



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06/IA034

Before: **A Panel of the Court of Appeals Chamber**
Judge Michèle Picard
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Fidelma Donlon

Date: 13 August 2025

Original language: English

Classification: Public

**Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision
on Request for Provisional Release**

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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 23 May 2025 by Mr Kadri Veseli (“Appeal” and “Veseli” or “Accused” or “Defence”, respectively),² against the “Decision on Veseli Defence Request for Provisional Release” (“Impugned Decision”).³ The Specialist Prosecutor’s Office (“SPO”) responded on 5 June 2025 that the Appeal should be rejected (“Response”).⁴ Veseli replied on 16 June 2025 (“Reply”).⁵

I. BACKGROUND

1. On 5 November 2020, Veseli was arrested and transferred to the Detention Facilities of the Specialist Chambers (“Detention Facilities”) pursuant to an arrest warrant issued by the Pre-Trial Judge,⁶ further to the confirmation of an indictment against him.⁷

¹ IA034/F00002, Decision Assigning a Court of Appeals Panel, 27 May 2025 (confidential, reclassified as public on 22 July 2025).

² IA034/F00001, Veseli Defence Appeal Against Decision on Veseli Defence Request for Provisional Release (F03177), 23 May 2025 (confidential) (“Appeal”).

³ F03177/COR/RED, Public Redacted Version of Corrected Version of Decision on Veseli Defence Request for Provisional Release, 11 June 2025 (uncorrected confidential version filed on 13 May 2025, corrected confidential version filed on 11 June 2025) (“Impugned Decision”).

⁴ IA0034/F00003, Prosecution response to ‘Veseli Defence Appeal Against Decision on Veseli Defence Request for Provisional Release (F03177)’, 5 June 2025 (confidential) (“Response”), paras 2, 44. The Response was distributed on 10 June 2025.

⁵ IA0034/F00004, Veseli Defence Reply to Prosecution Response to Appeal Against Decision on Veseli Defence Request for Provisional Release (F03177), 16 June 2025 (confidential) (“Reply”).

⁶ F00050, Notification of Arrest of Kadri Veseli Pursuant to Rule 55(4), 5 November 2020 (strictly confidential and *ex parte*, reclassified as public on 20 November 2020); 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/A03/RED, Public Redacted Version of Arrest Warrant for Kadri Veseli, 5 November 2020 (strictly confidential and *ex parte* version filed on 26 October 2020).

⁷ 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, confidential redacted version filed on 19 November 2020,

2. On 22 January 2021, the Pre-Trial Judge rejected Veseli's request for interim release ("First Detention Decision").⁸ On 30 April 2021, the Court of Appeals Panel upheld the First Detention Decision.⁹

3. The Pre-Trial Judge, and then the Trial Panel, have subsequently reviewed and extended Veseli's detention on a bi-monthly basis until this stage. Some of these decisions were appealed and upheld by the Court of Appeals Chamber.¹⁰ Veseli also filed a request on protection of legality against the Third Appeal Decision on Detention, which was dismissed by the Supreme Court Panel.¹¹

4. On 3 April 2025, Veseli filed a request for provisional release ("Provisional Release Request").¹²

5. On 11 April 2025, having received the SPO's submissions, the Panel issued a decision on periodic review of Veseli's detention and ordered his continued detention ("Twenty-First Detention Review Decision").¹³ Therein, the Trial Panel did not

confidential lesser redacted version filed on 21 September 2023, confidential further lesser redacted version filed on 5 June 2025). The operative indictment was filed on 30 September 2022. See F00999/A03, Public Redacted Version of Amended Indictment, 30 September 2022. A public lesser redacted version was filed on 27 February 2023. See F01323/A01, Public Lesser Redacted Version of Amended Indictment, 27 February 2023 (confidential, reclassified as public on 27 February 2023).

⁸ F00178, Decision on Kadri Veseli's Application for Interim Release, 22 January 2021 ("First Detention Decision"). See also F00151, Application for Interim Release of Kadri Veseli, 17 December 2020 (confidential, reclassified as public on 22 January 2021).

⁹ IA001/F00005, Decision on Kadri Veseli's Appeal Against Decision on Interim Release, 30 April 2021 ("First Appeal Decision on Detention").

¹⁰ IA008/F00004/RED, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021) ("Second Appeal Decision on Detention"); IA014/F00008RED, 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) ("Third Appeal Decision on Detention").

¹¹ PL001/F00008, Decision on Kadri Veseli's Request for Protection of Legality, 15 August 2022.

¹² F03076/RED, Public Redacted Version of Veseli Defence Request for Provisional Release, 23 April 2025 (confidential version filed on 3 April 2025) ("Provisional Release Request"); F03076/A01/CONF, Annex A to Veseli Defence Request for Provisional Release, 3 April 2025 (confidential) ("Annex to Provisional Release Request").

¹³ F03107, Decision on Periodic Review of Detention of Kadri Veseli, 11 April 2025 ("Twenty-First Detention Review Decision"); F03042, Prosecution Submission Pertaining to Periodic Detention Review

address the Provisional Release Request.¹⁴ Veseli did not appeal the Twenty-First Detention Review Decision.

6. On 15 April 2025, the SPO filed a notice announcing the close of its case.¹⁵

7. On 13 May 2025, the Trial Panel issued the Impugned Decision,¹⁶ denying Veseli's request for provisional release on the basis that, *inter alia*, there is a well-grounded suspicion that Veseli has committed crimes within the subject-matter jurisdiction of the Specialist Chambers, and that the risks that Veseli will obstruct the progress of Specialist Chambers proceedings or commit further crimes against those perceived as being opposed to the Kosovo Liberation Army, including potential witnesses, continue to exist.¹⁷ The Trial Panel further found that no reasonable conditions could be imposed by the Trial Panel to sufficiently mitigate the identified risks and concluded that his detention continues to be necessary and reasonable.¹⁸

8. On 10 June 2025, the Defence indicated that Veseli waived his right to bi-monthly detention review until the Appeals Panel issues a decision on his appeal.¹⁹

of Kadri Veseli, 20 March 2025. Veseli did not respond to the SPO Submissions. See Twenty-First Detention Review Decision, para. 3.

¹⁴ Twenty-First Detention Review Decision, para. 9, wherein the Trial Panel, having noted that Veseli's Provisional Release Request was based, *inter alia*, on the closure of the SPO case, that the SPO had not yet closed its case, and that the briefing schedule for this request was not completed, decided not to address the Provisional Release Request in that decision.

¹⁵ F03121, Prosecution Notice Pursuant to Rule 129, 15 April 2025 ("SPO Notice on Completion of its Case").

¹⁶ See also F03112/RED, Public redacted version of Consolidated Prosecution response to Veseli, Selimi and Krasniqi provisional release requests (F03076, F03078, and F03086), 22 April 2025 (confidential version filed on 14 April 2025) ("SPO Response to Provisional Release Requests"); F03140/RED, Public Redacted Version of Veseli Defence Reply to 'Consolidated Prosecution response to Veseli, Selimi and Krasniqi provisional release requests (F03076, F03078, and F03086)', 23 April 2025 (confidential version filed on 22 April 2025).

¹⁷ Impugned Decision, paras 16-17, 35-36, 40-42.

¹⁸ Impugned Decision, paras 53, 55-56, 60, 62.

¹⁹ F03242, Veseli Defence Notification of Waiver of Detention Review, 10 June 2025 (confidential).

9. On 16 July 2025, the Trial Panel rejected the joint Defence motion for dismissal of the charges pursuant to Rule 130 of the Rules.²⁰ On the same day, Veseli indicated his intention not to present a defence case pursuant to Rule 119(1) of the Rules.²¹ The presentation of the case by Victims' Counsel took place from 16 to 17 July 2025.²² The Defence case is set to start on 15 September 2025.²³

10. In the Appeal, Veseli develops five grounds of appeal consisting of alleged errors of law and fact, and alleged abuse of discretion committed by the Trial Panel.²⁴ Veseli requests that the Court of Appeals Panel grant the appeal, reverse the Impugned Decision and order his provisional release.²⁵

II. STANDARD OF REVIEW

11. The Court of Appeals Panel adopts the standard of review for interlocutory appeals established in its first decision and applied subsequently.²⁶

²⁰ See Transcript, 16 July 2025, pp. 26190-26196. See also F03329, Scheduling Order for the Pronouncement of the Decision on the Joint Defence Motion pursuant to Rule 130, 11 July 2025 ("Scheduling Order dated 11 July 2025"), para. 10. The Panel recalls that on 23 April 2025, the Trial Panel held a status conference where it, *inter alia*, ordered the Defence to file submissions pursuant to Rule 130 of the Rules by 2 June 2025, or within 14 days of the Trial Panel's last ruling on the admission of evidence, whichever occurs later. See Transcript, 23 April 2025, p. 26176. See also F03216, Decision on Prosecution Motion for Admission of Obstruction Related Materials, 29 May 2025 (confidential), para. 70. The Trial Panel further indicated that it expected the Victims' Counsel case to start in July 2025. See Transcript, 23 April 2025, p. 26175. On 12 June 2025, Veseli filed, jointly with the other co-Accused in Case KSC-BC-2020-06, a motion pursuant to Rule 130 of the Rules. See F03256, Joint Defence Motion Pursuant to Rule 130, 12 June 2025 (confidential) ("Rule 130 Motion").

²¹ F03338, Veseli Defence's Notice of Intent Not to Present a Defence Case, 16 July 2025, para. 1. The Panel notes that Krasniqi and Thaçi indicated that they intend to present a Defence case. See F03336, Krasniqi Defence Notification Pursuant to Rule 119(1), 16 July 2025; F03337, Thaçi Defence Notice pursuant to Rule 119(1), 16 July 2025.

²² See Scheduling Order dated 11 July 2025, para. 11. See also Transcript, 16 July 2025, pp. 26207-26315; Transcript, 17 July 2025, pp. 26316-26367.

²³ F03371, Further Order on the Scheduling of the Defence Case and Related Matters, 25 July 2025, para. 42(a).

²⁴ Appeal, paras 4, 16-55. See also Appeal, paras 2-3.

²⁵ Appeal, para. 56. See also Reply, para. 13.

²⁶ KSC-BC-2020-07, IA001/F00005, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, 9 December 2020 ("*Gucati* Appeal Decision on Matters Related to Arrest and Detention"), paras 4-14. See also See also KSC-BC-2023-12, IA001/F00005, Decision on Isni Kilaj's Appeal Against

III. PRELIMINARY MATTERS

A. PUBLIC FILINGS

12. The Appeals Panel notes that the Impugned Decision was initially filed confidentially. As a result, all submissions on appeal were also filed confidentially pursuant to Rule 82(4) of the Rules. However, the Panel notes that a public redacted version of the Impugned Decision was subsequently filed. The Panel recalls 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 submissions filed before the Panel.²⁷ The Panel therefore orders the Accused and the SPO to file public redacted versions of the Appeal, the Response and the Reply, or to indicate, through a filing, whether they can be reclassified as public within ten days of receiving notification of the present Decision.

B. THE STANDARD APPLICABLE TO REVIEW OF DETENTION IN THE INTERVALS BETWEEN THE AUTOMATIC MANDATED REVIEW

13. The Court of Appeals Panel recalls the provisions of the Law and Rules relevant to review of detention.

14. Article 41(10) of the Law provides that:

Until a judgement is final or until release, upon the expiry of two (2) months from the last ruling on detention on remand, the Pre-Trial Judge or Panel seized with the case shall examine whether reasons for detention on remand still exist and render a ruling by which detention on remand is extended or terminated. The parties may appeal against such a ruling to a Court of Appeals Panel.

Decision on Continued Detention, 28 January 2025 (“*Kilaj* Appeal Decision on Detention”), paras 15-17; First Appeal Decision on Detention, paras 4-7.

²⁷ See e.g. Second Appeal Decision on Detention, paras 8-9. See also KSC-CA-2022-01, F00103, Decision on Gucati Application for Reclassification or Public Redacted Versions of Court of Appeals Panel Decisions, 9 January 2023, para. 2.

15. Rule 57(2) of the Rules states:

After the assignment of a Pre-Trial Judge pursuant to Article 33(1)(a) of the Law and until a judgment is final, the Panel seized with a case shall review a decision on detention on remand upon the expiry of two (2) months from the last ruling on detention, in accordance with Article 41(6), (10), (11) and (12) of the Law or at any time upon request by the Accused or the Specialist Prosecutor, or *proprio motu*, where a change in circumstances since the last review has occurred.

16. The Panel recalls that the reference to “change in circumstances” in Rule 57(2) of the Rules applies to review of detention separately from the mandated review at two-month intervals and at any point in time “upon request by the Suspect [or the Accused] or the Specialist Prosecutor, or *proprio motu*”.²⁸ As stated by the Specialist Chamber of the Constitutional Court, such a review “ensures that new relevant factors that *arise in the intervals* between reviews of detention can be assessed, especially where they might affect the lawfulness of or the justification for the accused’s continued detention”.²⁹

17. In other words, when reviewing detention “at any time” *in between* the automatic, periodic reviews at two-month intervals,³⁰ the lower panel must determine whether there exist new relevant factors that would have arisen in the interval or a change in circumstances warranting reconsideration of the previous ruling on detention,³¹ rather than determining whether the reasons or circumstances

²⁸ 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 (“Constitutional Court Judgment on Referral of Amendments to the Rules”), para. 67. See also Second Appeal Decision on Detention, para. 15.

²⁹ Constitutional Court Judgment on Referral of Amendments to the Rules, para. 67 (emphasis added). See also Second Appeal Decision on Detention, para. 15 (emphasis in original).

³⁰ See Rule 57(2) of the Rules.

³¹ See ICC, *Prosecutor v. Gbagbo*, ICC-02/11-01/11-548-Red, Judgment on the appeal of Mr Laurent Gbagbo against the decision of Pre-Trial Chamber I of 11 July 2013 entitled “Third decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute”, 29 October 2013, para. 53; ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-2151-Red, Judgment on the Appeal of Jean-Pierre Bemba Gombo Against the Decision on Trial Chamber III of 6 January 2012 entitled “Decision on the defence’s 28 December 2011 ‘Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba’”, 5 March 2012, para. 31.

underpinning continued detention, including the existence of the risks foreseen under Article 41(6)(b) of the Law, “still exist”.³² The review which takes place in between this two-month interval is more limited in scope than the assessment conducted for the purpose of the bi-monthly mandatory review of detention. If, in its assessment, a panel does not find that a change in circumstances exists, it is not required to further review the ruling on release or detention.³³

18. In the present case, the Panel notes that the review of detention conducted in the Impugned Decision was not done in the context of the automatic review of detention every two-months, but on the basis of the Provisional Release Request filed on 3 April 2025 by the Accused, who argued, *inter alia*, that the conclusion of the SPO case constituted “a change in circumstances” justifying reconsideration of the ongoing detention of the Accused.³⁴ In fact, the Panel notes that the Accused did not respond to the SPO submissions on the twenty-first review of detention, dated 20 March 2025, and that the Trial Panel issued its Twenty-First Detention Review Decision on 11 April 2025 without addressing the Provisional Release Request.³⁵

19. The Appeals Panel observes that in the Impugned Decision, the Trial Panel correctly indicated that it would assess whether the new circumstances described by the Parties warranted a reconsideration of its previous findings regarding the three alternative bases under Article 41(6)(b) of the Law on which it found Veseli’s detention to be necessary.³⁶ In addressing the grounds of appeal, the Appeals Panel bears in mind the standard applicable in case of a “change in circumstances” as set out under the present section.

³² See KSC-BC-2020-07, IA002/F00005, Decision on Nasim Haradinaj’s Appeal on Decision Reviewing Detention, 9 February 2021, para. 55.

³³ See similarly ICC, *Prosecutor v. Abd-Al-Rahman*, ICC-02/05-01/20-542-Red, Public redacted version of Judgment on the appeal of Ali Muhammad Ali Abd-Al-Rahman against Trial Chamber I’s “Decision on the review of detention”, 17 December 2021, para. 39.

³⁴ Impugned Decision, para. 8; Provisional Release Request, paras 25, 27, 29-33.

³⁵ See above, para. 5.

³⁶ Impugned Decision, para. 21.

IV. DISCUSSION

A. WHETHER THE TRIAL PANEL ERRED IN FINDING THAT THERE CONTINUED TO BE A RISK OF OBSTRUCTION

1. Submissions of the Parties

20. Veseli submits that the Trial Panel committed a serious error by concluding that a risk of obstruction continued to exist despite the conclusion of the SPO case and that the alleged risk of obstruction could not be mitigated by any conditions.³⁷ Specifically, Veseli argues that the Trial Panel does not cite to any information or evidence to support this finding to the requisite standard of “articulable grounds to believe”.³⁸

21. Veseli further argues that the close of the SPO case constituted a material change in circumstances, and, even if it was not considered to be a change in circumstances, given the passage of time, the Trial Panel was required to rely on new evidence to justify that a risk of obstruction continued to exist.³⁹ Instead, according to Veseli, the Trial Panel erred by relying on the same allegations from the last four and a half years to impermissibly prolong his detention.⁴⁰ In that regard, the Defence submits that except for one conversation which “gave rise to a suspicion” that he had disclosed details from a private court session, there is a notable absence of any evidence of obstruction, despite the fact that Veseli was covertly monitored for that purpose in 2023.⁴¹

³⁷ Appeal, paras 16, 27. See also Appeal, para. 19.

³⁸ Appeal, paras 16-17. See also Appeal, paras 24-25. Veseli further argues and that according to jurisprudence from the European Court of Human Rights (“ECtHR”), grounds for justifying detention must not be “general or abstract” and a panel may not disregard “concrete facts invoked by the detainee and capable of putting into doubt the existence of the conditions” justifying their detention. See Appeal, paras 18, 23.

³⁹ Appeal, paras 20, 22-23; Reply, para. 3.

⁴⁰ Appeal, paras 20, 23.

⁴¹ Appeal, para. 21. Veseli further submits that it was only suggested, but not established, that he may have referred to confidential details based on the evidence of this one conversation in 2023. See Appeal, para. 20.

22. Regarding the risk for Victims' witnesses, Veseli contends that there could be "little to no objective incentive" to interfere with their evidence, which, unlike SPO evidence, does not relate to guilt or innocence.⁴² Veseli also argues that the Trial Panel erred by not considering or engaging with the Defence arguments on the substantive differences between SPO and Victims' witnesses.⁴³ In his view, the Trial Panel relied solely on Veseli's access to disclosure relevant to the Victims' case and the general climate of intimidation, instead of tangible evidence of actual risk of obstruction relevant to the Accused personally, to justify its finding of a risk for Victims' witnesses.⁴⁴

23. With respect to Defence witnesses, Veseli argues that the Trial Panel also erred in finding that there is a possible risk of obstructive conduct, as there is no indication that: (i) Veseli is incentivised to interfere with Defence witnesses; (ii) he is aware of their identities; or (iii) Defence witnesses have even been identified.⁴⁵ According to Veseli, the mere possibility of future events transpiring in relation to a potential risk is insufficient to demonstrate that there are articulable grounds of obstruction.⁴⁶

24. Veseli further argues that the Trial Panel's finding that Veseli may retaliate against SPO witnesses who have already testified, or incentivise them to recant, far exceeded the Trial Panel's discretion and constitutes a serious, and new, allegation.⁴⁷ Veseli submits that this finding is not based on any evidence and constitutes an "anything is possible" approach contrary to the Law.⁴⁸ Finally, Veseli contends that the Trial Panel erred in finding – based on mere possibilities and speculation – that the risk of interference extends to witnesses in parallel proceedings, as Veseli is not a

⁴² Appeal, para. 22.

⁴³ Appeal, paras 22; Reply, para. 4. See also Appeal, para. 27.

⁴⁴ Appeal, para. 23. See also Reply, para. 4.

⁴⁵ Appeal, para. 24. See also Reply, para. 5.

⁴⁶ Appeal, para. 24; Reply, para. 5.

⁴⁷ Appeal, para. 25.

⁴⁸ Appeal, para. 25.

party to the parallel proceedings and thus has no incentive to interfere with witnesses therein.⁴⁹

25. The SPO responds that the Trial Panel consistently found that there was a risk that Veseli “would obstruct *proceedings*” if released and that its analysis in relation to Article 41(6)(b)(ii) of the Law has always been “multi-factored and holistic”.⁵⁰ The SPO also contends that, in arguing before the Trial Panel that the end of the SPO case meant that the risk of obstruction “no longer applies”, Veseli misrepresented the Trial Panel’s prior reasoning, and the Trial Panel rejected this mischaracterisation in the Impugned Decision.⁵¹

26. The SPO further submits that Veseli merely disagrees with the Trial Panel’s risk assessment and does not identify any specific errors of fact or law.⁵² First, the SPO argues that the Trial Panel did not err by relying on evidence that was already before it when conducting the risk assessment pursuant to Article 41(6)(b) of the Law.⁵³ In the SPO’s view, the existence of “articulable grounds” is not time-limited and the passage of time does not alone affect previously-made findings on obstruction.⁵⁴ According to the SPO, the Trial Panel did not err in finding that Veseli’s release posed a risk to the progress of the proceedings, based on the evidence before it, including the fact that Veseli disclosed confidential information to unauthorised third parties in the Detention Facilities – a fact that Veseli “seeks to contest and otherwise downplay”.⁵⁵

27. Second, according to the SPO, the Trial Panel was not required to enter into a more detailed analysis of the substantive difference between SPO and Victims’

⁴⁹ Appeal, para. 26; Reply, para. 6.

⁵⁰ Response, para. 8 (emphasis in original). See also Response, para. 15.

⁵¹ Response, paras 10-11.

⁵² Response, paras 12, 21. See also Response, paras 2, 42.

⁵³ Response, para. 13.

⁵⁴ Response, paras 13-14.

⁵⁵ Response, paras 9, 14-15.

witnesses, as what matters is the determination by the Trial Panel that there is a *risk* that the Accused will obstruct the progress of criminal proceedings.⁵⁶ In the SPO's view, even accepting that Veseli may have less incentive to interfere with Victims' witnesses, it does not affect the Trial Panel's core finding that there are articulable grounds to believe he will obstruct the progress of proceedings if released.⁵⁷

28. Regarding the risk of interference in relation to Defence witnesses, the SPO argues that the Trial Panel referring to the "possibility" that Defence witnesses will be heard in this case is accurate, particularly given the stage of the proceedings, and that Veseli fails to show any error in the Trial Panel's statement in this regard.⁵⁸

29. Finally, the SPO submits that Veseli took out of context the Trial Panel's reasoning that he may retaliate against witnesses who have testified, or incentivise them to recant their testimony.⁵⁹ According to the SPO, the Trial Panel referred to these as relevant examples of interference to show that the risk of obstruction may continue after the conclusion of the SPO case.⁶⁰

30. Veseli replies that the SPO mischaracterises the Defence argument when it responded that a panel cannot based its decision on evidence that was already before it.⁶¹ Rather, Veseli argues that a "particularly strong justification" for continued detention is required when there has been: (i) the passage of several years; (ii) a

⁵⁶ Response, para. 16 (emphasis in original). The SPO adds that Veseli ignores the Trial Panel's finding that participating victims, some of whom are also SPO witnesses, are especially vulnerable. See Response, para. 16.

⁵⁷ Response, para. 16.

⁵⁸ Response, paras 17-18.

⁵⁹ Response, para. 19, referring to Impugned Decision, paras 31-32.

⁶⁰ Response, paras 19-20, wherein the SPO submits that the risk of obstruction foreseen in Article 41(6)(b)(ii) of the Law may materialise in different ways, including, but not limited to, the examples given by the Trial Panel in the Impugned Decision.

⁶¹ Reply, para. 3. See also Reply, para. 2.

material change in circumstances (i.e. the end of the SPO case); and (iii) an extensive investigation that resulted in no evidence of obstruction.⁶²

2. Assessment of the Court of Appeals Panel

31. At the outset, the Appeals Panel notes that the Trial Panel identified the correct applicable standard to determine whether any of the grounds under Article 41(6)(b) of the Law warrant continued detention, namely, “less than certainty, but more than a mere possibility of a risk materialising”.⁶³ The Panel further recalls that Article 41(6)(b) of the Law does not require the lower panel to be satisfied that the risks specified in subparagraphs (i) to (iii) will in fact occur in the event of provisional release being granted, or to be satisfied that they are substantially likely to occur.⁶⁴

32. The Panel notes that the Trial Panel found that, at the stage of proceedings when the Impugned Decision was issued – at the close of the SPO case and before the litigation pursuant to Rule 130 of the Rules – the risk that Veseli would obstruct the progress of proceedings continued to exist.⁶⁵ In assessing the risks of obstructing the progress of the Specialist Chambers proceedings under Article 41(6)(b)(ii) of the Law, the Trial Panel considered, *inter alia*: (i) the Trial Panel’s previous findings regarding Veseli’s ability to give instructions to an individual interacting with the Specialist Chambers, Veseli’s continuous role in Kosovo which would continue to allow him to access information or elicit the support of others, and Veseli’s previous position as the head of the Kosovo Intelligence Service (“SHIK”) at a time when SHIK members were involved in witness interference; (ii) the climate of witness and victim intimidation prevailing in Kosovo; (iii) the risk of interference relating to witnesses still to be heard in the case, namely, witnesses for Victims’ Counsel and possibly witnesses for the Defence; (iv) the fact that the risk of interference includes attempts to retaliate against

⁶² Reply, para. 3.

⁶³ Impugned Decision, para. 18. See also First Appeal Decision on Detention, para. 17.

⁶⁴ First Appeal Decision on Detention, para. 19.

⁶⁵ Impugned Decision, paras 35-36. See also Impugned Decision, paras 32-34.

witnesses who already testified, attempts to incentivise witnesses to recant their testimony and attempts to interfere with witnesses in parallel proceedings; and (v) the fact that it appears that Veseli disclosed privileged information to unauthorised third parties and that the Trial Panel ordered as a result additional restrictions on Veseli's contacts and visits in the Detention Facilities.⁶⁶

33. The Panel will now address the arguments Veseli raised in the Appeal. The Panel turns first to Veseli's argument that even if the close of the SPO case was not considered as a change in circumstances, given the passage of time, the Trial Panel was required to rely on new evidence to justify that a risk of obstruction continued to exist.⁶⁷ As mentioned above, in the context of a request for provisional release intervening *in the intervals* between the automatic, periodic reviews of detention every two months, the review by the lower panel is more limited in scope and focuses on whether there exists new relevant factors or a change in circumstances warranting reconsideration of the previous ruling on detention.⁶⁸

34. The Panel notes Veseli's argument that the Trial Panel relied on the same factors from the last four and a half years to impermissibly prolong his detention.⁶⁹ The Panel first considers that when conducting the risk assessment pursuant to Article 41(6)(b) of the Law, nothing prevents a trial panel from relying on evidence that it previously relied upon, regardless of when that evidence was first presented, as long as it is persuaded that the evidence, at the time of the decision, remains sufficient to justify the finding in question.⁷⁰ As a result, the Appeals Panel finds that there is no requirement to invoke *new* evidence demonstrating the existence of a risk of

⁶⁶ Impugned Decision, paras 30, 32-34.

⁶⁷ See Appeal, para. 20; Reply, para. 3.

⁶⁸ See above, para. 17.

⁶⁹ See Appeal, para. 20.

⁷⁰ See e.g. ICC, *Prosecutor v. Gbagbo*, ICC-02/11-01/11-278-Red, Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled "Decision on the 'Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo'", 26 October 2012, para. 69.

obstruction under Article 41(6)(b)(ii) of the Law to justify continued detention provided that the factors previously considered by the trial panel continue to be sufficient to demonstrate that such risk “still exist[s]”, and provided that there has been no new factor arising which would warrant reconsideration of these prior factors.⁷¹

35. Furthermore, the Appeals Panel recalls that there is no temporal limit to the assessment of the risk of obstruction under Article 41(6)(b)(ii) of the Law, and what matters is whether there exists a risk of obstructing the “progress of the criminal proceedings”, not only the progress of the trial.⁷² While the Appeals Panel considers that the risk of obstruction will likely diminish with the passing of time,⁷³ such risk may not always be reduced significantly, depending on the circumstances of the case.⁷⁴ The Panel further recalls the Court of Appeals Panel’s confirmation, with respect to another case before the Specialist Chambers, that the risk of obstruction may continue until the end of the trial.⁷⁵ In the Appeals Panel’s view, what is required is to

⁷¹ See e.g. Second Appeal Decision on Detention, paras 13-15. Contra Appeal, para. 20.

⁷² KSC-BC-2020-07, IA007/F00004 & IA008/F00004, Consolidated Decision on Nasim Haradinaj’s Appeals Against Decisions on Review of Detention, 6 April 2022 (“*Haradinaj Consolidated Appeal Decision on Detention*”), para. 41.

⁷³ *Haradinaj Consolidated Appeal Decision on Detention*, para. 42. See also ECtHR, *Letellier v. France*, no. 12369/86, Judgment, 26 June 1991, para. 39; ECtHR, *W. v. Switzerland*, no. 14379/88, Judgment, 26 January 1993, para. 35; ECtHR, *Clooth v. Belgium*, no. 12718/87, Judgment, 12 December 1991, para. 43.

⁷⁴ *Haradinaj Consolidated Appeal Decision on Detention*, para. 42. In this regard, the Panel further observes that at the ICC, the Trial Chamber in the *Gbagbo* case found that risks warranting continued detention still existed despite the conclusion of the prosecution case. See ICC, *Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/15-1156-Red, Public Redacted Version of Decision on Mr Gbagbo’s Request for Interim Release, 20 April 2018, para. 38, wherein the Trial Chamber found that the conclusion of the Prosecutor’s case was not a change of circumstances warranting the release of the accused and further found that the accused had not demonstrated that the risks under Article 58(1)(b) of the Rome Statute no longer existed.

⁷⁵ *Haradinaj Consolidated Appeal Decision on Detention*, para. 43. The Court of Appeals Panel also referred to international jurisprudence where it was found that the end of the trial did not eliminate the risk of obstruction by an accused. See *Haradinaj Consolidated Appeal Decision on Detention*, para. 42, fn. 106, referring to ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-3221, Decision on “Defence Urgent Motion for Provisional Release”, 23 December 2014, paras 38-51, confirmed on appeal in ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-3249-Red, Public redacted version of Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 23 December 2014 entitled “Decision

examine, as the Trial Panel did, whether a risk of obstruction still exists at the relevant stage of the proceedings when the Impugned Decision was issued, namely just after the close of the SPO case and when the Rule 130 litigation was still pending.⁷⁶ Veseli's argument regarding the passing of time is therefore rejected.

36. With respect to Veseli's contention that there is no evidence of obstruction in connection to him, even following an extensive investigation,⁷⁷ the Appeals Panel first recalls that in determining the necessity of detention, the question revolves around the possibility, not the inevitability, of a future occurrence,⁷⁸ and that Article 41(6)(b)(ii) of the Law does not require proof that obstruction has actually occurred in the past.⁷⁹ Rather, the panel must satisfy itself that "there are articulable grounds to believe" that at least one of the enumerated risks under Article 41(6)(b) of the Law will materialise.⁸⁰ In any event, the Panel notes that the Trial Panel found that Veseli allegedly disclosed privileged information to unauthorised third parties.⁸¹ The Panel notes that Veseli contends that this alleged disclosure was suggested but not established, and that even "taken at its very highest, it was in no way suggestive of

on 'Defence Urgent Motion for Provisional Release', 20 May 2015, paras 66-71; IRMCT, *Prosecutor v. Nzabonimpa et al.*, MICT-18-116-T, Judgment, 25 June 2021, paras 2-6, 409.

⁷⁶ See Impugned Decision, paras 35-36.

⁷⁷ See Appeal, para. 21. See also Reply, para. 3.

⁷⁸ See *Gucati* Appeal Decision on Matters Related to Arrest and Detention, para. 67. See also First Appeal Decision on Detention, para. 19 (recalling that Article 41(6)(b) of the Law does not require to be satisfied that the risks specified in subparagraphs (i) to (iii) "will in fact occur" in the event of provisional release being granted).

⁷⁹ See First Appeal Decision on Detention, para. 38.

⁸⁰ See e.g. First Appeal Decision on Detention, para. 19; IA003/F00005/RED, 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 on Detention"), para. 38.

⁸¹ See Impugned Decision, para. 34, referring to Twenty-First Detention Review Decision, para. 22. See also F01977, Further Decision on the Prosecution's Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi, 1 December 2023 ("Decision on Modification of Detention Conditions"), paras 35, 37 (where the Trial Panel found that "it appears that [Thaçi, Selimi and Veseli] disclosed to their visitor(s) confidential information received in the context of the proceedings or elicited during testimony of protected witnesses" and that this "illustrates a substantial risk that [...] [they] will impermissibly disclose privileged information to unauthorised third parties").

obstructive behaviour”.⁸² However, the Panel considers that Veseli’s possible involvement in the unauthorised disclosure of privileged information shows, at the very least, Veseli’s possible willingness and ability to obtain access to and disseminate confidential information related to an issue to which he is connected.⁸³ In that regard, the Panel notes that this information appears to have been received in the context of the proceedings or elicited during testimony of protected witnesses, and further notes that this led the Trial Panel to order additional restrictions to be placed upon the ability of Veseli to have contacts and visits in the Detention Facilities.⁸⁴

37. In light of the above, the Panel finds that the Trial Panel did not err in taking into account the allegation that Veseli disclosed confidential information to unauthorised third parties in the Detention Facilities to conclude that Veseli’s release posed a risk to the progress of the proceedings.

38. The Panel next turns to Veseli’s arguments regarding Victims’ witnesses – namely, that the Trial Panel erred by not considering the substantive differences between SPO and Victims’ witnesses, and, moreover, that there is “little to no” incentive for him to interfere with the evidence of Victims as it does not relate to guilt or innocence.⁸⁵ At the outset, the Panel finds that as a matter of principle, the determination of the existence of a risk of obstruction pursuant to Article 41(6)(b)(ii) of the Law does not distinguish among witnesses and whether they belong to a specific category.⁸⁶

⁸² See Appeal, paras 20-21.

⁸³ See Impugned Decision, para. 34.

⁸⁴ See Decision on Modification of Detention Conditions, paras 35, 51-53, 55-58, 60, 62-67.

⁸⁵ See Appeal, paras 22-23; Reply, para. 4.

⁸⁶ Cf. IA024/F00019, Decision on Defence Appeals against “Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant”, 27 December 2022, para. 77; F00854, Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant, 24 June 2022, paras 133-134, 141 (regarding the fact that the Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a

39. The Panel notes that the Trial Panel did not engage in an assessment of the particularities of the evidence to be provided by Victims' witnesses. The Panel is mindful that Victims' Counsel may submit evidence pursuant to Rule 114(5) of the Rules when the evidence already produced "does not adequately address the impact the alleged crimes have on the personal interests of victims participating in the proceedings." The Panel further recalls that according to the Trial Panel's Order on the Conduct of Proceedings, Victims' Counsel is limited, in principle, to calling evidence on the following issues: (i) the harm or injury done to the victim(s) and the circumstances in which this occurred; (ii) the consequences of those acts on the victim(s), their relatives, or the community to which they belong; and (iii) the appropriate relief to remedy the harm suffered by the victim(s). Where Victims' Counsel seeks to address other issues, he must seek leave from the Trial Panel.⁸⁷

40. While the evidence to be put forward by Victims' Counsel needs to meet these requirements, the Panel considers that this in itself does not preclude Victims from adducing potentially incriminating evidence against the Accused. In addition, an accused may be found liable for reparations and ordered to pay a reparations award, the modalities of which are determined notably on the basis of evidence presented by victims as to the harm suffered as a result of the crimes of which the accused was

Participant was designed to be implemented without distinction among witnesses from each Party and the fact that witnesses do not belong to a Party). Cf. also ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-1049, Decision Regarding the Practices Used to Prepare and Familiarise Witnesses for Giving Testimony at Trial, 30 November 2007, para. 34 (where the ICC Trial Chamber found that witnesses are not attributable to parties, but rather are "witnesses of the Court"); Ambos, K., *Treatise on International Criminal Law: Volume III: International Criminal Procedure* (Second Edition), Oxford University Press 2025, p. 371 (on the concept of "witnesses of truth" rather than witnesses for a particular party at the ICTY).⁸⁷ See F01226/A01, Annex 1 to Order on the Conduct of Proceedings ("Order on the Conduct of Proceedings"), 25 January 2023, paras 34-36. See also F03322/RED, Public redacted version of Decision on Victims' Counsel's Request for Admission of Evidence pursuant to Rule 153, 9 July 2025 (confidential version filed on 9 July 2025), para. 9.

ultimately convicted.⁸⁸ The Panel therefore rejects Veseli's argument that there can be little to no incentive for an accused to interfere with Victims' witnesses.

41. However, the Panel agrees with Veseli that at the time the Trial Panel issued the Impugned Decision, the Trial Panel had no confirmation as to whether Victims' Counsel would call witnesses to provide evidence, and that the determination of whether a risk of obstructing the progress of the Specialist Chambers proceedings under Article 41(6)(b)(ii) of the Law exists still needs to be supported by evidence.⁸⁹ In this regard, the Panel recalls that the question posed by Article 41(6)(b) of the Law is whether the SPO presented *specific reasoning based on evidence* supporting the belief of a sufficiently real possibility that (one or more of) the risks under Article 41(6)(b)(i)-(iii) of the Law exist.⁹⁰ The assessment as to whether the evidence presented by the SPO is sufficient is a question of fact depending on the individual circumstances of each case.⁹¹

42. In the present circumstances, the Panel notes that to support its conclusion that there exists a risk of interference in relation to Victims' witnesses, the Trial Panel relied on: (i) the fact that Veseli would soon have access to "sensitive information regarding the names and personal details of [Victims'] witnesses" and "information on the harm

⁸⁸ See e.g. KSC-BC-2020-04, F00866/RED, Public redacted version of Reparation Order against Pjetër Shala, 23 December 2024 (confidential version filed on 29 November 2024), paras 42, 81-82, 98-99, 146, 176-177, 203-207, 239; KSC-BC-2020-05, F00517/RED/COR, Corrected version of Public redacted version of Reparation Order against Salih Mustafa, 14 April 2023 (confidential version filed on 6 April 2023, uncorrected public redacted version filed on 6 April 2023), paras 209-210, 248-249, 283.

⁸⁹ See Appeal, para. 23.

⁹⁰ IA007/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), para. 21 (emphasis in original); First Appeal Decision on Detention, para. 19; *Kilaj* Appeal Decision on Detention, para. 39. 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 ("Constitutional Court Judgment on Referral of Rules of 26 April 2017"), para. 115 (where the Constitutional Court Chamber emphasised the importance of specific reasoning and concrete grounds which are required to be relied upon by any Panel in its decisions authorising detention on remand for a prolonged period of time).

⁹¹ First Appeal Decision on Detention, para. 19.

that victims are alleged to have sustained”; and (ii) that victims participating in the proceedings are especially vulnerable due to the general climate of witness and victim intimidation prevailing in Kosovo.⁹² In support of the latter finding, the Panel observes that the Trial Panel referred to its own decision granting the status of participating victim in the present case to an applicant where it found that the applicant “by virtue of his status as a victim participating in the proceedings”, became “especially vulnerable”.⁹³

43. The Appeals Panel recalls that an accused’s access to and increased knowledge of confidential witness-related information, for instance through the disclosure of the identities of witnesses, may be a relevant factor to determine the existence of a risk of obstruction.⁹⁴ Nevertheless, the Panel also recalls that while disclosure of evidence may be a relevant factor, it is but one factor that may be taken into account when determining whether continued detention appears necessary, and it is not sufficient in itself to justify the denial of provisional release.⁹⁵ The Panel further notes that the Trial Panel does not provide any additional reasoning beyond the mere fact that Veseli will soon have access to that information.⁹⁶

44. As to the existence of a general climate of intimidation of witnesses and victims in Kosovo, the Panel recalls that while it is a relevant contextual factor to be taken into account in the determination of whether risks under Article 41(6)(b)(ii) of the Law exist,⁹⁷ this factor alone is insufficient to justify continued detention.

⁹² Impugned Decision, para. 33.

⁹³ See Impugned Decision, para. 33, fn. 74, referring to F02786/RED, Public Redacted Version of Decision on Seventeenth Registry Report on Victims’ Applications for Participation in the Proceedings, 16 December 2024 (confidential version filed on 16 December 2024), para. 26.

⁹⁴ See *Kilaj* Appeal Decision on Detention, para. 44.

⁹⁵ See e.g. IA010/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), para. 38; Second Appeal Decision on Detention, para. 31.

⁹⁶ See Impugned Decision, para. 33.

⁹⁷ See e.g. First Appeal Decision on Detention, para. 40.

45. As such, the Panel finds that, in the absence of any further information supported by evidence, these factors combined, without more, are insufficient for the Trial Panel to reasonably conclude that there is a sufficiently real possibility that Veseli, if released, will interfere with Victims' witnesses. Therefore, the Panel considers that this finding must be set aside. The Panel will address the consequences, if any, of this conclusion below.

46. The Panel now turns to Veseli's challenges regarding the risk of interference with respect to Defence witnesses.⁹⁸ The Panel first notes that the language of the Impugned Decision, and the use of "possible", demonstrates the Trial Panel's awareness of the particularities inherent to the presentation of a Defence case.⁹⁹ However, the Appeals Panel observes that the Trial Panel provides no reasons as to why a risk of interference may exist for witnesses the Defence may call.¹⁰⁰ In light of the absence of any reference to evidence that would support this conclusion, the Panel finds that the Trial Panel failed to comply with its obligation to provide a reasoned opinion in relation to this finding.¹⁰¹ Accordingly, the Panel finds that this finding must also be set aside. The Appeals Panel will examine the repercussions, if any, of its conclusion below.

47. The Appeals Panel will now turn to Veseli's argument that the Trial Panel erred by relying for the first time on the possibility that he will retaliate against witnesses or incentivise them to recant their testimony to establish a risk of obstruction while no information or evidence was produced in support of such findings.¹⁰² The Panel first

⁹⁸ See Appeal, para. 24; Reply, para. 5.

⁹⁹ See Impugned Decision, para. 32.

¹⁰⁰ See Impugned Decision, para. 32.

¹⁰¹ See IA002/F00005/RED, Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release, 30 April 2021 (confidential version filed on 30 April 2021 ("*Krasniqi* First Appeal Decision on Detention"), para. 29; *Selimi* First Appeal Decision on Detention, para. 45; IA004/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), para. 27.

¹⁰² See Appeal, para. 25.

notes that Veseli ignores the Trial Panel's observation in the Impugned Decision that it never advanced a finding that the end of the SPO case would exclude the risk of obstruction.¹⁰³ In addition, the Panel does not find any error in the fact that the Trial Panel refers for the first time to these new risks in the Impugned Decision.¹⁰⁴ The Trial Panel considered that the risk of interference which detention seeks to prevent includes, *inter alia*, any attempt to retaliate against witnesses who have testified in these proceedings or attempts to incentivise witnesses to recant their testimony.¹⁰⁵ The Panel understands that with respect to this finding, the Trial Panel refers to SPO witnesses.¹⁰⁶

48. The Panel observes that the Trial Panel's reasoning in respect of this finding is limited and that the Trial Panel does not set out in much detail how it reached its finding.¹⁰⁷ However, the Panel notes that earlier in the Impugned Decision, the Trial Panel refers to the SPO's relevant submissions that obstruction may occur at any stage of the proceedings, and, in particular, that witnesses can remain at risk of interference even after the end of their testimony and that obstruction is not temporally confined to the SPO case.¹⁰⁸ In light of the Trial Panel's reference to these SPO submissions and its consideration of Veseli's possible involvement in unauthorised disclosure of confidential protected information, and the fact that this led to an order for additional

¹⁰³ See Impugned Decision, para. 32.

¹⁰⁴ See e.g. Third Appeal Decision on Detention, para. 21.

¹⁰⁵ Impugned Decision, para. 32.

¹⁰⁶ See Impugned Decision, para. 32. See also SPO Response to Provisional Release Requests, paras 4, 23, 25-26.

¹⁰⁷ See Impugned Decision, para. 32.

¹⁰⁸ See Impugned Decision, para. 28, referring to SPO Response to Provisional Release Requests, paras 22-24. The Panel notes that the SPO provided lengthy and detailed submissions demonstrating that witnesses can remain at risk of obstruction even after the end of their testimony and that the close of the SPO case does not obviate the risk. See SPO Response to Provisional Release Requests, paras 22-24.

restrictions to be placed on Veseli at the Detention Facilities,¹⁰⁹ the Panel can ascertain how the Trial Panel reached its finding.

49. Recalling the discretion of the lower panel to evaluate the circumstances militating for or against detention,¹¹⁰ and in light of the Trial Panel's express consideration of the stage of the proceedings at the time it issued the Impugned Decision, the Panel finds that it was still within the discretion of the Trial Panel to consider that the risk that Veseli obstructs the proceedings of the Specialist Chambers under Article 41(6)(b)(ii) of the Law continues to exist despite the conclusion of the SPO case.¹¹¹

50. Finally, the Panel turns to Veseli's argument that the Trial Panel erred in finding that the risk of interference extends to witnesses in parallel proceedings, as he is not a party to the parallel proceedings and thus has no incentive to interfere with witnesses.¹¹² The Panel acknowledges that Veseli is not involved in such parallel proceedings. That being said, the Panel considers that there is no requirement that an accused be expressly involved in proceedings concerning contempt allegations in order to be able to reach conclusions as to the existence of a risk of obstruction. In that regard, the Panel recalls that the standard for assessing the risks under Article 41(6)(b) of the Law does not require a demonstration that Veseli *has* intimidated or interfered with witnesses or that he *will* do so.¹¹³ In light of the Trial Panel's finding that Veseli appears to have disclosed privileged information to unauthorised third parties and the fact that this led to additional restrictions being placed on Veseli at the Detention

¹⁰⁹ See above, para. 36. See also Impugned Decision, para. 34.

¹¹⁰ See e.g. KSC-BC-2018-01, IA007/F00007/RED, Public Redacted Version of Decision on the Specialist Prosecutor's Office's Appeal Against Decision on Isni Kilaj's Review of Detention, 15 May 2024 (confidential version filed on 13 May 2024) ("*Kilaj* Appeal Decision on Release"), para. 15. See also *Gucati* Appeal Decision on Matters Related to Arrest and Detention, para. 49.

¹¹¹ See Impugned Decision, para. 36. See also e.g. *Kilaj* Appeal Decision on Detention, para. 34.

¹¹² See Appeal, para. 26; Reply, para. 6.

¹¹³ See above, para. 36.

Facilities,¹¹⁴ the Appeals Panel considers that it was within the Trial Panel's discretion to rely on the fact that parallel proceedings regarding allegations of interference in the present case were ongoing as one factor among others to reach its conclusion on the existence of a risk of obstruction.¹¹⁵ Therefore, the Panel dismisses Veseli's argument in this regard.

51. The Appeals Panel will now address the impact of the Trial Panel's erroneous reliance on the existence of risks of interference in relation to witnesses for Victims' Counsel and the Defence.¹¹⁶ In light of the Trial Panel's reliance on other factors that support the existence of a risk of obstruction, and the fact that the Appeals Panel upheld such findings,¹¹⁷ the Panel finds that the Trial Panel's erroneous reliance on the existence of risks of interference in relation to witnesses for Victims' Counsel and the Defence does not invalidate the overall conclusion that there continues to be a risk that, if released, Veseli will obstruct the progress of the proceedings.

52. Accordingly, the Panel finds that Veseli has failed to demonstrate that the Trial Panel erred in concluding that there are articulable grounds to believe that the risk that Veseli will obstruct the progress of proceedings of the Specialist Chambers, if released, as set out in Article 41(6)(b)(ii) of the Law, continues to exist.¹¹⁸ Therefore, the Panel dismisses Ground 1 of Veseli's Appeal.

¹¹⁴ See Impugned Decision, para. 34. See also Decision on Modification of Detention Conditions, paras 35-37, 51-53, 55-58, 60, 62-67.

¹¹⁵ See Impugned Decision, para. 32.

¹¹⁶ Impugned Decision, paras 32-33.

¹¹⁷ See above, paras 37, 49-50, 52. The Appeals Panel has upheld the Trial Panel's reliance on the risks associated to retaliations, securing recantations and interferences with witnesses in parallel proceedings – factors which, in the Panel's view, alone support the existence of a risk of obstruction.

¹¹⁸ See Impugned Decision, para. 47.

B. WHETHER THE TRIAL PANEL ERRED IN THE ASSESSMENT OF THE CONDITIONS OF RELEASE (GROUNDS 2, 3 AND 4)

53. At the outset, 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 detained.¹¹⁹ Similarly, and as rightly recalled by the Trial Panel, when deciding whether a person should be released or detained, panels must consider alternative measures to prevent the risks in Article 41(6)(b) of the Law.¹²⁰ The Trial Panel also properly recalled that detention should only be continued if there are no alternative, more lenient measures reasonably available that could sufficiently mitigate the risks set out in Article 41(6)(b) of the Law.¹²¹ Article 41(12) of the Law sets out a number of options to be considered in order to ensure an accused's presence at trial, to prevent reoffending or to ensure successful conduct of proceedings.¹²² In this context, the Trial Panel also rightly emphasised that it must therefore consider all reasonable alternative measures that could be imposed and not only those raised by the Defence or the SPO.¹²³ However, the Appeals Panel recalls that this obligation is not limitless; rather, the Pre-Trial Judge's enquiry shall be guided by the circumstances of each case.¹²⁴

¹¹⁹ Third Appeal Decision on Detention, para. 37. See also Constitutional Court Judgment on Referral of Amendments to the Rules, para. 70 and jurisprudence cited therein. See also Constitutional Court Judgment on Referral of Rules of 26 April 2017, para. 114.

¹²⁰ Impugned Decision, para. 47. See also Constitutional Court Judgment on Referral of Rules of 26 April 2017, para. 114.

¹²¹ Impugned Decision, para. 47; Constitutional Court Judgment on Referral of Rules of 26 April 2017, para. 114; Third Appeal Decision on Detention, para. 37. See also 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; Kosovo Code of Criminal Procedure, Code No. 04/L-123, 13 December 2012, Article 187(1.3).

¹²² Impugned Decision, para. 47; KSC-BC-2020-04, IA001/F00005/RED, Public Redacted Version of Decision on Pjetër Shala's Appeal Against Decision on Provisional Release, 20 August 2021 (confidential version filed on 20 August 2021), para. 56.

¹²³ Impugned Decision, para. 47; Constitutional Court Judgment on Referral of Rules of 26 April 2017, para. 114; Third Appeal Decision on Detention, para. 56.

¹²⁴ See IA016/F00005/RED, Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, 25 March 2022

54. In the Impugned Decision, similarly to previous decisions on this matter, and after considering the information recently provided by the Kosovo Police to the Defence,¹²⁵ the Trial Panel found that none of the measures foreseen in Article 41(12) of the Law, or any of the Proposed Conditions,¹²⁶ nor any additional measure it may order, would sufficiently mitigate the risk that Veseli may obstruct the proceedings or commit further crimes, if released.¹²⁷ Furthermore, the Trial Panel held that there was no need for further inquiries with the Kosovo Police.¹²⁸

55. Veseli develops three grounds of appeal on the Trial Panel's assessment of the Proposed Conditions, challenging the Trial Panel's findings on: (i) the monitoring of exchanges within the Veseli household (Ground 2); (ii) [REDACTED] (Ground 3); and (iii) the rejection of Veseli's invitation to make further inquiries with the Kosovo Police (Ground 4).

1. Whether the Trial Panel Abused its Discretion with Respect to its Findings on the Monitoring of Exchanges Within the Veseli Household (Ground 2)

(a) Submissions of the Parties

56. Veseli submits that the Trial Panel abused its discretion in finding, without any supporting evidence, that there was a sufficiently real possibility that Veseli's family would assist him in the commission of crimes.¹²⁹

57. First, Veseli takes issue with the Trial Panel finding that the measures to monitor the Accused's exchanges with his close family members were insufficient,

(confidential version filed on 25 March 2022) ("*Krasniqi* Third Appeal Decision on Detention"), para. 42. See also Third Appeal Decision on Detention, para. 42.

¹²⁵ See Annex to Provisional Release Request.

¹²⁶ As summarised by the Trial Panel, Veseli proposed that he "[REDACTED]: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; and (iv) [REDACTED]" and that he "is willing to surrender his passport, and to comply with any measure which may be deemed necessary by the [Trial] Panel". See Impugned Decision, para. 44. See also Provisional Release Request, paras 40-56.

¹²⁷ Impugned Decision, paras 48, 53, 55.

¹²⁸ Impugned Decision, para. 54.

¹²⁹ Appeal, paras 28, 34; Reply, para. 7.

despite the absence of any evidence that his close family members, including his minor children, had any propensity for criminal conduct.¹³⁰ In particular, Veseli emphasises that unmonitored family visits took place at the Detention Facilities without any indication that the Registry has *ever* refused him a family visit or imposed measures in this respect, and adds that there is no evidential basis to conclude that if allowed to spend more time with his family, his wife or children would commit crimes.¹³¹

58. Second, Veseli submits that since the Defence proposed that [REDACTED], the Trial Panel was obliged to identify evidence capable of demonstrating a sufficiently real risk that his young children and wife would commit serious criminal offences and to articulate which specific offence(s) they would be likely to commit.¹³²

59. The SPO responds that the Accused misrepresents the Trial Panel's findings in respect of Veseli's family members.¹³³ According to the SPO, the risk identified was not that Veseli's family members would commit criminal conduct, but rather that coded messages might be passed *between* Veseli and them.¹³⁴

60. The SPO adds that Veseli merely repeats the same general argument, which has already been addressed and rejected by the Court of Appeals Panel, and that it was reasonable for the Trial Panel to find the Proposed Conditions insufficient to mitigate this risk.¹³⁵

61. In response to Veseli's argument that the Trial Panel should have identified evidence supporting the allegation of wrongdoing by Veseli's family members, the

¹³⁰ Appeal, para. 29.

¹³¹ Appeal, para. 30.

¹³² Appeal, para. 33. See also Reply, para. 7. Veseli also argues that the Trial Panel failed to engage with his submissions that any finding that his family members including his minor children, "might be drawn into serious criminality by their father" would be wrong in law and in fact in the absence of any evidence. See Appeal, paras 32-33.

¹³³ Response, paras 22-23.

¹³⁴ Response, para. 23.

¹³⁵ Response, paras 23, 26.

SPO argues that Veseli misunderstands the legal exercise undertaken by the Trial Panel under Article 41(12) of the Law.¹³⁶ In the SPO's view, the Trial Panel correctly focused its analysis on the *conditions* governing interim release vis-à-vis the Accused, *not* the characteristics or prior criminal history of his family members, nor their prior conduct at the Detention Facilities.¹³⁷ The SPO adds that what is relevant is the "practical insufficiency" of the Proposed Conditions and the fact that the identified risks were "better managed" under the visitation framework in place at the Detention Facilities [REDACTED].¹³⁸ In particular, the SPO points to [REDACTED].¹³⁹

62. Veseli replies that the SPO's submissions "overlook common sense", arguing that the Trial Panel's finding that there existed a risk of obstruction through the passing of coded messages that could not be mitigated by the Proposed Conditions, "necessarily depended" on the existence of articulable grounds to believe that Veseli's family members would assist in those crimes; otherwise, there would be no need for such a risk to be mitigated.¹⁴⁰

(b) Assessment of the Court of Appeals Panel

63. The Panel notes that, under the Proposed Conditions put before the Trial Panel, the Defence proposed, *inter alia*, that [REDACTED].¹⁴¹ The Trial Panel found the Proposed Conditions insufficient, *inter alia*, to mitigate the risks associated with the potential leak of coded messages and confidential witness-related information during visits with Veseli, to monitor the Accused's exchanges with his close family members, and, ultimately, to mitigate the risks of obstruction and commission of further crimes.¹⁴² On appeal, Veseli argues that this finding is unsupported and erroneous,

¹³⁶ Response, para. 24.

¹³⁷ Response, paras 24-25.

¹³⁸ Response, para. 25.

¹³⁹ Response, para. 25.

¹⁴⁰ Reply, para. 7.

¹⁴¹ Provisional Release Request, paras 28, 40; Impugned Decision, para. 44.

¹⁴² Impugned Decision, paras 50-53.

and that such finding “necessarily depended” on the Trial Panel’s conclusion that there were articulable grounds to believe that Veseli’s family members – Veseli’s wife and his young children – would assist in those crimes.¹⁴³

64. First, and contrary to what Veseli argues,¹⁴⁴ the Panel notes that the Defence did not suggest, in the Proposed Conditions, that Veseli [REDACTED]; it actually mentioned that he would have no “[REDACTED]”, but did not [REDACTED] or [REDACTED].¹⁴⁵ Furthermore, the Panel notes that the recent exchanges between the Defence and the Kosovo Police specifically envisage [REDACTED].¹⁴⁶

65. Second, the Panel considers that Veseli misrepresents the findings of the Trial Panel, which did not find that Veseli’s family members “might be drawn into serious criminality by their father”.¹⁴⁷ It rather found that there exists a risk that coded messages might be passed *between* Veseli and them.¹⁴⁸ In other words, the risk is not whether his family members *could* commit a crime but whether Veseli *would* do so. Consequently, the behaviour of Veseli’s family members during prior visits at the Detention Facilities or whether they would have any “propensity for criminal conduct” is irrelevant.¹⁴⁹

66. The Panel recalls that under Article 41(6)(b) of the Law, the question revolves around the possibility, not the inevitability, of a future occurrence.¹⁵⁰ In the Panel’s view, the Trial Panel’s finding must be interpreted through the lens of this standard.

¹⁴³ Reply, para. 7; Appeal, paras 28-33.

¹⁴⁴ Appeal, para. 33.

¹⁴⁵ Provisional Release Request, para. 28. The Panel notes that Veseli specifically mentioned in the introduction to his request that he “has been in detention in The Hague for 4.5 years, while his wife, school-aged children, and *most of his extended family* remain in Kosovo”. See Provisional Release Request, para. 4 (emphasis added).

¹⁴⁶ Annex to Provisional Release Request, pp. 6, 77-80.

¹⁴⁷ Impugned Decision, para. 51. Contra Appeal, para. 32.

¹⁴⁸ Impugned Decision, paras 50-52.

¹⁴⁹ Contra Appeal, paras 29-31.

¹⁵⁰ See above, para. 36. See also *Gucati* Appeal Decision on Matters Related to Arrest and Detention, para. 67.

Accordingly, the Panel finds that it was reasonable for the Trial Panel to express concerns about the monitoring of Veseli's communications in light of its other finding that Veseli presented risks of obstructing the proceedings.¹⁵¹ It was further reasonable to extend its concerns to Veseli's family members considering that [REDACTED], and [REDACTED], and that, [REDACTED].¹⁵²

67. Contrary to what Veseli alleges, the Trial Panel was neither "obliged to identify" evidence capable of supporting the so-called "allegation" that Veseli's family members would commit serious criminal offences nor obliged to consider as determinative their prior conduct during family visits at the Detention Facilities.¹⁵³ What was relevant to the Trial Panel's reasoning is that the risk of Veseli passing coded messages to his family members could not be mitigated by the Proposed Conditions, [REDACTED].¹⁵⁴

68. Moreover, the Panel is not persuaded by Veseli's arguments that he has never passed illicit messages during unmonitored family visits at the Detention Facilities and that there is no evidential basis to conclude that if Veseli was allowed to spend more time with his family, Veseli's wife or children "would commit crimes".¹⁵⁵ Recalling that the standard is about the possibility, not the inevitability, of a future occurrence, the Panel finds that the fact that no evidence was adduced that Veseli and/or his family members engaged in such conduct in the tightly controlled environment of the Detention Facilities does not render the Trial Panel's finding unreasonable. The Panel agrees with the Trial Panel that the measures in place at the Detention Facilities offer a controlled environment where a potential breach

¹⁵¹ Impugned Decision, paras 35-36, 42. See also above, paras 49-50, 52.

¹⁵² Impugned Decision, para. 51.

¹⁵³ See Appeal, paras 29-30, 32-34. In the Panel's view, it is reasonable for a panel to have concerns about the possibility of an accused's family members being used, without their knowledge or their intention, as an instrument to convey messages to the outside world.

¹⁵⁴ Impugned Decision, para. 51.

¹⁵⁵ Appeal, paras 30, 37.

of confidentiality could be more easily identified and/or prevented.¹⁵⁶ In this regard, contrary to Veseli's contention, the Panel finds that limitations on the frequency and length of unmonitored family visits at the Detention Facilities are relevant to the Trial Panel's reasoning.¹⁵⁷ The Panel further recalls that, in addition to visits at the Detention Facilities being supervised as a rule, more measures of recording and listening – even in relation to all visits – are possible if considered necessary and proportionate.¹⁵⁸

69. Furthermore, what was also relevant to the Trial Panel's reasoning [REDACTED] and whether the assurances provided by the Kosovo Police would sufficiently mitigate the risks associated with the potential leak of confidential witness-related information during visits with Veseli. In this context, [REDACTED], the Panel finds that it was reasonable for the Trial Panel to consider that, were Veseli and his visitors to use coded messages, [REDACTED].¹⁵⁹

70. In light of the above, the Panel finds that the Trial Panel did not err in finding that the measures provided by the Kosovo Police were insufficient to monitor the Accused's exchanges with his close family members and to sufficiently mitigate the risk of Veseli passing coded messages to them. Therefore, the Panel dismisses Ground 2 of Veseli's Appeal.

¹⁵⁶ Impugned Decision, para. 52. See also Third Appeal Decision on Detention, para. 38.

¹⁵⁷ Impugned Decision, para. 51. See also Third Appeal Decision on Detention, para. 38; Second Appeal Decision on Detention, fn. 95.

¹⁵⁸ Third Appeal Decision on Detention, para. 38, referring to 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), paras 31-34, 37-39.

¹⁵⁹ Impugned Decision, para. 52. The Trial Panel further found that the issue of coded messaging would persist even in [REDACTED].

2. Whether the Trial Panel Erred in Finding that it was [REDACTED] (Ground 3)

(a) Submissions of the Parties

71. At the outset, Veseli argues that the alleged risk of the use of coded messages is unsupported and unsubstantiated.¹⁶⁰ Veseli submits that the Trial Panel's reasoning that because [REDACTED] is "arbitrary, irrational, and discriminatory".¹⁶¹ He develops three arguments.

72. First, Veseli argues that the Trial Panel's finding that [REDACTED] is not valid given that the Kosovo Police are required, as part of their duties, to maintain confidentiality and ensure the safety and security of others.¹⁶²

73. Second, Veseli submits that contrary to what the Trial Panel found, the Specialist Chambers have "[REDACTED]" by issuing orders to the Kosovo Police who are, by law, required to apply all lawful orders and instructions issued by the courts of Kosovo and should be presumed to be professional.¹⁶³ In Veseli's view, the Trial Panel's finding is rather based on the implicit "discriminatory" belief [REDACTED].¹⁶⁴

74. Finally, Veseli takes issue with the Trial Panel referring to the Court of Appeals Panel's previous finding that the Chief Detention Officer is in "a better position" to promptly bring to the Registrar's attention any communications that raise concerns.¹⁶⁵ Veseli argues that what is relevant is not who is on a "better footing" but whether the Kosovo Police are competent to perform the functions required of them.¹⁶⁶

¹⁶⁰ Appeal, para. 37. See also Reply, para. 10.

¹⁶¹ Appeal, paras 35, 41.

¹⁶² Appeal, para. 38. See also Appeal, para. 36.

¹⁶³ Appeal, para. 39. See also Appeal, para. 45.

¹⁶⁴ Appeal, para. 39.

¹⁶⁵ Appeal, para. 40.

¹⁶⁶ Appeal, para. 40. See also Appeal, para. 45; Reply, para. 10.

75. The SPO responds that the finding that [REDACTED] has already been challenged by Veseli and dismissed by the Pre-Trial Judge, who found that [REDACTED].¹⁶⁷ The SPO adds that this finding was endorsed by the Court of Appeals Panel.¹⁶⁸ In the SPO's view, Veseli merely disagrees with this finding and fails to submit any cogent reasons that would warrant overturning it.¹⁶⁹ The SPO argues that Veseli "appears to accept" the fact, as found by the Trial Panel, that the Detention Facilities are better positioned to identify and/or prevent breaches of confidentiality.¹⁷⁰ The SPO finally concludes that Veseli's serious allegation that the Trial Panel is being "discriminatory" is unfounded.¹⁷¹

76. Veseli replies that, contrary to what the SPO seems to argue, the Trial Panel made no finding in the Impugned Decision on [REDACTED], but in fact, accepted the evidence adduced by the Defence of improvements and professionalism within the Kosovo Police in recent years.¹⁷²

(b) Assessment of the Court of Appeals Panel

77. In the Impugned Decision, the Trial Panel found that the assurances provided by the Kosovo Police would not sufficiently mitigate the risks associated with the potential leak of confidential witness-related information during Veseli's visits, having considered notably that "[REDACTED]".¹⁷³

78. The Appeals Panel first notes that the Trial Panel recalled a previous finding by the Pre-Trial Judge, which had been endorsed by the Court of Appeals Panel.¹⁷⁴ In the

¹⁶⁷ Response, paras 28-29.

¹⁶⁸ Response, paras 28-29.

¹⁶⁹ Response, paras 30-31.

¹⁷⁰ Response, para. 30.

¹⁷¹ Response, para. 31.

¹⁷² Reply, para. 8.

¹⁷³ Impugned Decision, para. 52.

¹⁷⁴ Impugned Decision, para. 52, referring to Third Detention Decision, para. 88; Third Appeal Decision on Detention, para. 43.

Panel's view, Veseli is attempting to relitigate this finding, arguing now that the Kosovo Police are bound by confidentiality agreements and that they should be presumed to be professional and able to comply with the orders issued by the Specialist Chambers.¹⁷⁵

79. The Panel considers that Veseli merely disagrees with the findings of the Trial Panel, the Pre-Trial Judge and the Appeals Panel, and fails to bring any cogent reasons which would warrant the Appeals Panel departing from its previous finding. The Panel recalls that an appeals panel is expected to follow previous decisions by the Court of Appeals Chamber and should only depart from them for cogent reasons in the interests of justice.¹⁷⁶

80. In any event, the Panel finds reasonable the Trial Panel's impugned finding that [REDACTED].¹⁷⁷ In particular, the Trial Panel's reasoning, far from being "arbitrary, irrational, and discriminatory", relies on plain logic: first, [REDACTED]; and second, the Specialist Chambers, while having authority over the Kosovo Police, [REDACTED] and will [REDACTED].¹⁷⁸

81. By contrast, and as recalled by the Trial Panel, the Court of Appeals Panel previously held that the Chief Detention Officer, an official of the Specialist Chambers appointed by the Registrar, is in a better position to promptly bring to the Registrar's

¹⁷⁵ Appeal, paras 38-39.

¹⁷⁶ See e.g. KSC-CA-2024-03, F00069/RED, Public Redacted Version of Appeal Judgment, 14 July 2025 (confidential version filed on 14 July 2025), paras 50, 180 and references cited therein.

¹⁷⁷ Impugned Decision, para. 52. This finding was also upheld by the Court of Appeals Chamber. See Third Appeal Decision on Detention, para. 43. In the Panel's view, [REDACTED] *would* require a variation of protective measures pursuant to Rule 81 of the Rules. Pursuant to Rule 81(5) of the Rules, the competent panel, seized of an application on variation of protective measures, "shall ensure through the Witness Protection and Support Office that *the protected person has given consent to the variation of protective measures*. In the absence of such consent, variation of protective measures may be ordered *proprio motu* if justified by *exigent circumstances* or *where a miscarriage of justice would otherwise result*" (emphasis added).

¹⁷⁸ Impugned Decision, para. 52.

attention any communications that raise concerns, [REDACTED].¹⁷⁹ In addition, the Chief Detention Officer has broad authority to take further measures to restrict the communications of detainees, if deemed necessary.¹⁸⁰ The Panel considers that these findings remain valid, as well as the Trial Panel's conclusion that the Detention Facilities offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented.¹⁸¹

82. In light of the above, the Court of Appeals Panel finds that Veseli fails to establish any error in the Trial Panel's finding that it was "not possible" to [REDACTED].¹⁸² Therefore, the Panel dismisses Ground 3 of Veseli's Appeal.

3. Whether the Trial Panel Erred by not Requesting Information from the Kosovo Police (Ground 4)

(a) Submissions of the Parties

83. Veseli challenges the Trial Panel's rejection of his invitation to make further inquiries with the Kosovo Police, and in finding that the Kosovo Police: (i) provided insufficient information regarding [REDACTED]; (ii) had ample opportunity to provide the required information; and (iii) could not provide any additional information which would assist the Trial Panel further.¹⁸³

84. While acknowledging that the Kosovo Police's response to the Defence's [REDACTED] Letter¹⁸⁴ was not "thorough" with respect to [REDACTED], Veseli submits that the Trial Panel should still have sought further information from the Kosovo Police because: (i) the Specialist Chambers, unlike the Defence, have "the

¹⁷⁹ Third Appeal Decision on Detention, para. 41. See also Impugned Decision, para. 52.

¹⁸⁰ Impugned Decision, para. 52, referring, *inter alia*, to Third Appeal Decision on Detention, para. 41.

¹⁸¹ Impugned Decision, para. 52. See also Third Appeal Decision on Detention, para. 38.

¹⁸² Impugned Decision, para. 52.

¹⁸³ Appeal, para. 42, referring to Impugned Decision, paras 50, 54.

¹⁸⁴ The Panel notes that the Defence for Veseli, Rexhep Selimi and Jakup Krasniqi sent a letter [REDACTED], requesting information and assurances in support of [REDACTED]. See Annex to Provisional Release Request, pp. 4-11 ("[REDACTED] Letter").

powers of compulsion”,¹⁸⁵ (ii) it was not sufficient for the Trial Panel to rely on information previously provided to the Defence, or to the Pre-Trial Judge several years ago,¹⁸⁶ and (iii) it was for the Trial Panel to identify information it deemed relevant, order the Kosovo Police to provide such information, and enquire into the enforceability of the measures.¹⁸⁷

85. In its Response, the SPO points out that the response provided by the Kosovo Police in its [REDACTED] Letter does not address at all [REDACTED] and submits that Veseli fails to explain why the Trial Panel should ask again the Kosovo Police the same question the Defence asked.¹⁸⁸ In the SPO’s view, it is difficult to see what information the Kosovo Police could provide to [REDACTED].¹⁸⁹ The SPO concludes that it was entirely reasonable for the Trial Panel to find that the Kosovo Police have had ample opportunity to provide all relevant information, and that approaching them again would not assist matters any further.¹⁹⁰

86. Veseli replies that the SPO contradicts itself by on the one hand arguing that the Kosovo Police failed to address [REDACTED] and by observing on the other hand that “it is difficult to see” what information the Kosovo Police could provide on that issue.¹⁹¹ He adds that while the Kosovo Police might be “at an informational disadvantage”, the Trial Panel is responsible for this situation, namely its “unjustified refusal to provide the information needed to monitor provisional release”, and cannot rely on this to justify denying provisional release.¹⁹²

¹⁸⁵ Appeal, para. 43. See also Reply, para. 10.

¹⁸⁶ Appeal, paras 44, 46.

¹⁸⁷ Appeal, paras 43-45. See also Reply, para. 10.

¹⁸⁸ Response, paras 33-34.

¹⁸⁹ Response, para. 34.

¹⁹⁰ Response, para. 35.

¹⁹¹ Reply, para. 9.

¹⁹² Reply, para. 10.

(b) Assessment of the Court of Appeals Panel

87. At the outset, the Panel recalls that, as noted by the Trial Panel, the Kosovo Police have been approached on several occasions by the Veseli Defence – as well as by other Defence teams – and directly by the Pre-Trial Judge in the past, and again by the Veseli Defence on March 2025.¹⁹³ Upon those requests, the Kosovo Police have provided information about their willingness and capacity to enforce the Proposed Conditions or other conditions that the competent panel would order.¹⁹⁴

88. The Panel first observes that, in contending that the Trial Panel should have requested further information after having found that the Kosovo Police provided insufficient information regarding [REDACTED], Veseli in fact ignores the Trial Panel's comprehensive assessment of the Proposed Conditions, which went beyond what [REDACTED] responded to the Defence in [REDACTED] Letter.¹⁹⁵

89. With respect to Veseli's argument that the Trial Panel should have sought further clarification from the Kosovo Police [REDACTED],¹⁹⁶ the Panel notes that the Trial Panel assessed and found insufficient the proposed measures of:

¹⁹³ See Impugned Decision, para. 54; Provisional Release Request, paras 17, 20, 41, 47-48, 53. **Regarding previous exchanges between the Veseli Defence and the Kosovo Police**, see Annex to Provisional Release Request; F00518/COR/A01, Annex 1 to Corrected Version of Veseli Defence Submissions on Second Detention Review (KSC-BC-2020-06/F00518 dated 11 October 2021), 14 October 2021 (confidential). **Regarding previous orders for submissions by the Pre-Trial Judge to the Kosovo Police and the response of the Kosovo Police**, see Annex to Provisional Release Request, pp. 33-70; F00513, Order to the Kosovo Police to Provide Information, 8 October 2021; F00513/A01, Confidential Annex to Order to the Kosovo Police to Provide Information, 8 October 2021 (confidential); F00576/RED, Public Redacted Version of Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli, 8 December 2021 (confidential version filed on 23 November 2021) ("Third Detention Decision"), paras 9, 16. See also Second Appeal Decision on Detention, paras 51-54.

¹⁹⁴ Annex to Provisional Release Request; F00518/COR/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); F00548/eng, Answer to the Request number KSC-BC-2020-06, dated 13 October 2021, 27 October 2021.

¹⁹⁵ See Impugned Decision, paras 50-56; [REDACTED] Letter. The Panel notes for example that the Trial Panel also envisaged [REDACTED] such as [REDACTED], and considered, as previously found by the Court of Appeals Panel, that "[REDACTED]". See Impugned Decision, para. 52.

¹⁹⁶ See Appeal, para. 44.

(i) [REDACTED], and/or (ii) [REDACTED].¹⁹⁷ The Trial Panel further considered that, based on the information provided by the Kosovo Police, [REDACTED], and found that the Proposed Conditions were insufficient to monitor the Accused's exchanges with his close family members.¹⁹⁸

90. The Panel observes that Veseli does not suggest which further information could assist the Trial Panel or which additional conditions could be envisaged. The Panel recalls that the obligation for lower panels to inquire and evaluate, *proprio motu*, all reasonable conditions is not limitless.¹⁹⁹ In other words, there is no requirement for the lower panel to raise all possible conditions *proprio motu* if these were neither widely used in the context of interim release nor raised by the Parties.²⁰⁰ In the present case, the Appeals Panel does not see which kind of measures could be conducted [REDACTED] other than [REDACTED], or which additional questions could be asked to the Kosovo Police that would address the identified risk. The Panel recalls in that respect that even if there were a legal basis [REDACTED], such a measure would be unrealistic both in terms of the resources required to [REDACTED] and in terms of the scope of [REDACTED].²⁰¹

91. Turning to the risk associated with the possible leak of confidential witness-related information during visits with Veseli, the Appeals Panel notes that the Trial

¹⁹⁷ Impugned Decision, para. 51.

¹⁹⁸ Impugned Decision, para. 51.

¹⁹⁹ See *Krasniqi* Third Appeal Decision on Detention, para. 42, where the Court of Appeals Panel found that the Pre-Trial Judge's enquiry as to which measures could be reasonable shall be guided by the circumstances of each case and there is no requirement for the Pre-Trial Judge to consider *proprio motu* all possible conditions if these were, for example, not commonly ordered in the context of an interim release due to, *inter alia*, their complexity and requisite resources. The Court of Appeals Panel further found that the Pre-Trial Judge was required to request further information "only if the observations received were insufficient to enable him to make an informed decision". See *Krasniqi* Third Appeal Decision on Detention, para. 42.

²⁰⁰ Third Appeal Decision on Detention, para. 42.

²⁰¹ Third Appeal Decision on Detention, para. 36. The Panel further notes that the Court of Appeals Panel found that in the circumstances of [REDACTED]. See IA020/F00005/RED, Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Periodic Review of Detention, 2 August 2022 (confidential version filed on 2 August 2022), para. 33.

Panel found the assurances provided by the Kosovo Police to be insufficient to mitigate the risk, but not on the ground that the information provided by the Kosovo Police was itself lacking.²⁰² The Trial Panel rather found that because “[REDACTED]”, it would be [REDACTED].²⁰³ The Panel recalls that it has rejected Veseli’s arguments in this respect,²⁰⁴ and fails to see what information the Kosovo Police could provide [REDACTED]. As recalled above, the obligation for lower panels to inquire and evaluate, *proprio motu*, all reasonable conditions is not limitless.²⁰⁵

92. In light of the foregoing, the Panel considers that it was not unreasonable for the Trial Panel: (i) to base its decision on the information provided by the Kosovo Police to the Defence, as well as in response to the specific questions asked by the Pre-Trial Judge; (ii) to consider that the Kosovo Police have had ample opportunity to provide the required information; and (iii) to find that any further additional information would not assist the Trial Panel any further in relation to this matter.²⁰⁶ Contrary to Veseli’s arguments, the Trial Panel did not act unreasonably by choosing not to exercise its discretion to pose further clarifying questions to the Kosovo Police in advance of issuing the Impugned Decision. Therefore, the Panel dismisses Ground 4 of Veseli’s Appeal.

93. In conclusion, having dismissed Grounds 2, 3 and 4 of Veseli’s Appeal, the Appeals Panel finds that Veseli has failed to demonstrate that the Trial Panel erred in finding that, at this juncture, the identified risks could not be mitigated by the Proposed Conditions or any additional conditions.²⁰⁷

²⁰² Impugned Decision, para. 52.

²⁰³ Impugned Decision, para. 52.

²⁰⁴ See above, para. 82.

²⁰⁵ See above, paras 53, 90.

²⁰⁶ Impugned Decision, para. 54. See also Impugned Decision, paras 50-53.

²⁰⁷ Impugned Decision, paras 53, 62. Contra Appeal, paras 16, 46.

C. WHETHER THE TRIAL PANEL ERRED IN LAW IN FINDING THAT VESELI'S CONTINUED DETENTION WAS NOT DISPROPORTIONATE

1. Submissions of the Parties

94. Recalling the ECtHR and the Court of Appeals Chamber's jurisprudence on the principle of proportionality, Veseli submits that the Trial Panel erred in law in finding that his continued detention was not disproportionate.²⁰⁸

95. First, Veseli argues that the Trial Panel erred by disregarding the decision issued by the Single Judge in the *Kilaj* case, in which the Single Judge recognised that even though all risk factors were established, it would nonetheless be unreasonable to continue to detain Mr Isni Kilaj ("Kilaj"), given the nature of the sentence for the crimes with which he would likely be charged.²⁰⁹ In Veseli's view, the Trial Panel's reliance on the absence of a confirmed indictment in the *Kilaj* case to reject Veseli's argument, is irrelevant as the confirmation of an indictment was expected and Kilaj's continued detention would have been lawful under the legal framework – if it had been found compatible with the principle of proportionality.²¹⁰

96. Second, Veseli argues that contrary to the Trial Panel's finding, what is "speculative" is not the Defence's submission that "the rendering of the trial judgment is more than one year away" but rather the Trial Panel's suggestion that it could occur "in any less time than one year".²¹¹

²⁰⁸ Appeal, paras 47-49, 55. See also Appeal, paras 50-54.

²⁰⁹ Appeal, para. 51, referring to KSC-BC-2018-01, F00658/COR/RED, Public Redacted Version of Corrected Version of Decision on Review of Detention of Isni Kilaj, 15 May 2024 (corrected confidential version filed on 15 May 2024, uncorrected confidential version filed on 3 May 2024) ("*Kilaj* Release Decision"), para. 62.

²¹⁰ Appeal, para. 51.

²¹¹ Appeal, para. 52.

97. Third, Veseli claims that the Trial Panel failed to give any credible weight to the time he served in detention in its assessment to reject his request for provisional release.²¹²

98. Fourth, Veseli contends that the review of detention has devolved into a procedure where the burden has impermissibly shifted to Veseli to demonstrate why he should be provisionally released, in violation of ECtHR jurisprudence.²¹³

99. The SPO responds that Veseli's submissions ignore the weight of ECtHR and international jurisprudence which holds that in complex and voluminous cases such as the present proceedings, detention on remand for periods of four to five years is not considered to be disproportionate or unreasonable.²¹⁴

100. The SPO further submits that the Trial Panel correctly held that reliance on the *Kilaj* precedent is "misplaced and entirely distinguishable" to Veseli's situation, given that: (i) *Kilaj* was released pursuant to Rule 56(2) of the Rules due to undue delay prior to the opening of trial; (ii) "no express equivalent regime" exists for the trial phase; (iii) the SPO met the Trial Panel's target date for the completion of its case; and (iv) the nature of the charges against *Kilaj* and potential sentence he could face are different to the present case.²¹⁵

101. The SPO concludes that the Trial Panel reasonably found Veseli's continued detention to be proportionate, having correctly assessed all relevant factors.²¹⁶ The

²¹² Appeal, para. 53.

²¹³ Appeal, para. 54. See also Appeal, para. 2.

²¹⁴ Response, paras 37-39.

²¹⁵ Response, para. 40.

²¹⁶ Response, paras 41-42. Among the relevant factors considered by the Trial Panel, the SPO mentions the complexity of the case, the nature of the charges, the potential lengthy sentence Veseli could face if convicted, and the fact that the risks of obstruction and committing further crimes cannot be mitigated by any reasonable conditions. See Response, para. 41.

SPO adds that, by contrast, speculating on how long the proceedings will last post-Rule 130 litigation cannot assist the panels in their assessment.²¹⁷

102. Veseli replies that, while the SPO attempts to make a distinction with the *Kilaj* case based on the delay in that case, in the present case there was a two-year delay between the SPO's projected start of trial and its actual start.²¹⁸ Furthermore, Veseli argues that the ECtHR cases cited by the SPO are inapposite as detention was justified by a risk of flight, while the Trial Panel never found Veseli to be a flight risk.²¹⁹

2. Assessment of the Court of Appeals Panel

103. At the outset, the Appeals Panel recalls that a panel has a general obligation to ensure that the time spent in detention is reasonable, in accordance with Article 29(2) of the Constitution and Article 5(3) of the European Convention on Human Rights.²²⁰ As clarified by the Specialist Chamber of the Constitutional Court, "the period to be taken into consideration begins on the day the accused is taken into custody and ends when he or she is released or the charge is determined, even if only by a panel of first instance".²²¹

104. The Appeals Panel further recalls that panels must apply a proportionality test when conducting a review of the reasonableness of a person's detention. Namely, they must consider whether a person's detention on remand is strictly necessary to mitigate the risks of flight, obstruction or commission of further crimes under Article 41(6)(b) of the Law or whether other, less stringent, measures could be sufficient for that purpose.²²² The Panel notes that the Trial Panel correctly recalled that the

²¹⁷ Response, para. 41.

²¹⁸ Reply, para. 11.

²¹⁹ Reply, para. 12.

²²⁰ See Constitutional Court Judgment on Referral of Amendments to the Rules, para. 63. Rule 56(2) of the Rules provides that the Pre-Trial Judge "shall ensure that a person is not detained for an unreasonable period *prior to the opening of the case*" (emphasis in original).

²²¹ Constitutional Court Judgment on Referral of Amendments to the Rules, para. 62.

²²² *Kilaj* Appeal Decision on Release, para. 18.

reasonableness of an accused person's continued detention cannot be assessed in the abstract but must be assessed on the facts of each case and according to its special features.²²³ The length of time spent in detention pending and during trial is a factor that needs to be considered along with the risks described in Article 41(6)(b) of the Law, to determine whether, all factors being considered, the continued detention "stops being reasonable" and the individual needs to be released.²²⁴

105. The Panel first turns to Veseli's arguments with respect to the *Kilaj* precedent. The Panel agrees with the Defence in that the Single Judge's and the Court of Appeals Chamber's decisions in the *Kilaj* case indeed provide guidance with respect to the proportionality of detention.²²⁵ However, the Panel considers that Veseli's comparison of the present case with the facts of the *Kilaj* case and the Single Judge's reasoning leading to Kilaj's release is misplaced. As correctly found by the Trial Panel, the circumstances of Kilaj's release are entirely distinguishable from Veseli's situation.²²⁶

106. The Panel recalls that in the *Kilaj* case, the Single Judge found Kilaj's continued pre-trial detention to be unreasonable, having considered the following factors: (i) at the time when he was released, Kilaj was still a suspect against whom no charges had been confirmed yet; (ii) he had been detained for nearly six months while the legal

²²³ Impugned Decision, para. 59. See also Third Appeal Decision on Detention, para. 61; ECtHR, *Buzadji v. The Republic of Moldova*, no. 23755/07, Judgment, 5 July 2016 ("*Buzadji Judgment*"), para. 90; ECtHR, *Wemhoff v. Germany*, no. 2122/64, Judgment, 27 June 1968, para. 10 (p. 20). As mentioned by the Defence, the ECtHR also found that "[c]ontinued detention can be justified in a given case only if there are actual indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention". See Appeal, para. 48, referring to *Buzadji Judgment*, para. 90.

²²⁴ See Third Appeal Decision on Detention, para. 61. See also *Selimi* First Appeal Decision on Detention, para. 79. See ICC, *Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/15-992-Red, Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 10 March 2017 entitled "Decision on Mr Gbagbo's Detention", 19 July 2017, para. 76, referring to ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-969, Judgment on the appeals against Pre-Trial Chamber II's decisions regarding interim release in relation to Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu, and Narcisse Arido and order for reclassification, 29 May 2015, para. 45.

²²⁵ Appeal, para. 50. See *Kilaj* Appeal Decision on Release, paras 17-22.

²²⁶ Impugned Decision, para. 61.

framework only foresees the possibility of detaining a suspect prior to the filing of an indictment or its confirmation for a period up to one year pursuant to Rule 57(1) of the Rules; (iii) the offences for which Kilaj was considered a suspect carried a penalty between one and five years; and, most importantly, (iv) the SPO substantially delayed the timeline of the proceedings by *inter alia* requesting a suspension of the Pre-Trial Judge's assessment of the indictment filed in Case 12 and indicating its intention to submit an amended indictment.²²⁷

107. By contrast, the Panel notes that in the present case, the Trial Panel correctly considered the following factors to reach his conclusion that the time Veseli spent in detention thus far was not unreasonable: (i) Veseli is charged with ten counts of serious international crimes in which he is alleged to have played a significant role; (ii) if convicted, Veseli's sentence could be lengthy; (iii) the risks under Article 41(6)(b)(ii) and (iii) of the Law could not be mitigated by any conditions; (iv) the case against Veseli is complex; and (v) the trial is underway, demonstrating a reasonable progression of the proceedings.²²⁸ Regarding this last point, the Panel notes that while Veseli argues that there had also been a delay in Case 06 between the SPO's projected start date for trial and the actual start date, he does not argue nor attempt to demonstrate that the SPO failed to display special diligence in the proceedings.²²⁹ The Panel notes that, in fact, the SPO met the Trial Panel's target date for the completion of its case.²³⁰

²²⁷ *Kilaj* Release Decision, paras 62-65. See also *Kilaj* Appeal Decision on Release, para. 22.

²²⁸ Impugned Decision, para. 59, referring to Twenty-First Detention Review Decision, para. 36. See also Impugned Decision, para. 61.

²²⁹ See Reply, para. 11. According to the ECtHR jurisprudence, a panel must also ascertain whether "special diligence" in the conduct of the proceedings has been displayed. See *Kilaj* Appeal Decision on Release, para. 19, referring to ECtHR, *Chraidi v. Germany*, no. 65655/01, Judgment, 26 October 2006, para. 36; ECtHR, *Labita v. Italy*, no. 26772/95, Judgment, 6 April 2000, para. 153.

²³⁰ Transcript, 15 February 2023, p. 2039, lines 12-16; SPO Notice on Completion of its Case. The Panel notes that the last SPO live witness was heard on 27 March 2025. See Transcript, 27 March 2025.

108. As a result, the Panel finds that Veseli has failed to demonstrate that the Trial Panel erred in disregarding his comparison with the *Kilaj* precedent.

109. The Panel turns next to Veseli's challenge to the Trial Panel finding speculative his estimation that the rendering of the trial judgment was more than one year away.²³¹ The Panel observes that Veseli fails to demonstrate how estimating the future overall length of the trial proceedings could assist the competent panels in their assessment at the present time of the proportionality of detention, especially in light of the periodic review of the necessity of continued detention at the Specialist Chambers.²³² The Panel thus dismisses Veseli's argument in this respect.

110. Turning to Veseli's argument on the weight given to the time he spent in detention, the Panel observes that the Trial Panel did not explain how it analysed this factor in the context of its assessment of the reasonableness of detention. The Trial Panel however took note of Veseli's submission that he has been in detention within the Detention Facilities for four and a half years²³³ and pointed out that "the time served by Mr Veseli in detention is only one factor, to be weighed against all other circumstances of the case",²³⁴ as acknowledged by Veseli.²³⁵ The Panel recalls that while a panel must provide reasoning in support of its findings on the substantive considerations relevant for a decision, it is not required to articulate every step of its reasoning and to discuss each submission.²³⁶ In the present case, the Panel does not consider that the Trial Panel failed to consider or give proper weight to this factor, nor that the decision is lacking in reasoning. The Appeals Panel further observes that in previous decisions, the Trial Panel consistently noted that Veseli had already been in

²³¹ See Impugned Decision, para. 61; Appeal, para. 52.

²³² See similarly, First Appeal Decision on Detention, para. 59. See also Rule 57(2) of the Rules; Article 41(10) of the Law.

²³³ Impugned Decision, para. 57, referring to Provisional Release Request, para. 4.

²³⁴ Impugned Decision, para. 61.

²³⁵ See Appeal, para. 53.

²³⁶ See e.g. First Appeal Decision on Detention, para. 72; *Kilaj* Appeal Decision on Release, para. 51.

detention for a significant period of time, that the trial was lengthy, and that the Trial Panel would ensure that the trial proceeds as expeditiously as possible and would continue to monitor at every stage in these proceedings whether continued detention was necessary and reasonable.²³⁷ The Panel rejects Veseli's arguments accordingly.

111. As regards Veseli's claim that the Trial Panel shifted the burden of proof, the Panel recalls that, as a general principle, the SPO carries the burden of establishing that detention is necessary and that its length remains reasonable,²³⁸ and it is not incumbent upon the detained person to demonstrate the existence of reasons warranting his or her release.²³⁹ That being said, the Panel is also mindful that, in the context of the impugned detention review, triggered by the Accused's request for provisional release based on a change in circumstances, the review by the lower panel is more limited in scope and focuses on whether there exists new relevant factors or a change in circumstances warranting reconsideration of the previous ruling on detention.²⁴⁰

112. In the present case, the Panel is not persuaded by Veseli's general and unsubstantiated argument that the burden of proof had shifted. Having found no error in the Trial Panel's assessment of the risks under Article 41(6)(b) of the Law and of the conditions of release, the Panel finds that Veseli has failed to establish that the Trial Panel erred in concluding that Veseli's detention continues to be necessary and reasonable.²⁴¹

²³⁷ See, for example, Twenty-First Detention Review Decision, para. 38; F02925, Decision on Periodic Review of Detention of Kadri Veseli, 13 February 2025, para. 36; F02780, Decision on Periodic Review of Detention of Kadri Veseli, 13 December 2024, para. 36.

²³⁸ *Kilaj* Appeal Decision on Release, para. 18. See also Constitutional Court Judgment on Referral of Rules of 26 April 2017, para. 115.

²³⁹ *Kilaj* Appeal Decision on Release, para. 29.

²⁴⁰ See above, para. 17.

²⁴¹ Impugned Decision, para. 62.

V. DISPOSITION

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

DENIES the Appeal in its entirety;

ORDERS the Defence and the SPO to submit public redacted versions of the Appeal, Response and Reply or to indicate, through a filing, whether they can be reclassified as public, within ten days of receiving notification of the present Decision; and

INSTRUCTS the Registry to execute the reclassification as public of the Appeal, Response and Reply upon indication by the Defence and SPO, if any, that they can be reclassified.



**Judge Michèle Picard,
Presiding Judge**

Dated this Wednesday, 13 August 2025

At The Hague, the Netherlands