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In: **KSC-BC-2020-06**

Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: **Court of Appeals Panel**
Judge Michèle Picard
Judge Emilio Gatti
Judge Nina Jørgensen

Registrar: Dr Fidelma Donlon

Filing Participant: Counsel for Kadri Veseli

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Public Redacted Version of Veseli Defence Reply to Prosecution Response to Veseli Defence Appeal Against Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli (IA014-F00007, dated 21 December 2021)

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I. INTRODUCTION

1. The Veseli Defence files this reply to the SPO's Response[1] to its Appeal against the 23 November 2021 Decision on Detention Review ("Impugned Decision").[2]

II. SUBMISSIONS

A. Ground 1

i. Nazim Bllaca (Limaj case)

2. The Defence took issue with the PTJ's reliance on an incident raised at the outset of proceedings but never previously considered in relation to interim release. The SPO responds that "*the factors underpinning the risk of obstruction have been confirmed twice on appeal*" and "*the Pre-Trial Judge need not set out these findings anew or in identical terms to continue to rely upon them*."[3]

3. The Court of Appeals Panels has explained that the Pre-Trial Judge is not required to make findings on previously litigated factors, provided they were "*already decided upon in the initial ruling on detention*".[4] Yet, as the Defence noted in its Appeal,[5] the Pre-Trial Judge never made any finding that SHIK members interfered with witnesses in the *Limaj* case.[6] As for the claim that the "*obstruction in the Limaj et al. case […] has always been part of the witness interference […] going back to the Arrest Warrant Application*"[7] suffice to note that the SPO i) relied upon Bllaca's allegations only once and during an *ex parte* setting;[8] ii) never

[1] IA014/F00006, ("Response").
[2] F00576, ("Impugned Decision").
[3] Response, paras 11-12.
[4] KSC-BC-2020-07/IA002/F00005, Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention, 9 February 2021, para 55 (emphasis added).
[5] IA014/F00004, paras 8-9 ("Appeal").
[6] F00178, para 43 (referring to the 'probability' that SHIK members were involved in the commission of other crimes unrelated to the *Limaj* case).
[7] Response, para 12.
[8] F00005/CONF/RED, para 8.

introduced them as evidence in any of the previous detention decisions;[9] and failed to rebut the evidence submitted by the Defence which cast serious doubt in the veracity of Bllaca's statements.[10] In any event, Bllaca made no allegation against Mr Veseli and did not claim ever to have met him.[11]

ii. Lajci[12]

4. Despite its hyperbole,[13] the SPO cannot escape the fact that an "*innocent communication*" between Mr. Veseli and Mr. Lajci played a considerable, if not determinative, role in the Pre-Trial Judge's analysis.[14] While the Defence does not challenge the Court of Appeals' finding that it was not entirely irrelevant,[15] it takes issue with its weight vis-à-vis the proposed mitigation and the passage of time/continued delay in the Pre-Trial proceedings which has reduced the duty to periodically review whether the risk of interference "still exists" to nothing more than a mere formality.[16]

B. Ground 2

5. The Defence notes the SPO's failure to refute:

a) the fact that it did not make any submission claiming that Mr Veseli would "*commit crimes similar to the underlying acts charged against those perceived as being opposed to the KLA, including witnesses*";[17] and

[9] F00161, para 35; IA001/F00003, para 24; F00354, para 18; IA008/F00003, para 15;
[10] F00161, para 35.
[11] F00151, para. 26,
[12] Response, paras 13, 15.
[13] Response, para 15.
[14] Impugned Decision, para 52 ("directly intervened", "demonstrated intervention"), para 53 ("demonstrably intervened"), para 55 ("willingness and ability to intervene").
[15] Appeal, para 11.
[16] IA008/F00004, para 14.
[17] Appeal, paras 13-15.

b) that the Pre-Trial Judge found the existence of a risk that Mr Veseli would commit serious crimes, based only on his own earlier findings that there existed a risk of obstruction.[18]

C. Ground 3

i) Communications with Family Members

6. Referring to paragraph 16 of the KP Order, the SPO accuses the Defence of misrepresenting the Pre-Trial Judge's questions, who, according to the SPO "*did put the issue of unmonitored visits to the KP*."[19] The SPO is factually wrong on this point. The Defence submitted that the Pre-Trial Judge did not specifically ask the KP about "*unmonitored family visits*"[20] (emphasis added). The KP cannot be expected to distinguish *sui sponte* between family members and other visitors.[21] It did not set forth a specific protocol for family visits because it wasn't asked about *family* visits. It did, however, set forth many instances where the potential measures would be applied to both visitors and family members.[22] Claims about any lack of oversight[23] in relation to family members is simply incorrect.

ii) Communications with Pre-Approved Visitors

7. The SPO claims that "*[t]he KP did not propose the same regime as the Registry for non-family member visits. Such visits must generally occur within the sight and hearing of officers at the detention centre, but no such general rule was proposed by the KP.*"[24]

[18] Appeal, para 14; Impugned Decision, paras 58-59.
[19] Response, para 19(i).
[20] Appeal, para 18; F00513/A01, para 16.
[21] *Contra*, Response, para 21.
[22] F00548, p. 11, 12, 14, 15, and 18.
[23] Response, para 21.
[24] Response, para 19(ii).

8. First, the KP was not privy to and could not have anticipated the Registry's confidential submissions. Despite this, the KP indicated its availability to implement the same regime applied by the Registry:

> [REDACTED].[25]

9. Second, the KP were not asked to "propose" any measures, they were asked to respond to specific questions put to them by the Veseli Defence and the Pre-Trial Judge. Nothing prevents the Pre-Trial Judge from exercising his competences granted by the Law and Rule 56(5) of the Rules to *proprio motu* order the KP to implement further measures.[26]

10. Third, with regard to simultaneous monitoring, the SPO does not substantiate the "*clear and relevant […] information disparity*" between the Detention Centre and the KP,[27] particularly in view of the Defence's submissions that:

- [REDACTED]
- in any event, [REDACTED] [28]

11. As for *ex post-facto* monitoring of communications, the SPO accuses the Defence of "*invent[ing] the possibility of the Registry reviewing KP recorded visits*."[29] In reply, the Defence recalls Article 34(10) of the Law:

> The Registry shall include officers of the court and may also rely on the assistance of police in Kosovo, to carry out orders or serve documents on behalf of the Specialist Chambers. The Specialist Chambers officers of the court shall have the authority and

[25] F00548, p 18.
[26] F00386, para 15.
[27] Response, para 22.
[28] Appeal, paras 27-28.
[29] Response, para 22.

> responsibility to exercise powers given to Kosovo Police under Kosovo law in accordance with the modalities established by this Law.

12. It is clear, therefore, that combined with Rule 56(5), the legal framework to implement any such order is already in place.

13. Finally, and most importantly, the SPO does not even attempt to refute the Defence submissions set out in paragraph 32 of its Appeal.

iii) Conclusion that KP Officers are not Sufficiently Trained

14. The SPO does not provide any evidence to support the erroneous conclusion of the Pre-Trial Judge that i) KP officers are not sufficiently trained or that ii) DMU officers are better trained.[30] In any event, while the KP provided sufficient information in relation to their professionality and capability to implement judicial orders,[31] the Registry's self-assessed submission that its officers are "*highly qualified and receive training*"[32] can hardly be considered as "*specific submission on the training or qualifications of the officers involved*."[33]

D. Ground 4

i) Kosovo Cases

[REDACTED]

15. The Defence maintains that it is illogical to request the KP to answer for [REDACTED].[34] In any event, the order suggested that the KP liaise, if required, with other departments/authorities in Kosovo. [REDACTED], it cannot be considered as a Kosovo institution. [REDACTED].

[30] Response, para 23.
[31] Appeal, para 33.
[32] F00536, para 44.
[33] *Contra* Response, para 23.
[34] Response, para 19(v).

16. Contrary to the SPO's submissions, the KP was not asked to give "*examples of high profile-individuals who received conditional release in Kosovo*"[35] but whether the KP had "*previously enforced any conditions in relation to interim release […] of high-ranking positions*,"[36] to which the KP correctly replied in the affirmative.[37]

ii) Haradinaj

17. The authority provided by the Defence shows that i) the conditional release of Mr Haradinaj was implemented by *inter alia*, the KP; and ii) the conditional release of Mr Haradinaj proceeded without difficulties.[38] The SPO fails[39] to refute any of the above and misses the point entirely by reiterating the outcome of that decision which was taken at an entirely different phase of those proceedings, for different reasons, relating to the idiosyncrasies of a different case.

E. Ground 5

18. Contrary to the SPO's submissions, it is clear that the Pre-Trial Judge made no effort to inquire about other reasonable conditions, in addition to those proposed by the Defence.[40] It is not for the KP to "suggest" measures which are the duty and prerogative of the Pre-Trial Judge.

F. Ground 6

19. The Defence maintains and reaffirms its previous submissions set out in Ground 6 of its Appeal. The Defence replies to the following issues raised by the SPO:

[35] Response, para 19(iv).
[36] F00513/A01, para 22.
[37] F00548, p. 23.
[38] Appeal, para 38.
[39] Response, para 24.
[40] Appeal, paras 41-43.

20. Risk of obstruction: Other than providing generic responses and attempting to distinguish the facts of the relevant ECtHR cases, the SPO fails to grapple with the legal principles relied upon by the Defence in *Merabishvili v. Georgia* or *Idalov v Russia*.[41]

21. Delays: the SPO's submissions support the argument of the Defence.[42] In any event, while the Pre-Trial Brief should have already been filed, and the trial started by the summer of 2021, the Defence notes that the authorised length of the Pre-Trial Brief (150,000 words) is triple the length set forth by the rules and that the SPO has taken the decision to file it *ex parte* thus delaying once again the full disclosure of its case to the Defence. The realistic start of the trial will likely be delayed by at least one year, if not more.

G. Overall Bias

22. The Defence agrees that the independence and impartiality of the judges must be a cornerstone of the KSC and any other judicial institution. However, the Pre-Trial Judge abused his discretion by pre-judging the outcome of the detention review from the start. For instance, the Pre-Trial Judge rendered the KP submissions moot because he knew, before issuing his order, that he would consider as determinative a factor which is beyond the KP's control. Moreover, he considered the Marty Report as conclusive evidence[43] despite previously holding that such report holds no judicial value.[44] He found, without evidence, that the KP is not sufficiently trained,[45] or unreliable *in toto*[46] despite that, to date, the only institution that has failed to contain leaks of confidential data is

[41] Appeal, paras 46-48.
[42] Appeal, para 49.
[43] Impugned Decision, fn. 172.
[44] F00450, para 140.
[45] Appeal, para 33.
[46] Impugned Decision, para 86.

the SPO itself.[47] Finally, he relied for the first time[48] on the "evidence" of suspect Bllaca without considering previous Defence submissions which cast serious doubts on the reliability of such person;[49] and failed to take into account the presumption of liberty.[50] The only reasonable conclusion is that the Pre-Trial Judge treated the issue as a *fait accompli*, and then sought to justify this conclusion.

III. CONCLUSION

23. For these reasons, the objections set out in the Response should be dismissed.

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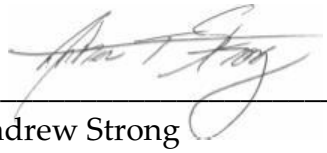

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[47] Balkan Insight, Dean B. Pineles, Kosovo War Crimes File Leaks Deliver a Blow to Justice, 1 October 2020.
[48] Regarding alleged interference in the *Limaj* case.
[49] F00151, paras 25-27.
[50] Appeal, para 16.