



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 16 December 2020

Language: English

Classification: Public

**Decision on the Conduct of Detention Review and Varying the Deadline for
Preliminary Motions**

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 41(10) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 9(5), 57(2), 95(2)(d) and 97(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. Between 9 and 11 November 2020, initial appearances pursuant to Rule 92 of the Rules were held for Jakup Krasniqi ("Mr Krasniqi"),² Hashim Thaçi ("Mr Thaçi"),³ Kadri Veseli ("Mr Veseli"),⁴ and Rexhep Selimi ("Mr Selimi") (individually and collectively "Accused").⁵

2. On 18 November 2020, the first status conference pursuant to Rule 96(1) of the Rules took place.⁶

3. On 4 December 2020, the Defence for Mr Thaçi filed a request for interim release, including a request for an oral hearing on this matter ("Mr Thaçi Release Request").⁷

4. On 7 December 2020, the Defence for Mr Krasniqi and the Defence for Mr Selimi filed two requests for interim release, including requests for oral hearings on this matter and to shorten the time limits for responses and replies ("Mr Krasniqi Release Request" and "Mr Selimi Release Request").⁸

¹ KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

² KSC-BC-2020-06, Transcript of Hearing (Mr Krasniqi), 9 November 2020, public.

³ KSC-BC-2020-06, Transcript of Hearing (Mr Thaçi), 9 November 2020, public.

⁴ KSC-BC-2020-06, Transcript of Hearing (Mr Veseli), 10 November 2020, public.

⁵ KSC-BC-2020-06, Transcript of Hearing (Mr Selimi), 11 November 2020, public.

⁶ KSC-BC-2020-06, Transcript of Hearing, 18 November 2020 ("18 November 2020 Transcript"), public.

⁷ KSC-BC-2020-06, F00120/RED, Defence for Mr Thaçi, *Application for Interim Release on Behalf of Mr Hashim Thaçi*, 4 December 2020, public.

⁸ KSC-BC-2020-06, F00122, Defence for Mr Krasniqi, *Application for Interim Release*, 7 December 2020, confidential, with Annexes 1-2, confidential, and Annex 3, public; F00124/RED, Defence for Mr Selimi, *Defence Application for Interim Release*, 7 December 2020, public, with Annexes 1-3, public.

5. On 14 December 2020, the Defence of the Accused filed a joint request for variation of the time limit for submission of preliminary motions under Rule 97(1) of the Rules (“Joint Defence Request for Variation of Time Limits”).⁹
6. On 15 December 2020, as previously requested by the Pre-Trial Judge,¹⁰ the Defence for Mr Veseli filed its observations for the second status conference (“Mr Veseli Observations on Status Conference”),¹¹ scheduled to take place on 17 December 2020.¹² The Defence for Mr Veseli informs that it will file a request for provisional release ahead of the second status conference and suggests a timeline for related submissions by the Parties.¹³
7. On 15 December 2020, the Defence for Mr Thaçi filed its observations for the second status conference, in which they reiterate their request for an oral hearing on the continued detention or release of Mr Thaçi.¹⁴
8. On 16 December 2020, the Specialist Prosecutor Office (“SPO”) filed its response to the Joint Defence Request for Variation of Time Limits, in which the SPO does not oppose a two-week extension of the prescribed 30-day time limit from disclosure of Rule 102(1)(a) material, for filing preliminary motions.¹⁵
9. On 16 December 2020, the SPO filed its response to Mr Thaçi Release Request, in which the SPO, *inter alia*, opposes the Defence requests for oral hearings on

⁹ KSC-BC-2020-06, F00137, Defence for Mr Thaçi, Mr Veseli, Mr Selimi, and Mr Krasniqi, *Joint Defence Request for Variation of the Time Limit for Preliminary Motions Submissions*, 14 December 2020, public.

¹⁰ KSC-BC-2020-06, F00130, Pre-Trial Judge, *Order Setting the Date for a Second Status Conference and for Submissions*, 8 October 2020, public (“Scheduling Order”), para. 19(c).

¹¹ KSC-BC-2020-06, F00145, Defence for Mr Veseli, *Submissions of the Defence for Kadri Veseli – Status Conference*, 17 December 2020, 15 December 2020, public.

¹² Scheduling Order, para. 19(a).

¹³ Mr Veseli’s Observations on Status Conference, paras 6-7.

¹⁴ KSC-BC-2020-06, F00143, Defence for Mr Thaçi, *Defence for Mr Thaçi – Submissions for second Status Conference*, 15 December 2020, public, para. 20.

¹⁵ KSC-BC-2020-06, F00147, Specialist Prosecutor, *Prosecution Response to Joint Defence Request for Variation of Time Limit*, 16 December 2020, public.

detention on the basis that written submissions by the Parties, including possible replies by the Defence, are sufficient for the Pre-Trial Judge to take a decision.¹⁶

II. APPLICABLE LAW

10. Pursuant to Article 41(10) of the Law, until a judgment is final or until release, upon the expiry of two months from the last ruling on detention, the Pre-Trial Judge seized with the case shall examine whether reasons for detention still exist and render a ruling by which detention is extended or terminated.

11. Pursuant to Rule 57(2) of the Rules, after the assignment of a Pre-Trial Judge and until a judgment is final, the Panel seized with a case shall review a decision on detention upon the expiry of two 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.

12. Pursuant to Rule 75(2) of the Rules, as a general principle and at the discretion of the Panel, decisions on routine matters or matters of no or limited complexity shall be rendered orally, and shall be complemented by written reasons where necessary.

13. Pursuant to Rule 75(3) of the Rules, unless otherwise ordered or provided in the Rules, written submissions by the Parties during the course of proceedings shall not be supplemented by oral arguments.

14. Pursuant to Rule 95(2)(d) of the Rules, the Pre-Trial Judge shall hold any hearings if it is necessary to ensure fair and expeditious proceedings.

15. Pursuant to Rule 97(2) of the Rules, the Accused may lodge preliminary motions in writing within thirty days from the disclosure of all material and statements

¹⁶ KSC-BC-2020-06, F00149, Specialist Prosecutor, *Prosecution Response to Application for Interim Release on Behalf of Mr Hashim Thaçi*, 16 December 2020, public.

referred to in Rule 102(1)(a) of the Rules.

16. Pursuant to Rule 9(5) of the Rules, the Pre-Trial Judge may, *proprio motu* or upon showing good cause, extend or reduce any time limit prescribed by the Rules or set by the Pre-Trial Judge.

III. DISCUSSION

A. REVIEW OF DETENTION

1. Requests for Oral Hearing

17. The Defence of all Accused request the Pre-Trial Judge to schedule a hearing to allow the Parties to make submissions on whether reasons for the continued detention of the Accused still exist or whether release should be ordered, with or without conditions.¹⁷ The Defence submit that a hearing for each Accused will allow the Parties to elaborate properly on an important matter such as continued detention or release, to respond to outstanding issues and answer questions from the Pre-Trial Judge.¹⁸

18. The Pre-Trial Judge notes that, within the legal framework of the Specialist Chambers, certain hearings are strictly necessary given the nature of the issues to be addressed, such as initial appearances¹⁹ of suspects and Accused or status conferences concerning disclosure of evidence.²⁰ In other instances, the Rules leave the holding of a hearing at the discretion of the Pre-Trial Judge, particularly if it is necessary to ensure fair and expeditious proceedings, as stipulated by Rule 95(2)(d) of the Rules.

19. In this case, the Pre-Trial Judge notes the extensive and exhaustive written submissions of the Defence on the matter, which will be further evaluated in light of

¹⁷ Mr Thaçi Release Request, para. 70; Mr Selimi Release Request, para. 49; Mr Krasniqi Release Request, para. 53; Mr Veseli Observations on Status Conference, para. 7.

¹⁸ Mr Thaçi Release Request, paras 70-71; Mr Veseli's Submissions on Status Conference, para. 7; Mr Selimi Release Request, paras 49, 51(c); Mr Krasniqi Release Request, paras 53-54(c).

¹⁹ Article 41(5) of the Law; Rule 92 of the Rules.

²⁰ Rule 96 of the Rules.

the SPO's response(s). Moreover, the Defence will also have the possibility to submit replies to the SPO's response(s), in order to further clarify their respective individual positions. In light of the sufficiency of the information to be received, deciding on each Defence's request for release on the basis of written submissions only will not, in this case, prejudice the rights of the Accused and the fairness and expeditiousness of these proceedings. Therefore, the Pre-Trial Judge considers that receiving oral submissions on the continued detention or release of the Accused is not necessary.

2. Requests for Expedited Timetable for Responses and Replies

20. The Defence for Mr Selimi and the Defence for Mr Krasniqi request an expedited timetable for responses and replies in order to exhaust the written litigation before the respective oral hearing, as requested, and also before the judicial recess begins.²¹

21. The Pre-Trial Judge notes that the Defence's requests in this respect are connected to their request for a hearing. Having found that the latter is unnecessary in this case, the Pre-Trial Judge considers that an expedited timetable for responses and replies is no longer warranted. As the proceedings concerning review of detention of the Accused will be conducted entirely in writing, and the SPO has to respond to filings of all four Accused, the full amount of days as provided for in Rule 76 of the Rules is necessary to provide the Parties with an opportunity to properly elaborate on their respective views.

3. Mr Veseli's Request for Extended Timetable for Responses and Replies

22. The Pre-Trial Judge notes that Mr Veseli has been in detention since his arrest on 5 November 2020. In accordance with Article 41(10) of the Law and Rule 57(2) of the Rules, the first review of his detention must occur upon the expiry of two months since

²¹ Mr Selimi Release Request, para. 50; Mr Krasniqi Release Request, para. 52.

the enforcement of the last ruling on detention, namely the warrant of arrest for Mr Veseli. The deadline for such review is therefore Tuesday, 5 January 2021.

23. The Pre-Trial Judge notes the timetable suggested by the Defence for Mr Veseli, according to which the SPO should file its response to Mr Veseli's forthcoming request for provisional release by Thursday, 31 December 2020; while the reply of the Defence for Mr Veseli should be filed by Monday, 11 January 2021.²² As such, the proposed timetable would go beyond the expiry of the two-month deadline stipulated in Article 41(10) of the Law and Rule 57(2) of the Rules.

24. Nevertheless, the Pre-Trial Judge considers that, as a matter of fairness, the Parties need the full time provided for in Rule 76 of the Rules to make their submissions, as also reflected in the proposed timetable of the Defence for Mr Veseli, which goes beyond the standard time limits for responses (10 days) and replies (5 days) under Rule 76 of the Rules. At the same time, applying Rule 76 time limits would cause excessive pressure on the Parties during the imminent winter recess.

25. In light of the timetable suggested by the Defence for Mr Veseli, the Pre-Trial Judge considers that the Accused intends to waive, in this instance, his right to have the detention reviewed within the two-month deadline stipulated in Article 41(10) of the Law and Rule 57(2) of the Rules.

26. Therefore, provided that Mr Veseli's request is filed on 17 December 2020, the Pre-Trial Judge considers it appropriate that the SPO file its response to the forthcoming request for provisional release by the Defence for Mr Veseli by Monday, 4 January 2021, and that the Defence file its reply by Monday, 11 January 2021. After hearing from the Parties, Pre-Trial Judge shall take a decision on the continued detention or release of the Accused as soon as possible.

²² Mr Veseli's Submissions on Status Conference, para. 7.

4. Public Redacted Version of Mr Krasniqi Release Request

27. The Pre-Trial Judge notes that the Defence for Mr Krasniqi has submitted its request for release only in confidential version. With a view to upholding the principle of publicity, the Defence for Mr Krasniqi shall submit a public redacted version of its request by Friday, 18 December 2020.

B. PRELIMINARY MOTIONS

28. The Defence of the Accused jointly request that the deadline for submission of preliminary motions within the meaning of Rule 97 of the Rules be extended to 10 February 2021.²³ The Defence submit that good cause exists for the requested extension, given the number of Accused in this case, the scope of the charges, the volume of evidence recently disclosed and the constraints created by the COVID-19 pandemic that affect consultations with the Accused.²⁴

29. The Pre-Trial Judge recalls that the current deadline for filing preliminary motions is 11 January 2021, pursuant to Rule 97(2) of the Rules. The Pre-Trial Judge observes that the Defence received, between 10 and 15 December 2020, an extensive amount of evidence under Rules 102(1)(a) and 103 of the Rules, which effectively marks the beginning of disclosure of evidence in this case. The Pre-Trial Judge acknowledges the time needed to analyse the voluminous evidence disclosed and discuss it with the Accused, including during the upcoming winter recess, as well as the constraints created by the COVID-19 pandemic for the work of the Defence. Therefore, the Pre-Trial Judge finds that good cause exists, pursuant to Rule 9(5) of the Rules, to extend the deadline for submission of preliminary motions within the meaning of Rule 97 of the Rules to Wednesday, 10 February 2021.

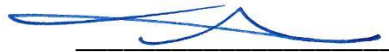
²³ Joint Defence Request for Variation of Time Limits, para. 11.

²⁴ Joint Defence Request for Variation of Time Limits, paras 6, 10.

IV. DISPOSITION

30. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a) **REJECTS** the Defence's requests for oral hearings on the continued detention or release of the Accused;
- b) **REJECTS** the requests by the Defence for Mr Selimi and the Defence for Mr Krasniqi for an expedited timetable for responses and replies on the continued detention or release of the Accused;
- c) **REQUESTS** the SPO to file its response to the forthcoming request for release by the Defence for Mr Veseli by **Monday, 4 January 2021**;
- d) **REQUESTS** the Defence for Mr Veseli to file its reply by **Monday, 11 January 2021**;
- e) **ORDERS** the Defence for Mr Krasniqi to file a public redacted version of document F00122 and its annexes, as the case may be, by **Friday, 18 December 2020**; and
- f) **GRANTS** the joint Defence request for variation of the time limit to submit preliminary motions and **REQUESTS** the Defence to submit any preliminary motions, if they so wish, within the meaning of Rule 97(1) of the Rules by **Wednesday, 10 February 2021**.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Wednesday, 16 December 2020
At The Hague, the Netherlands.