



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

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Decision on Kadri Veseli's Application for Interim Release

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 41(2), (6), and (12) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 5 November 2020, Kadri Veseli ("Mr Veseli" or "Accused") was arrested pursuant to a decision ("Decision on Arrest and Detention")² and an arrest warrant issued by the Pre-Trial Judge,³ upon request⁴ of the Specialist Prosecutor's Office ("SPO" and "SPO Request", respectively), and further to the confirmation of an indictment against him.⁵

2. On 15 December 2020, the Defence for Mr Veseli ("Defence") informed that it will file a request for interim release and suggested a timeline for related submissions by the Parties, including an oral hearing in relation thereto.⁶

3. On 16 December 2020, the Pre-Trial Judge, *inter alia*: (i) rejected the request of the Defence to hold an oral hearing on the Accused's continued detention or release; and

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

² KSC-BC-2020-06, F00027, Pre-Trial Judge, *Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders*, 26 October 2020, public.

³ KSC-BC-2020-06, F00027/A03/RED, Pre-Trial Judge, *Public Redacted Version of Arrest Warrant for Kadri Veseli*, 26 October 2020, public.

⁴ KSC-BC-2020-06, F00005/CONF/RED2, Specialist Prosecutor, *Second Confidential Redacted Version of 'Request for Arrest Warrants and Related Orders'*, Filing KSC-BC-2020-06/F00005 dated 28 May 2020, 15 December 2020, confidential; see also F00005/RED, Specialist Prosecutor, *Public Redacted Version of 'Request for Arrest Warrants and Related Orders'*, Filing KSC-BC-2020-06/F00005 dated 28 May 2020, 17 November 2020, public, with Annexes 1-3, public.

⁵ KSC-BC-2020-06, F00026/RED, Pre-Trial Judge, *Public Redacted Version of Decision on the Confirmation of the Indictment against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi* ("Confirmation Decision"), 26 October 2020, public.

⁶ KSC-BC-2020-06, F00145, Defence for Mr Veseli, *Submissions of the Defence for Kadri Veseli – Status Conference*, 17 December 2020, 15 December 2020, public, paras 6-7.

(ii) requested the SPO to respond by 4 January 2021 to the request for interim release to be filed by the Defence, and the latter to file its reply by 11 January 2021.⁷

4. On 17 December 2020, the Defence filed an application for interim release (“Request”) and reiterated its request for an oral hearing in relation thereto.⁸

5. On 4 January 2021, the SPO responded to the Request (“Response”).⁹

6. On 5 January 2021, the Pre-Trial Judge authorised a word limit of 6,000 words for all Defence replies.¹⁰

7. On 8 January 2021, the Defence requested that the Request be reclassified as public (“Reclassification Request”).¹¹

8. On 13 January 2021, further to a decision extending the time limit for the reply,¹² the Defence replied to the Response (“Reply”).¹³

II. SUBMISSIONS

9. The Defence submits that: (i) there is no basis for inferring that Mr Veseli would pose a flight risk; (ii) there is no articulable ground for concluding that Mr Veseli

⁷ KSC-BC-2020-06, F00150, Pre-Trial Judge, *Decision on the Conduct of Detention Review and Varying the Deadline for Preliminary Motions* (“Decision on Conduct of Detention”), 16 December 2020, public, para. 30(a), (c)-(d).

⁸ KSC-BC-2020-06, F00151, Defence for Mr Veseli, *Application for Interim Release of Kadri Veseli*, 17 December 2020, confidential, with Annexes 1-7, confidential.

⁹ KSC-BC-2020-06, F00161, Specialist Prosecutor, *Prosecution Response to Application for Interim Release on Behalf of Mr Kadri Veseli*, 4 January 2021, confidential, with Annex 1, confidential; see also F00161/RED, Specialist Prosecutor, *Public Redacted Version of ‘Prosecution Response to Application for Interim Release on Behalf of Mr Kadri Veseli’*, 15 January 2021, public.

¹⁰ KSC-BC-2020-06, F00162, Pre-Trial Judge, *Decision on Thaçi Defence Request for Extension of the Reply Word Limit*, 5 January 2021, public, para. 12(a)-(b).

¹¹ KSC-BC-2020-06, F00169, Defence for Mr Veseli, *Request to Reclassify “Application for Interim Release of Kadri Veseli With Annexes 1 to 7”*, Filing KSC-BC-2020-06/F00151, dated 17 December 2020, 8 January 2021, public.

¹² KSC-BC-2020-06, F00171, Pre-Trial Judge, *Decision on Veseli Defence Request for Extension of Time Limit*, 11 January 2021, confidential and *ex parte*.

¹³ KSC-BC-2020-06, F00174, Defence for Mr Veseli, *Defence Reply to the SPO’s Response to the Provisional Release Application of Kadri Veseli*, 13 January 2021, public, with Annexes 1-12, public.

would interfere with witnesses or obstruct the course of justice; and (iii) there is no separate basis for alleging a risk of further offences.¹⁴ Moreover, even if the Pre-Trial Judge were to consider that such articulable grounds exist, pre-trial detention would be disproportionate in light of the Pre-Trial Judge's power to make provisional release conditional and the likely expected duration of the period between Mr Veseli's first appearance and the start of the trial.¹⁵

10. The SPO opposes the Request, on the basis that the risks under Article 41(6)(b) of the Law, as previously found by the Pre-Trial Judge, continue to exist.¹⁶ The SPO further contends that only detention at the Specialist Chambers ("SC") detention facilities is sufficient to address these risks.¹⁷

11. The Defence replies to three categories of considerations addressed by the SPO in the Response.¹⁸ It further renews its request for an oral hearing, if, and to the extent that any of the witness evidence adduced in support of its Reply is disputed, in order to enable the witnesses to be examined in person.¹⁹

III. APPLICABLE LAW

12. Article 41(2) of the Law provides that any person deprived of his or her liberty by arrest or detention shall be entitled to challenge the lawfulness of his or her arrest and such challenge shall be decided speedily by the SC.

13. Article 41(6) of the Law provides that the SC shall only order the arrest and detention of a person when there is a grounded suspicion that the person has committed a crime within the jurisdiction of the SC and there are articulable grounds

¹⁴ Request, paras 4, 6-51.

¹⁵ Request, paras 5, 59-69.

¹⁶ Response, paras 1, 5-43.

¹⁷ Response, paras 1, 44-46.

¹⁸ Reply, paras 1-72.

¹⁹ Reply, para. 73.

to believe that: (i) the person is a flight risk; (ii) the person will destroy, hide, change or forge evidence or specific circumstances indicate that he or she will obstruct the progress of criminal proceedings; 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 the person will repeat the criminal offence, complete an attempted crime, or commit a crime which the person has attempted to commit.

14. Pursuant to Rule 57(2) of the Rules, after the assignment of a Pre-Trial Judge and until a judgment is final, the Panel seized with a case shall review a decision on detention upon the expiry of two months from the last ruling on detention or at any time upon request by the Accused or the Specialist Prosecutor, or *proprio motu*, where a change in circumstances since the last review has occurred.

15. Article 41(12) of the Law provides that, in addition to detention on remand, the following measures may be ordered to ensure the presence of the Accused, to prevent reoffending or to ensure successful conduct of criminal proceedings: summons, arrest, bail, house detention, promise not to leave residence, prohibition on approaching specific places or persons, attendance at police station or other venue, and diversion. Pursuant to Rule 56(5) of the Rules, a Panel may impose such conditions upon release as deemed appropriate to ensure the presence of the detained person.

IV. DISCUSSION

A. APPLICABLE STANDARDS

16. The Defence submits that, as Mr Veseli is currently detained pursuant to the *ex parte* issuance of the Decision on Arrest and Detention and related arrest warrant,

the Pre-Trial Judge is required to proceed *de novo* by inquiring anew into the existence of factors justifying detention in light of the material presented by the Parties.²⁰ It further avers that, within the legal framework of the SC, it is the SPO who bears the affirmative duty to establish the specific criteria set out in Article 41(6) of the Law, whereas the Accused bears no burden of proof for interim release.²¹ Moreover, the Defence submits that, in order to establish articulable grounds to believe that the particular Accused whose case is being considered would pose a certain risk if he was provisionally released, the SPO must establish a solid factual foundation for allegations against that particular Accused.²²

17. The SPO responds that the Pre-Trial Judge must be “satisfied” that the criteria under Article 41(6) of the Law are met.²³ The relevant assessment is as to the possibility – as opposed to the inevitability – of such future occurrences and, if these conditions are met, the person shall continue to be detained.²⁴ It further submits that, in the present instance, the Pre-Trial Judge previously found the criteria under Article 41(6) of the Law to be met in the Decision on Arrest and Detention; therefore, pursuant to the Request and Rule 57(2) of the Rules, the matter to be considered is a review of that decision.²⁵ The SPO further responds that an individual assessment does not exclude taking into account the context or actions of others, and that an Accused’s position or contacts, related networks of support, and common circumstances applying to multiple accused, are relevant for and remain compatible with an individualized assessment.²⁶

18. The Defence replies that a general climate of witness intimidation is not sufficient to justify pre-trial detention, unless the SPO can link the individual accused to any

²⁰ Request, para. 53.

²¹ Request, paras 55-59 and the references contained therein.

²² Request, paras 14-16 and the references contained therein.

²³ Response, paras 2-3.

²⁴ Response, para. 2 and the references contained therein.

²⁵ Response, para. 4.

²⁶ Response, paras 11-12.

proven attempt at witness intimidation, and that referring *in abstracto* to the fact that the witness has a network of support is similarly insufficient.²⁷

19. The Pre-Trial Judge recalls that while the arrest warrant, pursuant to Article 41(6) of the Law, was issued *ex parte*, without participation of the Defence, Article 41(2) of the Law provides the detained person with an early opportunity to challenge the lawfulness of his or her arrest, including the grounds set out in Article 41(6) of the Law. Accordingly, the Pre-Trial Judge is called upon to inquire anew into the existence of facts justifying detention in light of the arguments advanced by the Parties.²⁸ In this context, it is noted that any request for provisional release must be considered in the context of the detained person's right to be presumed innocent.²⁹

20. The SPO bears the burden of establishing that the detention of the Accused is necessary.³⁰

21. As regards the evidentiary threshold under Article 41(6)(b) of the Law, the Pre-Trial Judge notes that, once the standard in Article 41(6)(a) of the Law is met,

²⁷ Reply, paras 5-6 and the references contained therein.

²⁸ KSC-BC-2020-07, F00058, Single Judge, *Decision on Request for Immediate Release of Nasim Haradinaj* ("Haradinaj First Decision on Detention"), 27 October 2020, public, paras 12-13.

²⁹ 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 the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office* ("SCCC 26 April 2017 Judgment"), 26 April 2017, para. 113. Similarly, ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-2151-Red, Appeals Chamber, [Judgment on the Appeal of Mr Jean-Pierre Bemba Gombo Against the Decision of Trial Chamber III of 6 January 2012 Entitled "Decision on the Defence's 28 December 2011 'Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo'"](#), 5 March 2012, para. 40.

³⁰ SCCC 26 April 2017 Judgment, para. 115. Similarly, for example, ICC, *Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/15-208, Appeals Chamber, [Judgment on the Appeal of Mr Laurent Gbagbo Against the Decision of Trial Chamber I of 8 July 2015 Entitled "Ninth Decision on the Review of Mr Laurent Gbagbo's Detention Pursuant to Article 60\(3\) of the Statute"](#) ("Gbagbo 8 September 2015 Appeal Judgment"), 8 September 2015, para. 36; *Prosecutor v. Bemba*, ICC-01/05-01/08-1019, Appeals Chamber, [Judgment on the Appeal of Mr Jean-Pierre Bemba Gombo Against the Decision of Trial Chamber III of 28 July 2010 Entitled "Decision on the Review of the Detention of Mr Jean-Pierre Bemba Gombo Pursuant to Rule 118\(2\) of the Rules of Procedure and Evidence"](#), 19 November 2010, para. 51; *Prosecutor v. Katanga and Ngudjolo Chui*, ICC-01/04-01/07-330, Pre-Trial Chamber I, [Decision on the Powers of the Pre-Trial Chamber to Review Proprio Motu the Pre-Trial Detention of Germain Katanga](#), 18 March 2008, p. 7.

the grounds that allow deprivation of liberty must be *articulable* in the sense that they must be specified in detail.³¹ In this regard, Article 41(6)(b) of the Law echoes the principle that continued detention of a person can only be justified if there are specific indications of a genuine requirement of public interest, which outweigh the person's right to liberty.³² Accordingly, a Panel must rely on specific reasoning and concrete grounds in deciding to continue detention;³³ *i.e.* it must find that there are specific, concrete grounds to believe that the Accused poses public interest risks that can only be mitigated through continued detention. The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"³⁴ that the risks under any of the three limbs of Article 41(6)(b) of the Law exist, denoting an acceptance of the possibility, not the inevitability, of a future occurrence.³⁵ In simple terms, while suspicion *simpliciter* is not enough, certainty is not required.

22. As regards the nature of the assessment under Article 41(6)(b) of the Law, the Pre-Trial Judge recalls that, while the evaluation involves an element of discretion,³⁶

³¹ Article 19.1.30 of the Kosovo Criminal Procedure Code 2012, Law No. 04/L-123 defines "articulable" as: "the party offering the information or evidence must specify in detail the information or evidence being relied upon".

³² SCCC 26 April 2017 Judgment, para. 113.

³³ SCCC 26 April 2017 Judgment, para. 115.

³⁴ See chapeau of Article 41(6)(b) of the Law.

³⁵ KSC-BC-2020-07, IA001/F00005, Court of Appeals Chamber, *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention* ("Gucati Appeal Decision"), 9 December 2020, public, paras 63, 67. See also Haradinaj First Decision on Detention, para. 18. Similarly, ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-558, Appeals Chamber, [Judgment on the Appeal of Mr Aimé Kilolo Musamba Against the Decision of Pre-Trial Chamber II of 14 March 2014, Entitled "Decision on the 'Demande de mise en liberté provisoire de Maître Aimé Kilolo Musamba'"](#) ("Bemba et al. Appeal Judgment"), 11 July 2014, paras 107, 117; *Prosecutor v. Katanga and Ngudjolo Chui*, ICC-01/04-01/07-572, Appeals Chamber, [Judgment in the Appeal by Mathieu Ngudjolo of 27 March 2008 Against the Decision of Pre-Trial Chamber I on the Application of the Appellant for Interim Release](#) ("Katanga Appeal Judgment"), 9 June 2008, para. 21; *Prosecutor v. Lubanga*, ICC-01/04-01/06-824, Appeals Chamber, [Judgment on the Appeal of Mr. Thomas Lubanga Dyilo Against the Decision of Pre-Trial Chamber I Entitled "Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo"](#) ("Lubanga Appeal Judgment"), 13 February 2007, para. 137.

³⁶ Gucati Appeal Decision, para. 49. Similarly, ICTY, *Prosecutor v Popović et al.*, IT-05-88-AR65.2, Appeals Chamber, [Decision on Defence's Interlocutory Appeal of Trial Chamber's Decision Denying Ljubomir Borovčanin Provisional Release](#) ("Borovčanin Appeal Decision"), 30 June 2006, para. 5.

it must be based on the facts of the case and must be undertaken on an individual basis in light of the personal circumstances of each Accused.³⁷ Accordingly, the same factors, when applied to another case, in relation to another Accused, may result in a different conclusion by the Pre-Trial Judge or may be considered irrelevant.³⁸ When assessing the relevant factors, the Pre-Trial Judge may not conduct a piecemeal assessment, but must weigh all relevant factors taken together.³⁹ These factors may be individual, such as the nature and scope of the crimes allegedly committed by the Accused and the potential punishment that he or she is facing,⁴⁰ his or her age, (past) position(s), occupation, family ties, health condition, assets, conduct and statements,⁴¹ international contacts and ties,⁴² and existence of support networks that

³⁷ Similarly, ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-AR65.5, Appeals Chamber, [Decision on Prosecution's Consolidated Appeal Against Decision to Provisionally Release the Accused Prlić, Stojić, Praljak, Petković and Čorić](#) ("Prlić et al. Appeal Decision"), 11 March 2008, para. 7; *Prosecutor v. Lukić and Lukić*, IT-98-32/1-AR65.1, Appeals Chamber, [Decision on Defence Appeal Against Trial Chamber's Decision on Sredoje Lukić's Motion for Provisional Release](#) ("Lukić Appeal Decision"), 16 April 2007, para. 7; ICC, [Bemba et al. Appeal Judgment](#), para. 111.

³⁸ Similarly, ICTY, [Borovčanin Appeal Decision](#), para. 15.

³⁹ *Gucati Appeal Decision*, para. 61; Similarly, ICTY, *Prosecutor v. Šainović and Ojdanić*, IT-99-37-AR65, Appeals Chamber, [Decision on Provisional Release](#) ("Šainović and Ojdanić Appeal Decision"), 30 October 2002, para. 6; [Prlić et al. Appeal Decision](#), para. 7; *Lukić Appeal Decision*, para. 7; *Prosecutor v. Bemba et al.*, ICC-01/05-01/08-323, Appeals Chamber, [Judgment on the Appeal of Mr. Jean-Pierre Bemba Gombo Against the Decision of Pre-Trial Chamber III Entitled "Decision on Application for Interim Release"](#), 16 December 2008, para. 55; *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-970, Appeals Chamber, [Judgment on the Appeal of the Prosecutor Against the Decision of Pre-Trial Chamber II of 23 January 2015 Entitled "Decision on 'Mr Bemba's Request for Provisional Release'"](#), 29 May 2015, para. 27; *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-969, Appeals Chamber, [Judgment on the Appeals Against Pre-Trial Chamber II's Decisions Regarding Interim Release in Relation to Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu, and Narcisse Arido and Order for Reclassification](#) ("Bemba et al. 29 May 2015 Judgment"), 29 May 2015, para. 45.

⁴⁰ *Gucati Appeal Decision*, para. 72. Similarly ICTY, [Borovčanin Appeal Decision](#), paras 9, 14-15; ICC, *Prosecutor v. Gbagbo*, ICC-02/11-01/11-278-Red, Appeals Chamber, [Judgment on the Appeal of Mr Laurent Koudou Gbagbo Against the Decision of Pre-Trial Chamber I of 13 July 2012 Entitled "Decision on the 'Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo'"](#) ("Gbagbo Appeal Judgment"), 26 October 2012, para. 54; *Prosecutor v. Bemba*, ICC-01/05-01/08-323, Appeals Chamber, [Judgment on the Appeal of Mr. Jean-Pierre Bemba Gombo Against the Decision of Pre-Trial Chamber III Entitled "Decision on application for interim release"](#), 16 December 2008, para. 55.

⁴¹ See, ECtHR, *Gábor Nagy v. Hungary*, Application No. 73999/14, [Judgment](#), 11 April 2017, para. 70; *Yegorychev v. Russia*, Application No. 8026/04, [Judgment](#), 17 May 2016, para. 54; *Aleksandr Novikov v. Russia*, Application No. 7087/04, [Judgment](#), 11 July 2013, para. 46. Similarly, ICTY, [Šainović and Ojdanić Appeal Decision](#), paras 6-7, 9-10; ICC, [Bemba et al. Appeal Judgment](#), para. 111.

⁴² [Lubanga Appeal Judgment](#), paras 136-137.

may facilitate the materialisation of a risk.⁴³ Relevant factors may also be contextual, such as the environment and conditions in which the Accused lives,⁴⁴ or the particular stage of the ongoing proceedings.⁴⁵ In any event, contextual factors alone are not sufficient to demonstrate a risk. Any relevant factor may support one or more grounds under Article 41(6)(b) of the Law.⁴⁶ Lastly, the Pre-Trial Judge must consider the relevant factors not only as they exist at the time of the decision, but also, as much as it can be foreseen, at the time the Accused is expected to return for trial, if released.⁴⁷

23. Three articulable grounds are listed in Article 41(6)(b) of the Law:

- (i) the risk of flight;
- (ii) the risk of destroying, hiding, changing or forging evidence or obstructing the progress of the proceedings by influencing witnesses, victims or accomplices;
- (iii) the risk of repeating the criminal offence, completing an attempted crime or committing a crime which the Accused has threatened to commit.

24. In relation to the third ground, the Pre-Trial Judge holds that the future crime need not be identical to those included in the charges or occurring in the same (possibly no longer existing) context as the one for which the Accused is prosecuted. Rather, on the basis of available information, the Pre-Trial Judge must assess whether there is a likelihood that the Accused, if released, will, under any form of responsibility, engage

⁴³ *Gucati* Appeal Decision, para. 63. Similarly, 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.

⁴⁴ See Article 41(6)(b)(iii) of the Law.

⁴⁵ Similarly, ICTY, [Prlić et al. Appeal Decision](#), paras 19-20.

⁴⁶ Similarly, ICC, [Gbagbo Appeal Judgment](#), para. 63.

⁴⁷ Similarly, ICTY, [Šainović and Ojdanić Appeal Decision](#), paras 6-7; [Prlić et al. Appeal Decision](#), para. 7; [Lukić Appeal Decision](#), para. 7.

in or contribute to crimes similar to the underlying acts charged. The crimes predicted to be committed in the future need not be specified in detail.⁴⁸

25. In relation to the second and third grounds, the Pre-Trial Judge emphasizes that the risks may materialise as a result of the Accused's acts or omissions, but do not require physical execution on his or her part.

26. Furthermore, the three grounds are in the alternative, the existence of one ground suffices to determine the necessity of detention of the Accused.⁴⁹

27. Lastly, the Pre-Trial Judge may refer to previous decisions and material or evidence already before him, without this affecting the *de novo* character of the present decision.⁵⁰

B. NECESSITY OF DETENTION

28. The Pre-Trial Judge notes that the Defence bases the Request solely on the second limb of Article 41(6) of the Law.⁵¹ The Pre-Trial Judge will therefore assess the Request only against the risks under Article 41(6)(b) of the Law.

1. Risk of Flight

29. The Defence submits that Mr Veseli is not an identifiable or concrete flight risk, noting: (i) his active support for the establishment of and cooperation with the SC, including by means of a public statement issued upon his surrender;⁵² (ii) his voluntary attendance of an interview with the SPO in The Hague on

⁴⁸ ICC, [Bemba et al. Appeal Judgment](#), para. 116; [Gbagbo Appeal Judgment](#), para. 70.

⁴⁹ Similarly, ICC, [Lubanga Appeal Judgment](#), para. 139; [Katanga Appeal Judgment](#), para. 20; *Prosecutor v. Bemba*, ICC-01/05-01/08-321, Pre-Trial Chamber III, [Decision on Application for Interim Release](#), 16 December 2008, para. 35.

⁵⁰ Similarly, ICC, [Bemba et al. Appeal Judgment](#), para. 60; [Gbagbo Appeal Judgment](#), paras 27, 69.

⁵¹ Request, paras 3-4, 6-51.

⁵² Request, paras 6-8 and the references contained therein; Annex 3 to Request.

19 December 2019, the awareness of the existence of an indictment against him since 23 June 2020, the fact that, prior to the confirmation of the indictment, Mr Veseli proactively offered to surrender to the SC, should the indictment against him be confirmed, as well as his voluntary surrender to the SPO following such confirmation;⁵³ and (iii) the fact that Mr Veseli's family, including his young children and his elderly parents, live in Kosovo.⁵⁴

30. The SPO responds that: (i) the prospect of a lengthy, potentially life-long sentence for the crimes charged contributes to a persistent risk of flight, which increases as Mr Veseli learns the full extent of the case against him, which goes beyond the general information provided in the SPO's June 2020 announcement;⁵⁵ (ii) his ability to travel to several countries beyond the reach of the SC and his stature, resources, and connections further contribute to the risk of flight;⁵⁶ (iii) Mr Veseli's compliance with the arrest warrant against him merits no weight, as he had no choice but to surrender at the time;⁵⁷ (iv) as previous head of the Kosovo Intelligence Service ("SHIK"), Mr Veseli is one of the most experienced intelligence officials in Kosovo, which, combined with his status as a public figure, demonstrates that he has the technical knowledge and the network to flee from justice;⁵⁸ and (v) Mr Veseli's public calls for respecting the integrity of the judicial process were clearly made with the intention to seek interim release, noting that his praise of the SC has always been selective and opportunistic, considering that he has previously characterised the SC as an 'injustice' and has said nothing in

⁵³ Request, para. 6; KSC-BC-2020-06, F00024/A01, Specialist Prosecutor, *Letter to Jack Smith* ("Offer to Surrender"), 21 October 2020, public.

⁵⁴ Request, para. 9.

⁵⁵ Response, paras 16, 19.

⁵⁶ Response, paras 18, 20.

⁵⁷ Response, para. 20.

⁵⁸ Response, para. 17.

response to recent obstruction attempts by the Kosovo Liberation Army (“KLA”) War Veterans Association (“KLA WVA”).⁵⁹

31. The Defence replies that: (i) detention cannot be justified and extended solely on the basis of the gravity of the charges and the severity of the potential penalties;⁶⁰ (ii) the fact that Mr Veseli might have the capacity to flee does not mean that he will use it;⁶¹ (iii) if he was going to flee, Mr Veseli would have done so between June and November 2020, when he was aware of the existence of a then-unconfirmed indictment against him for multiple murders as war crimes and crimes against humanity, since at that time he was not subject to any restrictions on his freedom of movement and could have lawfully gone to a country without extradition arrangements with Kosovo;⁶² (iv) his high profile, meaning that he is instantly recognisable, makes it less likely that he would be able to successfully evade justice;⁶³ (v) Mr Veseli was specifically advised by his Counsel not to make any public statement regarding the September 2020 actions by the KLA WVA and to distance himself from the organisation;⁶⁴ and (vi) there is no conflict between considering the SC to be an injustice to Kosovo and agreeing to cooperate with it.⁶⁵

32. As regards the risk of flight, the Pre-Trial Judge accepts the Defence’s argument that, at the time when the SPO’s June 2020 announcement concerning the existence of an indictment against Mr Veseli was made, the SPO must have considered that Mr Veseli did not pose a high risk of flight.⁶⁶ However, the Pre-Trial Judge considers that the nature and extent of the crimes charged, as progressively informed through disclosure of the full evidentiary record against the Accused and providing him with

⁵⁹ Response, paras 21-22 and the references contained therein.

⁶⁰ Reply, paras 3-4.

⁶¹ Reply, para. 7.

⁶² Reply, paras 9, 48-49.

⁶³ Reply, para. 10.

⁶⁴ Reply, paras 19-20.

⁶⁵ Reply, paras 65-66.

⁶⁶ Reply, para. 49.

information going beyond the SPO's June 2020 announcement, as well as the severity of a potential sentence, constitute factors incentivising Mr Veseli to abscond, should he be released. Specifically, the Pre-Trial Judge recalls that Mr Veseli is charged with 10 counts of war crimes and crimes against humanity and that the factual scope of the charges against him embraces over 40 locations across Kosovo and Northern Albania spanning over the course of one year and a half.⁶⁷ If convicted for some or all of the crimes charged, Mr Veseli may receive a lengthy sentence, including life imprisonment, pursuant to Article 44(1) of the Law. Moreover, Mr Veseli's influence and authority as founding member of the KLA General Staff, member of the KLA Political Directorate and Head of the Intelligence Service Department, and Head of SHIK,⁶⁸ and more recently as Chairman of the Kosovo Assembly, cannot be ignored in assessing the risk that individuals supporting him, including former subordinates and persons affiliated to the KLA WVA, may be willing to give him access to resources and/or help him abscond. Moreover, Mr Veseli's intelligence background and the knowledge, ability, and skills so acquired⁶⁹ further increase his risk of flight.

33. That being said, the Pre-Trial Judge also finds that Mr Veseli's cooperation with the SPO and the SC, as well as his support for the establishment of the SC, are relevant factors. Particular weight should be given to his offer to surrender,⁷⁰ as well as to the fact that, once informed of the existence of an arrest warrant against him, Mr Veseli made a statement encouraging cooperation with the SC.⁷¹ In the view of the Pre-Trial Judge this is not undermined by either: (i) Mr Veseli's characterisation of the SC as 'an injustice that is being done in the name of justice';⁷² or (ii) the absence of a public

⁶⁷ KSC-BC-2020-06, F00045/A03, Specialist Prosecutor, *Further Redacted Indictment* ("Indictment"), 4 November 2020, public, paras 172-173.

⁶⁸ Confirmation Decision, para. 460.

⁶⁹ Response, para. 17.

⁷⁰ Offer to Surrender; Request, para. 6; Reply, para. 52.

⁷¹ Request, para. 6; Annex 3 to Request.

⁷² Response, para. 22, footnote 80 and the reference contained therein.

statement regarding the September 2020 actions taken by the KLA WVA.⁷³ Nevertheless, the Pre-Trial Judge considers that these factors, including the aforementioned instances of cooperation and compliance, along with Mr Veseli's family connection to Kosovo⁷⁴ and the fact that his high profile makes him more easily recognisable⁷⁵ only diminish, but do not eliminate the risk of flight for Mr Veseli, as for the most part they predate the subsequent knowledge of the full scope of the case and the evidence against him.

34. In light of the foregoing, the Pre-Trial Judge considers that Mr Veseli's: (i) ability to travel to several countries beyond the reach of the SC; (ii) status and high profile; and (iii) extensive intelligence background, when seen in light of the nature and extent of the charges against him and the severity of a potential sentence, outweigh the circumstances highlighted by the Defence.

35. The Pre-Trial Judge accordingly finds that a risk of flight exists in relation to Mr Veseli.

2. Risk of Obstructing the Progress of SC Proceedings

36. The Defence submits that there are no grounds to conclude that, if released, the Accused would interfere with the administration of justice.⁷⁶ It highlights that Mr Veseli has actively called on everyone in Kosovo to respect the authority of the SC and cooperate with its organs, and specifically called upon his supporters to ensure that there should be no attempts to interfere with witnesses or obstruct investigations.⁷⁷ As concerns the six specific allegations in the SPO Request which are alleged to relate directly to Mr Veseli, the Defence addresses them in turn,

⁷³ Response, para. 22.

⁷⁴ Request, para. 9.

⁷⁵ Reply, para. 10.

⁷⁶ Request, paras 4, 12.

⁷⁷ Request, paras 12-13; Annex 3 to Request.

arguing that five of them do not implicate the Accused, while one of them should not be considered by the Pre-Trial Judge in light of the extensive redactions applied to it.⁷⁸

37. The SPO responds that Mr Veseli's public calls for respecting the integrity of the judicial process and his praise of the SC were clearly made to further his request for interim release.⁷⁹ It also submits that all allegations of obstruction must be considered in light of Mr Veseli's extensive intelligence background, noting that the functions of his intelligence services during the time period of the charges included the identification and investigation of perceived opponents.⁸⁰ The SPO also addresses the six specific allegations disputed by the Defence.⁸¹

38. The Defence replies by contesting the SPO's interpretation of Mr Veseli's public calls to respect the SC and notes that the impact of Mr Veseli's statement to his supporters does not depend on his private thoughts or intentions.⁸² It also submits that, while Mr Veseli's position as leader of SHIK is referred to in support of the allegations concerning the risk of witness intimidation, none of the documents referred to by the SPO provide any evidence of criminal activity, noting that identifying perceived opponents during an armed conflict is not a crime.⁸³ The Defence also replies to the SPO's submissions concerning the six specific allegations initially disputed by it.⁸⁴

39. As regards the risk to obstruct SC proceedings, the Pre-Trial Judge considers that Mr Veseli's past and recent influential positions, as recalled in paragraph 32 above, are an important factor when assessing this risk. In the view of the Pre-Trial Judge,

⁷⁸ Request, paras 17-49.

⁷⁹ Response, paras 21-22 and the references contained therein.

⁸⁰ Response, para. 35 and the references contained therein.

⁸¹ Response, paras 27-40.

⁸² Reply, paras 19-20, 63-66.

⁸³ Reply, para. 8.

⁸⁴ Reply, paras 13-46.

Mr Veseli's public stature and influential positions, including his position as a former intelligence officer, enable him to have access to and mobilise a network of supporters – including former subordinates and persons affiliated with the KLA WVA – with the aim of obstructing the progress of SPO investigations and the conduct of criminal proceedings.⁸⁵ The Pre-Trial Judge considers that this is even more so at the current stage of the proceedings, where Mr Veseli is progressively informed of the evidence underpinning the charges against him, including the identity of witnesses who provided or could provide evidence in the case and/or are due to appear before the SC. While the disclosure of the identity of witnesses to the Accused will take place in a staggered manner, Mr Veseli will still, over the coming months, progressively gain access to the evidence and identity of witnesses in the case. The fact that, upon surrender, Mr Veseli called upon his supporters to ensure that there should be no attempts to interfere with witnesses or obstruct investigations⁸⁶ does not negate the risk that, once released, he could still use his influence in the aforementioned manner.

40. The Pre-Trial Judge notes the Parties' discussion on certain allegations of Mr Veseli's attempts to undermine the SC and the SPO and to interfere with investigations and proceedings. While the Accused's involvement in a given incident may be indicative of his future intentions, the Pre-Trial Judge must determine first and foremost whether, taken together, these instances reveal a risk of obstruction of the progress of the proceedings by Mr Veseli.

41. Before addressing the instances, the Pre-Trial Judge considers it necessary to address the Defence's submission that the extensive redactions applied to one particular allegation in the SPO Request prevent it from meaningfully responding thereto.⁸⁷ In this respect, the Pre-Trial Judge notes that, considering the impact of deprivation of liberty on the fundamental rights of the person concerned, proceedings

⁸⁵ Response, paras 24-26.

⁸⁶ Request, paras 12-13; Annex 3 to Request.

⁸⁷ Request, paras 47-49; Reply, paras 44-46.

by means of which the lawfulness of detention is challenged should in principle also meet, to the extent possible, the basic requirements of a fair trial, including the right to an adversarial procedure.⁸⁸ While the need for criminal investigations to be conducted efficiently may imply that part of the information collected during them is to be kept secret in order to maintain the integrity of the proceedings and so as to prevent evidence tampering, this legitimate goal cannot be pursued at the expense of substantial restrictions on the rights of the defence. Therefore, information which is essential for the assessment of the lawfulness of a detention should be made available in an appropriate manner to the detained person or his or her counsel.⁸⁹ In the present instance, the Pre-Trial Judge notes that key information regarding one incident that the SPO relies on to demonstrate the existence of a risk of obstruction by Mr Veseli is redacted,⁹⁰ which prevents the Defence from understanding the underlying the allegation. In these circumstances, the Pre-Trial Judge does not rely on this allegation in assessing the existence of a risk of obstruction by Mr Veseli.⁹¹

42. As regards Mr Veseli's alleged involvement in the 2017 attempt to abolish the SC through the adoption of a bill in the Kosovo Assembly, the Pre-Trial Judge takes note of the fact that the Democratic Party of Kosovo ("PDK"), headed at the time by Mr Veseli, was amongst the parties supporting the bill.⁹² However, he further notes that Mr Veseli opposed the bill's adoption following an international backlash.⁹³ In these circumstances, the Pre-Trial Judge considers that this allegation is not demonstrative of the existence of a risk of obstruction by Mr Veseli.

⁸⁸ See, ECtHR, *Oravec v. Croatia*, Application no. 51249/11, [Judgment](#), 11 July 2017, para. 67.

⁸⁹ ECtHR, *Podeschi v. San Marino*, Application no. 66357/14, [Judgment](#), 13 April 2017, para. 176; *Albrechtas v. Lithuania*, Application no. 1886/06, [Judgment](#), 19 January 2016, para. 75; *Emilian-George Igna v. Romania*, Application no. 21249/05, [Judgment](#), 26 November 2013, para. 27.

⁹⁰ SPO Request, para. 15.

⁹¹ *Similarly*, albeit in a different context, ICC, [Gbagbo 8 September 2015 Appeal Judgment](#), paras 87-88.

⁹² Request, para. 19; Annexes 1 and 2 to Request; Response, para. 37; Reply, para. 15; Annex 5 to Reply.

⁹³ Request, paras 18-22 and the references contained therein; Annex 6 to Request; Response, para. 38 and the references contained therein; Annex 1 to Response, pp. 21-22; Reply, paras 13-14, 16.

43. As regards Mr Veseli's previous position, the Pre-Trial Judge considers that his intelligence background as, among others, Head of SHIK, and the knowledge, ability, and skills so acquired, contribute to a risk of obstruction of the progress of proceedings by him. Moreover, in this context, the Pre-Trial Judge takes note that the District Court of Prishtinë/Priština considered it probable that SHIK was involved in the commission of three counts of aggravated murder, attempted kidnapping, and attempted aggravated murder, respectively, although the court could not make such finding beyond reasonable doubt.⁹⁴

44. As regards the allegation concerning Mr Veseli's connection to and influence over Driton Lajçi ("Mr Lajçi"), the Pre-Trial Judge at the outset accepts the Defence's argument as to the absence of evidence that Mr Veseli directly asked Mr Lajçi to do something improper.⁹⁵ However, as noted above, the SPO is not required to prove that Mr Veseli has obstructed the SC proceedings in the past, but that there is a risk he may do so.⁹⁶ In this respect, the Pre-Trial Judge notes: (i) Mr Lajçi's long-term membership in the PDK, a party led by Mr Veseli;⁹⁷ (ii) the fact that Mr Lajçi previously served as advisor to Mr Veseli;⁹⁸ and (iii) the fact that Mr Lajçi would receive instructions from Mr Veseli.⁹⁹ He further notes Mr Lajçi's previous position as Head of the Division for Coordinating Legal Protection and Financial Support for Potential Accused Persons in Trials before the SC ("Division"), a position in which he was responsible for, among others, ensuring representation for individuals summonsed by the SPO,¹⁰⁰ as well as the fact that, in the past, Mr Lajçi has gone beyond his aforementioned role by

⁹⁴ Annex 4 to Request, pp. 10-11, 56-57.

⁹⁵ Reply, paras 30-33; Annex 2 to Reply, pp. 1-3; Annex 6 to Reply, paras 9-10.

⁹⁶ See *supra* para. 21.

⁹⁷ Response, para. 30.

⁹⁸ Response, para. 30; Annex 1 to Response, p. 9.

⁹⁹ Response, para. 31; Annex 1 to Response, p. 12.

¹⁰⁰ Request, para. 28; Annex 5 to Request; Reply, para. 30; Annex 2 to Reply, pp. 1-2; Annex 6 to Reply, para. 9.

attending an SPO witness interview in the capacity of interpreter.¹⁰¹ While acknowledging that, in the interim, Mr Lajçi no longer holds the position of Head of the Division,¹⁰² the Pre-Trial Judge finds that the above-mentioned fact pattern indicates that Mr Veseli is able to give instructions to an individual interacting with the SC. This, in turn, militates in favour of a risk of obstruction of the SC proceedings by Mr Veseli.

45. As regards the allegations concerning attempts by the Kosovo Government to exercise improper influence over potential SPO witnesses, the Pre-Trial Judge notes the payment of EUR 40,000 made by the Kosovo Government to Lahi Brahimaj (“Mr Brahimaj”) before his SPO interview.¹⁰³ Noting the payments made to three other individuals summonsed by the SPO, which amounted to EUR 13,000, 10,000, and 7,000, respectively,¹⁰⁴ the Pre-Trial Judge considers the payment made to Mr Brahimaj to have been disproportionate by comparison. Moreover, the fact that Mr Brahimaj was considered to be in serious danger of prosecution in light of his previous role and KLA membership¹⁰⁵ does not provide an explanation as to the size of the payment made to him, noting that the procedure by means of which the payment was approved did not involve the fulfilment of specific requirements or the provision of invoices.¹⁰⁶

46. The Pre-Trial Judge further notes Syleman Selimi (“Mr Selimi”)’s appointment as an adviser to the Prime Minister of Kosovo shortly after his being summonsed for an SPO interview.¹⁰⁷ The fact that both Mr Selimi’s appointment and his summons occurred shortly after his release from prison¹⁰⁸ does not provide an explanation as to

¹⁰¹ Request, paras 29-31, 33; Annex 5 to Request; Reply, para. 31; Annex 2 to Reply, pp. 1-2; Annex 6 to Reply, paras 9-10.

¹⁰² Annex 5 to Request; Annex 2 to Reply, p. 1.

¹⁰³ Request, paras 36, 38; Reply, para. 24.

¹⁰⁴ Reply, para. 23; Annex 6 to Reply, para. 13.

¹⁰⁵ Reply, paras 25-26; Annex 6 to Reply, para. 18; Annex 7 to Reply, paras 5-7.

¹⁰⁶ Reply, para. 24; Annex 6 to Reply, paras 6-7, 14-19; Annex 12 to Reply.

¹⁰⁷ Request, para. 43; Response, para. 34.

¹⁰⁸ Request, paras 44-45; Reply, paras 35, 37.

why Mr Selimi – who had been detained on charges relating to war crimes committed at the Likoc/Likovac detention site¹⁰⁹ – was appointed to a high governmental position on or about the same time as his SPO interview.

47. The aforementioned two instances involving Mr Brahimaj and Mr Selimi, while not directly implicating Mr Veseli,¹¹⁰ indicate the existence of a contemporaneous climate of attempted interference with SPO investigations and SC proceedings within the Kosovo Government which was, at the time, supported by Mr Veseli as a member of the Kosovo Assembly, as well as by the PDK parliamentary group. In the view of the Pre-Trial Judge, this further contributes to the existence of a risk of obstruction by Mr Veseli.

48. Lastly, the Pre-Trial Judge considers that the above findings must be placed in the context of a general, well-established, and ongoing climate of intimidation of witnesses and interference with criminal proceedings against former KLA members.¹¹¹ While this factor alone is not determinative of a risk of obstruction of the criminal proceedings, it constitutes a framework that must be taken into due consideration by the Pre-Trial Judge, along with the other factors addressed above.

49. The Pre-Trial Judge accordingly finds there is a risk that Mr Veseli will obstruct the progress of SC proceedings.

3. Risk of Committing Further Crimes

50. The Defence submits that there is no risk of a repetition of the offences alleged in the indictment against Mr Veseli, which were entirely specific to the context of an ongoing armed conflict, and that, as demonstrated, the SPO's allegations with respect to the supposed risk of obstruction of justice are baseless.¹¹² Since the SPO

¹⁰⁹ Response, para. 34.

¹¹⁰ Request, paras 37, 46.

¹¹¹ Response, paras 12, 24-25.

¹¹² Request, paras 50-51.

has not advanced any separate articulable grounds for believing that, if granted provisional release, Mr Veseli would be likely to commit further offences, no separate objection to granting provisional release can be made on this ground.¹¹³

51. The SPO responds that there is still a risk that Mr Veseli will commit further crimes on the basis of: (i) the nature of the joint criminal enterprise with which he is charged, which concerned the targeting of opponents of the Accused; (ii) Mr Veseli's attempts to obstruct the progress of the criminal proceedings; and (iii) the prevailing climate of witness intimidation in Kosovo.¹¹⁴ It further submits that, while the Defence attempts to rely upon the age of the alleged offences as a factor to be considered, the well-grounded suspicion that Mr Veseli committed a wide range of war crimes and crimes against humanity is a serious indicator, among others, of the risk that he is willing to commit further violent acts, even many years later.¹¹⁵

52. As regards the risk of committing further crimes, the Pre-Trial Judge recalls his above finding that there is a risk that Mr Veseli will obstruct SC proceedings.¹¹⁶ While the existence of a risk of obstruction does not automatically translate into a risk of committing further crimes, in the present case the factors underpinning the former are of relevance to the assessment of the latter. In this regard, the Pre-Trial Judge considers that the seriousness of the crimes with which Mr Veseli is charged and the risk that he will engage in obstruction of justice, as set out above, must be considered together with Mr Veseli's prominent position in Kosovo, and in light of a prevalent practice of witness intimidation and interference in proceedings against former KLA members.¹¹⁷ These factors, altogether, show that there is a risk that Mr Veseli will, under any form of responsibility, engage in or contribute to crimes similar to the underlying acts

¹¹³ Request, paras 50-51.

¹¹⁴ Response, paras 41-42.

¹¹⁵ Response, para. 43.

¹¹⁶ *See supra* para. 49.

¹¹⁷ *See supra* para. 48.

charged against those perceived as being opposed to the KLA, including witnesses who provided evidence to the SPO and/or are due to appear before the SC. Such contribution need not materialise in Mr Veseli physically executing such crimes. It suffices that Mr Veseli, through his statements and actions, either public or private, may instigate or assist individuals in his support network to commit such crimes or may contribute in any other way to their commission.

53. The Pre-Trial Judge accordingly finds that there is a risk that Mr Veseli will commit further crimes.

4. Conclusion

54. The Pre-Trial Judge concludes that there is a risk that Mr Veseli will abscond, obstruct the progress of SC proceedings or commit further crimes against those perceived as being opposed to the KLA, including witnesses who provided evidence to the SPO and/or are due to appear before the SC. The Pre-Trial Judge will assess below whether these risks can be adequately addressed by the Proposed Conditions.

C. PROPOSED CONDITIONS

55. The Defence submits that, even if the Pre-Trial Judge were to conclude that the SPO has discharged of its obligation to establish the existence of articulable grounds to believe that any of the Article 41(6) of the Law criteria are present, he must nevertheless grant provisional release on conditions, unless the SPO is able to establish that: (i) pre-trial detention is the least restrictive measure available to achieve its goals and all other measures listed in Article 41(12) of the Law are insufficient to address the existing risks; and (ii) pre-trial detention is, in the circumstances, a proportionate restriction on the presumption of liberty and the

presumption of innocence.¹¹⁸ It further avers that Mr Veseli is willing to comply with any mitigating measures including, but not limited to: (i) not engaging in any public political activity or making any further public statements without the prior approval of the SPO or the Pre-Trial Judge; (ii) house arrest at his family home in Prishtinë/Priština; (iii) surrender of travel documents; (iv) not contacting any potential witness, directly or indirectly; and (v) close monitoring, including random unannounced home visits and searches and/or regular daily checks by EULEX in Kosovo (“Proposed Conditions”).¹¹⁹ As to the expected length of pre-trial detention, the Defence submits that, considering the scope of the case and the expected number of witnesses to be called by the SPO, and by comparison with similar ICTY cases, it is expected to last at a minimum until June 2022.¹²⁰

56. The SPO responds that no combination of the Proposed Conditions comes close to mitigating the risks posed by Mr Veseli, if released.¹²¹ It contends that detention at the SC detention facilities, including the communications monitoring framework applicable therein, is the only means by which these risks can be managed.¹²² It further avers that neither the SPO, nor EULEX or the Kosovo Police have the means and resources to adequately monitor an Accused of the stature, authority, and resources of Mr Veseli.¹²³ The SPO also submits that the Defence’s prediction of the anticipated length of pre-trial proceedings is unreasonable and contrary to the interests of justice.¹²⁴ Even if the estimates put forward were to be taken at face value, it still does not follow that any resulting length of pre-trial detention would be unreasonable.¹²⁵ In any case, any such assessment would be

¹¹⁸ Request, paras 59-62 and the references contained therein.

¹¹⁹ Request, para. 10.

¹²⁰ Request, paras 63-68.

¹²¹ Response, para. 44.

¹²² Response, para. 44.

¹²³ Response, paras 45-46.

¹²⁴ Response, para. 9.

¹²⁵ Response, para. 10.

entirely hypothetical at this stage of the proceedings and has no bearing on the Pre-Trial Judge's review of detention under Rule 57 of the Rules, especially where the legal framework contemplates the periodic review of detention every two months.¹²⁶

57. The Defence replies that: (i) if Mr Veseli would be granted provisional release on conditions, including the surrender of his passport and a prohibition on travel, there would be no way for him to escape to any country without an extradition arrangement with Kosovo;¹²⁷ (ii) the fact that Mr Veseli was named as an indicted person in June 2020 places an extremely heavy burden on the SPO to explain why – on the basis of something that has happened since then and which creates a risk that was not present at the time – provisional release on strict conditions presents an unacceptable level of risk, when it clearly did not present such a risk between June and November 2020;¹²⁸ (iii) it has made enquiries with the Kosovo Police Service and the Ministry of Justice, which indicate that the Kosovo Police has the capacity to monitor and enforce conditions of provisional release imposed by the KSC and ensure the Accused's attendance at trial, which should weigh heavily in favour of granting conditional release, even in instances where the relevant law enforcement agencies are not in a position to provide a complete guarantee of compliance;¹²⁹ and (iv) the assessment of the anticipated length of pre-trial detention is mandatory when considering an application for provisional release.¹³⁰

58. As regards the risk of flight, the Pre-Trial Judge finds that the Proposed Conditions can mitigate such a risk in relation to Mr Veseli. In this regard, the Pre-Trial Judge notes favourably the Proposed Conditions of Mr Veseli's house

¹²⁶ Response, paras 8, 10.

¹²⁷ Reply, para. 12.

¹²⁸ Reply, paras 49-51.

¹²⁹ Reply, paras 55-61; Annexes 9-11 to Reply.

¹³⁰ Reply, paras 69-72.

arrest at his home in Prishtinë/Priština, the surrender of his travel documents, and a prohibition on travel.

59. As regards the risk of obstructing the progress of SC proceedings or committing further crimes, the Pre-Trial Judge considers that none of the Proposed Conditions, nor any additional limitations imposed by the Pre-Trial Judge, could restrict Mr Veseli's ability to communicate, through any non-public means, with his community or support network. It is through such communication that Mr Veseli could instigate, assist or otherwise engage others in intimidating or harming those perceived as being opposed to the KLA. Restricting Mr Veseli's movements or public activity would not limit his possibility to communicate privately, from his home. Crucially, prohibiting Mr Veseli from contacting potential witnesses, persons connected to the case or, for that matter, any person in Kosovo, can neither be enforced nor monitored, whether such bar refers to in-person contacts or communication through electronic devices. Given the stature of Mr Veseli and the authority and influence he can exercise, directly or indirectly, over former subordinates and supporters, it is only through the communication monitoring framework applicable at the SC detention facilities that Mr Veseli's communications can be effectively restricted and monitored, thereby mitigating the risks of him obstructing SC proceedings or engaging in or contributing to crimes.

60. The Pre-Trial Judge accordingly finds that the Proposed Conditions, including any additional limitations imposed by the Pre-Trial Judge, would insufficiently mitigate the risks of obstructing SC proceedings or committing further crimes.

61. As regards the proportionality of detention, it is incumbent upon the Pre-Trial Judge to consider more lenient measures when deciding whether a person should be detained.¹³¹ The Pre-Trial Judge notes that, in the circumstances of the present case,

¹³¹ 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, public, para. 70; *Gucati* Appeal Decision, para. 72.

the risks under Article 41(6)(b)(ii) and (iii) of the Law cannot be mitigated by the Proposed Conditions. Against this backdrop, and considering that Mr Veseli has been charged with 10 counts of war crimes and crimes against humanity,¹³² with a potential penalty of up to life-long imprisonment,¹³³ and was arrested on 5 November 2020,¹³⁴ the Pre-Trial Judge finds that any discussion as to the expected total length of Mr Veseli's pre-trial detention is premature and speculative at the present stage.

V. REQUEST FOR AN ORAL HEARING

62. The Pre-Trial Judge recalls that, while within the legal framework of the SC certain hearings on a given issue are strictly necessary, in other instances the Rules leave the holding of a hearing at the discretion of the Pre-Trial Judge, particularly if it is necessary to ensure fair and expeditious proceedings, as stipulated by Rule 95(2)(d) of the Rules.¹³⁵

63. The Pre-Trial Judge further recalls that, in the present case, he has considered that receiving oral submissions on the continued detention or release of the Accused was not necessary, in light of the extensive and exhaustive written submissions of the Defence on the matter.¹³⁶ The arguments have now been further addressed in the Response and the Reply. Moreover, the Pre-Trial Judge notes that, for the purposes of the present decision, an assessment on the credibility of any Defence witness evidence is not required. In these circumstances, the Pre-Trial Judge considers that an oral hearing is not necessary.

¹³² Indictment, paras 172-173.

¹³³ Article 44(1) of the Law.

¹³⁴ KSC-BC-2020-06, F00050, Registrar, *Notification of Arrest of Kadri Veseli Pursuant to Rule 55(4)*, 5 November 2020, public.

¹³⁵ Decision on Conduct of Detention, para. 18.

¹³⁶ Decision on Conduct of Detention, para. 19.

VI. DISPOSITION

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

- a. **REJECTS** the Request;
- b. **REJECTS** the Defence request for an oral hearing;
- c. **GRANTS** the Reclassification Request; and
- d. **ORDERS** the Registrar to reclassify F00151 (without annexes) as public.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Friday, 22 January 2021
At The Hague, the Netherlands