

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

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

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Kadri Veseli

Date: 22 April 2025

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**Public Redacted Version of Veseli Defence Reply to ‘Consolidated Prosecution response to
Veseli, Selimi and Krasniqi provisional release requests (F03076, F03078, and F03086)’
(F03112)**

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I. INTRODUCTION

1. Pursuant to Rule 76, the Defence for Mr Veseli (“the Defence”) files this reply to the SPO’s response to its request for provisional release.
2. The Defence recalls that the Court of Appeals has held that the Prosecution must show “specific reasoning and concrete grounds” supporting the belief of a sufficiently real possibility that one or more risks under Article 41(6) continues to exist.¹ The Defence submits that the Prosecution has fallen well short of this standard.
3. The Prosecution’s Response relies on old allegations and generalised speculation to justify Mr Veseli’s continued detention. Moreover, it refuses to acknowledge that the closure of its case is a material change in circumstances that affects the risk assessment; and picks holes without justification in the Kosovo Police Response to show that the risks it says still exist cannot be adequately managed, other than at the Detention Unit. However, all issues identified by the Prosecution are wholly speculative and can in any case be effectively resolved through the provision of clear direction to the Police and, if deemed necessary, the provision of further information by the Police. Lastly, the Prosecution attempts unsuccessfully to argue that the Panel should reconsider its finding that Mr Veseli is not a flight risk. Given that Prosecution Response fails to raise any legitimate or substantiated concerns regarding Mr Veseli’s provisional release, the Defence reiterates that release should be granted.

¹ IA001/F00005, *Decision on Kadri Veseli’s Appeal Against Decision on Interim Release*, 30 April 2021, paras. 17-18. See also, ICTY, *Prosecutor v. Gotovina et al*, IT-06-90-T, *Decision on Ivan Čermak’s Motion for Provisional Release*, 2 December 2008, para. 12; ICTY, *Prosecutor v. Stanišić*, IT-03-69-PT, *Decision on Provisional Release*, 28 July 2004, para. 35; ICTY, *Prosecutor v. Hadžihasanović et al*, IT-01-47-PT, *Decision Granting Provisional Release to Enver Hadžihasanović*, 19 December 2001, para. 11.

II. SUBMISSIONS

A. The allegations relied on no longer justify detention

4. The Prosecution relies on a series of old allegations to justify Mr Veseli's continued detention.² Noting that these allegations have been the subject of prior litigation, the Defence wishes to emphasise that: first, it has been acknowledged by the Specialist Chambers from the outset that there was nothing improper in Mr Veseli's instruction to Mr Lajci to post a public court decision in social media;³ and second, it has never been alleged that Mr Veseli was involved in witness interference. Nor has it been established that he has ever abused his position of influence in Kosovo in the manner the Prosecution suggested he could. As such, the Prosecution's submissions turn on mere, unsubstantiated, possibilities.

B. The Defence reiterates that the closure of the Prosecution case is a significant change in circumstances

5. After two years of evidence, the Prosecution case is now closed. All live witnesses have been heard and all applications for admission on paper have been submitted. Any risk of interference must at the very least be significantly reduced if not eradicated. Any residual risk can be more than adequately mitigated by conditions on the Accused's release.
6. In an attempt to downplay this significant milestone, the SPO points to the risk of witness recantation⁴ to justify Mr Veseli's detention. However, no specific witnesses are identified as at risk, and there is no evidence that Mr Veseli has any propensity to engage in such conduct. It is all highly speculative with no

² F03112, Specialist Prosecutor, *Consolidated Prosecution response to Veseli, Selimi and Krasniqi provisional release requests (F03076, F03078, and F03086) with public Annex 1 ("Response")*, para. 18.

³ F00178, *Decision on Kadri Veseli's Application for Interim Release*, 22 January 2021, para. 44.

⁴ Response, para. 4.

concrete evidence of any risks. That is plainly insufficient to justify continuous detention.

7. In any event, the Trial Panel has the discretion to reject the admission of any evidence that may be tendered, such as any evidence of recantation (even though there is no substantiated basis to suggest that such evidence could arise in the future).
8. Regarding the suggestion that provisional release may impact potential unidentified Prosecution rebuttal witnesses,⁵ at present it is not even known whether the circumstances to necessitate rebuttal witnesses will arise. The argument is therefore too remote and speculative to figure in the calculus.
9. In the most recent detention review, the Trial Panel found that given the stage of the proceedings at the time of that Decision, his release would not be conducive to the effective protection of witnesses.⁶ While the Defence does not agree, it notes that the Prosecution case is now closed. Moreover, all applications under Rules 153 and 155 have been made, and most pending applications pertain to [REDACTED] who are consequently removed from the so-called climate of witness interference.⁷

C. Kosovo Police is capable of implementing any conditions ordered by the Panel

10. At the outset, the Defence underscores that the Kosovo Police is an organ of one and the same State to which this court, the KSC, belongs. Their

⁵ Response, para. 26.

⁶ F03107, *Decision on Periodic Review of Detention of Mr Veseli*, 11 April 2025.

⁷ See F03028, Specialist Prosecutor, *Prosecution eighth motion for admission of evidence pursuant to Rule 155 with confidential Annexes 1-6*, 17 March 2025; F03056, Specialist Prosecutor, *Prosecution consolidated motion for the admission of evidence pursuant to Rules 153 and 155 and related requests with confidential Annexes 1-5*, 24 March 2025; and F03069, Specialist Prosecutor, *Prosecution motion for admission of evidence of W04747 pursuant to Rule 155 with confidential Annex 1*, 1 April 2025.

professionalism is confirmed by the European Commission.⁸ It is directly required, pursuant to Article 53 of the Law, to “comply without undue delay with any request for assistance or an order or decision issued by Specialist Chambers.”⁹ The Law on Police further explicitly requires the Kosovo Police to execute any lawful judicial orders.¹⁰ Naturally, this includes any order from the Trial Panel to prevent obstruction of justice during provisional release. Any questions about the willingness or ability of the Kosovo Police to enforce conditions must be considered with this clear legal framework in mind. They are at the disposal of the Court to ensure that its orders are effectively implemented, including to negate any risks that could possibly be said to arise in respect of any alleged witness protection issues. It would be wrong to refuse provisional release on the basis of any apparent shortcomings in the operations of the Kosovo Police.

11. As explained below, the concerns raised by the Prosecution regarding the Kosovo Police and their capacity to manage provisional release are not well-grounded and must be dismissed.
12. The Prosecution expresses its concern with the lack of information regarding the Police’s ability to detect coded messages.¹¹ The Defence reiterates that it has never been suggested Mr Veseli has resorted to the use of coded messages.¹² Moreover, the closure of the Prosecution case renders such risk even more remote and speculative.

⁸ F03076, Specialist Counsel, *Veseli Defence Request for Provisional Release with Confidential Annex A* (“Veseli Request”), 3 April 2024, para 51.

⁹ Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, Article 53(1).

¹⁰ Law No.04/L-076 On Police, Article 6: Relationship between Police, Public Prosecutors and the Court (providing that “The Police shall apply the orders and instructions lawfully issued by a public prosecutor or competent judge”).

¹¹ Response, paras. 39-40.

¹² Veseli Request, paras. 45-46.

13. Additionally, the Registry's capacity to detect coded messages has never been explained and the Kosovo Police's supposed inability to do so has never been substantiated – except to state that they cannot be made privy to confidential information about the case. Even absent case specific information, however, common sense dictates the linguistic and cultural proximity of Kosovo Police must make them at least if not more capable of detecting coded messages.
14. The SPO also expresses its concern with the Kosovo Police's failure to [REDACTED] yet the police were not asked for this. Additionally, the fact that Kosovar law does not expressly contemplate [REDACTED] is immaterial as it is clearly permissible.¹³ The Prosecution has failed to identify any legal or practical obstacle to [REDACTED].
15. The Prosecution expresses similar concerns regarding the Kosovo Police's alleged failure to [REDACTED].¹⁴ Once again, the Defence notes that it is open to the Trial Panel to make any inquiries necessary to satisfy itself of the operability of any conditions it chooses to impose – but notes that [REDACTED] is a secondary precaution to be taken in addition to [REDACTED]. It is not, the Defence submits, a necessary condition of release but merely an additional mitigating measure that could be considered.
16. The Prosecution raises further legal concerns regarding Kosovo Police's proposed [REDACTED]. This is based on the following part of the Police response: "[REDACTED]." The Defence submits that a common-sense reading indicates that the [REDACTED] refers to the Accused only. If the Trial Panel conditions their release upon the [REDACTED], this can easily be specified.
17. The SPO also argues that [REDACTED] are insufficient to eradicate the [REDACTED]. The Defence observes that [REDACTED] are also used at the

¹³ Response, para. 36.

¹⁴ Response, para. 37.

Detention Unit to [REDACTED].¹⁵ The two regimes are comparable on this point and the Prosecution has failed to articulate why such a measure, which is satisfactory in the DU, is not satisfactory during [REDACTED].

18. The Prosecution criticises the purported [REDACTED] in the Kosovo Police's response on [REDACTED]. Yet, the Police have stated very clearly that [REDACTED].¹⁶

19. Finally, the Defence underscores that any residual risks that persists past the end of the Prosecution case must be able to be mitigation, not eradication. It is a matter for the Trial Panel's discretion to determine which conditions may assist with any residual risk mitigation and, consonant with the Appeals Panel's prior ruling, to seek any further information from the Kosovo Police which it deems necessary to rule on provisional release.¹⁷

D. There is no reason for the Trial Panel to revisit its finding that Mr Veseli is not a flight risk

20. Lastly, the Defence submits that there is no reason for the Trial Panel to revisit their prior finding that Mr Veseli is not a flight risk. The Prosecution invokes non-binding precedents to support the proposition that the Court may rely on a negative Rule 130 finding in determining whether an Accused poses a heightened risk of flight.¹⁸ No Rule 130 Motion has been filed, let alone ruled upon. The SPO's submission is therefore premature and the precedents non-binding.

21. Crucially, nothing in Mr Veseli's circumstances or conduct gives rise to a concrete risk that *he* would pose a heightened risk of flight. The SPO has

¹⁵ KSC-BD-29, Registrar, Detention Management Unit Instruction: House Rules of the Detention Facilities, 23 September 2020, Article 23.

¹⁶ Annex 1 to Veseli Request, p. 80.

¹⁷ Veseli Request, para. 43.

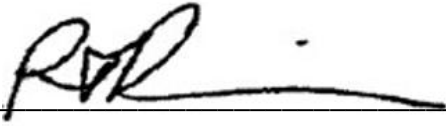
¹⁸ Response, para. 10.

pointed to no evidence in support of its new contention that a risk has suddenly arisen. Therefore, even in the event of a negative Rule 130 ruling, the Defence submits, it would not be reasonable to find that Mr Veseli would pose a heightened risk of flight. The Defence therefore invites the Panel to disregard the Prosecution's submissions on this point.

III. CONCLUSION

22. The Defence thus reiterates its request for Mr Veseli's provisional release.

Word Count: 1991



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Tuesday 22 April 2025,

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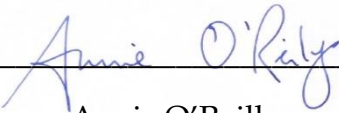


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