



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**In:** KSC-BC-2020-06  
**Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi**

**Before:** Trial Panel II  
Judge Charles L. Smith, III, Presiding Judge  
Judge Christoph Barthe  
Judge Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor's Office

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**Public redacted version of Consolidated Prosecution response to Veseli, Selimi and Krasniqi provisional release requests (F03076, F03078, and F03086)**

**with public Annex 1**

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## I. INTRODUCTION

1. The provisional release requests from Veseli,<sup>1</sup> Selimi,<sup>2</sup> and Krasniqi<sup>3</sup> (collectively, 'the Accused') should be rejected. As found in the Arrest Warrant Decision<sup>4</sup> - and repeatedly reaffirmed thereafter - the detention criteria under Article 41(6) of the Law<sup>5</sup> continue to be met, and no alternative measures sufficiently address these risks.
2. The Accused represent serious flights risks, as they face long sentences if convicted of the serious charges against them. Furthermore, the release of the Accused now, at this sensitive stage of the trial, would unnecessarily increase the risk profile of protected witnesses in this case, against the backdrop of a climate of witness intimidation in Kosovo, and the ongoing prosecution of obstructive conduct designed to defeat these proceedings.
3. The modified conditions of detention imposed on Veseli and Selimi<sup>6</sup> – which remain in force – were necessitated by their violation of the framework governing these proceedings and failure to respect the confidentiality of witness information disclosed to them. The risk of further obstructive conduct remains.
4. That the Prosecution nears the formal end of its case does not alter or diminish these risks in any way. Forced recantation is a real and present danger.<sup>7</sup> Moreover,

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<sup>1</sup> Veseli Defence Request for Provisional Release with Confidential Annex A, KSC-BC-2020-06/F03076, 3 April 2025 ('Veseli Request').

<sup>2</sup> Selimi Defence Request for Provisional Release with Confidential Annexes 1-2, KSC-BC-2020-06/F03078, 3 April 2025 ('Selimi Request').

<sup>3</sup> Confidential Redacted Version of "Krasniqi Defence Request for Provisional Release with Confidential and *Ex Parte* Annexes 1 and 2 and Confidential Annex 3", KSC-BC-2020-06/F03086, 4 April 2025 ('Krasniqi Request').

<sup>4</sup> Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders, KSC-BC-2020-06/F00027/RED, 26 October 2020.

<sup>5</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' herein refer to articles of the Law, unless otherwise specified.

<sup>6</sup> Further Decision on the Prosecution's Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi, KSC-BC-2020-06/F01977, 1 December 2023 ('Modification Decision').

<sup>7</sup> In this regard, taking harmful action against a person 'with the intent to retaliate for providing truthful information relating to the commission or possible commission of any criminal offense to police, an

and crucially, obstructive conduct is not unique or temporally confined to the Prosecution case – the Victims and Defence phases are not immune from the risk of interference. Nor do the requests for family access materially affect the application of the legal standard governing continued detention. If one limb of Article 41(6)(b) is met, then detention continues to be necessary.<sup>8</sup>

5. As discussed below, the risks of flight and/or obstructive conduct for all three Accused remain undiminished. None of the proposed conditions can adequately address the risks inherent to release. The Accused must therefore remain in detention.

## II. SUBMISSIONS

### A. APPLICABLE LEGAL FRAMEWORK

6. As detailed in Confirmation Decision,<sup>9</sup> there is a well-grounded suspicion that the Accused committed multiple crimes within the jurisdiction of the KSC, per Article 41(6)(a).

7. As to the Article 41(6)(b) criteria, there must be articulable grounds to support a ‘belief’ that there is a risk of one of the three grounds occurring.<sup>10</sup> The ‘belief’ test denotes ‘an acceptance of the possibility, not the inevitability, of a future occurrence’.<sup>11</sup> In other words, the standard to be applied is less than certainty, but more than a mere

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authorized investigator, a prosecutor or a judge’ is a punishable offence under Article 15(2) of the Law, as read with Article 388 of the 2019 Kosovo Criminal Code (renumbered from Article 396 of the 2012 Kosovo Criminal Code).

<sup>8</sup> Decision on Rexhep Selimi’s Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA003/F00005, 30 April 2021, para.76.

<sup>9</sup> Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00026/RED, 26 October 2020.

<sup>10</sup> Decision on Kadri Veseli’s Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA001/F00005, 30 April 2021 (‘Veseli Interim Release Appeals Decision’), para.19.

<sup>11</sup> *Specialist Prosecutor v. Gucati & Haradinaj*, Decision on Hysni Gucati’s Appeal on Matters Related to Arrest and Detention, KSC-BC-2020-07/IA001/F00005, 9 December 2020 (‘Gucati Appeal Decision’), paras 63, 67.

possibility of a risk materialising.<sup>12</sup> Articulate in this context means specified in detail by reference to the relevant information or evidence.<sup>13</sup>

8. In considering whether an accused should be detained or released, the relevant Panel must consider whether measures other than detention would sufficiently reduce the *risk* of the Article 41(6)(b) factors occurring.<sup>14</sup>

## B. THE ARTICLE 41(6) LIMBS ARE SATISFIED

### 1. There is an increased risk of flight (Article 41(6)(b)(i))

(i) Detention is necessary to ensure appearance for the remainder of trial

9. As recalled by the Panel, there is a well-grounded suspicion that the Accused are criminally responsible for the commission of serious crimes.<sup>15</sup> The gravity of the charges and the possibility of a lengthy prison sentence are relevant factors in decisions on interim release.<sup>16</sup> This is because serious charges provide a strong incentive for an Accused to abscond, and the Panel may properly rely on this factor to deny provisional release.<sup>17</sup> Here, the Accused face ten counts of war crimes and crimes against humanity, with a sentence of up-to life imprisonment potentially open to the Panel.<sup>18</sup>

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<sup>12</sup> Veseli Interim Release Appeals Decision, KSC-BC-2020-06/IA001/F00005, para.17.

<sup>13</sup> Veseli Interim Release Appeals Decision, KSC-BC-2020-06/IA001/F00005, para.18.

<sup>14</sup> Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F03005, 13 March 2025 ('Krasniqi 13 March 2025 Review Decision'), para.29.

<sup>15</sup> Krasniqi 13 March 2025 Review Decision, KSC-BC-2020-06/F03005, paras 7-10; Decision on Periodic Review of Rexhep Selimi, KSC-BC-2020-06/F03008, 13 March 2025 ('Selimi 13 March 2025 Review Decision'), paras 7-10; Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F03107, 11 April 2025 ('Veseli 11 April 2025 Review Decision'), paras 8-11.

<sup>16</sup> *Gbagbo* Appeals Decision, para.54; *Čermak* Appeals Decision, para.25; *Gucati* Appeal Decision, KSC-BC-2020-07/IA001/F00005, para.72.

<sup>17</sup> *Said* Appeals Decision, para.47.

<sup>18</sup> Law, Article 44(1).

10. The Prosecution is mindful of the Panel's stated view in relation to this limb.<sup>19</sup> However, the imminent Rule 130 litigation marks a new juncture in this trial.<sup>20</sup> If the Accused lose any such litigation, it will necessarily mean that the Panel will have found there is evidence capable of supporting a conviction beyond a reasonable doubt<sup>21</sup> – a higher standard to that of 'well-grounded suspicion'. This will further increase their incentive to flee. The Panel must take such a significant procedural development into consideration when contemplating interim release.<sup>22</sup> Indeed, the fact that the Accused are now closer to receiving the judgment on the charges against them (by Veseli's own estimate, approximately 12 months away),<sup>23</sup> in itself *increases* the risk of absconding to avoid a potentially long sentence.<sup>24</sup>

11. The Accused's assurances that they would not flee are immaterial.<sup>25</sup> Such commitment cannot be considered *per se* decisive, or dispositive, when assessing whether there is a risk of flight within the meaning of Article 41(6)(b)(i).<sup>26</sup> The fact that an accused complied with provisional release on an emergency, limited basis, does not mean they are not a flight risk for longer-term provisional release, where they

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<sup>19</sup> Krasniqi 13 March 2025 Review Decision, KSC-BC-2020-06/F03005, paras 13-14; Selimi 13 March 2025 Review Decision, KSC-BC-2020-06/F03008, paras 13-14; Veseli 11 April 2025 Review Decision, KSC-BC-2020-06/F03107, paras 15-17.

<sup>20</sup> Rule 130, Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

<sup>21</sup> *Specialist Prosecutor v. Gucati & Haradinaj*, Decision on the Defence Motions to Dismiss Charges, KSC-BC-2020-07/F00450, 26 November 2021, para.18.

<sup>22</sup> See *Prlić et al*, Appeal Decision, paras 20-21; *Petković* Appeal Decision, para.17.

<sup>23</sup> Veseli Request, KSC-BC-2020-06/F03076, para.58.

<sup>24</sup> See *Bemba* Appeal Decision, paras 67-70.

<sup>25</sup> *Contra* Veseli Request, KSC-BC-2020-06/F03076, para.18; Krasniqi Request, KSC-BC-2020-06/F03086/CONF/RED, para.30.

<sup>26</sup> *Babala* Decision, para.20.

would not be accompanied by a custodial escort.<sup>27</sup> Similarly, prior findings as to past cooperation with authorities are now diluted by the advanced stage of the trial.<sup>28</sup>

(ii) The Accused have the means to abscond

12. The Accused have the means to abscond,<sup>29</sup> and have a network of contacts and supporters which could provide them with the necessary means of absconding. They retain influence over this network of supporters within Kosovo,<sup>30</sup> and could rely on them to flee. The prevailing climate of obstruction in connection with KLA related criminal proceedings – a significant contextual factor to be considered<sup>31</sup> – allow for the mobilisation of supporters to assist the Accused in fleeing to evade justice.

13. In its determination, the Panel need only consider the possibility – not the inevitability – of the Accused having access to resources, financial or otherwise, where that risk is established on the basis of concrete evidence.<sup>32</sup> Taken together, the combination of the above factors elevate the risk of flight to a ‘sufficiently real possibility’.<sup>33</sup>

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<sup>27</sup> *Contra* Krasniqi Request, KSC-BC-2020-06/F03086/CONF/RED, para.30. See *Bemba* Appeal Decision, paras 82-83.

<sup>28</sup> Decision on Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F02060, 15 January 2024, para.13; Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F01171, 19 December 2022, para.24.

<sup>29</sup> Decision on Remanded Detention Review and Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F00580, 26 November 2021, para.28.

<sup>30</sup> Selimi 13 March 2025 Review Decision, KSC-BC-2020-06/F03008, para.15; Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00987, 26 September 2022, para.22; Public Redacted Version of Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F01110/RED, 18 November 2022, para.30.

<sup>31</sup> Public Redacted Version of Decision on Rexhep Selimi’s Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA015/F00005/RED, 25 March 2022, para.43.

<sup>32</sup> *Gbagbo* Appeals Decision, para.56.

<sup>33</sup> Veseli Interim Release Appeals Decision, KSC-BC-2020-06/IA001/F00005, para.28.

## **2. Detention is necessary to ensure the Accused do not obstruct the proceedings (Article 41(b)(ii))**

14. In the most recent periodic reviews of detention, the Panel considered that each of the Accused continue to present a risk of obstructing proceedings, per Article 41(6)(b)(ii).<sup>34</sup>

15. In respect of Krasniqi, the Panel recently reiterated, *inter alia*, that (i) his position of influence which, combined with the willingness and ability to obtain access to confidential information inaccessible to the public, allows for the reasonable conclusion that it is possible for Krasniqi to secure access to confidential information related to matters to which he is currently connected; (ii) his public statements criticising the KSC; and (iii) the content of a 24 April 2020 Facebook post targeting ‘collaborators’.<sup>35</sup>

16. Furthermore, the Panel recalled that the Court of Appeals held that: (i) there are indications that Krasniqi is, at least, predisposed to witness intimidation, for reasons earlier stated; and (ii) in assessing whether there is a risk that Krasniqi will obstruct the proceedings if released, it was not unreasonable to take into account, among other factors, each of the matters outlined above.<sup>36</sup>

17. As to Selimi, the Panel reiterated, *inter alia*, its previous determinations that: (i) Selimi’s past and present positions of influence in Kosovo, would enable him to influence and mobilise support network; (ii) there is a persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members; and (iii) the proceedings continue to advance and Selimi continues to

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<sup>34</sup> Krasniqi 13 March 2025 Review Decision, KSC-BC-2020-06/F03005, paras 15-19; Selimi 13 March 2025 Review Decision, KSC-BC-2020-06/F03008, paras 15-21; Veseli 11 April 2025 Review Decision, KSC-BC-2020-06/F03107, paras 18-24.

<sup>35</sup> Krasniqi 13 March 2025 Review Decision, KSC-BC-2020-06/F03005, para.17.

<sup>36</sup> Krasniqi 13 March 2025 Review Decision, KSC-BC-2020-06/F03005, para.17.



gain insight into the evidence underpinning the serious charges against him.<sup>37</sup> The Panel further noted that Selimi's disclosure of privileged information reinforced its view that he could obstruct proceedings if released.<sup>38</sup>

18. For Veseli, the Panel reiterated, *inter alia*, its previous determination that: (i) Veseli has the ability to give instructions to an individual interacting with the KSC and, in doing so, he directly intervened in a matter involving the KSC; (ii) Veseli continues to play a significant role in Kosovo on the basis of the previous positions he occupied, which would continue to allow him to, for instance, access information or elicit the support of others; (iii) while Veseli was at the head of the Kosovo Intelligence Service ('SHIK'), members of SHIK were involved in witness interference; and (iv) the advancement of the trial proceedings provides an opportunity for Veseli to gain insight into the evidence underpinning the serious charges against him.<sup>39</sup> The Panel further noted the risk that Veseli could disclosure confidential information to unprivileged third parties, given his past conduct in the Detention Centre.<sup>40</sup>

19. Importantly, the Panel has emphasised that the passage of time since prior findings on obstruction does not, in and of itself, affect findings previously made regarding the concrete risks of obstruction.<sup>41</sup> All of the above findings – in relation to each Accused – remain entirely valid and undisturbed.

(i) The end of the Prosecution case does not remove the risk of obstruction

20. The core, common argument advanced by each of the three Accused is that the end of the Prosecution cases amounts to a change of circumstances, such that it merits

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<sup>37</sup> Selimi 13 March 2025 Review Decision, KSC-BC-2020-06/F03008, para.18.

<sup>38</sup> Selimi 13 March 2025 Review Decision, KSC-BC-2020-06/F03008, para.20.

<sup>39</sup> Veseli 11 April 2025 Review Decision, KSC-BC-2020-06/F03107, para.20.

<sup>40</sup> Veseli 11 April 2025 Review Decision, KSC-BC-2020-06/F03107, para.22.

<sup>41</sup> Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F02313, 15 May 2024, para.21.



provisional release.<sup>42</sup> Each of the Accused base this argument by isolating one sentence of the Panel's prior reasoning: '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.'<sup>43</sup> The Accused summarily conclude that because the Prosecution case is nearing formal completion, that the risk of obstruction is now somehow 'moot.'<sup>44</sup> This logic does not survive scrutiny.

21. First, by isolating only one sentence (and just one factor) underpinning the Panel's reasoning, the Defence ignore that the Panel's Article 41(6)(b)(ii) analysis in respect of each Accused was multi-factored and holistic.<sup>45</sup> It never advanced a finding, or an understanding, that the end of the Prosecution case would singularly exclude the risk of obstruction. The close of the Prosecution case, in and of itself, does not alter the Panel's assessment that the Accused may obstruct *proceedings* withing the meaning Article 41(6)(b)(ii).<sup>46</sup> The term 'proceedings' in this provision plainly refers to proceedings as a whole, not just the Prosecution case.

22. Second, it is incorrect to assume that obstruction is unique or temporally confined to the Prosecution case. It may occur at any stage of the trial, including after the Defence case<sup>47</sup> and post-conviction.<sup>48</sup> Where, as here, the *risk* of obstruction is evident, detention continues to be necessary. The Victims case is forthcoming, and the

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<sup>42</sup> Veseli Request, KSC-BC-2020-06/F03076, paras 29-33; Selimi Request, KSC-BC-2020-06/F03078, paras 5-9; Krasniqi Request, KSC-BC-2020-06/F03086/CONF/RED, paras 23-28.

<sup>43</sup> Veseli 13 February 2025 Review Decision, KSC-BC-2020-06/F02925, para.19; Krasniqi 13 March 2025 Review Decision, KSC-BC-2020-06/F03005, para.18; Selimi 13 March 2025 Review Decision, KSC-BC-2020-06/F03008, para.19.

<sup>44</sup> See e.g., Selimi Request, KSC-BC-2020-06/F03078, para.8.

<sup>45</sup> See e.g. Krasniqi 13 March 2025 Review Decision, KSC-BC-2020-06/F03005, para.26: 'the Panel concludes that, **taking all factors together** [...]'. Emphasis added.

<sup>46</sup> See *Gbagbo* 2018 Trial Decision, para.38 (rejecting the argument that the close of the Prosecution case was a change in circumstance warranting modification of prior findings that continued detention was necessary to prevent the accused from obstructing the proceedings), *referring to Gbagbo* 2017 Trial Decision', para.32. See similarly, *Bemba* Trial Decision, paras 27-32 (rejecting the argument that the commencement of deliberations represented a change in circumstances warranting modification of prior findings that continued detention was necessary due to a risk of flight).

<sup>47</sup> See *Senessie* Judgement.

<sup>48</sup> See e.g. *Nzabonimpa* Judgement; *Bangura* Judgement; *Nshogoza* Judgement.

Defence wrongly downplays the importance of this phase, as somehow having no impact on their personal responsibility.<sup>49</sup> Yet, if convicted, the Accused will be liable for reparations, the modalities of which will be informed by victim testimony outlining the harm they suffered by virtue of the Accused's acts and conduct, and their co-perpetrators.<sup>50</sup>

23. Third, the Panel has already rejected the suggestion that the risk of interference diminishes as the trial progresses, and that the risk of recantation is real:

[W]itnesses who have already testified could still be at risk of interference, for instance if interference attempts aim at securing a recantation and/or indirectly dissuading future witnesses from testifying, which could obstruct the progress of the proceedings within the meaning of Article 41(6)(b)(ii). Moreover, witnesses may have to be recalled, which makes them susceptible to interference attempts and could equally lead to obstruction of the progress of the proceedings.<sup>51</sup>

24. Nothing in the Accused's Requests undermines the soundness of this finding. Whether a risk exists at a given point in the trial always depends on the specific circumstances of the case.<sup>52</sup> As the Panel has noted, each Accused have in their possession sensitive information, and to release them would not be conducive to the effective protection of witnesses.<sup>53</sup> Importantly, the Panel recently held that this concern continues to apply even *after* the Prosecution has completed the *viva voce* component of its case.<sup>54</sup>

25. Given Selimi and Veseli's past conduct in detention, and Krasniqi's stated propensity towards obstruction, the Accused's interim release would increase their

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<sup>49</sup> See e.g. Veseli Request, KSC-BC-2020-06/F03076, paras 32-33; Krasniqi Request, KSC-BC-2020-06/F03086/CONF/RED, para.28.

<sup>50</sup> See Public redacted version of Reparation Order against Pjetër Shala, KSC-BC-2020-04/F00866/RED, 29 November 2024, paras 85-90.

<sup>51</sup> Decision on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F02183, 15 March 2024, para.25.

<sup>52</sup> *Specialist Prosecutor v. Gucati & Haradinaj*, Consolidated Decision on Nasim Haradinaj's Appeals Against Decisions on Review of Detention, KSC-BC-2020-07/IA007/F00004, 6 April 2022, para.42.

<sup>53</sup> Krasniqi 13 March 2025 Review Decision, KSC-BC-2020-06/F03005, para.18; Selimi 13 March 2025 Review Decision, KSC-BC-2020-06/F03008, para.19; Veseli 11 April 2025 Review Decision, KSC-BC-2020-06/F03107, para.21.

<sup>54</sup> Veseli 11 April 2025 Review Decision, KSC-BC-2020-06/F03107, paras 21, 27. See similarly, Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F03106, 11 April 2025, para.18.

capacity to obstruct and endanger the proceedings, including through encouraging recantation of witnesses who have already testified. The Panel should not countenance this 'sufficiently real possibility.'

- (ii) Release would increase the risk of obstruction and further unauthorised disclosure to third parties

26. The Accused request release to Kosovo, where the majority of Prosecution witnesses reside, and where the Accused and their contacts could have direct contact with them, improperly influencing their evidence, including through encouraging recantation. Interim release also risks creating a chilling effect on the continued co-operation of witnesses for the Victims case, with dual status witnesses an important feature of this trial. The Panel should consider the negative effect release will have on victims and witnesses, particularly at this advanced stage of proceedings.<sup>55</sup> Moreover, the possible need to call rebuttal Prosecution witnesses – who will also be susceptible to interference – also cannot be discounted at this stage.

27. Notably, the Panel has considered that the standard conditions of detention were insufficient to mitigate the risk of the Accused, specifically Selimi and Veseli, engaging in conduct that could interfere with the proceedings and/or present a risk to the safety and security of witnesses.<sup>56</sup> To address these risks, the Panel ordered significant modifications to their detention conditions.<sup>57</sup>

28. More recently, the Panel recalled its finding that it appears that Selimi disclosed privileged information to unauthorised third parties, and that such conduct supports the Panel's view that the release of Selimi constitutes a risk of obstruction with the progress of proceedings.<sup>58</sup> With regard to Veseli, the Panel similarly recalled its

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<sup>55</sup> See *Petković* Appeal Decision, para.17.

<sup>56</sup> Modification Decision, KSC-BC-2020-06/F01977, para.41.

<sup>57</sup> Modification Decision, KSC-BC-2020-06/F01977, paras 51-53, 55-60, 62-78, 84(b).

<sup>58</sup> Selimi 13 March 2025 Review Decision, KSC-BC-2020-06/F03008, para.20.

finding that there is a risk Veseli could engage in the divulgence of confidential information to unprivileged third parties, thereby obstructing the proceedings.<sup>59</sup> These serious concerns remain live.

29. All of the above demonstrates that the risk of obstruction is not only well-founded, but the Accused present an especially heightened risk of obstructing KSC proceedings, by virtue of their past conduct and statements. This limb remains satisfied.

### **3. Detention is necessary to prevent the commission of further crimes (Article 41(6)(b)(iii))**

30. When deciding on a request for interim release, the Panel has to inquire anew into the existence of facts justifying detention. However, this does not mean that the Panel cannot base its decision on evidence that was already before it when previously ordering continued detention, as long as it is persuaded that the evidence justifies the finding in question.<sup>60</sup>

31. In the most recent periodic reviews of detention, the Panel considered that the Accused should remain detained because of the risk of committing further crimes, relying on the same obstruction-related factors.<sup>61</sup> The assessment under this limb necessarily involves, *inter alia*, whether there is a *risk* of the Accused committing further crimes (including by reference to past conduct), *not* actual evidence of their planning to do so.<sup>62</sup> Given that the factors considered by the Panel under Article 46(1)(b)(ii) remain unchanged, there is no need to revisit these findings in the context of Article 41(6)(b)(iii). As such, this limb is equally satisfied.

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<sup>59</sup> Veseli 11 April 2025 Review Decision, KSC-BC-2020-06/F03107, para.22.

<sup>60</sup> *Gbagbo* Appeals Decision, para.69.

<sup>61</sup> Krasniqi 13 March 2025 Review Decision, KSC-BC-2020-06/F03005, paras 20-22; Selimi 13 March 2025 Review Decision, KSC-BC-2020-06/F03008, paras 22-24; Veseli 11 April 2025 Review Decision, KSC-BC-2020-06/F03107, paras 25-28.

<sup>62</sup> *Contra* Krasniqi Request, KSC-BC-2020-06/F03086/CONF/RED, para.37.

## C. NO CONDITIONS SUFFICIENTLY MITIGATE THESE RISKS

32. Each Accused offer renewed correspondence from the Kosovo Police ('KP') in support of their proposed release conditions.<sup>63</sup> Regardless of the extent to which [REDACTED], no combination of these conditions is sufficient to mitigate the risks posed if the Accused are released. As developed below, none of the [REDACTED] can sufficiently mitigate the risk of unauthorised disclosure if the Accused are released to Kosovo, where they will be able to interact with persons who are not involved in this case.<sup>64</sup> As is evident from the analysis below, the conditions now proposed are in fact not materially different, and certainly no more effective, than those previously considered and found insufficient.

33. [REDACTED].<sup>65</sup> [REDACTED]. [REDACTED].<sup>66</sup> [REDACTED].

34. [REDACTED],<sup>67</sup> [REDACTED]. [REDACTED]. [REDACTED],<sup>68</sup> [REDACTED].<sup>69</sup> [REDACTED].<sup>70</sup>

35. [REDACTED]. [REDACTED].<sup>71</sup> [REDACTED],<sup>72</sup> [REDACTED].

36. [REDACTED].<sup>73</sup> [REDACTED]<sup>74</sup> [REDACTED]. [REDACTED].

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<sup>63</sup> Veseli Request, KSC-BC-2020-06/F03076, Annex A; Selimi Request, KSC-BC-2020-06/F03078, Annexes 1-2; Krasniqi Request, KSC-BC-2020-06/F03086/CONF/RED, Annex 3 [REDACTED].

<sup>64</sup> See *similarly* Public Redacted Version of Corrected Version of Decision on Review of Detention of Isni Kilaj, KSC-BC-2018-01/F00658/COR/RED, 3 May 2024, para.56.

<sup>65</sup> [REDACTED].

<sup>66</sup> [REDACTED].

<sup>67</sup> [REDACTED].

<sup>68</sup> [REDACTED].

<sup>69</sup> [REDACTED].

<sup>70</sup> [REDACTED].

<sup>71</sup> [REDACTED].

<sup>72</sup> [REDACTED].

<sup>73</sup> [REDACTED].

<sup>74</sup> [REDACTED].

37. [REDACTED],<sup>75</sup> [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].  
[REDACTED].<sup>76</sup>

38. [REDACTED]. [REDACTED].<sup>77</sup> [REDACTED].<sup>78</sup> [REDACTED].  
[REDACTED].<sup>79</sup> [REDACTED].<sup>80</sup>

39. [REDACTED]. [REDACTED].<sup>81</sup> [REDACTED]. [REDACTED]. Importantly, it is not possible to share the identifying information of Prosecution witnesses with the KP because doing so would compromise protective measures in this case. This was a ‘decisive’ concern for the Pre-Trial Judge, who held that it was not feasible for the KP to detect coded messaging in relation to protected witnesses given the confidential nature of this information<sup>82</sup> – a finding endorsed by the Court of Appeals.<sup>83</sup> [REDACTED].<sup>84</sup> Concerningly, [REDACTED] does not address this issue at all.

40. The proposal for [REDACTED] does not overcome the KP’s information-deficit in relation to protected witnesses, and their ability to detect the passing of coded information.<sup>85</sup> [REDACTED]. It is no substitute for the monitoring regime that the KSC detention facilities provide, and which has been a critical safeguard for the integrity of these proceedings – a safeguard that would be entirely lost if release is permitted.

41. The monitoring framework of KSC Detention Centre – administered by the Registrar and her specialised staff, who are best equipped in these specific

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<sup>75</sup> [REDACTED].

<sup>76</sup> [REDACTED].

<sup>77</sup> [REDACTED].

<sup>78</sup> [REDACTED].

<sup>79</sup> [REDACTED].

<sup>80</sup> See *Specialist Prosecutor v. Shala*, Public Redacted Version of Decision on Pjetër Shala’s Request for Provisional Release, KSC-BC-2020-04/F00045/RED, 15 June 2021, para.46.

<sup>81</sup> [REDACTED].

<sup>82</sup> Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00576, 23 November 2021 (‘Veseli 23 November 2021 Review Decision’), paras 82-86.

<sup>83</sup> Decision on Kadri Veseli’s Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA014/F00008, 31 March 2022, para.43.

<sup>84</sup> [REDACTED].

<sup>85</sup> [REDACTED].

circumstances to manage information security in particular<sup>86</sup> – thus remains critical to ensuring that no confidential information is disclosed to unauthorised persons, as consistently held by the Panel in respect of each Accused.<sup>87</sup>

42. More generally, the Defence arguments that each of the Accused have obeyed the conditions of detention and would return for trial when ordered, are hypothetical and self-serving.<sup>88</sup> That Selimi and Veseli have, under the more restrictive and monitored detention regime, abided by its terms and not (so far as is known) further disclosed confidential information, shows that the restrictions imposed by the Panel are effective and working.<sup>89</sup> It does not mean that the Accused pose any lesser risk to the integrity of the proceedings or witness security.

43. Further, abiding by the stringent terms of detention does not create a track record warranting interim release,<sup>90</sup> nor does it abate the attendant risks the come with release back into the very community where witnesses reside. The Accused's conduct in the Detention Centre has no correlation to the potential risk of flight, or the obstruction of justice, outside of their current detention environment.

#### D. THE LENGTH OF DETENTION IS NOT DISPROPORTIONATE OR UNREASONABLE

44. When viewed in context and given the specific nature of international criminal proceedings such as these, the length of the Accused's detention is not unreasonable or disproportionate.

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<sup>86</sup> Veseli 23 November 2021 Review Decision, KSC-BC-2020-06/F00576, paras 82-86. *See also Specialist Prosecutor v. Sabit Januzi and Ismet Bahtijari*, Public Redacted Version of Decision on Sabit Januzi's Request for Interim Release, KSC-BC-2023-10/F00123/RED, 8 December 2023, para.71.

<sup>87</sup> Krasniqi 13 March 2025 Review Decision, KSC-BC-2020-06/F03005, paras 24-28; Selimi 13 March 2025 Review Decision, KSC-BC-2020-06/F03008, paras 26-29; Veseli 11 April 2025 Review Decision, KSC-BC-2020-06/F03107, paras 30-34.

<sup>88</sup> *Contra* Veseli Request, KSC-BC-2020-06/F03076, para.39; Selimi Request, KSC-BC-2020-06/F03078, para.10; Krasniqi Request, KSC-BC-2020-06/F03086, para.26.

<sup>89</sup> *Contra* Veseli Request, KSC-BC-2020-06/F03076, para.39.

<sup>90</sup> *Contra* Krasniqi Request, KSC-BC-2020-06/F03086/CONF/RED, para.29.



45. The European Court of Human Rights (ECtHR) has repeatedly held detention of more than five years may be justified in the presence of particularly strong justifications or exceptional circumstances. The complexity of a case may justify such periods of detention. For instance, in *Chraidi*, the ECtHR found that the length of the applicant's detention of five years could be regarded as reasonable in the 'exceptional circumstances' of the case, which 'involved a particularly complex investigation and trial concerning serious offences of international terrorism'.<sup>91</sup>

46. In this respect, the Prosecution underlines the complexity and the size of the case—involving four accused, counts charging crimes against humanity, war crimes and complex proceedings lasting over four years. At the ICTR, detention of a similar length to these proceedings was not considered unreasonable given the complexity of the case, with provisional release being denied.<sup>92</sup>

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<sup>91</sup> See *Chraidi v. Germany* Judgement, paras 46-48. See also *Cretello v. Italy* Judgement, para.35; *Blondet v. France* Judgement, para.42; *Maloum v. France* Judgement, para.39.

<sup>92</sup> *Ngirumpatse* Decision, para.25; *Kanyabashi* Decision, para.12.

47. Moreover, reliance on the *Kilaj* precedent, as a basis for seeking provisional release during trial proceedings, is misplaced.<sup>93</sup> In *Kilaj*, the pre-trial proceedings were effectively paused due to the re-submission of the indictment, making continued pre-trial detention unreasonable until the indictment was confirmed.<sup>94</sup> Rule 56(2) provides for a specific regime where an accused may be released in circumstances of undue delay prior to the opening of trial. No express procedural regime exists for the trial phase, and, in any event, there has been no undue delay in the conduct of the trial proceedings. Indeed, the SPO has abided by the Panel's target date for the completion of its case. The nature of the charges against Insi Kilaj, including the (much less) potential sentence he could face, are also very different to the present case.<sup>95</sup>

48. The ICTY Appeals Chamber has found that sufficiently compelling humanitarian circumstances may be considered when ruling on a request for provisional release.<sup>96</sup> None exist here. The Accused's wishes to see their family members are not compelling humanitarian circumstances,<sup>97</sup> nor can they inform the Panel's analysis of any of the Article 41(6)(b) limbs.

49. It is also incorrect to suggest that the presumption of innocence should limit detention on remand.<sup>98</sup> This presumption does not play a determinative role in provisional release. Otherwise, no accused could ever be detained, because an accused is always presumed innocent.<sup>99</sup>

50. Finally, the Prosecution notes that the Krasniqi Defence relies on information and annexes that are *ex parte*, thereby depriving the Prosecution from making any

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<sup>93</sup> Veseli Request, KSC-BC-2020-06/F03076, para.57.

<sup>94</sup> Public Redacted Version of Decision on the Specialist Prosecutor's Office's Appeal Against Decision on Insi Kilaj's Review of Detention, KSC-BC-2023-12/INV/F00273/RED, 13 May 2024 ('*Kilaj* Appeal Decision'), paras 20-21.

<sup>95</sup> *Kilaj* Appeal Decision, KSC-BC-2023-12/INV/F00273/RED, para.22.

<sup>96</sup> See e.g. *Petković* Appeal Decision, para.17.

<sup>97</sup> *Contra* Veseli Request, KSC-BC-2020-06/F03076, para.4; Selimi Request, KSC-BC-2020-06/F03078, para.11; Kransiqi Request, KSC-BC-2020-06/F03086/CONF/RED, para.22.

<sup>98</sup> *Contra* Kransiqi Request, KSC-BC-2020-06/F03086/CONF/RED, para.44.

<sup>99</sup> See *Milutinović* Appeal Decision, paras 11-12.

relevant submissions. The Panel should not rely on such information/submissions without the Prosecution being heard, as adversarial fairness requires.<sup>100</sup>


### III. CLASSIFICATION

51. This filing is confidential pursuant to Rule 82(4).

### IV. CONCLUSION

52. For the foregoing reasons, the Requests should be rejected.

**Word count: 5948**



**Kimberly P. West**

**Specialist Prosecutor**

Monday, 14 April 2025

At The Hague, the Netherlands.

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<sup>100</sup> Decision on Kadri Veseli's Application for Interim Release, KSC-BC-2020-06/F00178, 22 January 2021, para.41.