

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

Before: Court of Appeals Panel
Judge Michèle Picard
Judge Kai Ambos
Judge Nina Jørgensen

Registrar: Dr Fidelma Donlon

Filing Participant: Counsel for Kadri Veseli

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Defence Reply to SPO's Response to Veseli Provisional Release Appeal, IA001-F00004 dated 16 February 2021

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1. Pursuant to Article 41 and 45 of the KSC Law the Veseli Defence files this reply to the Specialist Prosecutor's Response to Veseli Defence Appeal of Detention Decision, dated 11 February 2021.

The Decisive Issue in the Pre-Trial Judge's decision: Ground 6

2. The Prosecution response fails to grapple with the central issue in the appeal. The Pre-Trial Judge accepted that conditions of provisional release enforced by the Kosovo Police Service would be sufficient to meet the "articulable risk" of flight that he had identified. At paragraph 58 of his ruling, he said this:

"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 arrest at his home in Prishtine/Pristina, the surrender of his travel documents, and a prohibition on travel".

3. In adopting this approach, the Pre-Trial Judge was supported by the settled practice of the ICTY. In the *Haradinaj* provisional release ruling, the ICTY emphasised that guarantees given by the State and its law enforcement agencies in connection with the monitoring and enforcement of conditional release should weigh heavily in the balance in favour of granting conditional release:

"When assessing the likelihood that an accused will appear for trial, Trial Chambers have regularly given significant weight to guarantees provided by the State or entity the accused sought to be released to."¹

4. However, the Judge took the opposite view in relation to the risk of interference with witnesses. As he made clear in his ruling, his concern was that without

¹ *Ibid*, Annex 3 at paragraph 22.

electronic monitoring of Mr. Veseli's communications, he would be able to incite his supporters to interfere with the administration of justice.

5. The supposed inability of the Kosovo Police monitor Mr. Veseli's communications was the sole reason he distinguished between flight risk (which *could* be adequately mitigated by conditions) and risk of interference with justice (which could not). At paragraph 59, the distinction is clearly spelt out:

"59. As regards the risk of obstructing the progress of SC proceedings or committing further offences, the Pre-Trial Judge considers that *none of the Proposed Conditions, nor any additional limitations imposed by the Pre-Trial decisive Judge, could restrict Mr. Veseli's ability to communicate, through any non-public means, with his community or support network. It is through such communications 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 communications through electronic devices.*" (emphasis added).

6. It is thus plain beyond doubt that this was the *decisive* factor in his eventual ruling, namely that the risk he had identified as "*critical*" could not be adequately mitigated by house arrest in Kosovo, even it was supervised and enforced by the Kosovo Police. He went on to find that this risk of private communications could not be mitigated by "*any additional limitations imposed by the Pre-Trial decisive Judge*" because there was no means by which restrictions on private communications could be "*enforced or monitored*". There is no possible way to read or interpret that paragraph that does not involve an implied assessment by the Judge of the

inability of the Kosovo Police to “*enforce or monitor*” restrictions on communication.

7. There was absolutely no evidential basis whatsoever entitling the Judge to reach that conclusion. Annex 1 to the Veseli Defence Reply to the SPO’s submission on pre-trial release contained a statement of the Minister of Justice, Selim Selimi, which appended a written assurance from the Head of Kosovo Police Service. The Appeal Chamber is invited to read all the witness statements appended to that filing because they are essential to the Veseli Grounds of Appeal.
8. The Kosovo Police Service website sets out its capacities (an extract was appended to the Veseli Defence Filing at Annex 8). It explained that the Director-General of the Kosovo Police Service is responsible for a total of 9314 employees (8301 police officers and 1013 civilian staff). The KPS currently has 38 international agreements, including 23 agreements on international policing co-operation with other police forces; 6 agreements in the operational field; and 9 agreements with EULEX. The States covered by these international policing agreements are Austria, Bulgaria, Great Britain, France, Finland, Germany, Hungary, Croatia, Lithuania, Macedonia, Monte Negro, Sweden, Slovenia, Albania, USA, Turkey and Switzerland.
9. Division Specialised Units (“DSUs”) have a range of policing functions including the close protection of VIPs and diplomatic protection; escorting international delegations; conveying suspects for extradition (including high risk suspects); anti-terrorist operations; arrest of high-risk suspects; and liaising with other law enforcement entities, including EULEX and the KSC. Elite units include the Special Intervention Unit, and the Special Operations Unit. The KPS also has a close protection unit. The KPS has assisted the Specialist Prosecutor’s Office in a number of operations in Kosovo and they regard it as part of their professional

obligations to assist and support the work of the Kosovo Specialist Chambers (KSC).

10. The Minister of Justice, Selim Selimi, provided a formal guarantee that the Kosovo Police Service has the capacity to monitor and enforce conditions of provisional release imposed by the KSC, and to ensure the accused's attendance at trial:

“Moreover, referring to your question on the capacity of the Kosovo Police to ensure the enforcement of other conditions in case of eventual court order to issue one of the other alternative measures pursuant to article 41 of the law, please be aware that such duty of the Police is a legal that is stipulated in the applicable legislation, and moreover this practice is in place since 2004”.

11. The Minister's statement appended a letter from the Director-General of the Police Service, Mr. Samedin Mehmeti which states:

“I confirm that Kosovo Police is dedicated to fulfil all legal obligations as per our mandate and have the capacities to perform any task/duty as requested by the Prosecutors Office or Courts (including the SPO or KSC). It is part of our ordinary functions to supervise the implementation of conditions imposed on the provisional release of accused persons pending trial, even for the most serious offences, when this is ordered by a Court in Kosovo, and we routinely perform this function.”

12. To put this undertaking in context, Mr. Samedin Mehmeti, the Director of the Kosovo Police Service, [REDACTED] served as [REDACTED], holding the rank of [REDACTED]. During his career, he has also worked for a number of years in the field of international security, including [REDACTED].

13. He has also taken part in specialist security training, including the management of critical incidents. [REDACTED]. He has published a number of research papers

on security matters, [REDACTED].

14. It is, with respect, completely unrealistic for the SPO to suggest in these appeal proceedings that it was open to the Pre-Trial Judge to base his decision (as he undoubtedly did) on the assumption that the Kosovo Police Service could not “restrict Mr. Veseli’s ability to communicate, through any non-public means, with his community or support network” because conditions prohibiting communication in person or by electronic means “can neither be enforced nor monitored”. The evidence before him was from impressive and unchallenged witnesses who were in a unique position to answer any questions about the capacity of the Kosovo Police to monitor electronic communication, to enforce a prohibition on internet access, and to restrict visitors to those who were pre-approved. The evidence of these two witnesses asserted in terms that the Kosovo Police had the capacity to enforce *any* conditions the KSC might impose.
15. At the conclusion of the Veseli Defence’s Reply in the proceedings below, a specific request was made to hear these (and other witnesses) testify if there were any questions that they could assist with or clarify or if their evidence was disputed. The Judge’s response is at paragraph 63 of his ruling:

“63 Moreover, the Pre-Trial Judge notes that, for the purposes of the present decision, an assessment of the credibility of any Defence witness is not required. In these circumstances, the Pre-Trial Judge considers that an oral hearing is not necessary”.
16. It was certainly necessary to the Judge’s reasoning that he should determine whether the unqualified undertaking given by these witnesses extended to an ability to “enforce and monitor” conditions imposed by the Court to “restrict Mr. Veseli’s ability to communicate, through any non-public means, with his community or support network”. The Judge could not rationally conclude as he did unless if

either; (a) he had reason to doubt the credibility of their evidence; or (b) he had reason to doubt the scope of their unqualified assertions. He expressly disavowed (a) in paragraph 63 of his ruling. Route (b) would require the witnesses to have qualified their assertion on further enquiry (either in writing or at an oral hearing). The Judge failed to seek clarification on the question that was ultimately decisive to his decision; and he expressly refused the Defence request to test the evidence at an oral hearing.

17. The SPO has not engaged with the real issues at all (save for a generalised, superficial and dismissive single paragraph at the very end of the filing; see paragraph 53).

Other Grounds

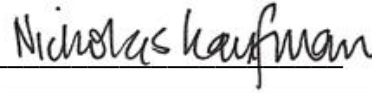
18. Contrary to the SPO submission, very similar procedural defects arise in relation to each of the individualised risks identified by the Pre-Trial Judge (as set out in Grounds 1 to 5). The Appeal Chamber is invited to read the pleading and the witness statements filed by Veseli Defence in the proceedings below. It is apparent from a consideration of those documents that; (a) Driton Laci denied ever being ordered to do anything by Mr. Veseli, and (as the Pre-Trial Judge found, was never asked to do anything that was not a part of his job); (b) the evidence of Rodney Dixon QC established that Mr. Brahimaj had made his decision not to testify three weeks before any request for payment out of Government funds was ever made (and the SPO's arguments on this, in any event, involve unwarranted speculation and (c) there is no evidence whatsoever to connect Mr. Veseli to the Prime Minister's decision to give Mr Syleman Selimi a job when he came out of prison.

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