



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

**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

**Filing Participant:** Specialist Prosecutor

**Date:** 15 January 2021

**Language:** English

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**Public Redacted Version of 'Prosecution response to Application for Interim  
Release on behalf of Mr Kadri Veseli'**

**with Public Redacted Annex 1**

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## I. INTRODUCTION

1. The VESELI Release Request<sup>1</sup> should be rejected, and Mr VESELI ('VESELI') should remain in detention. As found in the Arrest Warrant Decision,<sup>2</sup> the criteria for detention under Article 41(6) of the Law<sup>3</sup> are satisfied. Those criteria continue to be met and, as discussed below, further information only underscores the seriousness of the risks presented. No alternative measures sufficiently address these risks.

## II. SUBMISSIONS

### A. THE APPLICABLE LEGAL FRAMEWORK IN PROPER CONTEXT

2. The Pre-Trial Judge must be satisfied<sup>4</sup> that: (i) there is a grounded suspicion that VESELI has committed a crime within the jurisdiction of the Specialist Chambers ('KSC'); and (ii) there are articulable grounds to believe that: (1) there is a risk of flight; (2) VESELI will obstruct the progress of the criminal proceedings, including by influencing witnesses, victims or accomplices; or (3) the seriousness of the crime, or the manner or circumstances in which it was committed and VESELI's personal characteristics, past conduct, the environment and conditions in which he lives or other personal circumstances indicate a risk that he will repeat the criminal offence, complete an attempted crime or commit a crime which he has threatened to commit.<sup>5</sup>

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<sup>1</sup> Application for Interim Release of Kadri Veseli, KSC-BC-2020-06/F00151, 17 December 2020, Confidential (with seven annexes) ('VESELI Release Request').

<sup>2</sup> Decision on Request for Arrest Warrants and Transfer Orders, KSC-BC-2020-06/F00027, 26 October 2020 ('Arrest Warrant Decision'). *See also* Confidential Redacted Version of 'Request for arrest warrants and related orders', filing KSC-BC-2020-06/F00005 dated 28 May 2020, KSC-BC-2020-06/F00005/CONF/RED, 15 November 2020 ('Arrest Warrant Application').

<sup>3</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

<sup>4</sup> Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, KSC-BC-2020-07/IA001/F00005, 9 December 2020, Public, ('Appeals Decision'), para.51.

<sup>5</sup> Article 41(6)(b)(i)-(iii).

The relevant assessment is as to the possibility—as opposed to the inevitability—of such future occurrences.<sup>6</sup> If these conditions are met, the person shall continue to be detained.<sup>7</sup>

3. There are no requirements beyond these statutory criteria; repeatedly emphasising an accused’s entitlement to liberty in the abstract does not advance the matter.<sup>8</sup> What is required is that the Pre-Trial Judge is ‘satisfied’ that the Article 41(6)(b) criteria are met.<sup>9</sup>

4. On 26 October 2020, the Pre-Trial Judge found the Article 41(6) criteria to be met and VESELI’s detention to be necessary. Pursuant to the VESELI Release Request and Rule 57(2),<sup>10</sup> the matter now to be addressed is a review of that decision.<sup>11</sup>

#### B. THE ARTICLE 41(6) RISKS ARE ESTABLISHED

5. For the reasons set out in the Confirmation Decision,<sup>12</sup> there is a well-grounded suspicion that VESELI committed multiple crimes within the jurisdiction of the KSC.

6. Further, and although just one would suffice, all three Article 41(6)(b) risks are present and no conditions sufficiently mitigate them. VESELI asserts that the SPO falls ‘very far short’ of the applicable standard,<sup>13</sup> but supports this claim through selective

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<sup>6</sup> Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.67; Arrest Warrant Decision, para.27.

<sup>7</sup> Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.51.

<sup>8</sup> *Contra* VESELI Release Request, KSC-BC-2020-06/F00151, paras 2, 52, 57.

<sup>9</sup> Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.51.

<sup>10</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 (‘Rules’). All references to ‘Rule’ or ‘Rules’ herein refer to the Rules, unless otherwise specified.

<sup>11</sup> *See similarly*, Appeals Decision, KSC-BC-2020-07/IA001/F00005, paras 37-38.

<sup>12</sup> Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00026, 26 October 2020, Strictly Confidential and *Ex Parte* (‘Confirmation Decision’).

<sup>13</sup> VESELI Release Request, KSC-BC-2020-06/F00151, para.4.

and unconvincing argumentation. Considered together, the evidence presented amply demonstrates the considerable risks that Kadri VESELI presents if at liberty.

7. Before turning to the risks themselves, there are three important preliminary considerations.

8. First, the VESELI Defence argues that the trial commencement date is a relevant consideration for interim release.<sup>14</sup> Thereafter, by arbitrarily alleging a distant trial date it attempts to manufacture a basis for interim release out of thin air. This gambit fails for several reasons. The present detention review falls under Rule 57. A different provision—Rule 56(2)—governs the possibility of releasing an accused due to being detained for an unreasonable period prior to the opening of the case. Of course, it would be meritless for the VESELI Defence to claim relief under Rule 56(2) when the Accused was arrested in November 2020.

9. Moreover, the VESELI Defence's prediction of the anticipated length of the pre-trial process is unreasonable and contrary to the interests of justice.<sup>15</sup> Based on little more than a simplistic numerical average from other institutions, it conveniently ignores both the particular circumstances that gave rise to those numbers, and the fact that the KSC framework was specifically fashioned in light of, and in response to, past experience at other institutions. It is also tainted with a clear ulterior motive of making pre-trial detention in this case appear impossibly burdensome so as to support an otherwise unpersuasive application for interim release.

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<sup>14</sup> VESELI Release Request, KSC-BC-2020-06/F00151, paras 5, 63-69.

<sup>15</sup> Prosecution submission further to the status conference of 18 November 2020, KSC-BC-2020-06/F00097, 23 November 2020.

10. Even if the VESELI Defence estimates were taken at face value, it still does not follow that any resulting pre-trial detention period would be ‘unreasonable’.<sup>16</sup> In any event, the assessment is entirely hypothetical at this point and resolving this dispute has no bearing on the Pre-Trial Judge’s Rule 57 review, especially where the legal framework contemplates periodic review of detention every two months.<sup>17</sup>

11. Second, an accused’s position or contacts may be considered when determining the likelihood of his returning for trial, threatening witnesses if released, or committing further crimes.<sup>18</sup> For example, an individual’s experience in intelligence is potentially relevant to all three risk factors.<sup>19</sup> Equally, extensive and active support networks can also increase the risk that an accused would use the resources of a support network to flee.<sup>20</sup>

12. Third, risks posed by one accused can increase due to his personal actions or to circumstances equally applicable to him and all co-accused. The VESELI Defence’s argument that reliance on the undisputed climate of witness intimidation in Kosovo would be incompatible with an individualised assessment,<sup>21</sup> proceeds from the flawed

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<sup>16</sup> The length of pre-trial detention must be balanced against the Article 41(6) risks and the circumstances of the case as a whole, including the potential penalties for the crimes charged. ICC, *Prosecutor v. Bemba et al.*, Judgment on the appeals against Pre-Trial Chamber II’s decision 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, ICC-01/05-01/13-969, para.45. In the course of this balancing exercise, even significant pre-trial detention may still be reasonable.

<sup>17</sup> Rule 57(2).

<sup>18</sup> Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.63 (finding no error in reliance upon a person’s position as indicating contacts and a network that ‘could create the risk that Gucati may obstruct the proceedings or that he may commit further offences’).

<sup>19</sup> *Prosecutor v. Mustafa*, KSC-BC-2020-05/F00052, Decision on Review of Detention, 23 November 2020, paras 22-23, 27, 31. This factor is even more significant in the present context. Salih MUSTAFA was only a mid-level intelligence officer, whereas VESELI is a former head of intelligence.

<sup>20</sup> ICC, *Prosecutor v. Gbagbo*, ICC-02/11-01/11-180-Red, Decision on the “*Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo*”, 13 July 2012, para.62.

<sup>21</sup> VESELI Release Request, KSC-BC-2020-06/F00151, paras 14-16.

premise that evidence of context or the actions of others cannot inform a proper, individualised assessment of the risks involved.

13. In this regard, the VESELI Defence's reliance on the ICTY's *Haradinaj et al.* trial is misplaced. The VESELI Defence claims that, in its 6 June 2005 Decision, the *Haradinaj et al.* Chamber 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.'<sup>22</sup> This misrepresents the legal reasoning. What the Chamber actually concluded in the paragraph cited was that '[t]he assessment whether the accused would pose a danger cannot be made only *in abstracto*; a concrete danger has to be identified'.<sup>23</sup> The *Haradinaj et al.* Chamber did not require that all acts relied upon for detention purposes be somehow attributable to the accused. In fact, the Chamber did no more than restate the basic principle that an individualised assessment is required, and that there must be articulable grounds to suggest that the accused would interfere with the administration of justice.<sup>24</sup>

14. It is entirely proper to take into account the known problem of witness intimidation in criminal cases involving former KLA members in Kosovo, as long as this is not the sole consideration.<sup>25</sup> This persistent climate of witness intimidation is undeniably a significant concern, with the *Haradinaj et al.* case being a salutary lesson in the potential of the problem to derail even proceedings held outside of Kosovo.<sup>26</sup>

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<sup>22</sup> VESELI Release Request, KSC-BC-2020-06/F00151, para.15 (emphasis removed from original).

<sup>23</sup> ICTY, Trial Chamber, *Prosecutor v. Haradinaj et al.*, IT-04-84-PT, Decision on Ramush Haradinaj's Motion for Provisional Release, 6 June 2005, para.22.

<sup>24</sup> ICTY, Trial Chamber, *Prosecutor v. Haradinaj et al.*, IT-04-84-PT, Decision on Ramush Haradinaj's Motion for Provisional Release, 6 June 2005, para.48 (noting that in that particular case there was 'nothing in the evidence to suggest the Accused interfered or would interfere with the administration of justice').

<sup>25</sup> Eulex, *Prosecutor v. Sabit Tafil Geci et al.*, 117/2013, Ruling on Appeals Against Extension of Detention on Remand, 22 February 2013, SITF00177439-SITF00177695, p.SITF00177484 (para. 21).

<sup>26</sup> Indeed, in a trial beset by pervasive witness interference (Arrest Warrant Application, KSC-BC-2020-06/F00005, para.22), later detention rulings in *Haradinaj et al.* gave considerable and increasing weight

Where there exists a climate of witness intimidation, an accused will have more tools at his disposal to silence witnesses and will face less risk of detection or denunciation when he does so. Moreover, the climate of intimidation which indisputably exists in Kosovo is manifestly not the only circumstance alleged in support of VESELI's detention.

## 1. Risk of flight

15. It has been established that a risk of flight exists because: (a) convictions of senior KLA in other cases create an incentive to flee; (b) VESELI's current and former positions allow for mobilisation of supporters; (c) of VESELI's access to significant funds; (d) of VESELI's ability to travel to places with no obligation to transfer him; (e) the incentive to flee would increase once VESELI was informed of the confirmed charges in full; and (f) VESELI has attempted to obstruct these proceedings.<sup>27</sup>

16. VESELI is charged with war crimes and crimes against humanity across over 40 detention sites, including murder and torture. The crimes charged against VESELI entail a potential sentence of life-long imprisonment.<sup>28</sup> This prospect creates a persistent risk of flight that will only increase as VESELI learns the full scope of the evidence against him.<sup>29</sup> As the Court of Appeals recently emphasised: 'the nature of the offence as well as the severity of the penalty are important factors to consider when

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to the climate of interference. ICTY, Trial Chamber, *Prosecutor v. Haradinaj et al.*, IT-04-84-T, Decision on Motion on Behalf of Ramush Haradinaj for Provisional Release, 20 July 2007, para.24 (noting that the case was 'being heard in an atmosphere where witnesses feel unsafe and where serious problems arise in ensuring that they testify before the Tribunal'); ICTY, Trial Chamber, *Prosecutor v. Haradinaj et al.*, IT-04-84bis-PT, Decision on Ramush Haradinaj's Motion for Provisional Release, 10 September 2010, para.35 (noting that there was an 'unprecedented atmosphere of widespread and serious witness intimidation surrounding the [retrial]').

<sup>27</sup> Arrest Warrant Decision, KSC-BC-2020-06/F00027, para.32. See also Arrest Warrant Application, KSC-BC-2020-06/F00005, paras 31-33 (incorporated by reference).

<sup>28</sup> Article 44(1).

<sup>29</sup> Arrest Warrant Decision, KSC-BC-2020-06/F00027, para.28.

deciding whether detention is necessary in the circumstances of a particular case.’<sup>30</sup> The ECtHR Grand Chamber also recognises them as relevant in assessing the risk an accused might abscond,<sup>31</sup> and they are particularly pertinent in cases alleging war crimes and crimes against humanity, like this one.<sup>32</sup>

17. Further, VESELI is one of the most experienced intelligence officials in Kosovo, the previous head of the KLA intelligence services and the Kosovo Intelligence Service (‘SHIK’). When combined with his status as a public figure, it is beyond question that VESELI has the technical knowledge and network to flee from justice.

18. VESELI’s connections to Kosovo do not change the reality that the KSC can only seek binding cooperation to surrender him from Kosovo itself or from a country which recognises Kosovo and has an extradition agreement with it, or other enabling legislation.<sup>33</sup> There are only a limited number of countries with such agreements.<sup>34</sup> This situation is markedly different from other jurisdictions and other institutions such as the ICTY, which could seek broader binding cooperation on the basis of its powers derived from the United Nations Security Council. VESELI can travel to over 180 countries in the world and potentially place himself permanently beyond the reach of the KSC.

19. VESELI’s appearance at an SPO interview, his conduct after being named as an indicted person, and his counsel’s letter offering that VESELI travel to The Hague

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<sup>30</sup> Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.72.

<sup>31</sup> ECtHR (Grand Chamber), *Idalov v. Russia*, 5826/03, 22 May 2012, para.145.

<sup>32</sup> The ECtHR has found that, in cases concerning war crimes against the civilian population, detention may be justified and extended solely on the gravity of the charges, and attached particular significance to the seriousness of the crime at issue and the nature and gravity of the charges. See ECtHR, *Šuput v. Croatia*, 49905/07, Judgment, 31 May 2011, paras 101-110; ECtHR, *Getoš-Magdić v. Croatia*, 56305/08, Judgment, 2 December 2010, paras 80-91.

<sup>33</sup> Article 55(2); Rule 208.

<sup>34</sup> See Prosecution response to Application for Interim Release on behalf of Mr Hashim Thaçi, KSC-BC-2020-06/F00149, 16 December 2020 (‘THAÇI Interim Release Response’), para.11, fn.25.

hardly negate the flight risk.<sup>35</sup> Each of these facts were available to the Pre-Trial Judge at the time of the Arrest Warrant Decision.<sup>36</sup> VESELI also overstates the extent of information provided in the SPO's June 2020 announcement naming him as an indicted person.<sup>37</sup> The SPO's announcement was phrased at a high level of generality. VESELI now knows more fully the scope of the case against him, including all counts charged and the victims, witnesses, and detention sites disclosed in the indictment supporting materials.

20. Similarly, VESELI's carefully curated surrender does not merit significant weight.<sup>38</sup> As acknowledged by his Counsel, VESELI's actions at the time of his surrender were specifically directed towards the possibility of future provisional release.<sup>39</sup> Moreover, VESELI's counsel was informed that any other course of action would result in VESELI's immediate arrest within 24 hours, and VESELI was doubtless aware that a significant SPO operation was underway in Kosovo at that time, with assistance from EULEX and the Kosovo Police. In short, he had no choice but to surrender. Of course, permanently maintaining the same deployment on the ground in Kosovo during VESELI's surrender is impossible, so a provisionally released accused—especially one of VESELI's stature, resources, and connections—would have a considerable opportunity to escape which he did not have when he was forced to surrender.

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<sup>35</sup> *Contra* VESELI Release Request, KSC-BC-2020-06/F00151, para.6.

<sup>36</sup> See Notice of Communication, KSC-BC-2020-06/F00024/A01, 21 October 2020, Public (provided to the Pre-Trial Judge prior to the Arrest Warrant Decision, and reclassified 25 November 2020). See also Transcript of Status Conference, 18 November 2020, pp.162-163 (where Counsel for VESELI acknowledges having made 'detailed representations' in advance of VESELI's arrest).

<sup>37</sup> See VESELI Release Request, KSC-BC-2020-06/F00151, para.6.

<sup>38</sup> VESELI Release Request, KSC-BC-2020-06/F00151, para.6.

<sup>39</sup> Transcript of Status Conference, 11 November 2020, p.163 (VESELI's surrender was 'a strong signal and indication of his commitment [...] to cooperate with the Tribunal *so that* a provisional release would inevitably be granted in due course' (emphasis added); 'we are on to a collaborative, cooperative start of a process which we trust will result in Mr Veseli's provisional release').

21. VESELI's public calls for respecting the integrity of the judicial process upon his surrender are welcome, but were clearly made only because of VESELI's need and intention to seek interim release.<sup>40</sup> That VESELI's counsel read these same remarks into the record at VESELI's initial appearance—immediately after foreshadowing an interim release application—leaves no doubt that the statements were directed solely towards furthering the VESELI Release Request.<sup>41</sup>

22. VESELI's current lavish praise of the KSC is a transparent attempt to secure his release. Tellingly, this is the same man who earlier characterised the KSC as an 'injustice' foisted on Kosovo by its powerful international patrons.<sup>42</sup> His praise of the KSC has always been selective and opportunistic.<sup>43</sup> As a notable recent example, he said nothing in response to obstructive efforts by the KLA War Veterans Association ('KLAWVA').<sup>44</sup>

## 2. Risk of obstructing the investigation

23. It has been established that a risk of obstructing the investigation exists because: (a) VESELI's former and current positions allow for mobilisation of a vast support network; (b) of VESELI's efforts to interfere with witnesses; and (c) there is a prevailing climate in Kosovo of intimidation of witnesses who testify against KLA members.<sup>45</sup> As outlined below, further factors supporting the existence of this risk have been revealed.

### (a) Support network and the climate of intimidation

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<sup>40</sup> *Contra* VESELI Release Request, KSC-BC-2020-06/F00151, paras 6-7, 13.

<sup>41</sup> *See* Initial Appearance of 10 November 2020, KSC-BC-2020-06, pp.17-19.

<sup>42</sup> Fn.80 below.

<sup>43</sup> Paragraphs 37-40 below.

<sup>44</sup> Paragraphs 24-26 below.

<sup>45</sup> Arrest Warrant Decision, KSC-BC-2020-06/F00027, para.33. *See also* Arrest Warrant Application, KSC-BC-2020-06/F00005, paras 34-38 (incorporated by reference).

24. In September 2020, collections of SITF/SPO-related materials were provided without authorisation to the KLA War Veterans Association, which then distributed or otherwise made them available to the public. This court has confirmed an indictment charging that these documents were delivered as part of a campaign to intimidate witnesses.<sup>46</sup>

25. The KLA WVA has long had a particularly active network of supporters hostile to the SPO's investigation.<sup>47</sup> There is a significant risk the KLA WVA and others will continue such activities, and a prime potential source of leaks is material to be disclosed to the Accused. What the KLA WVA has already done has intimidated or frightened several of the SPO's potential witnesses. Such actions demonstrate – again – that conducting legal proceedings in The Hague is best seen not as a panacea for mitigating interference risks so much as a concrete reflection of the deadly seriousness of the problem.<sup>48</sup>

26. By virtue of his role as a senior KLA leader, Kadri VESELI is in a position of particular influence over this network. The VESELI Defence fails to acknowledge that the existence of such a network creates risks that extend to VESELI individually.

(b) Interference in current proceedings

27. The VESELI Defence's arguments regarding the activities of the Division for Coordinating the Process of Legal Protection and Financial Support for Potential

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<sup>46</sup> See generally *Prosecutor v. Gucati and Haradinaj*, Redacted indictment, KSC-BC-2020-07/F00075, 14 December 2020 (confirmed 11 December 2020).

<sup>47</sup> Arrest Warrant Application, KSC-BC-2020-06/F00005, paras 4-5.

<sup>48</sup> See *Obstructing the Investigation – Too Many Obstacles, Too Little Evidence*, in Sense Agency, ICTY: The Kosovo Case, 1998-1999, available at <https://kosovo.sense-agency.com/>; Arrest Warrant Application, KSC-BC-2020-06/F00005, paras 21-22.

Accused Persons in Trials before the Specialist Chambers ('Division')<sup>49</sup> misstate important facts and ignore others.

28. The VESELI Defence expends significant energy refuting that [REDACTED].<sup>50</sup> However, that is not the allegation which was made. The allegation made is that VESELI, and THAÇI, put [REDACTED] under a lot of pressure [REDACTED].<sup>51</sup> [REDACTED]'s carefully worded, unsigned endorsement of the capacity in which [REDACTED] sheds no light on that charge.<sup>52</sup> [REDACTED]'s declaration similarly sidesteps the issue, focusing exclusively on pressure to [REDACTED]. That [REDACTED] did in fact make that spontaneous, unprompted admission is confirmed by both the [REDACTED] and the contemporaneously made notes of the contact.<sup>53</sup> That [REDACTED] may now seek to deny having done so is unsurprising, but this certainly does not merit any weight.

29. Indeed, [REDACTED] is entirely consistent with additional information demonstrating VESELI's [REDACTED]. The VESELI Defence's insistence that [REDACTED]<sup>54</sup> – premised largely on a formalistic reliance upon VESELI's role as Speaker of the Parliament, and forming the primary basis for many of the VESELI Defence's attempts to deflect responsibility<sup>55</sup> – is not only disingenuous but demonstrably untrue.

30. LAJÇI is a long-term – indeed founding<sup>56</sup> – member of the PDK, a party led first by THAÇI and then by VESELI. Prior to taking up his role in the Division, LAJÇI

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<sup>49</sup> VESELI Release Request, KSC-BC-2020-06/F00151, paras 28-46.

<sup>50</sup> VESELI Release Request, KSC-BC-2020-06/F00151, paras 28-35.

<sup>51</sup> Arrest Warrant Application, KSC-BC-2020-06/F00005, [REDACTED].

<sup>52</sup> *Contra* VESELI Release Request, KSC-BC-2020-06/F00151, para.31.

<sup>53</sup> Annex 1.1, 1.2.

<sup>54</sup> VESELI Release Request, KSC-BC-2020-06/F00151, [REDACTED].

<sup>55</sup> VESELI Release Request, KSC-BC-2020-06/F00151, [REDACTED].

<sup>56</sup> Arrest Warrant Application, KSC-BC-2020-06/F00005, para.10.

served as Chef de Cabinet and Advisor to VESELI.<sup>57</sup> Moreover, [REDACTED] is far from the only indication of VESELI's [REDACTED], especially when it comes to matters related to SPO witnesses and the KSC.

31. For example, in one telling exchange between [REDACTED], occurring during that same time period, [REDACTED].<sup>58</sup> The example is instructive, not only in further corroborating VESELI's influence over [REDACTED] and his direct intervention on matters related to the KSC, but on the inseparable nature of THAÇI and VESELI's coordinated efforts, and the indirect means adopted by them. Manipulating matters behind the scenes so as to leave room for future denial of their personal involvement is a common tactic with THAÇI and VESELI. Such false denials are the foundation upon which much of the VESELI Release Request is built.

32. A further example occurred on 20 January 2019 – the day that VESELI met with Rrustem MUSTAFA shortly following MUSTAFA's return from his SPO interview<sup>59</sup> ([REDACTED]),<sup>60</sup> and barely three weeks before THAÇI hired MUSTAFA as an adviser.<sup>61</sup> On that day, [REDACTED].<sup>62</sup>

33. The VESELI Defence's attempted disassociation from LAJÇI holds no water, and this extends to the Division's unreasonable legal assistance payments to [REDACTED] and others.<sup>63</sup> Indeed, the VESELI Defence's assertion that [REDACTED] would not need to be [REDACTED]<sup>64</sup> ignores the obvious role of insider witnesses in trials like this one. [REDACTED], and who could themselves be in jeopardy of further

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<sup>57</sup> [REDACTED].

<sup>58</sup> [REDACTED].

<sup>59</sup> Kosova Press, Veseli meets Remi: KLA fought for justice, 20 January 2019, available at <http://old.kosovapress.com/en/news/veseli-meets-remi-kla-fought-for-justice-195718>.

<sup>60</sup> Arrest Warrant Application, KSC-BC-2020-06/F00005, [REDACTED].

<sup>61</sup> Arrest Warrant Application, KSC-BC-2020-06/F00005, para.17.

<sup>62</sup> [REDACTED].

<sup>63</sup> *Contra* VESELI Release Request, KSC-BC-2020-06/F00151, paras 36-42.

<sup>64</sup> VESELI Release Request, KSC-BC-2020-06/F00151, para.[REDACTED].

prosecution, are especially dangerous for the accused, making them prime targets for improper influence to 'stay on-side' and not say what they know.

34. This is equally true in respect of Sylejman SELIMI's appointment, and the VESELI Defence's arguments there similarly hinge on an unreasonable interpretation of the facts. At the end of 2018, SELIMI was detained on charges relating to war crimes (torture and cruel treatment) against prisoners at the Likoc/Likovac detention site. Despite a prior unsuccessful request for release from prison as recently as October 2018, after the SPO contacted him on 11 December 2018, Sylejman SELIMI was granted conditional release in January 2019. That same day, VESELI posted a message on social media welcoming SELIMI's release from prison<sup>65</sup> and VESELI—together with THACI and others—met SELIMI the following day.<sup>66</sup> SELIMI was appointed as an adviser to the Kosovo Prime Minister at the start of February 2019, with his SPO interview taking place on 6 February 2019. Amidst the clear pattern of improper assistance to other witnesses contemporaneous with their being summonsed by the SPO,<sup>67</sup> the VESELI Defence's assertion of mere coincidence is untenable.

35. All of this must be further considered in light of VESELI's extensive intelligence background. The functions of VESELI's intelligence services during the charged timeframe included identification and investigation of perceived opponents.<sup>68</sup> Further, [REDACTED] SHIK agents were involved in the murder of alleged collaborators during VESELI's tenure as chief. The VESELI Defence may

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<sup>65</sup> BIRN, Die Morina and Adelina Ahmeti, Kosovo Ex-Commander Sylejman Selimi Freed from Jail, 25 January 2019, available at <https://balkaninsight.com/2019/01/25/kosovo-ex-kla-commander-sylejman-selimi-released-01-25-2019/> (quoting VESELI's Facebook page: 'The truth can be late but it always triumphs. Sylejman SELIMI is a synonym for the KLA's truth. WELCOME COMMANDER!').

<sup>66</sup> Annex 1.5.

<sup>67</sup> THAÇI Interim Release Response, KSC-BC-2020-06/F00149, paras 25-30.

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

[REDACTED],<sup>69</sup> but [REDACTED].<sup>70</sup> In short, VESELI has all the experience, skills, and network necessary to target witnesses against him, including through clandestine means which would be difficult to trace. Moreover, as outlined above, he has already demonstrated that he is motivated to do so.

36. Finally, the VESELI Defence presents no authority for the proposition that the Pre-Trial Judge cannot rely upon redacted evidence in his assessment.<sup>71</sup> There is no such indication in the statutory scheme,<sup>72</sup> and the European Court of Human Rights Grand Chamber permits reliance upon undisclosed evidence following a proper balancing assessment.<sup>73</sup> Were the rule otherwise, detention of an accused like VESELI – at high risk of interfering with witnesses – would be impossible without revealing the very information that would enable such interference.

(c) Attempts to undermine the KSC

37. VESELI argues at length that he has been a long and active supporter of the KSC.<sup>74</sup> Although VESELI's actions toward undermining the KSC's mandate are not specifically relied upon in the Arrest Warrant Decision,<sup>75</sup> VESELI's submissions are misleading on their own terms, particularly regarding the 2017 efforts to repeal the Law. Contrary to the VESELI Defence's attempt to characterise the bill as an act of

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<sup>69</sup> VESELI Release Request, KSC-BC-2020-06/F00151, paras [REDACTED].

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

<sup>71</sup> VESELI Release Request, KSC-BC-2020-06/F00151, paraa 47-49.

<sup>72</sup> To the contrary *see* Rule 157 (questioning anonymous witnesses at trial).

<sup>73</sup> ECtHR (Grand Chamber), *A. and others v. United Kingdom*, 3455/05, 19 February 2009, paras 205-08, 218. One relevant consideration in such balancing assessments is if the material formed no part of the prosecution's case. *See Jasper v. United Kingdom* (Grand Chamber), 27052/95, 16 February 2000, paras 51-53, 55. In the present case, the redacted information challenged by the VESELI Defence is only being relied upon to establish the accused's detention.

<sup>74</sup> VESELI Release Request, KSC-BC-2020-06/F00151, paras 6-8, 18-24.

<sup>75</sup> Arrest Warrant Decision, KSC-BC-2020-06/F00027, para.33, *in contrast to* para.29 (THAÇI) and para.41 (KRASNIQI).

individual deputies from ‘all political parties’,<sup>76</sup> it was put forward by parliamentary members of the then governing ‘war-coalition’ of parties led by former KLA commanders, dominated by the PDK (founded by THAÇI and led at the time by VESELI), together with the AAK (founded and led by then Prime Minister Ramush HARADINAJ) and NISMA (founded and led by Fatmir LIMAJ and Jakup KRASNIQI).<sup>77</sup> While the leaders avoided putting their names directly to the motion, virtually every eligible member of the PDK signed the bill. If there is one issue that their then coalition partners could also agree on, it was abolition of the KSC.

38. Today, VESELI claims he was opposed to the initiative, but cites no public statement to that effect while the efforts were developing.<sup>78</sup> VESELI cites only to statements made *after* an unprecedented international backlash had occurred, and opposition parties had initiated a boycott.<sup>79</sup> And even those statements are far from unequivocal.<sup>80</sup> To state weakly that the initiative would not be able to succeed, having

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<sup>76</sup> VESELI Release Request, KSC-BC-2020-06/F00151, para.19.

<sup>77</sup> Other signatories included two members of the small AKR party, also a coalition partner, and four members of the 6+.

<sup>78</sup> See VESELI Release Request, KSC-BC-2020-06/F00151, para.19, n.26 (cross-referencing to footnote 16, which itself cross-references footnote 14, which is a citation to VESELI’s remarks upon his surrender on 5 November 2020).

<sup>79</sup> When the initiative was put forward, U.S. Ambassador DELAWIE gave a statement saying, *inter alia*, ‘I’m calling on Kosovo’s leaders to help shut this effort down. Everybody needs to think about the interests of the state [...] instead of their personal interests on this’, available at: <https://xk.usembassy.gov/ambassador-delawies-statement-media-undoing-special-court-law/>. See also Quint Member States Statement, January 4, 2018, available at <https://xk.usembassy.gov/quint-member-states-statement/>; VOA, Keida Kostreci, Move to Abolish Kosovo War Crimes Court Rattles US, Other Western Allies, 23 December 2017, available at <https://www.voanews.com/europe/move-abolish-kosovo-war-crimes-court-rattles-us-other-western-allies>.

<sup>80</sup> VESELI cites an interview purportedly published 8 January 2018, but fails to provide an accurate citation. VESELI Release Request, KSC-BC-2020-06/F00151, para.20, n.29 (providing a series of cross-references back to his remarks upon surrender in November 2020). Nonetheless there are many reports of VESELI speaking about the KSC on that date. One such article quotes VESELI as saying the following about the KSC: ‘Kosovo deserved this to happen least in the world, but it will happen even though there are hundreds of arguments that speak against it! It is an injustice that is being done in the name of justice!’. VESELI also took the opportunity to attack LDK and other opposition parties who had not supported the initiative (describing them as ‘old wartime enemies’). BIRN, Die Morina, Kosovo

been informed in no uncertain terms of the dire consequences of proceeding with it, is very different from firmly opposing it from the outset. Indeed, in an October 2018 interview cited by the VESELI Defence, the journalist specifically challenged VESELI about his delayed support for the KSC as the repeal was being considered.<sup>81</sup>

39. Former United States Ambassador Greg DELAWIE, whose positive remark of 9 January 2018 VESELI did not hesitate to reference, equally emphasised on 17 January 2018 that ‘MPs who support this initiative *and the politicians who lead it, despite their denials*, will be subject to specific and harsh consequences should the initiative succeed. They know this, we’ve told them.’<sup>82</sup>

40. Making selective public pronouncements in support of the KSC clearly does not preclude persistent, less publicised efforts to undermine it.<sup>83</sup> In context, far from demonstrating VESELI’s support for the KSC, the incident reinforces the multitude of ways in which VESELI, his co-accused, and network have sought to attack it.

### 3. Risk of committing further crimes

41. It has been previously established that a risk of committing further crimes exists because: (a) the nature of the joint criminal enterprise charge concerned targeting opponents of the accused; (b) VESELI has already attempted to obstruct the

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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/>.

<sup>81</sup> Annex 1.6 (referenced in footnote 30 of the VESELI Release Request).

<sup>82</sup> BIRN, Die Morina, Push to Scrap Special Court Fails Again in Kosovo, 17 January 2018, available at <https://balkaninsight.com/2018/01/17/kosovo-fails-again-to-revoke-the-law-on-special-court-01-17-2018/> (emphasis added).

<sup>83</sup> See THAÇI Interim Release Response, KSC-BC-2020-06/F00149, paras 19-22.

proceedings; and (c) there is a prevailing climate in Kosovo of intimidation of witnesses who testify against KLA members.<sup>84</sup>

42. The heart of the joint criminal enterprise in this case is the targeting of perceived opponents of the KLA,<sup>85</sup> including those who objected to or exposed attacks on those targeted. This focus persists.<sup>86</sup>

43. The VESELI Defence attempts to rely upon the age of the alleged offences as a factor that should be considered.<sup>87</sup> But the well-grounded suspicion that VESELI committed a wide range of war crimes and crimes against humanity<sup>88</sup> is a serious indicator, amongst others, of the risk that he is willing to commit further violent acts, even many years later.

#### C. NO CONDITIONS SUFFICIENTLY MITIGATE THESE RISKS

44. The VESELI Defence presents a list of conditions which could be applied in the event of his release.<sup>89</sup> No combination of the conditions proposed comes close to mitigating the array of risks VESELI poses if released. Detention is the only means by which they can be adequately managed, with the communications monitoring framework of the KSC Detention Centre being particularly important to ensure that no confidential information disclosed to him is disseminated to the outside world.<sup>90</sup>

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<sup>84</sup> Arrest Warrant Decision, KSC-BC-2020-06/F00027, para.34. *See also* Arrest Warrant Application, KSC-BC-2020-06/F00005, para.40 (incorporated by reference).

<sup>85</sup> Confirmed Indictment, KSC-BC-2020-06/F00034/A01, 30 October 2020, para.32.

<sup>86</sup> Annex 1 to the THAÇI Interim Release Response, KSC-BC-2020-06/F00149/A01 (on Gazmend HALILAJ). *See also* fn.80 above.

<sup>87</sup> VESELI Release Request, KSC-BC-2020-06/F00151, para.50.

<sup>88</sup> Confirmation Decision, KSC-BC-2020-06/F00026, paras 474, 478, 482, 491.

<sup>89</sup> VESELI Release Request, KSC-BC-2020-06/F00151, paras 10, 60-62.

<sup>90</sup> *See especially* Articles 4.2, 6-8 and 17 of the Registry Practice Direction on Detainees – Visits and Communications, KSC-BD-09/Rev1/2020, 23 September 2020.

45. The KSC/SPO does not have the resources to adequately monitor provisionally released accused in Kosovo. Further, EULEX's monitoring mandate does not extend to monitoring conditions of release, nor does it have the resources to do so.<sup>91</sup>

46. The Kosovo Police have been of assistance to the SPO when called upon, particularly in the recent arrests of the Accused. But there are good reasons to believe that the Kosovo authorities are limited in their ability to monitor an accused of VESELI's stature, resources, and authority in a case like this one. There are prominent examples that demonstrate the lack of capacity to effectively monitor and enforce conditions in respect of former KLA leaders.<sup>92</sup>

#### D. THE ADDITIONAL RELIEF SOUGHT IS UNNECESSARY

47. As to the VESELI Defence request for an oral hearing,<sup>93</sup> the Pre-Trial Judge has determined he has enough information from the written filings alone to resolve the interim release requests of the other accused.<sup>94</sup> Nothing in the VESELI Release Request warrants a different approach.

### III. CLASSIFICATION

48. The present submission is filed confidentially in accordance with Rule 82(4). A public redacted version will be filed.

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<sup>91</sup> *Contra* VESELI Release Request, KSC-BC-2020-06/F00151, para.10.

<sup>92</sup> THAÇI Interim Release Response, KSC-BC-2020-06/F00149, paras 45-47.

<sup>93</sup> VESELI Release Request, KSC-BC-2020-06/F00151, para.70.

<sup>94</sup> Decision on the Conduct of Detention Review and Varying the Deadline for Preliminary Motions, KSC-BC-2020-06/F00150, 16 December 2020.

IV. RELIEF REQUESTED

49. For the foregoing reasons, the relief sought by the VESELI Defence should be rejected in full.

Word count: 5,482



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**Jack Smith**

**Specialist Prosecutor**

Friday, 15 January 2021  
At The Hague, the Netherlands.