Rules 77 and 170(2) of the Rules, KSC-BC-2020-07, F00007, Decision on the Defence Appeals Against Decision on Preliminary Motions, 23 June 2021, para. 20.

³³ See, in particular, Additional Submissions, paras 17-29, 35.

³⁴ The exculpatory material was disclosed to the Defence on 1 February 2021. See Additional Submissions, para. 13.

Appeal.³⁵ In the Panel's view, and contrary to Thaçi's submissions,³⁶ the Additional Submissions are not linked to the Appeal and do not arise from the Impugned Decision. As such, the Panel finds that the Additional Submissions do not fall within the scope of appeals as of right under Article 45(2) of the Law and Rule 58(1) of the Rules.

19. Furthermore, and contrary to Thaçi's contention,³⁷ the obligation to review a decision on detention on remand "at any time [...] where a change in circumstances since the last review has occurred" does not apply to the Appeals Panel in relation to the Appeal.³⁸ Rule 57(2) of the Rules clearly states that such obligation applies to "the Panel seized with *a case*",³⁹ which in the present case is the Pre-Trial Judge. By contrast, the Appeals Panel is only seised with an appeal against the review of detention.

20. As a result, the Panel finds that it is not validly seised of the matter raised in the Additional Submissions, either pursuant to Rule 110 or Rule 57(2) of the Rules, and therefore dismisses the Additional Submissions and the Reply to Request for Dismissal. The Panel however underlines that the present decision is without prejudice to any future ruling on the matter if properly brought before the Panel.

IV. DISCUSSION

21. The Appeals Panel notes that Thaçi makes serious allegations against the Specialist Chambers in general, and the Pre-Trial Judge in particular, which he perceives as conducting a "discriminatory policy against Kosovo Albanians".⁴⁰ The Panel understands that Thaçi does not raise this as a separate ground of appeal,⁴¹ but presents several instances of alleged bias against the Kosovo Police and Kosovo public

³⁵ See, in particular, Appeal, paras 9-18.

³⁶ Additional Submissions, paras 30-34.

³⁷ Reply to Request for Dismissal, para. 5.

³⁸ See Rule 57(2) of the Rules.

³⁹ Rule 57(2) of the Rules (emphasis added).

⁴⁰ Appeal, para. 1. See also Thaçi Reply on Detention Review, paras 3-5, 46.

⁴¹ See in particular Appeal, para. 2.

authorities in general.⁴² The Panel will deal with them below as they arise in the grounds of appeal. Nonetheless, the Panel finds it appropriate to recall that the Pre-Trial Judge, in conducting his review of detention, and the Panel, in adjudicating appeals, are subject to the principle of equality before the law and the requirement of non-discrimination.⁴³ When an appellant alleges that the first instance panel is biased towards him, the burden of proof rests on the appellant.⁴⁴ Therefore, the appellant must demonstrate that the decision to continue his detention was based on impermissible motives, such as race or ethnicity. In the present case, the Panel observes that Thaçi did not even attempt to prove his allegations. The Panel finds that such unsupported claims are inappropriate and inadmissible.

A. ALLEGED ERRORS REGARDING ASSESSMENT OF ARTICLE 41(6)(B) OF THE LAW (GROUNDS B-C)⁴⁵

1. Article 41(6)(b)(i) of the Law (Ground B)

22. The Panel notes that under Ground B, Thaçi makes arguments which address solely the risk of flight under Article 41(6)(b) of the Law.⁴⁶ As the Pre-Trial Judge's conclusion to continue Thaçi's detention is not based on findings regarding the risk of flight,⁴⁷ the Panel summarily dismisses this ground of appeal.⁴⁸

2. Article 41(6)(b)(iii) of the Law (Ground C)

23. Given that Thaçi does not appeal the Pre-Trial Judge's finding that Thaçi continues to pose a risk of obstruction to the progress of the Specialist Chambers'

⁴² See in particular Appeal, paras 28-36.

⁴³ See e.g. Article 21(1) of the Law; Article 24 of the Kosovo Constitution; Article 14 of the European Convention of Human Rights; Article 26 of the International Covenant on Civil and Political Rights.

⁴⁴ See for e.g., ICTR, *Renzaho v. Prosecutor*, ICTR-97-31-A, Judgement, 1 April 2011, para. 23; ICTR, *Karera v. Prosecutor*, ICTR-01-74-A, Judgement, 2 February 2009, para. 254; ICTY, IT-95-17/1-A, *Prosecutor v. Furundžija*, Judgement, para. 197.

⁴⁵ In referring to Grounds A to G, the Panel refers to the numbering used by Thaçi in the headings of the Appeal.

⁴⁶ See Appeal, paras 9-11. See also Reply, paras 6-7.

⁴⁷ Impugned Decision, para. 70.

⁴⁸ See also First Appeal Decision, para. 32; Second Appeal Decision, para. 29.

proceedings, making continued detention necessary, any findings by the Panel on Thaçi's arguments under Article 41(6)(b)(iii) of the Law would not have an impact on the outcome of the Impugned Decision. The Panel thus does not need to address the alleged errors with regard to Article 41(6)(b)(iii) of the Law⁴⁹ and summarily dismisses Ground C of Thaçi's Appeal.

**B. ALLEGED ERRORS REGARDING ASSESSMENT OF THE CONDITIONS OF RELEASE
(GROUNDS E, F AND G)**

**1. Alleged Errors in the Comparison between the Release Conditions and the
Detention Facilities' Regime (Ground E)**

(a) Submissions of the Parties

24. Thaçi submits that the Pre-Trial Judge erred in finding that only the regime in place at the Detention Facilities can effectively restrict and monitor Thaçi's communications.⁵⁰ In particular, Thaçi argues that the Pre-Trial Judge erred in setting the Detention Facilities' regime as the benchmark and requiring equivalence between house arrest and prison,⁵¹ rather than assessing the release conditions against their ability to mitigate the identified risks.⁵² Moreover, Thaçi argues that, in assessing the release conditions, the Pre-Trial Judge made several errors of fact by *inter alia*: (i) asserting that [REDACTED];⁵³ (ii) finding that the use of coded or obscure language can only be effectively monitored in the Detention Facilities;⁵⁴ (iii) finding that

⁴⁹ See also First Appeal Decision, para. 78; Second Appeal Decision, para. 44.

⁵⁰ Appeal, paras 2(vi), 24, 27.

⁵¹ Appeal para. 24, referring to Impugned Decision, paras 75-81.

⁵² Appeal, para. 25.

⁵³ Appeal para. 26(i), referring to Impugned Decision, paras 74, 78.

⁵⁴ Appeal para. 26(ii), referring to Impugned Decision, para. 75.

[REDACTED];⁵⁵ (iv) failing to inquire into [REDACTED];⁵⁶ and (v) finding “decisive” the fact that [REDACTED].⁵⁷

25. The SPO responds that comparing the conditions at the Detention Facilities and those for house arrest is entirely appropriate.⁵⁸ In the SPO’s view, the Pre-Trial Judge did exactly what Thaçi requests in the Appeal, namely assessing the measures in house arrest against their ability to mitigate the risk of obstruction or committing further crimes.⁵⁹ Moreover, the SPO argues that the errors of fact alleged by Thaçi are groundless, as follows: (i) the Kosovo Police did not provide [REDACTED], which leaves room for concern regarding [REDACTED];⁶⁰ (ii) there is indeed less likelihood to pass coded messages in the Detention Facilities than under house arrest;⁶¹ (iii) [REDACTED];⁶² (iv) [REDACTED] cannot be considered as an “additional safeguard” due to [REDACTED];⁶³ and (v) the Pre-Trial Judge did not claim that [REDACTED], but that [REDACTED].⁶⁴

(b) Assessment of the Court of Appeals Panel

26. The Panel recalls that to fully comply with the constitutional standards, a panel must consider more lenient measures when deciding whether a person should be

⁵⁵ Appeal para. 26(iii), referring to Impugned Decision, para. 78.

⁵⁶ Appeal, para. 26(iv), referring to Impugned Decision, para. 79.

⁵⁷ Appeal, para. 26(v), referring to Impugned Decision, para. 78. See also Reply, paras 15-16. Thaçi argues *inter alia* that the Pre-Trial Judge should not have compared the Kosovo Police officers with Registry officers, but with the Detention Officers. He also notes that Veseli was granted custodial visits, [REDACTED].

⁵⁸ Response, para. 30.

⁵⁹ Response, para. 30, referring to Impugned Decision, para. 81.

⁶⁰ Response, paras 33-34.

⁶¹ Response, paras 35-36. The SPO also indicates that “other aspects of Detention Facilities confinement” help prevent the passing of coded message. These aspects include (i) the physical monitoring of visits other than those of close family members, (ii) the possibility of active monitoring and after-the fact-listening and (iii) [REDACTED].

⁶² Response, para. 37.

⁶³ Response, paras 38-39.

⁶⁴ Response, para. 40.

detained.⁶⁵ This means that an accused can only be detained if such lesser measures would be insufficient to mitigate the risks of flight, obstruction or commission of further crimes.⁶⁶

27. The Panel observes that, contrary to Thaçi's assertion, the Pre-Trial Judge did not set the Detention Facilities regime as a "benchmark" in a comparative exercise.⁶⁷ The Pre-Trial Judge instead identified the limitations of the release conditions that would be enforced by the Kosovo Police,⁶⁸ before identifying "by contrast" specific additional safeguards in place to monitor communications at the Detention Facilities.⁶⁹ By doing so, the Pre-Trial Judge did not set a standard that would be satisfied only when the protection offered by the Kosovo Police was equivalent to that of the Detention Facilities, but used it as a method to assess the adequacy of the proposed conditions in terms of mitigating the identified risks. The Panel finds that such comparison between conditions of release and pre-trial detention is entirely permissible in order to assess whether the latter remains necessary at this stage. The Panel notes that it specifically expected the Pre-Trial Judge to assess the feasibility of

⁶⁵ KSC-CC-PR-2020-09, F00006, Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020, 26 May 2020 ("Judgment of the Constitutional Court of 26 May 2020"), para. 70 and jurisprudence therein. See also KSC-CC-PR-2017-01, F00004, 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, 26 April 2017, para. 114.

⁶⁶ See ECtHR, *Ilmseher v. Germany*, nos 10211/12 and 27505/14, Judgment, 4 December 2018, para. 137; ECtHR, *Stanev v. Bulgaria*, no. 36760/06, Judgment, 17 January 2012, para. 143. See also Article 187 of the Kosovo Code of Criminal Procedure, Code No. 04/L-123, 13 December 2012.

⁶⁷ Contra Appeal, paras 24-25.

⁶⁸ For example, the Pre-Trial Judge indicated that [REDACTED] and that [REDACTED] would not prevent the risk of use of coded or obscure language to communicate illicit information. See Impugned Decision, para. 74. The Pre-Trial Judge took into consideration [REDACTED]. See Impugned Decision, para. 73. See also Impugned Decision, paras 78, 80.

⁶⁹ Impugned Decision, paras 75-77, 81.

the conditions of release in Kosovo⁷⁰ and this comparison was a reasonable and appropriate method to do so.⁷¹

28. Nevertheless, the Panel will address the alleged errors of fact in the assessment of the release conditions.⁷² First, with regard to family visits, the Panel notes that Thaçi misrepresents the Pre-Trial Judge's findings.⁷³ The Pre-Trial Judge referred to [REDACTED] in finding that [REDACTED].⁷⁴ The Panel considers that given that [REDACTED], it was reasonable for the Pre-Trial Judge to find that the release conditions do not address the possibility that Thaçi could ask a family member to pass on a message or transmit covert messages.⁷⁵

29. The Panel further finds that the Pre-Trial Judge correctly pointed out that at the Detention Facilities, unmonitored communications are strictly limited in terms of persons *and* time periods.⁷⁶ In that respect, the Panel finds that limitations on [REDACTED] at the Detention Facilities are relevant to the Pre-Trial Judge's reasoning. Furthermore, even if there was a legal basis [REDACTED], such a measure would be, in the Panel's view, unrealistic both in terms of the resources required to [REDACTED] such interactions and the scope of [REDACTED].

30. Second, turning to the use of messages through coded or obscure languages, the Panel observes that the Pre-Trial Judge found that such risk would exist not only

⁷⁰ *Selimi* Second Appeal Decision, paras 57-58; *Krasniqi* Second Appeal Decision, paras 57-58; *Veseli* Second Appeal Decision, paras 52-53.

⁷¹ See KSC-BC-2020-04, F00005/RED, Public Redacted Version of Decision on Pjetër Shala's Appeal Against Decision on Review of Detention, 11 February 2022 (confidential version filed on 11 February 2022), paras 54, 60.

⁷² See Appeal, paras 26-27.

⁷³ See Appeal, para. 26(i), referring to Impugned Decision, para. 74.

⁷⁴ Impugned Decision, para. 74. Contrary to Thaçi's contention, the Pre-Trial Judge did not refer to [REDACTED] but [REDACTED]. [REDACTED].

⁷⁵ Impugned Decision, para. 74.

⁷⁶ See Impugned Decision, para. 75 (emphasis added). The Panel notes that the [REDACTED] is not comparable to the limited visits Thaçi receives [REDACTED] at the Detention Facilities. *Contra* Appeal, para. 26(ii).

[REDACTED] but also [REDACTED] as Thaçi proposed.⁷⁷ Therefore, Thaçi's argument that he has [REDACTED] is irrelevant.⁷⁸ In any event, the Panel agrees with the Pre-Trial Judge that given [REDACTED], and unless the Accused is denied any external communication or visit, the risk of illicit messages and instructions being passed cannot be entirely eliminated in the Detention Facilities.⁷⁹ However, the Pre-Trial Judge correctly identified additional and robust safeguards for in-person (and video) visits.⁸⁰

31. In the Panel's view, in the current circumstances, the Detention Facilities offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented.⁸¹ While 10% of the non-privileged calls are listened to, all telephone conversations of the Accused on the non-privileged telephone line, the only one to which the Accused has access for non-privileged calls, are recorded.⁸² Moreover, in addition to visits at the Detention Facilities being supervised as a rule, more measures of recording and listening of all visits are possible if considered necessary and proportionate.⁸³ Furthermore, the Panel observes that the Pre-Trial Judge assessed at length the level of monitoring that the Kosovo Police affirm it can implement, including [REDACTED], and provided adequate reasoning to conclude that such monitoring is insufficient.⁸⁴

⁷⁷ Impugned Decision, paras 74, 78. See also Thaçi Reply on Detention Review, para. 49.

⁷⁸ Appeal, para. 26(ii).

⁷⁹ Impugned Decision, para. 81. See also Second Appeal Decision, para. 68.

⁸⁰ Impugned Decision, para. 75. The Pre-Trial Judge notably considered in addition to the fact that in-person and video visits are conducted within the sight and general hearing of the Detention Officers, active monitoring and after-the fact-listening are also envisaged in order to prevent the unauthorised disclosure of confidential information or interference with the safe and secure conduct of proceedings.

⁸¹ See Impugned Decision, para. 78.

⁸² Registry Submissions, paras 18-19, 26. See also Registry Submissions, paras 24, 29 (wherein the Registry submits that the passive monitoring regime ensures that, should there be a grounded suspicion of any offences under the Law, any relevant evidence is retained for a certain period, should such recordings, *inter alia*, prove to be relevant to ongoing or future investigations).

⁸³ Registry Submissions, paras 31-34. See also Registry Submissions, paras 37-39.

⁸⁴ Impugned Decision, paras 73-74, 77-80.

32. Third, with respect to the Pre-Trial Judge's conclusion that the conditions would [REDACTED], the Panel notes that the Pre-Trial Judge refers primarily to [REDACTED].⁸⁵ The Panel considers that this is a reasonable conclusion, since the release conditions do not include the [REDACTED] and which currently take place under restrictions in the Detention Facilities.⁸⁶ [REDACTED].

33. Fourth, [REDACTED], the Panel finds that the Pre-Trial Judge did not err in finding that [REDACTED].⁸⁷ The fact that [REDACTED] is irrelevant given that this measure, proposed by the Defence and found ineffective,⁸⁸ was only considered as an *additional* safeguard to counterbalance some of the shortcomings of house arrest.⁸⁹ Furthermore, the question of [REDACTED] is irrelevant in light of the inefficacy of such measure.

34. Fifth, turning to Thaçi's arguments regarding [REDACTED], the Panel notes that Thaçi argues in particular that the Pre-Trial Judge's finding that it is "decisive" that [REDACTED].⁹⁰ At the outset, the Panel observes that the Pre-Trial Judge noted that [REDACTED],⁹¹ and agrees that [REDACTED].⁹² Thaçi fails to acknowledge that the Kosovo Police themselves stated that [REDACTED].⁹³

35. Furthermore, the Panel agrees with the Pre-Trial Judge that the fact that Kosovo Police officers speak the Accused's native language is insufficient for the effective monitoring of visits and communications [REDACTED].⁹⁴ Moreover, while the Detention Officers [REDACTED],⁹⁵ the Panel notes that the Kosovo Police officers

⁸⁵ Impugned Decision, para. 78.

⁸⁶ See above, para. 29.

⁸⁷ Impugned Decision, para. 79.

⁸⁸ Impugned Decision, para. 79.

⁸⁹ Contra Appeal, para. 26(iv).

⁹⁰ Appeal, para. 26(v).

⁹¹ Impugned Decision, paras 73-74, 78, 80.

⁹² Impugned Decision, paras 76, 78. Contra Appeal, paras 34-35; Reply, paras 8-9.

⁹³ Kosovo Police Submissions, pp. 7-8.

⁹⁴ See Impugned Decision, para. 80. Contra Appeal, para. 26(v).

⁹⁵ Registry Submissions, para. 30. See Appeal, para. 26(v).

would [REDACTED]. In the Panel's view, the Chief Detention Officer, an official of the Specialist Chambers appointed by the Registrar,⁹⁶ is in a better position to promptly bring to the Registrar's attention any communications that raise concerns, [REDACTED].⁹⁷ Moreover, the Chief Detention Officer has broad authority to take further measures to restrict the communications of detainees, if deemed necessary.⁹⁸ [REDACTED].

36. Therefore, the Panel finds that the Pre-Trial Judge did not err in placing emphasis on [REDACTED] and in making it an important consideration in his assessment of the adequacy of conditions to mitigate the identified risks.

37. Furthermore, the Panel is not persuaded by the relevance of Thaçi's arguments on Veseli's custodial visits or the provisional release of accused at the ICTY [REDACTED].⁹⁹ First, due to the specific nature, brevity and strict conditions imposed during custodial visits,¹⁰⁰ any comparison with conditional release should be afforded limited weight.¹⁰¹ Second, the Panel observes that at the ICTY and the International Criminal Court ("ICC"), the conditions of release imposed on accused were

⁹⁶ Detention Rule 2.

⁹⁷ Registry Submissions, paras 20-21.

⁹⁸ Registry Submissions, paras 15-16, 19, 26, 35-36, 40-41, 45.

⁹⁹ Appeal, para. 26(v); Reply, para. 15.

¹⁰⁰ See F00271/RED, Public Redacted Version of Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds, 11 May 2021 (confidential and *ex parte* version filed on 30 April 2021); F00386/RED, Public Redacted Version of Second Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds, 16 July 2021 (confidential and *ex parte* version filed on 8 July 2021); F00640/RED, Public Redacted Version of Third Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds, 17 January 2022 (confidential and *ex parte* version filed on 8 January 2022) ("Third Decision on Veseli's Temporary Release").

¹⁰¹ The Panel further notes that during his custodial visits, Veseli remained at all times in the custody of the Specialist Chambers and under escort, and visits were conducted within the sight and hearing of the chief custody officer designated by the Registrar and escorting officers. See e.g. Third Decision on Veseli's Temporary Release, paras 24, 31; F00648/RED, Public Redacted Version of "Report of the Registrar pursuant to Third Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds", filing F00648, 27 January 2022 (confidential and *ex parte* version filed on 18 January 2022), paras 6-17. See also F00638/RED, Public Redacted Version of "Registrar's Submissions on Urgent Third Veseli Defence Request for a Custodial Visit on Compassionate Grounds", F00638, dated 7 January 2022, 14 January 2022 (confidential and *ex parte* version filed on 7 January 2022), paras 14, 19, 22-25, 27-28.

significantly different than in the present case, and did not require the same level of monitoring and resources.¹⁰² Moreover, the situation at the ICTY is distinguishable from Thaçi's situation, as the United Nations Mission in Kosovo, rather than the Kosovo Police, provided the guarantees.¹⁰³

38. In light of the above, the Panel dismisses Ground E of the Appeal.

2. Alleged Errors in the Assessment of the Kosovo Police's Capacity to Implement the Release Conditions (Ground F)

(a) Submissions of the Parties

39. Thaçi submits that the Pre-Trial Judge viewed the Kosovo Police as "a kind of private entity that can pick and choose which orders to enforce", and that this distorted and biased approach tainted the Pre-Trial Judge's assessment of the Kosovo Police's capacity to mitigate the identified risks.¹⁰⁴ According to Thaçi, the Pre-Trial Judge committed the following legal and factual errors: (i) the Pre-Trial Judge referred to the wrong article of the Law in the Order to Kosovo Police;¹⁰⁵ (ii) the Pre-Trial Judge ignored the Defence submissions on the Kosovo Police's international reputation, operational record and faultless cooperation with the Specialist Chambers and the

¹⁰² See Reply, para. 15, referring to the jurisprudence cited in Appeal, fn. 74. The Panel observes that the majority of the decisions cited by the Defence did not require the accused to be confined at their residence. See e.g. ICTY, *Prosecutor v. Haxhiu*, IT-04-84-R77.5, Decision on Provisional Release of Baton Haxhiu, 23 May 2008; ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84-PT, Decision on Ramush Haradinaj's Motion for Provisional Release, 6 June 2005; ICTY, *Prosecutor v. Haraqija and Morina*, IT-04-84-R77.4, Decision on Defence Application for Provisional Release, 15 September 2008. See also e.g. ICC, *Prosecutor v. Gicheru*, ICC-01/09-01/20-90-Red2, Public Redacted Version of 'Decision on Mr Gicheru's Request for Interim Release', 29 January 2021, ICC-01/09-01/20-90-Conf, 29 January 2021. The Panel notes that in only one decision cited by the Defence, house arrest was ordered under strict conditions, but for a limited period of two weeks. See ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84-T, Decision on Motion on Behalf of Lahi Brahimaaj for Provisional Release, 14 December 2007.

¹⁰³ See F00005/RED, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, 31 March 2022 (confidential version filed on 31 March 2022), para. 51.

¹⁰⁴ Appeal, para. 28. See also Appeal, para. 2(v).

¹⁰⁵ Appeal, paras 28-29, referring to Order to Kosovo Police. In particular, Thaçi argues that the Pre-Trial Judge mistakenly referenced Article 53(1) of the Law rather than Article 53(2) which provides for the compulsory force and effect of Specialist Chambers orders.

SPO;¹⁰⁶ (iii) the Pre-Trial Judge erroneously relied on “contextual considerations” to assess the Kosovo Police’s capacity to enforce the proposed conditions, and in particular on [REDACTED] allegedly attributed to the Kosovo Police;¹⁰⁷ (iv) if the Pre-Trial Judge had doubts about the Kosovo Police’s capacity, he should have ordered the deployment of Specialist Chambers or SPO officers to act in its place;¹⁰⁸ and (v) the Pre-Trial Judge was wrong to assert that “criminal proceedings against (high-ranking) former KLA members could not be conducted in Kosovo” and shows a bias against the Kosovo Police.¹⁰⁹

40. The SPO responds that (i) the Pre-Trial Judge correctly referred to Article 53(1) of the Law in the Order to Kosovo Police as it provides, in compulsory terms, that Kosovo entities shall co-operate with the Specialist Chambers;¹¹⁰ (ii) the Pre-Trial Judge made a fact-based observation that the Kosovo Police are not in a position to ensure protection comparable to the Detention Facilities;¹¹¹ and (iii) the contextual considerations made by the Pre-Trial Judge were “not determinative” of the Impugned Decision,¹¹² and were in any event entirely appropriate.¹¹³

(b) Assessment of the Court of Appeals Panel

41. With regard to Thaçi’s argument that in the Order to Kosovo Police, the Pre-Trial Judge failed to rely on the Kosovo Police’s legal obligation to enforce any Specialist Chambers’ order pursuant to Article 53(2) of the Law, the Panel notes that Thaçi did not properly bring this issue before the Pre-Trial Judge in the context of his

¹⁰⁶ Appeal, paras 30, 33; Reply, para. 17.

¹⁰⁷ Appeal, paras 31-33, referring to Impugned Decision, paras 82, 85.

¹⁰⁸ Appeal, paras 34-35.

¹⁰⁹ Appeal, para. 36, referring to Impugned Decision, para. 84.

¹¹⁰ Response, para. 41.

¹¹¹ Response, para. 42, referring to Impugned Decision, paras 78, 81, 83.

¹¹² Response, para. 43, referring to Impugned Decision, para. 85.

¹¹³ Response, para. 44, referring to Impugned Decision, para. 82.

detention review.¹¹⁴ For this reason, it is not properly raised before the Appeals Panel and warrants summary dismissal.¹¹⁵

42. Contrary to Thaçi's contention that the Pre-Trial Judge failed to take into account the Defence arguments on the Kosovo Police's integrity and efficiency in his assessment of the Kosovo Police's experience, capacity and training,¹¹⁶ the Panel observes that the Pre-Trial Judge referred to these arguments,¹¹⁷ demonstrating that the Pre-Trial Judge considered them but still found that the Kosovo Police's guarantees were insufficient to mitigate the identified risks.¹¹⁸

43. Turning to the argument that the Pre-Trial Judge considered irrelevant and arbitrary factors for context,¹¹⁹ the Panel observes that the Pre-Trial Judge explicitly noted that while these "considerations are, as such, not determinative of the matter [...], the assessment of the conditions of house arrest to be enforced by the Kosovo Police cannot be divorced from the context in which the house arrest would take place insofar as it affects the conduct of the proceedings before the [Specialist Chambers]".¹²⁰ The Panel agrees with the Pre-Trial Judge that such context is relevant to assessing whether the proposed conditions were sufficient to mitigate the identified risks, but considers that, contrary to what Thaçi infers, the cases [REDACTED] were not decisive in the Pre-Trial Judge's assessment of the Kosovo Police's capacity to implement conditions.¹²¹ In any event, these cases are indicative of the difficulties involved in

¹¹⁴ See Thaçi Submissions on Detention Review.

¹¹⁵ See e.g. KSC-BC-2020-07, F00005, Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention, 9 February 2021 ("*Haradinaj Appeal Decision*"), paras 29, 38; Second Appeal Decision, para. 13. In any event, the Panel notes that Thaçi misrepresents the Order to Kosovo Police and fails to identify any error. First, contrary to Thaçi's assertion, Article 53(1) of the Law also provides for the compulsory compliance with Specialist Chambers' orders. Second, Thaçi overlooked the fact that, in the Annex to this Order, the Pre-Trial Judge did remind the Kosovo Police of their obligations pursuant to both Article 53(1) and (2) of the Law. See Annex to Order to Kosovo Police, para. 2.

¹¹⁶ Appeal, para. 30.

¹¹⁷ See Impugned Decision, para. 64.

¹¹⁸ See Impugned Decision, para. 81.

¹¹⁹ Appeal, paras 31-33.

¹²⁰ Impugned Decision, para. 85.

¹²¹ Contra Appeal, paras 30, 32.

securing the presence of high-ranking individuals and/or those accused of serious crimes.¹²²

44. Specifically with respect to Thaçi's argument that the Pre-Trial Judge should have reviewed all examples of the Kosovo Police enforcing conditions of provisional release for high profile detainees,¹²³ the Panel observes that when asked explicitly by the Pre-Trial Judge about cases of high-ranking accused, the Kosovo Police gave a generic response.¹²⁴ Therefore, the Panel considers that having sought the relevant information from the Kosovo Police, the Pre-Trial Judge did not err in basing his assessment on the information received.

45. As for Thaçi's argument that the Pre-Trial Judge should have compelled [REDACTED] to produce relevant documents, the Appeals Panel notes that the Pre-Trial Judge ordered the Kosovo Police to liaise with other entities in Kosovo if necessary to obtain information and to raise with him any impediment preventing the proper execution of the Order.¹²⁵ In light of this, the Panel finds that the Pre-Trial Judge did not err in ruling that the Kosovo Police failed to provide the required information.¹²⁶ In the circumstances, it was a reasonable exercise of the Pre-Trial Judge's discretion not to contact other entities on the Kosovo Police's behalf.

46. Among the "contextual considerations" that in his view show bias against the Kosovo public authorities, Thaçi also challenges the Pre-Trial Judge's consideration, based on the report on "Inhuman treatment of people and illicit trafficking in human

¹²² See Impugned Decision, paras 82-83. See also Kosovo Police Submissions, pp. 21-23. The Panel notes that contrary to Thaçi's submissions, the Kosovo Police stated that they were involved in the identified [REDACTED]. See Kosovo Police Submissions, p. 22. Contra Appeal, paras 31-32.

¹²³ See Appeal, para. 33.

¹²⁴ Impugned Decision, para. 82, referring to Kosovo Police Submissions, p. 23. The Kosovo Police merely indicated that "[REDACTED]". See also Order to Kosovo Police, para. 8 (requesting the Kosovo Police to provide information on, *inter alia*, previous instances of enforcing conditions attaching to the interim release or detention of persons accused of severe crimes"); Annex to Order to Kosovo Police, para. 22.

¹²⁵ Order to Kosovo Police, para. 9; see also Annex to Order to Kosovo Police, para. 1.

¹²⁶ Impugned Decision, para. 82. The Kosovo Police only mentioned [REDACTED]. See Second Kosovo Police Submissions, p. 22.

organs in Kosovo” issued by the Parliamentary Assembly of the Council of Europe (“Council of Europe Report”), that the proceedings could not be conducted in Kosovo.¹²⁷ While the Panel sees no error in referring to the Council of Europe Report,¹²⁸ it observes that the Impugned Decision also refers to the Exchange of Letters, as well as to the Host State Agreement.¹²⁹ Furthermore, the Panel notes that a change of venue from Kosovo to the Host State was decided in the present case, considering “the current security situation and the proper administration of justice”.¹³⁰

47. As for the deployment of officers from the Specialist Chambers or SPO in place of the Kosovo Police,¹³¹ the Panel notes that the Pre-Trial Judge did not ignore Thaçi’s suggestion that the SPO could provide support to the Kosovo Police.¹³² Nonetheless, the Panel finds that any alleged omission by the Pre-Trial Judge to address this argument in detail would not affect his findings. The Panel recalls that since his arrest, the Accused is in the custody (and under the authority) of the Specialist Chambers, not of the SPO, and that the SPO’s main responsibilities are the investigation and

¹²⁷ Appeal, para. 36, referring to Impugned Decision, para. 84.

¹²⁸ The Panel recalls that the Specialist Chambers were established as a result of Kosovo’s international obligations “stemming from” the Council of Europe Report and that these international obligations arise out of the Exchange of Letters with the European Union and were incorporated into the legal framework of Kosovo by way of Law No. 04/L-274. See F00030, Decision on Appeals Against “Decision on Motions Challenging the Jurisdiction of the Specialist Chambers”, 23 December 2021, para. 70.

¹²⁹ Impugned Decision, fn. 143 referring to Law No. 04/L-274 on Ratification of the International Agreement between the Republic of Kosovo and the European Union on the European Union Rule of Law Mission in Kosovo (“Exchange of Letters”), pp. 8-9 (wherein it is stated that “sensitive proceedings, including hearing of witnesses, would take place outside of the country in view of the nature of the allegations”); Agreement between the Kingdom of the Netherlands and the Republic of Kosovo concerning the Hosting of the Kosovo Relocated Specialist Judicial Institution in the Netherlands, 15 February 2016 (“Host State Agreement”), preamble. Contra Appeal, para. 36.

¹³⁰ F00017, Decision Invoking a Change of Venue to the Host State, 21 September 2020 (confidential and *ex parte*), para. 3. The Panel also notes that proximity to the territory covered by the indictment or the witnesses while on provisional release has been considered by the ICTY as an aggravating risk factor. See ICTY, *Prosecutor v. Boškoski and Tarčulovski*, IT-04-92-AR65.2, Decision on Ljube Boškoski’s Interlocutory Appeal on Provisional Release, 28 September 2005, paras 19-20.

¹³¹ Appeal, para. 35; Reply, paras 1-2.

¹³² The Pre-Trial Judge in fact expressly referred to the corollary of this submission, which was that “the SPO cannot rely on an alleged lack of resources of the Kosovo Police to justify Mr Thaçi’s ongoing detention.” See Impugned Decision, para. 66, referring to Thaçi Reply on Detention Review, paras 56-58. Contra Appeal, para. 35.

prosecution of persons responsible for crimes falling within the Specialist Chambers' jurisdiction.¹³³ Admittedly, the competent panel may, where appropriate, request the cooperation of the SPO;¹³⁴ however, given the significant resources that would be required for the implementation of the conditions of release,¹³⁵ the Panel finds that it is reasonable that the Pre-Trial Judge did not consider such a proposal. Similarly, there are limited Registry officers¹³⁶ and their main functions are at the seat of the Specialist Chambers in the Host State.¹³⁷

48. In light of the above, the Panel finds that Thaçi failed to demonstrate that the Pre-Trial Judge erred in his assessment of the Kosovo Police's capacity to implement release conditions. The Panel therefore dismisses Ground F of the Appeal.

3. Alleged Errors Regarding Failure to Consider *Proprio Motu* Additional Conditions of Release (Ground D)

(a) Submissions of the Parties

49. Thaçi submits that the Pre-Trial Judge failed to *proprio motu* inquire about and evaluate all reasonable conditions that could be imposed, before deciding on his continued detention.¹³⁸ In Thaçi's view, the Pre-Trial Judge's reasons for refusing to consider additional measures are flawed and contradictory,¹³⁹ as he cannot "complain" about a lack of information from the Kosovo Police and the inadequacy of a blanket commitment to implement any measures while at the same time find that no

¹³³ See Article 35(1) of the Law.

¹³⁴ See Article 35(2)-(3) of the Law.

¹³⁵ See, for example, Second Kosovo Police Submissions, p. 3, wherein the Kosovo Police [REDACTED].

¹³⁶ See e.g. Third Decision on Veseli's Temporary Release, para. 11; F00267, Confidential Redacted Version of 'Registrar's Submissions on Veseli Defence Request for Temporary Release on Compassionate Grounds', filing F00267 dated 28 April 2021, 29 April 2021 (confidential and *ex parte* version filed on 28 April 2021), para. 17; F00385, Public Redacted Version of "Registrar's Submissions on Urgent Request for a Custodial Visit on Compassionate Grounds" (F00385), dated 7 July 2021, 15 July 2021 (confidential and *ex parte* version filed on 7 July 2021), paras 20-21.

¹³⁷ The Panel observes that Thaçi only submitted to the Pre-Trial Judge that the SPO provide support to the Kosovo Police; he did not mention the possibility for Specialist Chambers' officers to do so. See Thaçi Reply on Detention Review, paras 56-58.

¹³⁸ Appeal, paras 19-20, 22. See also Appeal, paras 2(iv), 23.

¹³⁹ Appeal, paras 20-21; Reply, para. 12.

additional information would assist.¹⁴⁰ Thaçi further argues that it does not fall on the Kosovo Police, but rather on the Pre-Trial Judge to identify conditions and seek any further necessary information from the Kosovo Police.¹⁴¹

50. The SPO responds that in light of the Pre-Trial Judge's extensive efforts to obtain relevant information, and given his limited time and resources, the Pre-Trial Judge was under no obligation to engage in additional analysis, and was entitled to determine that further attempts to obtain information would be unfruitful or detrimental.¹⁴² The SPO also underlines that the Kosovo Police have had multiple opportunities to provide relevant information.¹⁴³

(b) Assessment of the Court of Appeals Panel

51. The Panel recalls that, in the assessment of the conditions of release, the Pre-Trial Judge is required, *proprio motu*, to inquire and evaluate all *reasonable* conditions that could be imposed on an accused and not just those raised by the Defence.¹⁴⁴

52. The Panel finds that, contrary to Thaçi's contention, the fact that the Pre-Trial Judge noted on a few occasions that the Kosovo Police had not provided specific information or that some ambiguity remained,¹⁴⁵ did not oblige the Pre-Trial Judge to request further information from the Kosovo Police.¹⁴⁶ In fact, given that the Kosovo Police have been given an opportunity to provide the required information, the Pre-

¹⁴⁰ Appeal paras 20-22 (emphasis added); Reply, para. 12.

¹⁴¹ Appeal para. 22; Reply, para. 13.

¹⁴² Response paras 26-27. See also Response, paras 25, 28.

¹⁴³ Response, para. 31.

¹⁴⁴ F00005, Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Interim Release, 30 April 2021 (confidential version filed on 30 April 2021) ("*Selimi* First Appeal Decision"), para. 86 (emphasis added).

¹⁴⁵ Impugned Decision, paras 78-79, 82. Contra Appeal, para. 21.

¹⁴⁶ For example, the Panel observes that the Pre-Trial Judge clearly asked the Kosovo Police [REDACTED], but the Kosovo Police did not answer this question. See Kosovo Police Submissions, p. 18; Annex to Order to Kosovo Police, para. 16. The Pre-Trial Judge also asked the Kosovo Police about [REDACTED] instances in which they previously enforced conditions in relation to the interim release of persons accused of severe crimes (occupying or having previously occupied high-ranking positions). The Kosovo Police responded in general terms that "[REDACTED]". See Kosovo Police Submissions, p. 23; Annex to Order to Kosovo Police, para. 22.

Trial Judge should only request further information if the observations received are insufficient to enable him to make an informed decision.¹⁴⁷ In the Panel's view, the Pre-Trial Judge's thorough analysis of the Kosovo Police's observations,¹⁴⁸ and his conclusion that "any additional information would not assist the Pre-Trial Judge any further in relation to this matter"¹⁴⁹ demonstrate that the Pre-Trial Judge found these observations sufficient to make an informed decision. The Panel does not find any error in this conclusion.

53. Moreover, the Panel considers that the Pre-Trial Judge did not err in finding that the Kosovo Police's undertaking to enforce any Specialist Chambers order is neither an acceptance nor a guarantee that "fundamental concerns about illicit communications" can be mitigated, and does not provide, in and of itself, a sufficient basis for ordering *proprio motu* additional measures.¹⁵⁰ The Panel notes that the Kosovo Police had been approached on at least five previous occasions by the Defence¹⁵¹ and once by the Pre-Trial Judge, who asked specific questions.¹⁵² The Panel recalls that a response of a "general and generic character" by the Kosovo Police cannot be considered as constituting a sufficient response to the detailed questions posed to

¹⁴⁷ See, in another context, ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-1626-Red, Public Redacted Version of Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 27 June 2011 entitled "Decision on Applications for Provisional Release", 19 August 2011, para. 56; ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-1937-Red2, Public Redacted Version of Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 26 September 2011 entitled "Decision on the accused's application for provisional release in light of the Appeals Chamber's judgment of 19 August 2011", 23 November 2011, para. 35.

¹⁴⁸ Impugned Decision, paras 73-74, 77-80, 82-83.

¹⁴⁹ Impugned Decision, para. 88.

¹⁵⁰ Impugned Decision, para. 86.

¹⁵¹ See the requests made by Counsel for Kadri Veseli, Counsel for Jakup Krasniqi and Counsel for Rexhep Selimi: F00174/A11, Annex 11 to Defence Reply to the SPO's response to the Provisional Release Application of Kadri Veseli, 13 January 2021; F00341/A03, Annex C to Veseli Defence Submissions on Detention Review, 7 June 2021 (confidential); F00358/A01, Annex 1 to Krasniqi Defence Reply to Prosecution Response to Defence Submissions on Detention Review, 18 June 2021 (confidential); F00361/A01, Annex 1 to Selimi Defence Reply to SPO Response to Defence Submissions on Review of Detention, 18 June 2021 (confidential); F00518/A02, Annex 2 to Corrected Version of Veseli Defence Submissions on Second Detention Review (KSC-BC-2020-06/F00518 dated 11 October 2021), 14 October 2021 (confidential) (uncorrected version filed on 11 October 2021).

¹⁵² See Order to Kosovo Police; Annex to Order to Kosovo Police. See also Impugned Decision, para. 88.

them¹⁵³ and, therefore, agrees with the Pre-Trial Judge that this statement is not a sufficient basis to order *proprio motu* additional measures.¹⁵⁴

54. The Panel further notes the efforts by the Pre-Trial Judge to seek alternative measures and verify their enforceability in furtherance of the Appeal Decisions dated 1 October 2021. In particular, the Panel observes that the Pre-Trial Judge enquired into the availability and the enforceability of a large number of conditions.¹⁵⁵

55. Furthermore, the Panel considers that the Pre-Trial Judge's obligation to inquire and evaluate, *proprio motu*, all reasonable conditions¹⁵⁶ is not limitless, but rather the Pre-Trial Judge's enquiry as to which measures could be reasonable shall be guided by the circumstances of each case. Therefore, there may be situations in which the Pre-Trial Judge can reasonably decline to consider *proprio motu* conditions which, for example, are not commonly ordered in the context of an interim release due *inter alia* to their complexity and requisite resources. In the case at hand, given the thorough enquiry conducted by the Pre-Trial Judge and the level of complexity and resources involved in the implementation of the measures proposed by Thaçi on appeal,¹⁵⁷ the Panel finds that the Pre-Trial Judge did not err in concluding that on the basis of the information before him, no additional measures, which could be reasonably considered, could sufficiently mitigate the identified risks of obstruction and commission of further crimes.¹⁵⁸

56. In light of the above, the Panel finds that the Pre-Trial Judge did not err in not ordering additional conditions *proprio motu*. The Court of Appeals Panel, accordingly, dismisses Ground D of Thaçi's Appeal.

¹⁵³ See e.g. *Veseli* Second Appeal Decision, para. 49. See also Second Appeal Decision, para. 67.

¹⁵⁴ See Impugned Decision, para. 86.

¹⁵⁵ See Order to Kosovo Police; Annex to Order to Kosovo Police.

¹⁵⁶ *Selimi* First Appeal Decision, para. 86. See also Impugned Decision, para. 86.

¹⁵⁷ See in particular Appeal, paras 34-35 (wherein Thaçi proposes the deployment of Specialist Chambers or SPO officers or guards). See also Reply, para. 13.

¹⁵⁸ See Impugned Decision, para. 89.

C. ALLEGED ERRORS REGARDING THE PRE-TRIAL JUDGE'S DECISION NOT TO CONVENE AN ORAL HEARING (GROUND A)

1. Submissions of the Parties

57. Thaçi submits that the Pre-Trial Judge's decision not to convene an oral hearing is based on a misunderstanding of the purpose of the hearing, which was not to hear further submissions from the parties, but to elicit new information from [REDACTED] ("Third States") and the Kosovo Police.¹⁵⁹ Thaçi argues that, in refusing to convene an oral hearing on the basis that the parties had filed "*extensive and exhaustive* written submissions", the Pre-Trial Judge abused his discretion.¹⁶⁰

58. The SPO responds that the Pre-Trial Judge did not abuse his discretion as he clearly considered that he had sufficient information to make an informed decision, without an oral hearing.¹⁶¹ The SPO submits that the Pre-Trial Judge already found in the Second Detention Decision that he was satisfied that no additional information from [REDACTED] would have been helpful, and this finding was upheld by the Appeals Panel.¹⁶² Moreover, the SPO submits that the Kosovo Police were provided with ample opportunity to provide information.¹⁶³

2. Assessment of the Court of Appeals Panel

59. The Panel recalls that there is no general obligation to hold an oral hearing on a detention related issue, as the Pre-Trial Judge may decide in exercising his discretion that a hearing is unnecessary when the information before him is sufficient to enable

¹⁵⁹ Appeal, paras 2(i), 7-8; Reply, para. 5. See also Appeal, para. 6.

¹⁶⁰ Appeal, paras 7-8 (emphasis added), referring to Impugned Decision, para. 23. See also Reply, para. 5.

¹⁶¹ Response, paras 8, 11.

¹⁶² Response, paras 9-10, referring to Impugned Decision, paras 23, 91; Second Appeal Decision, paras 64-69.

¹⁶³ Response, para. 11. See also Response, para. 9.

him to reach an informed decision.¹⁶⁴ On the specific issue of government guarantees, the Panel recalls that the Specialist Chambers' legal framework does not require an oral hearing if an applicant seeks to supplement government guarantees with oral assurances.¹⁶⁵ The Panel further recalls that consultations, including at an oral hearing, with a Third State to which a detained person seeks to be released are compulsory only when the panel intends to grant interim release or envisages the possibility thereof.¹⁶⁶

60. The Panel notes that it is clear from the Pre-Trial Judge's reasoning and summary of Thaçi's submissions that he did not misunderstand the purpose of the requested hearing which was to elicit information directly from the Third States and the Kosovo Police, not only to hear submissions from the Parties.¹⁶⁷

61. Furthermore, the Panel observes that the Pre-Trial Judge clearly considered that he had received sufficient information from the Parties, the Third States and the Kosovo Police, to enable him to reach an informed decision on conditional release. In particular, the Panel notes that (i) the Pre-Trial Judge conducted a thorough enquiry with the Kosovo Police to seek alternative measures and verify their enforceability in furtherance of the Appeal Decisions dated 1 October 2021;¹⁶⁸ (ii) the Kosovo Police provided detailed submissions;¹⁶⁹ (iii) the Kosovo Police were approached on at least five previous occasions;¹⁷⁰ and (iv) Thaçi had the opportunity to make written

¹⁶⁴ F00005, Decision on Kadri Veseli's Appeal Against Decision on Interim Release, 30 April 2021 ("*Veseli First Appeal Decision*"), para. 66 and jurisprudence cited therein; *Gucati* Appeal Decision, para. 77; *Haradinaj* Appeal Decision, para. 41.

¹⁶⁵ *Veseli First Appeal Decision*, para. 66. See also ICTY, *Prosecutor v. Rašević and Todović*, IT-97-25/1-AR65.1, Decision on Interlocutory Appeal from Trial Chamber Decision Denying Savo Todović's Application for Provisional Release, 7 October 2005, para. 29.

¹⁶⁶ See Article 41(11) of the Law and Rule 56(4) of the Rules. See also Second Appeal Decision, para. 64.

¹⁶⁷ See Impugned Decision, paras 20, 22-23. The Panel notes in particular that the Pre-Trial Judge considered that the Parties and the Kosovo Police provided "extensive and exhaustive written submissions". See Impugned Decision, para. 23. Contra Appeal, paras 7-8.

¹⁶⁸ See Annex to Order to Kosovo Police.

¹⁶⁹ See First Kosovo Police Submissions; Second Kosovo Police Submissions.

¹⁷⁰ See above, fn. 151.

observations on the First and Second Kosovo Police Submissions.¹⁷¹ In addition, with regard to the Third States' guarantees, the Panel recalls its previous findings on the Pre-Trial Judge's discretion in this regard,¹⁷² and observes that Thaçi does not present any new information warranting reconsideration of this matter. Finally, the Panel finds that Thaçi fails to demonstrate the added value of an oral hearing, namely the reason why if granted, such a hearing could have led the Pre-Trial Judge to reach another conclusion.¹⁷³

62. In light of the foregoing, the Panel finds that the Pre-Trial Judge did not abuse his discretion by ordering Thaçi's continued detention without holding an oral hearing, and dismisses Ground A of Thaçi's Appeal.

D. ALLEGED ERRORS REGARDING THE ASSESSMENT OF THE PROPORTIONALITY OF DETENTION (GROUND G)

1. Submissions of the Parties

63. Thaçi argues that the Pre-Trial Judge erred by consistently declining to estimate the length of pre-trial detention.¹⁷⁴ In his view, the Pre-Trial Judge cannot reasonably assert that the pre-trial phase will be completed in "the foreseeable future", while finding that any discussion of its anticipated length "remains purely speculative",¹⁷⁵ especially given that the SPO did not dispute the likely trial start date estimated by Thaçi.¹⁷⁶ Thaçi expresses concern that as long as a trial date is not set, the Pre-Trial

¹⁷¹ The Panel also notes that Thaçi decided not to file any further submissions on the Second Kosovo Police Submissions. See Impugned Decision, para. 23, referring to Thaçi Submissions on Detention Review, paras 29-38; Thaçi Reply on Detention Review, paras 12, 48-55.

¹⁷² Second Appeal Decision, paras 67-69. The Panel further recalls that Judge Jørgensen dissented on this point. See Second Appeal Decision, Partially Dissenting Opinion of Judge Nina Jørgensen, paras 2-3, 9, 11.

¹⁷³ See similarly, ICTY, *Prosecutor v. Limaj et al.*, IT-03-66-AR65, Decision on Fatmir Limaj's Request for Provisional Release, 31 October 2003, para. 17; ICTY, *Prosecutor v. Boškoski and Tarculovski*, IT-04-82-AR65.3, Decision on Ljube Boškoski's Interlocutory Appeal on Second Motion, 28 August 2006, para. 12.

¹⁷⁴ Appeal, para. 37, referring to Impugned Decision, para. 101. See also Appeal, paras 38-40.

¹⁷⁵ Appeal, paras 37-39.

¹⁷⁶ Appeal, para. 38; Reply, paras 20-21.

Judge can continue to conclude that the pre-trial detention is proportionate.¹⁷⁷ Thaçi further argues that the Pre-Trial Judge erred by relying on factors which do not distinguish Thaçi from other accused who were granted provisional release by international courts, including to Kosovo.¹⁷⁸

64. The SPO responds that Thaçi fails to explain how estimating the length of pre-trial detention would have affected the outcome of the Impugned Decision.¹⁷⁹ Recalling the Appeals Panel's jurisprudence, the SPO submits that the Pre-Trial Judge was correct in not grounding his decision on a speculative estimate of the trial start date.¹⁸⁰ The SPO further argues that detention review is a fact-based inquiry, which the Pre-Trial Judge has conducted carefully, and that the existence of similarities among other accused in other international courts or other contexts is irrelevant.¹⁸¹

2. Assessment of the Court of Appeals Panel

65. The Appeals Panel notes that the Pre-Trial Judge correctly recalled the importance of the proportionality principle in determining the reasonableness of pre-trial detention.¹⁸² The Panel recalls that according to Rule 56(2) of the Rules, the Pre-Trial Judge "shall ensure that a person is not detained for an unreasonable period prior to the opening of the case".¹⁸³ The Panel also recalls that the general obligation on a panel to ensure that the time spent in detention is reasonable continues after the opening of a case.¹⁸⁴ The reasonableness of an accused's continued detention must be assessed on the facts of each case and according to its special features.¹⁸⁵ The length of

¹⁷⁷ Appeal, para. 39. See also Reply, paras 18-19.

¹⁷⁸ Appeal, paras 41-42.

¹⁷⁹ Response, para. 45.

¹⁸⁰ Response, para. 46, referring to *Selimi* First Appeal Decision, paras 46-47.

¹⁸¹ Response, para. 47.

¹⁸² Impugned Decision, para. 95.

¹⁸³ Rule 56(2) of the Rules. See also Appeal, para. 58.

¹⁸⁴ See Judgment of the Constitutional Court of 26 May 2020, para. 63.

¹⁸⁵ See Second Appeal Decision, para. 49, referring to ECtHR, *Buzadji v. The Republic of Moldova*, no. 23755/07, Judgment, 5 July 2016, para. 90; ECtHR, *Wemhoff v. Germany*, no. 2122/64, Judgment, 27 June 1968, para. 10 (p. 20).

time spent in detention pending trial is a factor that needs to be considered along with the risks that are described in Article 41(6)(b) of the Law, in order to determine whether, all factors being considered, the continued detention “stops being reasonable” and the individual needs to be released.¹⁸⁶

66. The Panel notes that the Pre-Trial Judge considered the following factors to reach his conclusion that the time Thaçi spent so far in pre-trial detention is not unreasonable and that a discussion on the expected total length of such pre-trial detention remains premature and speculative at the present stage: (i) Thaçi was arrested on 5 November 2020; (ii) Thaçi is charged with committing crimes of extreme gravity and his alleged role in the commission of these crimes is significant; (iii) if convicted, Thaçi’s sentence could be lengthy; (iv) the proceedings against him are complex; (v) the risks under Article 41(6)(b)(ii) and (iii) of the Law continue to exist and cannot be mitigated by any less restrictive measures than detention; and (vi) substantial procedural steps have been completed with a view to transmitting the case to trial in the foreseeable future, notwithstanding the delays regarding particular time limits, which have been extended for good cause.¹⁸⁷

67. The Panel again recalls its findings in previous decisions that especially in light of the periodic review of the necessity of continued detention at the Specialist Chambers, the Pre-Trial Judge had not erred in adopting a different approach than ICTY judges who considered the probable length of pre-trial detention in the exercise of their discretion to release an accused.¹⁸⁸ Such periodic review indeed enables the Pre-Trial Judge to ensure that an accused is not detained for an unreasonable period prior to trial, and prevents any *fait accompli* that the accused might be maintained in detention during the entirety of the pre-trial stage.¹⁸⁹ The proportionality of pre-trial

¹⁸⁶ Second Appeal Decision, para. 49 and jurisprudence cited therein.

¹⁸⁷ Impugned Decision, paras 96-102.

¹⁸⁸ *Selimi* First Appeal Decision on Detention, para. 81 and jurisprudence cited therein; Second Appeal Decision, para. 51. See also Rule 57(2) of the Rules; Article 41(10) of the Law.

¹⁸⁹ *Contra* Appeal, para. 40. See also Appeal, para. 39.

detention shall not be assessed against its expected length but against the risks under Article 41(6)(b) of the Law together with other factors as mentioned in the previous paragraph.

68. In the present case, the Pre-Trial Judge identified multiple and serious risks pursuant to Article 41(6) of the Law,¹⁹⁰ as well as other relevant factors.¹⁹¹ Among these factors, the Panel agrees with the Pre-Trial Judge that, for the purpose of assessing the proportionality of an accused's detention, the actual length of time spent in pre-trial detention must be considered, rather than estimates by the SPO,¹⁹² or by the Parties in general. In this context, the likely start date of the trial, and thus the expected length of pre-trial detention may be a relevant factor but it is not determinative. In light of the foregoing, and notably the fact that Thaçi's detention shall be reviewed every two months, the Panel finds that it was reasonable and within the Pre-Trial Judge's discretion to find that a determination *at the present stage* on the expected total length of Thaçi's pre-trial detention is speculative.¹⁹³

69. The Panel further finds that contrary to Thaçi's assertions, the Pre-Trial Judge correctly weighed the circumstances of the present case, taking into consideration the factors listed above in paragraph 66 of this Decision, and in particular the degree of the risks identified in this case. The fact that there may be general similarities with accused who were granted provisional release at other courts is not relevant.¹⁹⁴ The Panel observes that Thaçi cites specific decisions issued by the ICTY in different contexts and providing significantly different release conditions.¹⁹⁵

¹⁹⁰ Impugned Decision, paras 35-39, 42-47, 50-54, 99, 101.

¹⁹¹ Impugned Decision, paras 96-98, 100-101.

¹⁹² Impugned Decision, para. 100.

¹⁹³ Impugned Decision, para. 101.

¹⁹⁴ See Appeal, paras 41-42.

¹⁹⁵ For example, the accused in the *Popović* case were granted temporary release for specific periods of time (judicial recess) during trial. See Appeal, fn. 72, referring to ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Decision on Motions for Provisional Release during the winter judicial recess, 7 December 2007; ICTY, *Prosecutor v. Popović et al.*, IT-05-88-T, Decision on Motion for Provisional Release from 21 July 2007 until the resumption of trial, 13 July 2007. See also above, para. 37. The Panel also notes

70. As a result, the Panel finds that the Pre-Trial Judge did not err in finding that the period Thaçi has spent in pre-trial detention remains reasonable, and dismisses Ground G of Thaçi's Appeal accordingly.

V. DISPOSITION

71. For these reasons, the Court of Appeals Panel:

DISMISSES the Additional Submissions and subsequent filings;

DENIES the Appeal; and

ORDERS Thaçi and the SPO to file public redacted versions of their submissions on appeal within ten days of receiving notification of the present Decision.



**Judge Michèle Picard,
Presiding Judge**

Dated this Tuesday, 5 April 2022

At The Hague, the Netherlands

that a large number of accused in Kosovo or before international courts were denied provisional release. See e.g. Kosovo, Supreme Court, *B.S.*, Pml Kzz 59/2015, Judgment, 16 March 2015 (wherein the Supreme Court rejected the defendant's request for protection of legality against the ruling extending the measure of detention for three months while the defendant had already been detained for 18 months); ICC, *Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/15-1038-Red, Public redacted version of the Decision on Mr Gbagbo's Detention, 25 September 2017 (wherein the Trial Chamber did not find the length of detention, almost six years since the accused's transfer to the ICC, unreasonable), paras 53-60.