In:	**KSC-BC-2020-06** **Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi**
Before:	**Pre-Trial Judge** Judge Nicolas Guillou
Registrar:	Dr Fidelma Donlon
Filing Participant:	Counsel for Kadri Veseli
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Application for Interim Release of Kadri Veseli
With Annexes 1 to 7

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I. ARGUMENTS

1. The Defence for Mr. Kadri Veseli files this motion for his provisional release pursuant to Article 41(2) and (5) of the Law and Rules 48 and 75(1) of the Rules of Procedure and Evidence.

2. The Kosovar Constitution ("Constitution"), the Law,[1] and the applicable international human rights instruments,[2] unequivocally provide that liberty pending trial remains the statutory presumption (unlike at the ICTY),[3] and that any of the possible measures restricting the liberty of the accused are to be regarded as exceptional. Given the presumption of innocence, pre-trial detention, is to be regarded as a last resort, which is only appropriate when no other mitigating measures are capable of effectively managing an identifiable risk that the Court finds would be posed by the provisional release of the accused pending trial.

3. In the present case, the threshold which the Specialist Prosecutor ("SPO") must establish is "articulable grounds" to believe that the Defendant is (a) a flight risk, (b) that he would interfere with the administration of justice or (c) that he would repeat his alleged offences or commit further crimes.[4]

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[1] Article 41(1) and (5) of the Law.
[2] Including, but not limited to, the European Convention on Human Rights and Fundamental Freedoms ("ECHR") and the International Covenant on Civil and Political Rights ("ICCPR").
[3] ICTY, Prosecutor v. Ramush Haradinaj *et al*, Case No. IT-04-84-PT, Pre-Trial Chamber, *Decision on Ramush Haradinaj's Motion for Provisional Release*, 6 June 2005, para. 21. ('The burden of proof is upon the Accused to satisfy the Chamber that, if released, he will appear for trial and will not pose any danger to victims, witnesses or any other persons').
[4] Article 41 (6) of the Law: The Specialist Chambers of the SPO shall order the arrest and detention of a person only when: there is a grounded suspicion that he or she has committed a crime within the jurisdiction of the Specialist Chambers; and there are articulable grounds to believe that (i) there is a risk of flight, (ii) he or she will destroy, hide, change or forge evidence of a crime or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses, victims or accomplices; or (iii) the seriousness of the crime, or the manner or circumstances in which it was committed and his or her personal characteristics, past conduct, the environment and conditions in which he or she lives or other personal circumstances indicate a risk that he or she will repeat the criminal offence, complete an attempted crime or commit a crime

4. The SPO's objections to provisional release are entirely unfounded. There is no basis for inferring that Mr. Veseli would pose a flight risk. All of the evidence points firmly in the opposite direction. Similarly, there is no articulable ground for concluding that Mr. Veseli would interfere with witnesses or obstruct the course of justice. The general evidence about witness security in Kosovo does not implicate Mr. Veseli in any way; and the specific concerns identified by the SPO in relation to Mr. Veseli have all been investigated and are devoid of substance. There is no separate basis for alleging a risk of further offences. On analysis, each of the SPO's particularised objections is conclusively shown below to have no merit. Taken individually or cumulatively, the SPO's arguments fall very far short of the "articulable grounds" standard necessary to justify the continued pre-trial detention of Mr. Veseli.

5. Moreover, even if the Pre-Trial Judge were to consider that such articulable grounds exist, pre-trial detention would be disproportionate, having regard to the Pre-Trial Judge's power to make provisional release conditional,[5] and the likely duration of the period between his first appearance and the effective start of the trial.

a) Mr. Veseli poses no articulable flight risk

6. Mr. Veseli is not a flight risk. Throughout this process, his attitude and his behaviour before the Court have been exemplary:

- Mr Veseli was named in the Dick Marty report and has therefore been aware that he was in jeopardy from the very outset. Despite this, he actively supported the establishment of the KSC in 2015. When the original legislation setting up the KSC was put before Parliament in 2015, the official record

which he or she has threatened to commit.
[5] Article 41 (2) of the Law.

shows that Mr. Veseli took the position that a vote against establishing the KSC "will only damage the whole country" and made clear his intention to vote in favour.[6] During a subsequent debate on the legislation, in August 2015, he publicly stated that the deputies should "not to make a mistake of voting against" the establishment of the KSC.[7]

- Ever since then, Mr. Veseli has used his public position to encourage participation and cooperation with the KSC and the SPO. For example, in an interview on 4 May 2016, he observed that although the establishment of the KSC was a painful decision for the Kosovo Assembly to have to take, it was a necessary one because Kosovo's international partners considered that "accusations against some KLA fighters are becoming obstacles in the development of the country". This was the reason, he said, "why we accepted and will move forward" with the KSC. He emphasised that Kosovo's fight for liberation was just, but noted "[a]t the same time, if there is something that is related to individual mistakes, there is still the willingness, I believe, of every fighter to answer such questions and to put right and justice in place".[8]

- He voluntarily attended an interview with the SPO in The Hague when summoned on 19 December 2019.[9] He was fully aware at that stage that he was in increased jeopardy, but it has been his consistent position that those called upon by the KSC should voluntarily comply.

[6] Official transcript, 26 June 2015, p. 72
[7] Official transcript, 3 August 2015, pp. 103 to 104.
[8] https://www.youtube.com/watch?v=o2KtIvV43Rw
[9] *Balkan Transitional Justice*, 7 November 2019, available at https://balkaninsight.com/2019/11/07/hague-prosecutors-summon-kosovo-parliament-speaker-kadri-veseli.

- On 23 June 2019, the SPO took the exceptional step of announcing that he had submitted an indictment for confirmation against Mr. Thaçi, Mr. Veseli and other unnamed individuals. Although the statement rightly emphasised that these were at that stage only accusations, and that the indictment had not been confirmed, the SPO emphasised that, in his view, there was sufficient evidence to secure a conviction. Thus, Mr. Veseli has known about the Indictment against him since 23 June 2020. The SPO publicly stated the number of counts, their legal characterisation and nature of the alleged crimes, together with the approximate number of known victims, and their affiliation or ethnicity.[10] If the SPO genuinely considered Mr. Veseli to pose a serious flight risk, he would not have made public the fact of the Indictment, months before it was confirmed. In doing so, the SPO created a situation in which Mr. Veseli would have a real opportunity, if was minded to flee, to do so without consequences, and/or to relocate in another jurisdiction from which he could not be extradited if it was his intention to escape justice. The very fact that the SPO chose to make this public statement is the clearest possible indication that Mr. Veseli was not considered to be a serious flight risk at that time.

- Prior to the confirmation of the Indictment, Mr. Veseli proactively contacted the SPO through his counsel, and offered to travel voluntarily to The Hague to surrender if the indictment were to be confirmed.[11] In a letter to the Specialist Prosecutor, dated 20 November 2020, which was before the Pre-Trial Judge at the time of the arrest warrant application, Specialist Counsel for Mr. Veseli stated:

[10] KSC-BC-2020-06, F00008, Specialist Prosecutor, *Urgent Request for Authorisation to Disclose Information Relating to the Indictment*, 23 June 2020, strictly confidential and *ex parte*.
[11] Annex 1 to the Notice of Communication, KSC-BC-2020-06/F00024/A01

"If the Indictment is (or already has been) confirmed against Mr. Veseli, in whole or in part, it will be necessary to make arrangements for his first appearance at the seat of the KSC in The Hague.

For this purpose, I am instructed to inform you that Mr. Veseli undertakes that if the Indictment is confirmed, he will travel voluntarily to The Hague in order to surrender to the KSC. In these circumstances, it is unnecessary for the Pre-Trial Judge to issue an order for his arrest because there is no evidence to justify an assessment that he will abscond or interfere with witnesses. In particular, Mr. Veseli is a recognisable public figure who lives with his young family in Pristina. He currently occupies a pubic political position, which effectively eliminates any risk of absconding.

Mr. Veseli has known since June 2020 that your office has filed an Indictment against him. The confirmation of that Indictment cannot significantly alter the evaluation of the risks that should determine whether arrest and detention in custody are necessary to ensure his attendance at court. Indeed, the very fact that you issued a statement publicly announcing the Indictment against Mr. Veseli before it had been confirmed is a clear indication that your office does not consider the fact that he is at liberty to pose a significant flight risk, or risk to witnesses.

Mr. Veseli has strong community ties in Pristina, and has every motivation to attend court in response to any Indictment that may be issued. He has no previous convictions for any criminal offences and has made an important contribution to public life in Kosovo. He publicly supported the setting up of the Kosovo Specialist Chambers, and looks forward to the opportunity to establish his innocence of the charges levelled against him.

Mr. Veseli further undertakes, through me, that if the Indictment is confirmed, he will not make any public statement between the time he is informed of the confirmation and the date of his first appearance in court. The question of conditions that may be imposed on his provisional release pending trial can then be considered by the court at the first hearing.

It is fundamental to the Law and Rules of the KSC that arrest and pre-trial detention are only to be ordered where they are strictly necessary to secure the attendance of the accused at trial and/or to prevent obstruction or interference with witnesses or an ongoing investigation. This is also an axiomatic requirement of article 5 of the European Convention on Human Rights, and creates a strong presumption against pre-trial arrest and detention. Resort to generalized allegations of risk is never sufficient to overcome that strong presumption. Detailed and evidence-based risk assessments are required.

A detailed risk assessment in the present case must take full account of the inherent unlikelihood that a man in Mr. Veseli's position would abscond. In the absence of direct and credible evidence implicating him personally in any improper interference with witness, there is no basis for depriving him of his liberty. Vague or generic concerns about witness protection in Kosovo that do not directly implicate Mr. Veseli are plainly insufficient."

- Following the confirmation of the Indictment,[12] Mr. Veseli voluntarily resigned from his position as the Chairman of the Kosovo Assembly and as the leader of the PDK and surrendered voluntarily to the SPO, in accordance with an agreement reached with his counsel.[13]

[12] Redacted Indictment, KSC-BC-2020-06/F00045/A02, 4 November 2020.
[13] *Kadri Veseli Indicted by the Special Court*, 5 November 2020, available in

- He was given notice the day before that his attendance was required following the confirmation of the Indictment. The SPO was right to trust him to comply with its request voluntarily. If he had intended to abscond following the confirmation of the Indictment, he had every opportunity to do so then.

- On 5 November 2020, the day he surrendered to the SPO, he issued the public statement, in which he re-iterated:

> *"I know that some people in Kosovo view the Specialist Chambers as an insult to our historic fight to protect the people of Kosovo from the ravages of the Milosevic regime. But I do not see it that way. I welcome the opportunity to finally answer the false allegations and rumours that have been circulating for many years. Ever since Dick Marty published his flawed report, it was inevitable that this day would come. It was inevitable that the unjust accusations he made would have to be tested in a court of law, so that they can finally be put to rest. That is why I supported the establishment of this tribunal, and it is why I am now ready to play my part in that process.*
>
> *More than twenty years have passed since the end of our war of liberation. Kosovo is now an independent State, and is well on its way towards admission to the United Nations. Since we aspire to be treated as an equal partner with other States, our political leaders must rise to that challenge, and behave as international Statesmen. When individual leaders are called upon to co-operate with an international tribunal, we must do so without hesitation. And if charges are made against us, they must be answered in the proper way, with evidence of the truth.*

https://prishtinainsight.com/kadri-veseli-indicted-by-the-special-court/.

> *I have every confidence in the objectivity and fairness of the judges, and I would ask that everyone in Kosovo should show due respect to their judicial authority at all times. The process is there to get at the truth. We have nothing to fear from the truth. (…)*
>
> *Personal sacrifices must sometimes be made for the greater good of the nation. Many of our people have already sacrificed a great deal. Far too many have made the ultimate sacrifice. The process that is beginning before the Specialist Chambers is the final step on our historic journey towards full Statehood. It should be welcomed as an opportunity to establish that we fought a just war against overwhelming odds, and that we did so honourably.*
>
> *If mistakes were made, then of course individuals should be held accountable for their actions. That is what the rule of law means to a new nation like ours*." [14]

7. The very fact that Mr. Veseli made such a statement publicly, addressed to all those who may consider themselves his supporters, or the supporters of the other accused, carries significant weight. Indeed, at his initial appearance, Mr. Veseli re-affirmed through a passage of his statement read into the record by his counsel[15] that the KSC should be allowed to perform their important task, and should be regarded as an indispensable step in Kosovo's journey to full Statehood.[16] In that context, he actively encouraged full cooperation with the organs of the KSC.

[14] Annex 3, Statement by Kadri Veseli, Pristina, 5 November 2020.
[15] KSC-BC-2020-06, Transcript, *Status Conference*, 18 November 2020.
[16] *Supra* footnote 14.

8. Thus, Mr. Veseli has publicly defended the KSC's mandate throughout the process,[17] even after the confirmation of the Indictment.[18] From his statements and conduct, there is no basis whatsoever to infer that he would abscond or fail to appear at trial if he is granted provisional release.

9. Finally, Mr. Veseli's family lives in Kosovo, an important community tie that renders it highly unlikely that he would abscond. His home is in Pristina with his wife Violeta (43) and four children. He has three boys - Klestor (aged 17); Lir (aged 13); and Yllor (aged 11); and one girl - Rrite (aged 9). His elderly parents also live in Kosovo.

10. He is willing to comply with any mitigating measures including, but not limited to, a condition not to engage in any public political activity, or to make any further public statements without the prior approval of the SPO or the Pre-Trial Judge (a condition that was imposed by the ICTY in similar circumstances);[19] house arrest at his family home in Pristina; surrender of travel documents; not to contact any potential witness, directly or indirectly; close monitoring including random unannounced home visits and searches, and/or regular daily checks by EULEX in Kosovo.

11. Given the responsible manner in which he managed his surrender, his public comments concerning co-operation with the Specialist Chambers, and his

[17] Kosovo Parliament Chairman: MPs Can't Stop Special Court, 8 January 2018, available at https://balkaninsight.com/2018/01/08/kosovo-parliament-chairman-special-court-can-t-be-stopped-01-08-2018/; Kadri Veseli on Special Court case, 8 January 2018, available at http://www.arbresh.info/eng/kadri-veseli-special-corte-case/; *Veseli on the Special (Court): We need to rise above the emotions, and act with State reason*, 15 June 2015, available on https://www.botasot.info/kosova/420726/veseli-per-specialen-te-ngrihemi-mbi-emocionet-te-veprojme-me-arsyen-shteterore; *Veseli and the veterans disagree on the Special (Court)*, 24 June 2015, available at https://www.arbresh.info/lajmet/veseli-e-veteranet-nuk-pajtohen-per-specialen/.
[18] *Supra* footnote 14.
[19] *Supra* footnote 3, para 53.6.

personal interest in being near his young family, and the availability of conditions on his release, it is clear that Mr. Veseli does not pose an identifiable or concrete flight risk.

b) No articulable risk of interference with the administration of justice

12. There are no grounds to conclude that, if released, Mr. Veseli would interfere in the administration of justice. To the contrary, as described above he has actively called on witnesses to participate in these proceedings, expressed his confidence in the fairness of the judges, and called on "everyone in Kosovo to respect the judicial authority of the Court." In the statement issued on the morning he surrendered, he publicly emphasised the fact that the KSC is performing an important role that the people of Kosovo asked it to perform; that it existed to serve the interests of justice; and that anyone asked to co-operate with the KSC should do so willingly.[20] He specifically called upon his supporters to ensure that there should be no attempts to interfere with witnesses or to obstruct the work of investigations of the SPO (see Annex 3):

> *"There must be no attempts whatsoever to undermine the work of the tribunal, or to obstruct or interfere in any way with due process. It must be allowed to get on with the important task we have entrusted to it. The integrity of the process must be respected at all times and by everyone. Justice does not just serve the interests of one side or the other. It serves the interests of the people. So, if you are asked to assist the Specialist Chambers, please do so without hesitating. That way, we will all get at the truth. I would therefore ask that all sections of our society respond to this situation calmly and with dignity, confident in the knowledge that the judges will deliver a just result at the end of the process.*

[20] *Supra* footnote 14.

> *Please remember at all times that this tribunal was set up by the Kosovo Parliament, acting on behalf of the people. It is the embodiment of the principle that there is no peace without justice and no justice without peace. Although it sits in The Hague, it is part of our own law. There should be no resentment directed towards the internationals who work at the tribunal. They are only doing what we, the people of Kosovo, have asked them to do. This tribunal is part of Kosovo's journey to Statehood, and we must see it through to the end."*

13. Mr. Veseli could hardly have made his position clearer to those who support him and/or the other accused. The very fact that he made this statement when he did is a factor that weighs heavily in his favour, since it stands as an active discouragement to those who might be tempted, out of a misplaced sense of loyalty, to interfere with the judicial process. It ought to be quite clear from Mr. Veseli's statements that no one should even consider that such actions would assist the accused.

14. The SPO's submissions on this point rely on generalised assertions about the risk of witness intimidation, some of which are more than ten years old. They rest on an implication of collective guilt by association, rather than specific incidents of wrongdoing alleged to be attributable to Mr. Veseli. Generalised allegations of this kind, which rest on an assumption of collective responsibility, do not amount to articulable or concrete grounds to perceive a likely future risk posed by an individual accused.

15. Many of the general instances relied upon by the SPO to support the alleged risk of witness intimidation in Kosovo (and others like them) were invoked by the Office of the Prosecutor of the ICTY in seeking an order for pre-trial detention of

Ramush Haradinaj[21] in the most closely comparable case that was heard at that Tribunal. The Pre-Trial Chamber in that case robustly rejected objections to provisional release put forward on this generalised basis, as a matter of legal principle. The ICTY rightly emphasised that pre-trial detention could only be justified by acts allegedly attributable to the *individual accused*, or which provide grounds of objection that are specific to the *individual accused*.[22] In a ruling delivered on 6 June 2005, the ICTY adopted the following approach:

> *46. In its submissions to the Trial Chamber, the Prosecution has not identified or alleged that the Accused can be linked to any of the incidents of witness interference that were mentioned. The Prosecution's main arguments are based on the assumption that (1) the perpetrators from these incidents would have a similar interest to interfere with witnesses in the present case, and (2) that the provisional release of the Accused would negatively impact on the public perception of the safety of potential witnesses*
>
> *47. The Trial Chamber is not persuaded that the Prosecution's first argument shows that the Accused's presence in Kosovo would have a negative impact on the security situation of witnesses, or induce the perpetrators from previous incidents to take steps against these witnesses. As regards the second argument, the Trial Chamber acknowledges that public perception of witness safety may play a crucial role under the circumstances prevailing in Kosovo for the willingness of witnesses to give evidence. However, since it has not been shown that the Accused could pose a concrete danger to anyone, including victims and witnesses, the Trial Chamber is not satisfied that a negative impact on the public perception of the safety of potential witnesses suffices as a ground for denying provisional release. As stated by the Trial Chamber in Prlic, "even if the Accused continues*

[21] *Supra* footnote 3, para 22.
[22] *Supra* footnote 3, para 22.

> *to enjoy influence, it does not necessarily follow that he will exercise it unlawfully".*[23]
>
> *48. The Trial Chamber notes that in this case, there is nothing in the evidence to suggest that the Accused interfered or would interfere with the administration of justice. The Accused has also given an undertaking that he will not have any contact or interfere, directly or indirectly, with any potential witness.*

16. Those words are equally apt to apply to the generalised allegations made by the SPO in the present case. In order to establish articulable grounds to be believe that *the particular accused* whose case is being considered would pose a risk of interference with witness if he was provisionally released, the SPO must establish a solid factual foundation for allegations of interference against *that particular accused*.

17. Putting the generalised evidence aside, there are six specific allegations made by the SPO in its application for an arrest warrant that are said to relate directly to Mr. Veseli. However, on an objective examination, none of these six allegations implicates Mr. Veseli in any way. As objections to provisional release, they are entirely without merit.

i) Attempt to abolish the KSC in 2017

18. The **first allegation** is that Mr. Veseli was party to an attempt, "to generate support for the abolition of the KSC"[24] by certain members of the PDK through a legislative amendment. This is entirely untrue. As noted above, Mr. Veseli

[23] Ibid.
[24] KSC-BC-2020-06, F00027RED, Pre-Trial Judge, *Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders*, 26 October 2020, para. 7

actively supported the establishment of the KSC, and has publicly defended the institution ever since. In particular, he actively and publicly opposed the attempt by certain Deputies from various political parties to introduce the 2017 Bill that would have abolished the KSC, and in his role as Speaker, he was decisive in defeating the attempt. It is grossly misleading for the SPO to casually make the allegation that Mr. Veseli supported this initiative, without first examining the facts.

19. The 2017 Bill was an attempt by a group of 43 individual Deputies (Parliamentarians), acting on their own initiative [25] It was not a measure promoted by the PDK leadership, and Mr. Veseli made it clear publicly that he was firmly opposed to it throughout.[26] Mr. Veseli never did or said anything to support the Bill. On the contrary, he worked hard to stop the legislation from being pursued. In his role as Speaker, he personally refused to sign the legislation in order to prevent its passage through Parliament. The Bill failed in the Assembly on 22 December 2017. The list of signatories is appended to this filing.[27] As will be apparent, the measure was signed by 43 individual Deputies from all political parties, acting in their individual capacity. Mr. Veseli's name is not among them. In refusing to allow the measure to move forward, Mr. Veseli made a decision which put him in breach of parliamentary procedures.[28]

20. There is ample material in the public domain confirming Mr. Veseli's staunch opposition to this measure. Indeed, he came in for some criticism for this stance,

[25] The forty-three members of Parliament who signed the bill were not comprised solely of representatives from PDK, but were also from other parties, such as AAK, LDK, NISMA and 6+. See Annex 2, Copy of the Legislative Initiative to abolish the Law on SC signed by 43 MP, 22 December 2017
[26] *Supra* footnote 16.
[27] Annex 2, *supra* footnote 25.
[28] https://insajderi.org/deputeti-pdk-se-thote-se-kadri-veseli-e-shkeli-kushtetuten-pasi-nuk-thirri-seance-per-specialen/

and was obliged to defend it publicly. In an interview published on 8 January 2018, soon after the failure of the Bill, Mr. Veseli made his position clear once again:

> *"My attitude towards [the KSC] remains what I said in the Assembly two years ago. It could not be stopped, even then. December 22 [2017] just proved this. We should not be enthusiastic or naïve about unrealistic proposals like this,nor should anyone feel vengeful. We must be prepared, and do everything to minimize the damage to the country. It is not about individual destiny at all. In this context, I say to my comrades: remain calm and dignified. You should be proud of the war we fought, and the success we achieved, but you should do even more for the State of Kosovo. The Special Court will not embarrass us for the war we waged. The only thing that can embarrass us is the personal egos of individuals, or the fake veterans' propaganda."*[29]

21. Mr. Veseli's opposition to the 2017 Bill was so well-known in the international community, that he was singled out for praise by the US Ambassador for the principled stance he had taken. In a tweet published on 9 January 2020 (the day following the publication of the interview cited above) Ambassador Greg Delawie wrote:

> *"Welcome public statements from Speaker Veseli, and other leading political figures, honouring Kosovo's commitment to the Special Court".*

22. A screen grab of this tweet is appended to this filing at Annex 6. In light of the clear evidence that Mr. Veseli was recognised internationally as a staunch public opponent of the 2017 Bill, it is disturbing that the SPO should have sought to

[29] *Supra* footnote 16.

confect an allegation that he was party to an attempt to abolish the KSC. The reverse is true, and this calls into question the integrity and reliability of the SPO's submissions in general on the need for pre-trial detention.

23. For the sake of completeness, it is important to point out that Mr. Veseli's position has remained consistent since then. During a television interview broadcast on 5 October 2018, he told the interviewer that the question of whether the KSC should proceed must be regarded as "closed as an issue", and that whilst former KLA fighters should be proud of their contribution to the war, any of them who "did something bad" should be ashamed.[30] Similarly, in an interview in January 2019, he said:

> *"The Special Court will be a challenge from which we will emerge stronger... I will respond to this challenge and I invite all comrades to answer the invitation of the Specialist Chambers."*[31]

24. These statements are all consistent with the position taken by Mr. Veseli in the statement issued on the day of his surrender (Annex 3). Taken together, they demonstrate the falsity of the SPO's first articulable objection to provisional release.

ii) Nazim Bllaca

25. The **second specific ground** relied upon by the SPO relates to certain allegations made by a man called Nazim Bllaca, concerning his claimed involvement in crimes committed by members of the newly-formed intelligence service of Kosovo (SHIK) which was headed by Mr. Veseli. Again, the SPO's reliance on

[30] http://www.youtube.com/watch?v=72F9s8ZEyys
[31] https://www.epokaere.com/sfidat-e-speciales/

this as a basis for objecting to provisional release is wholly misplaced. Mr. Bllaca has given evidence in a number of criminal trials in Kosovo[32] and is an individual of some notoriety. In one of these trials, Mr. Veseli was called as a witness to give evidence for the prosecution.[33] He explained under oath the formation and structures of SHIK, and stated that Mr. Bllaca had never been appointed as a SHIK officer.[34] The trial chamber made no finding, one way or the other, on Bllaca's claim that he was acting as a member of SHIK.[35]

26. However, the important point is that Mr. Bllaca himself testified that he had never met Mr. Veseli or had anything to do with him.[36] Moreover, evidence has subsequently emerged in the public domain which strongly indicates that throughout the relevant period, Mr. Bllaca was a paid participant informant and *provocateur*, working for the Serbian secret service, the RDB.[37] The ICTY has consistently held that where such associations were proved, the evidence of a witness could not safely be relied upon without independent corroboration,[38] since the RDB is known to have used various means to corrupt evidence of witnesses and informers.

27. The critical point, for present purposes, is that Mr. Bllaca has never made any allegation against Mr. Veseli and (despite the fact that Mr. Veseli was the head

[32] Annex 4, District Court of Pristina, Case no P 292/11, 17 December 2012.
[33] Ibid.
[34] Ibid.
[35] *Supra* footnote 32.
[36] District Court of Pristina, Case no P 292/11, 17 December 2012.
[37] Annex 4, Official documents showing recruitment of Mr. Bllaca as an operative for the Serbian Secret Service.
[38] ICTY, Prosecutor v. Karadzic, case no, IT-95-5/18-T, Trial Chamber III, *Judgement*, 24 March 2016, para. 1032. On the evaluation of evidence received from persons which may be 'biased', *see* ICTY, Prosecutor v. Djordevic, IT-05-87/1-T, Trial Chamber II, *Judgement*, para. 16-17; On the evaluation of evidence received from persons associated from parties to the proceedings *see*, ICTY, Prosecutor v. Karadzic, case no, IT-95-5/18-T, Trial Chamber III, *Judgement*, 24 March 2016, para. 15.
('It [The Chamber] has been mindful to exercise caution in evaluating their evidence in view of their association with a party to the proceedings').

of SHIK for some time) Mr. Bllaca never claimed to have had direct or indirect contact with Mr. Veseli. The SPO cannot properly invoke this witness as a basis for denying provisional release to Mr. Veseli. Mr. Bllaca's testimony does not implicate Mr. Veseli at all. It is, in any event, a number years since Mr. Veseli left his position as head of SHIK.

iii) Driton Lajçi's role as an interpreter for Sami Lushtaku's interview

28. The **third incident** invoked by the SPO, relates to the actions of a man called Driton Lajçi. Mr. Lajçi worked for the Government of Kosovo in the Division for Coordinating the Process of Legal Protection and Financial Support for Potential Accused Persons in Trials before the Specialist Chambers ('Division'). [39] The SPO alleges that he attended the interview of a KLA zone commander, deceptively pretending to be an interpreter.[40] The SPO further alleges that when asked why he did this, Mr. Lajçi claimed that he had been pressured to do it by Mr. Thaçi and Mr. Veseli.

29. This allegation has been investigated by the defence for Mr. Veseli. Attached to this filing is a statement from Driton Lajçi explaining the circumstances.[41] Mr. Lajçi states that he was asked to attend the interview of a man called Sami Lushtaku as an interpreter. He states that the reques was made not by Mr. Thaci or Mr. Veseli, but by Specialist Counsel for Mr. Lushtaku, Sir Geoffrey Nice QC. [42] He states that Sir Geoffrey Nice QC specifically requested him to perform the role of a "private" interpreter (that is, an interpreter who was not provided by the SPO). This was presumably because Sir Geoffrey Nice QC wanted to ensure there was a trusted interpreter available to translate any privileged

[39] *Supra* footnote 23.
[40] Ibid.
[41] Annex 5, Statement of Driton Lajçi, 11 December 2020.
[42] Ibid.

conversations between lawyer and client accurately and confidentially.

30. Mr. Lajçi explains that before the interview began, he was specifically asked by Daniel Saxon of the SPO whether he also worked for the Government of Kosovo, and confirmed that he did. The interview went ahead nonetheless. The relevant passage of his statement reads:

> *"On 16 January 2019, I attended the suspect interview of Mr. Sami Lushtaku in the Hague at the request of his specialist counsel, Sir Geoffrey Nice QC, and with the approval of Mr. Lushtaku. I attended the interview in the capacity of a private interpreter for the specialist counsel."* [43]

31. This passage of Mr. Lajçi's statement has been drawn to the specific attention of Sir Geoffrey Nice QC, who has confirmed in writing to Specialist Counsel for Mr. Veseli that there is nothing he wishes to add, amend or correct.

32. Mr. Lajçi goes on to state that approximately two weeks later, he was visited at the Government offices in Pristina by Kwai Hong Ip of the SPO, who cautioned him against attending suspect interviews in the future, in view of his role as an employee of the Ministry of Justice. [44] Mr. Lajçi specifically denies that he was ever put under any form of pressure by Mr. Thaçi or Mr. Veseli to attend the interview of Mr. Lushtaku, and denies ever having made any claim to this effect to anyone. [45]

33. The SPO's suggestion is contrary to the evidence. As noted above, Sir Geoffrey Nice QC does not dispute that it was at his request that Mr. Lajçi attended the

[43] Ibid.
[44] Ibid.
[45] Ibid.

interview as a "private" interpreter. If that is right, then there is no basis whatsoever to suggest that Mr. Lajçi's actions were dishonest, or that they were somehow attributable to Mr. Veseli. Nor is it remotely likely that Mr. Lajçi would have made such an allegation, given that there was a perfectly innocent explanation for his attendance, and given that his dual role was known to the SPO before the interview began.

34. Like the SPO's other specific allegations, this objection is built on sand. Not only is there a complete explanation for Mr. Lajçi's conduct, but it is clear from the SPO's handling of the situation at the time, that Mr. Lajçi's actions were not regarded by the SPO as evidence of an attempt to interfere with the administration of justice by Mr. Lajçi.

35. Specifically, as regards the interview of Mr. Lustaku, Mr. Lajçi denies being asked or suggesting at any time that he was 'pressured in any way'.[46] Given the acknowledged role of Sir Geoffrey Nice QC in this matter, it is overwhelmingly likely that this denial is correct.

iv) Payments out of Government funds to SPO witnesses

36. The **fourth specific allegation** advanced by the SPO is that the Government of Kosovo made excessive payments of expenses to a witness who had been summoned for interview by the SPO. The Defence understands the SPO to be alleging that Driton Lajçi was directly involved in these payments. In this context, the SPO draws attention to a payment of €40,000 from Government funds made to a potential witness for legal and other expenses in connection with a one-day attendance in The Hague.[47] The Pre-Trial Judge is asked to infer

[46] Ibid.
[47] *Supra* footnote 23.

that this payment was so excessive that it must have been a corrupt payment to induce the witness concerned not to provide incriminating evidence against the accused, or to testify for the SPO. It is believed that the SPO alleges that Lajçi played a role in this payment., and other similar payments, although no particulars have been provided.

37. There is a short answer to this point. Mr. Veseli had nothing whatsoever to do with the allocation of Government funds to any person who was summoned to appear for interview by the SPO. As Speaker of Parliament, he had no role at all in authorising payments of Government money to witnesses or suspects before the KSC. That was entirely the responsibility of those in Government, which did not include Mr. Veseli. If, therefore, an excessive amount was indeed paid to any particular person summoned by the SPO, that is not something that can conceivably be laid at Mr. Veseli's door. It is entirely misconceived for the SPO to put this forward as a ground for concluding that Mr. Veseli would interfere with the administration of justice if granted provisional release. Quite simply, it has nothing to do with him.

38. The Defence of Mr. Veseli has nonetheless investigated the allegation, in an effort to establish the facts. From publicly available sources, it appears that the specific instance the SPO is referring may relate to a man called Lahi Brahimaj, who was summoned for interview in The Hague. If so, it is important for the Pre-Trial Judge to be aware of the role of Mr. Brahimaj. He was a co-accused in the ICTY prosecution of Ramush Haradinaj and others, and was alleged to be the commander of the KLA facility at Jabllanice. At the conclusion of proceedings at the ICTY, Mr. Brahimaj was convicted in relation to the ill-treatment of detainees at Jabllanice.[48] That conviction will no doubt be adduced in evidence in the

[48] ICTY, Prosecutor v. Ramush Haradinaj et al, Case No. IT-04-84-PT, Trial Chamber I, Judgment, 3 April 2008 (Lahi Brahimaj); Basic Court of Pristina, Case P. no. 448/2012, 7 June 2013 (Rrustem

present proceedings since Mr. Brahimaj is named by the SPO as an unindicted co-conspirator. When summoned for interview by the SPO, he was represented by Specialist Counsel Rodney Dixon QC.

39. The relevance of this information is that it puts the SPO's allegation in its proper context. Mr. Brahimaj was not a witness for the SPO against the accused, who could reasonably be considered a target for bribery by or on behalf of the accused. On the contrary, he was likely a defendant and is an alleged co-conspirator. The suggestion that a payment of costs to him by the Government of Kosovo could plausibly have been a bribe to dissuade him from testifying is entirely unsubstantiated. In any event, as noted, the transaction had nothing whatsoever to do with Mr. Veseli. This is yet another entirely misconceived allegation.

40. In light of Mr. Lajçi's alleged role in paying costs and expenses of individuals summoned for interview by the SPO, the SPO has opened an investigation into Mr. Lajçi. His Specialist Counsel, Toby Cadman, has made requests for clarification of the nature of the allegations against him, but has received no substantive response. Mr. Cadman recently informed Mr. Veseli's Specialist Counsel that upon reading the statements made about Mr. Lajçi by the SPO in the present context, he has filed a detailed letter of complaint concerning the conduct of the SPO. The gist of his complaint is that the SPO has consistently refused to furnish any information about the allegations against Mr. Lajçi, but then proceeded, in the present case, to state those accusations as if they were proven facts, when there has been no charge or finding against him. A copy of that letter is appended at Annex 7.

Mustafa); District Court of Mitrovica, Case P. no. 45/2010, 29 July 2011 (Sabit Geci.).

41. It should be emphasised that there is no institutional or evidential connection whatsoever between Mr. Lajçi and Mr. Veseli. The former was a Government employee (a member of the executive branch). Mr. Veseli was the Speaker of Kosovo's Parliament and accordingly had no responsibility for the conduct of the Government employees. In Kosovo, as in many States, members of Parliament cannot serve in Government, or have any other executive responsibilities. Mr. Lajçi's actions (in attending the interview of Mr. Lushtaku and/or in meeting expenses claims of other interviewees out of Government funds) have nothing to do with Mr. Veseli. The SPO's attempt to connect Mr. Veseli to the unsubstantiated allegations against Mr. Lajçi is untenable.

42. In the context of the SPO's investigation into Mr. Lajçi's role in the allocation of Government funds, the SPO seized Mr. Lajçi's mobile phone in May 2019[49] and subsequently examined it. There is no evidence of any communication by phone or text message implicating Mr. Veseli. There are two mentions of Mr. Veseli in text messages to other people, both of which are entirely innocent in character. There is nothing in Mr. Lajçi's phone records to suggest that he was in phone contact with Mr. Veseli, or that Mr. Veseli had any role whatsoever in Mr. Lajçi's decision to attend the interview of Mr. Lushtaku, to allocate Government funds to individuals called for interview, or to any other conduct of Mr. Lajçi giving rise to complaint by the SPO.

v) The appointment of Syleman Selimi

43. The **fifth specific allegation** relates to a man called Syleman Selimi who was appointed as an adviser to the Prime Minister of Kosovo, Ramush Haradinaj, on

[49] 15 January 2019, WhatsApp Exchange Between Driton Lajçi and Abelard Tahiri, SPOE00129587-SPOE00129587-ET, SPOE00129586-SPOE00129586-ET, SPOE00129585-SPOE00129585-ET

1 February 2019,[50] shortly after being summoned for interview by the SPO. Again, the SPO makes the entirely unsubstantiated allegation that this appointment should be regarded as a bribe to dissuade Mr. Selimi from testifying for the prosecution, and then makes the further unjustified leap of inference to suggest that this somehow implicates Mr. Veseli in an attempt to manipulate the evidence.

44. Again, there is a short and simple answer. Mr. Selimi had previously been a senior officer in the Kosovo Protection Corps (KPC), which was the demilitarised entity that succeeded the KLA at the end of the war.[51] He was subsequently convicted for a crime committed during the conflict and was in prison until shortly before his appointment as a Government adviser.[52] Soon after his release, he was appointed as a security adviser by the Prime Minister personally. This appointment was at the sole discretion of the Prime Minister, and had nothing whatsoever to do with Mr. Veseli. The fact that the SPO also sought to interview him following his release from prison is entirely immaterial. There is no evidence whatsoever to suggest that the appointment was connected with the SPO's summons. The fact that the two events occurred at about the same time is not evidence of a causal connection – particularly given that both events occurred immediately after Mr. Selimi was released from serving a custodial sentence. Like so much of the SPO's reasoning, this objection involves a complete *non-sequitur*.

45. In point of fact, the timing point is not borne out by the evidence. The Defence understands that the SPO had previously approached Mr. Selimi's lawyer, Tome

[50] *Balkan Insight*, 6 February 2019, available at https://balkaninsight.com/2019/02/06/yihr-condemns-the-appointment-of-kla-ex-commander-as-pm-advisor-02-05-2019/
[51] Ibid.
[52] Ibid.

Gashi, whilst Mr. Selimi was still in custody, asking to set up an appointment for him to be interviewed. Mr. Gashi made this approach public, and the SPO then ceased its attempts to contact Mr. Selimi through Mr. Gashi. The subsequent summons was issued to Mr. Selimi directly, following his release from custody.

46. There is no evidence to justify the conclusion that Mr. Selimi's appointment was a bribe, or that Mr. Veseli has anything to do with the appointment. The converse is true. Following his appointment by the Prime Minister, Mr. Selimi was required to declare his income on appointment, and did so. There is simply no basis for inferring that the appointment was a corrupt inducement, or for the specious suggestion that it is evidence of Mr. Veseli's propensity to interfere with the course of justice. The SPO is evidently clutching at straws.

vi) Redacted allegation should be disregarded

47. Finally, in a heavily redacted section of its arrest warrant request, the SPO alleges that Mr. Veseli was involved in the attempted bribery of an unnamed individual interviewed by the SPO, at an unidentified time and place in an unidentified manner. The extent of the redaction prevents the Defence from responding to this allegation since the SPO has not even disclosed a gist of the material facts.

48. The Defence submits that it would be unlawful for the Pre-Trial Judge to base a decision to refuse provisional release on an allegation that cannot be addressed. The procedure for determining provisional release presupposes respect for the fundamental rules of procedural justice, including the principle of *audi altarem partem*. The extent of the redactions to this particular allegation are such that it must be disregarded altogether. To do otherwise would be to turn the application in substance into an *ex parte* procedure. This would be fundamentally inconsistent with Mr. Veseli's right under Article 21 of the Law, and Article 29

of the Constitution, to be informed of the allegations against him so that he can meaningfully respond, and challenge the evidence presented by the SPO.

49. The obvious unfairness of this approach is made apparent by the fact that each of the preceding objections has turned out, on examination, to be entirely without factual foundation. In this context, it would be manifestly unjust for an *ex parte* objection, which cannot be objectively evaluated in adversarial proceedings, to be allowed to carry any significant weight in a decision concerning a pre-trial deprivation of liberty of an accused who enjoys the benefit of the presumption of innocence.

c) No separate articulable risk of further offences

50. The SPO has not advanced any separate articulable grounds for believing that Mr. Veseli would be likely, if granted provisional release, to commit further offences. The allegations on the Indictment relate to events said to have occurred in the context of an armed conflict that ended 20 years ago. There is self-evidently no risk of a repetition of the offences alleged in the Indictment which were entirely specific to the context of an ongoing armed conflict. It would be absurd and nonsensical to base any finding on a supposed risk of repetition of alleged war crimes.

51. There is no evidence (or even allegation) of Mr. Veseli having committed any other offence. The only possible basis for inferring a risk of future offending relates to the supposed risk of interference with the course of justice. However, as outlined above, each of the grounds put forward by the SPO for drawing such an inference lacks any foundation in fact or evidence. It follows that there is no separate objection to be made on the ground of an articulable risk of future offences.

II. APPLICABLE LAW

a) Legal Basis for the Application for Interim Release

52. The Constitution, the Law,[53] and the applicable international human rights instruments,[54] which have direct effect pursuant to Article 3(2)(e) of the Law, unequivocally provide that an accused is "entitled" to release pending trial. Liberty remains the rule and measures restricting the liberty of the accused are the exception.

53. The present application must be reviewed *de novo*. Mr. Veseli is currently detained pursuant to an *ex parte* issuance of the Decision for Arrest Warrants and Transfer Orders.[55] This application is the first time the Defence has been allowed to respond to the SPO's allegations and submissions[56] and as such the Pre-Trial Judge is required to proceed *de novo* by inquiring anew into the existence of facts justifying the detention in light of the material presented before it by the Parties.[57] The Pre-Trial Judge has already endorsed such approach in the 'Decision on the Request for Immediate Release of Nasim Haradinaj'.[58]

54. In proceeding with a *de novo* review, the KSC first applies the specific criteria set forth by Article 41(6) as set forth at paragraph 3 above.

55. Significantly, at the KSC, it is the SPO who bears the affirmative duty to establish the above criteria. This is a marked contrast from the ICTY, for example,[59] where

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[53] Supra footnote 1.
[54] Supra footnote 2.
[55] *Supra* footnote 23.
[56] ICC, Prosecutor v. Laurent Koudou Gbagbo, ICC-02/11-01/11-278-RED OA, Appeals Chamber, *Public Redacted Version of 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 Defence demandant la mise en liberté provisoire du président Gbagbo"*, 26 October 2012, paras 23-25.
[57] Ibid.
[58] KSC-BC-2020-07/F00058, Single Judge, *Decision on Request for Immediate Release of Nasim Haradinaj*, 27 October 2020, para. 13.
[59] *Supra* footnote 3.

the Court explicitly requires the accused to demonstrate that, if released, he would appear for trial and not pose a danger to others.[60]

56. At the KSC, the accused bears no burden of proof for interim release. What's more, the SPO must demonstrate not only that the criteria set forth by Article 41(6) are met but further that detention is best suited in the present case, but also, and importantly, that any other measure specified in Article 41(12) of the Law are insufficient to mitigate the risks alleged by the SPO.

b) The Burden of Proof

57. The Constitution clearly sets liberty of the accused as the default. Article 29(2) of the Constitution states that "everyone who is arrested shall be entitled to trial within a reasonable time *and to release pending trial*, unless the judge concludes that the person is a danger to the community or presents a substantial risk of fleeing before trial" (emphasis added). The same wording can be found in Article 41(5) of the Law.

58. This principle is a direct corollary to the presumption of innocence. The plain reading of this Article 29(2) of the Constitution, clearly and unequivocally holds that a defendant is entitled to release by default. As noted by this Court in its 17 March 2017 Judgement on the Referral of the Rules of Procedure and Evidence, "it is not incumbent upon the detained person to demonstrate the existence of reasons warranting his or her release."[61]

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[60] *Supra* footnote 3.

[61] KSC-CC-PR-2017-01/F00004, Specialist Chamber of the Constitutional Court, *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*, 27 April 2017, para. 115 ("Judgment of 26 April 2017"); See also, *Vasiliciuc v. Moldova*, App no. 15944/11 (ECHR 2 May 2017) para. 40; *Ilijkov v. Bulgaria*, App no. 33977/96 (ECHR 26 July 2001), para. 85; *Bykov v. Russia*, App no 4378/02 (ECHR 10 March 2009), para. 64.

c) Proportionality

59. As noted above, the SPO bears the burden of proving that there are articulable grounds to believe that the accused might abscond, interfere with the administration of justice or re-offend (Article 41(5)). However, this is only the first step in the analysis required by law. If (contrary to the submissions of the Defence) the Pre-Trial Judge were to conclude that the SPO has discharged the burden of establishing articulable grounds for the belief specified in Article 41(5), the Pre-Trial Judge must nevertheless grant provisional release on conditions, unless the SPO is able to establish (i) that pre-trial detention is the least restrictive measure available to achieve its goals; and (ii) that pre-trial detention is, in all the circumstances, a proportionate restriction on the presumption of liberty and the presumption of innocence.

i) The availability of conditions on provisional release

60. The first of these proportionality criteria involves a consideration of the conditions that the Pre-Trial Judge is able to impose. It requires a reasoned judgment on why those conditions are considered insufficient to address the particular (articulable) risk that has been identified. The SPO bears the burden of proving that all other measures listed in Article 41(12) of the Law are carefully assessed before detention, as a measure of last resort, is ordered. The SPO is required to prove exactly why detention is *absolutely necessary*, and precisely why the other measures available are insufficient to address the risk. The KSC has previously affirmed this concept, when called upon to review the adoption and amendment of the Rules. The Specialist Chamber of the Constitutional Court has ruled that 'to fully comply with the constitutional standards, a panel must consider more lenient measures when deciding whether a person should be

detained.'[62]

61. The European Court of Human Rights has also consistently held that detention must be subject to a necessity and proportionality test, so that less severe measures must first be considered before any decision on detention on remand is ordered:

> *"The detention of an individual is such a serious measure that it is justified only as a* ***last resort****, where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained.*[63]*"*

62. This two-step approach is followed by the Kosovo Criminal Code, which provides a *conditio sine qua non* for the application of any type of 'measures restricting liberty' (similar to the three criteria set out in Article 41(6)(b)), and a further separate analysis listing the types of measures, including, among others, detention.[64] The guiding principles here are clear. The burden of establishing the criteria set forth in Article 41(6) falls to the SPO. In addition to that, the SPO must demonstrate why lesser measures other than detention would be ineffective on an individualised basis.

ii) The likely duration of pre-trial detention

63. The second part of the proportionality test requires the Court to stand back from its consideration from the evidence, and make an overall assessment of the question whether pre-trial detention is proportionate having regard to the presumption of innocence and the likely duration of pre-trial incarceration. This

[62] KSC-CC-PR-2020-09/F00006, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020*, 22 May 2020, para. 70 (referring to Judgment of 26 April 2017, para. 126).
[63] *S., V. and A. v. Denmark*, [GC], App nos 35553/12, 36678/12 and 36711/12 (ECHR 22 October 2018), para. 71; *Saadi v. the United Kingdom* [GC], App no. 13329/03 (ECHR 29 January 2008), para. 70.
[64] *See* for example, the Kosovar Code of Criminal Procedure, Articles 164, 173 and 187.

will take account of the gravity of the perceived risk, the likelihood of it occurring, and the seriousness of the consequences. It also requires the Court to make a realistic assessment of the likely duration of pre-trial phase, in order to assess whether detention is proportionate for a person who is presumed to be fully innocent of the charges. This necessarily involves some preliminary assessment of the time that is likely to elapse between the first appearance and the start of the trial. As a minimum, the Court must consider the time necessary to afford the accused with adequate time and facilities for the preparation of his defence. That is a basic minimum legal right.

64. The European Court of Human Rights has frequently held that the longer a person is likely to be held in pre-trial detention, the more compelling the justification must be. This self-evident proposition is an axiomatic feature of the proportionality principle that underlies Article 5 of the European Convention. Even where the threshold tests under Article 41(5) are met, pre-trial detention will therefore be unlawful it is likely to be of an unreasonable duration, having regard to the presumption of innocence.

65. In the present case, the SPO has proposed June to September 2021 as the date for trial. This is an entirely unrealistic proposal that has evidently been made for tactical reasons. Given the number of incidents on the indictment, and the number of witnesses to be called by the SPO, the earliest the Defence could be trial-ready is June to September 2022. This is not a matter of indulgence or negotiation. It is the bare minimum required to meet the legal obligation to afford the accused adequate time and facilities for the preparation of his defence. The SPO's suggestion that the Defence could investigate and prepare this case in six months, whilst the SPO is still meeting its primary disclosure obligations is an affront to justice.

66. By way of comparison, the average time taken at the ICTY between the first appearance of the accused and the start of the trial was 3.6 years. This has been improved upon by the ICC, where the average period between first appearance and the start of the trial is 2.3 years.[65]

67. However, the closest analogies to the present case are the two KLA cases tried at the ICTY – the *Limaj and others* case: and the *Haradinaj and others* case. Both cases involved an allegation of JCE against KLA zone commanders, and concerned allegations comparable in nature to those on the present Indictment. However, the allegations are much more extensive, in time, place and number. Both of these ICTY cases concerned relatively short indictment periods, and defined zones within Kosovo. The present case, by contrast, involves a vast number of incidents across a full two-year indictment period, in every part of Kosovo and parts of Albania.

68. In the *Limaj and others case*, the first appearance of the accused occurred on various dates in February 2003 and the trial began in mid-November 2004. In the *Haradinaj and others* case, the first appearance of the accused was on 9 March 2005, and the trial began on 5 March 2007. Thus, in the two cases most closely resembling the present case, the pre-trial periods were 18 months and 2 years respectively. Given that those case were obviously very much less complex, and involved three accused rather than four, it is entirely obvious that the present case cannot fairly be tried before June 2022, at the very earliest. It is more likely that it will not begin until later in 2022, or even early 2023.

69. It is against that background that the proportionality of pre-trial detention falls to be judged. Having regard to the need to respect the presumption of innocence, and the flimsy evidential basis for the objections put forward by the SPO, the

[65] https://pure.uvt.nl/ws/portalfiles/portal/1523643/Sixty_five_years.pdf (see table on p. 13).

only proper conclusion is that Mr. Veseli should be granted provisional release, subject to such conditions as the Pre-Trial Judge considers appropriate.

III. REQUEST FOR ORAL HEARING

70. The Defence of Mr. Veseli requests the Pre-Trial Judge to order an oral hearing of the present Application. A hearing is warranted considering the importance of the matter, namely the liberty of Mr. Veseli; the complexity of both legal and factual issues to be considered; as well as to address any questions the Pre-Trial Judge wishes to put to the parties.

IV. CLASSIFICATION

71. The present motion and annexes are filed as confidential.

V. RELIEF SOUGHT

72. In conclusion, the Defence of Mr. Veseli requests the Pre-Trial Judge to:

- **Order** a hearing on the present Application for Interim Release as soon as possible; and

- **Order** the interim release of Mr. Veseli pending trial.

Word count 9953

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