



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

**In:** KSC-BC-2020-06  
**Before:** Pre-Trial Judge  
Judge Nicolas Guillou  
  
**Registrar:** Dr Fidelma Donlon  
**Filing Participant:** Specialist Prosecutor  
**Date:** 17 June 2021  
**Language:** English  
**Classification:** Public

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**Public redacted version of Prosecution response to Veseli Defence Submissions  
on Detention Review**

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## I. INTRODUCTION

1. The continued detention of Kadri VESELI remains necessary.<sup>1</sup> There has been no relevant change in circumstances detracting from the established reasons for detention.<sup>2</sup> Rather, the Article 41(6)(b) risks have increased since the latest decision.<sup>3</sup>

2. The Pre-Trial Judge previously found: (i) grounded suspicion that the Accused committed crimes within the jurisdiction of the Specialist Chambers ('KSC');<sup>4</sup> (ii) articulable grounds to believe that the Accused will obstruct the progress of criminal proceedings, and will repeat or attempt to repeat the criminal offences;<sup>5</sup> and (iii) that the release conditions proposed by the Accused insufficiently mitigated the Article 41(6)(b) risks.<sup>6</sup> These findings were upheld by the Appeals Panel,<sup>7</sup> and continue to be true in all respects.

## II. SUBMISSIONS

3. For purposes of a detention review under Rule 57(2), the reasons or circumstances underpinning detention must be reviewed in order to determine whether these reasons continue to exist under Article 41(6) of the Law.<sup>8</sup> That determination inevitably concerns what has changed, if anything, since the previous

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<sup>1</sup> *Contra* Veseli Defence Submissions on Detention Review, KSC-BC-2020-06/F00341, 4 June 2021, Confidential (with three annexes; notified 7 June 2021) ('VESELI Submissions').

<sup>2</sup> *See* Article 41 of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'); Rule 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Article' or 'Articles' herein refer to articles of the Law, and all references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

<sup>3</sup> Decision on Kadri Veseli's Application for Interim Release, KSC-BC-2020-06/F00178, 22 January 2021 ('VESELI Release Decision'), *upheld by* Decision on Kadri Veseli's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA001/F00005, 30 April 2021 ('VESELI Release Appeal Decision').

<sup>4</sup> *See* VESELI Release Decision, KSC-BC-2020-06/F00178, para.28.

<sup>5</sup> VESELI Release Decision, KSC-BC-2020-06/F00178, paras 36-53.

<sup>6</sup> VESELI Release Decision, KSC-BC-2020-06/F00178, paras 55-61.

<sup>7</sup> VESELI Release Appeal Decision, KSC-BC-2020-06/IA001/F00005.

<sup>8</sup> *Prosecutor v. Gucati and Haradinaj*, Decision on Nasim Haradinaj's Appeal on Decision Reviewing Detention, KSC-BC-2020-07/IA002/F00005, 9 February 2021, para.55.

ruling on detention. The Pre-Trial Judge is not required to make findings on the factors already decided upon in the initial ruling on detention.<sup>9</sup>

4. Defence submissions repeat certain past arguments. In particular, the VESELI Defence relies upon VESELI's 'voluntary surrender' and his statement upon surrender.<sup>10</sup> But it must be emphasised that despite these points - and given the weight of countervailing evidence - the Pre-Trial Judge maintained VESELI's detention<sup>11</sup> and that decision was upheld by the Appeals Panel.<sup>12</sup> Repeating insufficient arguments does not justify release.

5. Below, the SPO addresses new arguments concerning the Accused's detention. None of them constitutes a relevant change in circumstances, impacts the Pre-Trial Judge's previous findings, or detracts from the need for the continued detention of the Accused.

#### A. RECENT DEVELOPMENTS INCREASE THE RELEVANT RISKS

6. The SPO has disclosed voluminous Rule 102(1)(b) material since the last detention decision. As the disclosure process reaches an advanced stage,<sup>13</sup> the Accused has an ever-growing account of the evidence against him, which only increases his incentive and opportunity to attempt to unlawfully obstruct or evade the proceedings, including through a repetition of criminal offences.

7. The finding that VESELI is in a position of influence and authority over former subordinates and supporters was not disturbed by the Appeals Panel,<sup>14</sup> and this

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<sup>9</sup> KSC-BC-2020-07/IA002/F00005, para.55

<sup>10</sup> VESELI Submissions, KSC-BC-2020-06/F00341, para.31.

<sup>11</sup> VESELI Release Decision, KSC-BC-2020-06/F00178, para.33.

<sup>12</sup> VESELI Release Appeal Decision, KSC-BC-2020-06/IA001/F00005.

<sup>13</sup> Decision on Categorisation of Evidence Under Rule 109(c) and Related Matters, KSC-BC-2020-06/F00218, 12 March 2021, para.22.

<sup>14</sup> See VESELI Release Appeal Decision, KSC-BC-2020-06/IA001/F00005, paras 40, 74.

potential network remains as active as ever.<sup>15</sup> The 'Freedom has a name, the KLA' campaign was set up shortly after the Accused's arrest.<sup>16</sup> The campaign has been highly vocal in recent months, demonstrating a concrete and active support network for the Accused.<sup>17</sup>

8. On 4 June 2021, Faton KLINAKU, the acting chairman of the KLA War Veterans Association ('KLA WVA') - an association comprised of former subordinates of the Accused with an asserted membership of 40,000<sup>18</sup> - gave an interview whereby he promised he would publish more confidential KSC documents if he obtained them.<sup>19</sup> This is extraordinary, noting that Mr KLINAKU is the acting chairman because the previous head and deputy head of the KLA WVA are being prosecuted before the KSC for identical conduct.<sup>20</sup> That the law is no constraint for the acting head of the KLA

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<sup>15</sup> See United States Department of State, Kosovo 2020 Human Rights Report, available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/kosovo/> ('[l]eading politicians and civil society leaders, particularly veterans' organizations, publicly denounced the SPO and the KSC and worked to undermine public support for the work of the SPO and the KSC. These efforts included public protests, a petition drive to abrogate the court, and a legislative initiative proposed by former president Thaci that could have undermined the KSC's mandate').

<sup>16</sup> Balkan Transitional Justice, Serbeze HAXHIAJ, Kosovo: Top Politicians Sent to Hague to Face War Charges, 28 December 2020, available at <https://balkaninsight.com/2020/12/28/kosovo-top-politicians-sent-to-hague-to-face-war-charges/> ('KLA war veterans were furious at the indictment, however. A nationwide campaign was launched under the slogan "Freedom has a name" by artists, veterans and politicians as a sign of support for the former KLA leaders facing trial').

<sup>17</sup> See BIRN, Perparim Isufi, In Kosovo, New Political Generation Sweep Old Guard Aside, 15 June 2021, available at <https://balkaninsight.com/2021/06/15/in-kosovo-new-political-generation-sweep-old-guard-aside/> ('"Heroes of war and peace" reads the billboard featuring a KLA emblem and Thaci's and Veseli's pictures at both ends. Together with the slogan "Freedom Has a Name", the billboards have bloomed everywhere in Kosovo since November 2020, when the Hague-based Specialist Court indicted both men for committing war crimes and crimes against humanity in the independence struggle of the late-1990s').

<sup>18</sup> See Public 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/RED, 17 November 2020, para.5, citing AFP, Kosovo's guerrilla 'heroes' fear war crimes court, 15 February 2018, at <https://www.france24.com/en/20180215-kosovos-guerrilla-heroes-fear-war-crimes-court>.

<sup>19</sup> Faton KLINAKU interview with KlanKosovaTv, 4 June 2021, 100911-100915 (Annex 1; '[w]e, as a Veterans Association, have opposed the Special Court because it is a monoethnic court and prosecutes only the KLA, after they were served the files by Serbia, like UNMIK and EULEX did earlier, and they do not deal with the crimes and massacres committed by the Serb occupier during the war in Kosovo. As we have been against this Court, we will make public any material we receive that is in everybody's interest').

<sup>20</sup> *Prosecutor v. Gucati and Haradinaj*, KSC-BC-2020-07.

WVA is emblematic of the lengths the Accused's supporters are willing to go to obstruct these proceedings.

B. THE MERITS OF THE CASE ARE DECIDED AT TRIAL, NOT WHEN REVIEWING DETENTION

9. The Article 41(6)(b) risks increase as VESELI learns more about the SPO's evidence, as the information revealed by ongoing disclosure creates new opportunities to obstruct the proceedings. The VESELI Defence's submissions on the overall merits of the case are inapposite in the context of the Article 41(6)(b) risk assessment.<sup>21</sup>

10. As noted by the VESELI Defence itself, the risks posed by VESELI if released are fundamentally distinct from his guilt or innocence as to the crimes charged.<sup>22</sup> The relevant evidentiary threshold is entirely different, as Article 41(6)(a) requires only a 'grounded suspicion' that the charged crimes were committed.<sup>23</sup> The Pre-Trial Judge has already concluded that there is a 'well-grounded suspicion' that VESELI committed the crimes charged,<sup>24</sup> and nothing has changed to warrant re-visiting that determination.<sup>25</sup> The matters raised by the VESELI Defence are standard evidentiary matters which will be disputed and adjudicated at trial.

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<sup>21</sup> VESELI Submissions, KSC-BC-2020-06/F00341, paras 4-25.

<sup>22</sup> VESELI Submissions, KSC-BC-2020-06/F00341, para.4 ('[a] detention review (or application for provisional release) is, of course, not the time for a full trial of the SPO's case').

<sup>23</sup> See similarly ICC, *Prosecutor v. Ntaganda*, Decision on the Defence's Application for Interim Release, ICC-01/04-02/06-147, 18 November 2013, para.47 ('[t]he purpose of an [interim release] assessment under article 60(2) of the [ICC] Statute differs from that required for the purpose of the confirmation of charges or making a finding on the merits upon trial. An assessment pursuant to article 60(2) of the Statute neither aims at confirming one or more charges nor at making a finding of guilt against an accused person, which require meeting a high evidentiary threshold').

<sup>24</sup> Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00026/RED, 26 October 2020 (public version notified 30 November 2020).

<sup>25</sup> See similarly ICC, *Prosecutor v. Ongwen*, Decision on the "Defence Request for the Interim Release of Dominic Ongwen", ICC-02/04-01/15-349, 27 November 2015 (reclassified 24 March 2016), paras 7-13 (at para.7 - the ICC Statute's interim release framework 'cannot be understood to require, for the disposal of an application for interim release, an examination of the merits of the case with a view to determining whether there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court').

11. VESELI's submissions are also premised on a distorted portrayal of the SPO's case. VESELI is not charged with committing crimes as a direct perpetrator. Rather, he is charged, amongst other modes of liability, with acting through his leadership positions to gain and exercise control over all of Kosovo by criminal means, including by using members outside the common plan to commit crimes against those deemed to be opponents.<sup>26</sup> Focusing its arguments on one aspect of the evidentiary material (pertaining to VESELI's interaction with individual detainees), the VESELI Defence ignores the charged modes of liability<sup>27</sup> and does not advance the Article 41(6)(b) assessment.<sup>28</sup>

12. Similar considerations apply to the VESELI Defence's reliance on its preliminary motions.<sup>29</sup> As the Pre-Trial Judge is aware, those motions are strongly

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<sup>26</sup> See Annex 3 to Submission of corrected and public redacted versions of confirmed Indictment and related requests, KSC-BC-2020-06/F00045/A03, 4 November 2020 (reclassified 5 November 2020) ('Indictment'), para.49 ('[i]n addition, Kadri VESELI, acting through the positions described [...], significantly contributed to achieving the common purpose, which involved the commission of the charged crimes, in one or more of the following ways: a. Formulating and/or participating in the development, approval, promotion, dissemination, and implementation of plans, policies, and practices in furtherance of the common purpose, including in the form of communiques, public statements, internal rules and regulations, structures, and information-gathering and reporting mechanisms; b. Participating in, facilitating, condoning, encouraging and/or otherwise aiding in the crimes in furtherance of the common purpose; c. Failing to take adequate steps to prevent and investigate crimes, and/or punish or discipline the perpetrators; d. Disseminating and/or facilitating the dissemination of information intended to promote the common purpose and engender fear, distrust, and hatred of Opponents, including through communiques, public statements, and other media; e. Appointing, promoting, and/or approving the appointment and promotion of [joint criminal enterprise, aka] JCE Members and Tools, including persons with a history of alleged involvement in serious crimes; f. Providing, arranging, and/or facilitating political, logistical, military, and/or financial support, including to JCE Members and Tools committing crimes in furtherance of the common purpose; and g. Coordinating and liaising between JCE Members and Tools in furtherance of the common purpose').

<sup>27</sup> For example, [REDACTED]. [REDACTED]. [REDACTED].

<sup>28</sup> In this regard, see ICC, *Prosecutor v. Abd-Al-Rahman*, Public redacted version of 'Decision on the Review of the Detention of Mr Abd-Al-Rahman pursuant to rule 118 (2) of the Rules of Procedure and Evidence', ICC-02/05-01/20-230-Red, 11 December 2020, paras 25-27 (rejecting interim release arguments premised on the inadmissibility of evidence relied upon in the warrant of arrest when the Defence arguments, even if accepted in their entirety, would not lead to the annulment of the arrest warrant), confirmed on appeal in ICC, *Prosecutor v. Abd-Al-Rahman*, Judgment on the appeal of Mr Abd-Al-Rahman against Pre-Trial Chamber II's 'Decision on the Review of the Detention of Mr Abd-Al-Rahman pursuant to rule 118 (2) of the Rules of Procedure and Evidence', ICC-02/05-01/20-279-Red, 5 February 2021, paras 28-33.

<sup>29</sup> VESELI Submissions, KSC-BC-2020-06/F00341, para.26.

contested, remain to be resolved outside the scope of this litigation and, in any event, do not impact the Article 41(6)(b) risk assessment.

13. Further, there is no indication that the Pre-Trial Judge relied upon any redacted evidence concerning Drenoc/Drenovac in assessing the Article 41(6)(b) risks.<sup>30</sup> As noted by the VESELI Defence itself, the Pre-Trial Judge made a point of not relying upon any redacted evidence which the Defence could not meaningfully challenge in the previous Article 41(6)(b) risk assessment.<sup>31</sup> It must also be noted that the evidence in question concerning the Drenoc/Drenovac detention site is covered by delayed disclosure and other protective measures in this case. Lifting these redactions for the purposes of a detention review is unnecessary, noting that the evidentiary weighing sought by the VESELI Defence is inapposite in advance of trial and would effectively nullify the protective measures granted by the Pre-Trial Judge.

#### C. A CUSTODIAL VISIT DOES NOT CHANGE THE RISK ASSESSMENT

14. VESELI's recent custodial visit in Kosovo does not change the Pre-Trial Judge's previous risk assessment. VESELI was granted a short custodial visit on humanitarian grounds subject to strict conditions, most notably that he be held at the KSC detention facility in Kosovo during his visit.<sup>32</sup> VESELI had in fact originally asked to be released for this visit, but the Pre-Trial Judge determined that maintained detention was necessary because of the unmanageable risks VESELI posed if released.<sup>33</sup>

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<sup>30</sup> *Contra* VESELI Submissions, KSC-BC-2020-06/F00341, paras 20-25.

<sup>31</sup> VESELI Release Decision, KSC-BC-2020-06/F00178, para.41.

<sup>32</sup> Public Redacted Version of Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds, KSC-BC-2020-06/F00271/RED, 30 April 2021, para.18.

<sup>33</sup> KSC-BC-2020-06/F00271/RED, 30 April 2021, para.17. The custodial visit granted was in fact so far removed from the release which VESELI had sought that, despite the urgency of the circumstances and the significant accommodations that were being made to enable VESELI to see his family, the VESELI Defence argued that maintaining detention 'renders the request for compassionate release pointless'. Public Redacted Version of URGENT Veseli Defence Reply to SPO Filing KSC-BC-2020-06/F00268 & Registry Filing KSC-BC-2020-06/F00267, KSC-BC-2020-06/F00270/RED, 29 April 2021 (redacted version notified 6 May 2021, para.5 (at 4(b))).

15. VESELI's asserted 'trustworthiness' and 'exemplary conduct'<sup>34</sup> must be assessed in this light. This visit was an exceptional, temporary modification of the conditions of VESELI's detention for a strictly limited humanitarian purpose. The custodial visit was not an audition for interim release, and cannot be meaningfully compared to it.

D. CONDITIONS REMAIN UNABLE TO MITIGATE THE RISKS

16. The Pre-Trial Judge concluded that no conditions could mitigate the risks posed by VESELI if released, and this conclusion has been upheld on appeal.<sup>35</sup> The latest Defence submissions provide no information warranting a different assessment.

17. No conditions can actually mitigate the risks posed by the Accused.<sup>36</sup> The new conditions proposed – some repeated from prior submissions<sup>37</sup> - are only partial and imperfect substitutes for what can be monitored from a controlled environment in the detention centre. An inherent, fatal defect of the proposed house arrest is that VESELI will have regular opportunities to speak privately with those who have the freedom to come and go from his residence. VESELI would have access to family members and authorised visitors, with whom he can have any number of unmonitorable communications.<sup>38</sup> Searches for telecommunications devices and even written documents cannot stop the contents of those unmonitored conversations from reaching the outside world.<sup>39</sup>

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<sup>34</sup> VESELI Submissions, KSC-BC-2020-06/F00341, para.32.

<sup>35</sup> VESELI Release Appeal Decision, KSC-BC-2020-06/IA001/F00005, paras 66-76.

<sup>36</sup> *Contra* VESELI Submissions, KSC-BC-2020-06/F00341, paras 35-37.

<sup>37</sup> *Compare* VESELI Submissions, KSC-BC-2020-06/F00341, para.36(i), (iv), (x) *with* Application for Interim Release of Kadri Veseli, KSC-BC-2020-06/F00151, 17 December 2020, para.10.

<sup>38</sup> Nowhere in the proposed conditions does it indicate that police monitor the conversations VESELI has at his residence. Indeed, such a condition would be impossible to enforce given that VESELI contemplates living with his immediate family. In contrast, *see* Article 15(1) of the Registry Practice Direction on Detainees Visits and Communications, KSC-BD-09/Rev1/2020, 23 September 2020 ('[v]isits with a Detainee pursuant to this Chapter shall be conducted within the sight and hearing of Detention Officers.').

<sup>39</sup> *Contra* VESELI Submissions, KSC-BC-2020-06/F00341, paras 36(viii).



18. The limitations of the proposed conditions would be apparent with respect to any accused. VESELI, however, is not just any accused. 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'). He is a high-level professional intelligence officer, with an extensive network. Each of the Article 41(6)(b) risks – and the question of whether they can be effectively mitigated outside of detention – must be assessed in that light.<sup>40</sup> VESELI's communications with the outside world cannot be meaningfully monitored with the conditions proposed. The Article 41(6) risks are such that anything short of detention creates an unacceptable opportunity for clandestine communications. Even a single such communication could have grave consequences.

19. If no condition can mitigate the risks identified, as in the present case, a chamber is not obligated to assess a State's willingness and ability to enforce conditions.<sup>41</sup> Nevertheless, it is noted that the VESELI Defence again places great reliance on assurances from the General Director of the Kosovo Police.<sup>42</sup> A previous assurance from the General Director was found insufficient by the Pre-Trial Judge to address the risk of obstruction.<sup>43</sup> The Appeals Panel upheld this finding, given 'the low level of detail provided in the Kosovo Police's blanket guarantee, its vague and

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<sup>40</sup> *Prosecutor v. Mustafa*, KSC-BC-2020-05/F00052, Decision on Review of Detention, 23 November 2020, paras 22-23, 27, 31.

<sup>41</sup> ICC, *Prosecutor v. Gbagbo*, 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'", ICC-02/11-01/11-278-Red, 26 October 2012, para.80.

<sup>42</sup> VESELI Submissions, KSC-BC-2020-06/F00341, para.37.

<sup>43</sup> See VESELI Release Decision, KSC-BC-2020-06/F00178, para.59, *in relation to* Annex 11 to Defence Reply to the SPO's response to the Provisional Release Application of Kadri Veseli, KSC-BC-2020-06/F00174/A11, 13 January 2021 ('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 Prosecutors Office or Courts (including 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').

general character, its focus on the risk of flight and its silence on any measures to prevent prohibited communications'.<sup>44</sup>

20. The latest assurance of the General Director of the Kosovo Police has all these same deficiencies.<sup>45</sup> There is no 'specific reference to the list of conditions proposed'.<sup>46</sup> The indication given by the General Director of the Kosovo Police is, in fact, even more brief than the previous one. It does nothing more than to repeat, in general terms, a willingness to implement judicial orders. Repeating inadequate assurances does not constitute a changed circumstance.

21. In the circumstances of a case like this one, there is nothing that Kosovo or any other state could do to sufficiently mitigate the Article 41(6) risks becoming manifest. Should this occur, it will irreversibly damage the integrity of these proceedings. Continued detention is the only way to address the risks entailed.

#### E. DETENTION REMAINS PROPORTIONATE

22. None of the parties' trial commencement estimates were relied upon in the Pre-Trial Judge's assessment, and the Appeals Panel determined that the Pre-Trial Judge was not required to estimate the probable length of detention.<sup>47</sup> Moreover, all deadlines set by the Pre-Trial Judge in the case to date have been met or extended for good cause. There is no indication that the SPO has been dilatory, and trial preparations are proceeding in an expeditious manner.<sup>48</sup>

23. As the SPO has stated previously, '[t]he length of pre-trial detention must be balanced against the Article 41(6) risks and the circumstances of the case as a whole,

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<sup>44</sup> VESELI Release Appeal Decision, KSC-BC-2020-06/IA001/F00005, para.74.

<sup>45</sup> Annex C of the VESELI Submissions, KSC-BC-2020-06/F00341/A03, p.7 ('[i]n reference to your letter/request, we inform you that the Kosovo Police is capable of implementing in practice court decisions/orders issued by the Kosovo Specialist Chambers, if requested from the Kosovo Police in a judicial order').

<sup>46</sup> *Contra* VESELI Submissions, KSC-BC-2020-06/F00341, para.2.

<sup>47</sup> *See* VESELI Release Appeal Decision, KSC-BC-2020-06/IA001/F00005, para.59.

<sup>48</sup> *Contra* VESELI Submissions, KSC-BC-2020-06/F00341, paras 27-29.

including the potential penalties for the crimes charged. [...] In the course of this balancing exercise, even significant pre-trial detention may still be reasonable.<sup>49</sup> The Accused has been detained for seven months on a vast array of war crimes and crimes against humanity committed over a near two-year period. The scale of these charges affects all aspects of the trial process, including preparations and the necessity of continued detention.

24. The Defence's insistence that pre-trial proceedings must certainly be too long conveniently ignores its own responsibility in this regard. The Defence received an extension of time to file the present detention submissions,<sup>50</sup> as well as its preliminary motions.<sup>51</sup>

25. VESELI's failure to appreciate this responsibility is apparent from the VESELI Submissions, where it is argued that the final resolution of the preliminary motions is a 'pre-requisite for the effective conduct of defence investigations'.<sup>52</sup> The VESELI Defence also argues that it is not possible for the Defence or Pre-Trial Judge to ascertain the scope of the case until the decisions on preliminary motions are final.<sup>53</sup> Such submissions are incompatible with the KSC statutory scheme, which conditions sending the case to a trial panel – not the commencement of Defence investigations – on the final resolution of the preliminary motions.<sup>54</sup> The VESELI Defence is effectively refusing to investigate the case as pled. It is self-evident that, should this choice

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<sup>49</sup> Prosecution response to Application for Interim Release on behalf of Mr Kadri Veseli, KSC-BC-2020-06/F00161, 4 January 2021, para.10, n.16, citing 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.

<sup>50</sup> Oral order regarding timeline for defence submissions on continued detention, 19 May 2021, pp.451-52.

<sup>51</sup> Decision on the Conduct of Detention Review and Varying the Deadline for Preliminary Motions, KSC-BC-2020-06/F00150, 16 December 2020, para.30(f).

<sup>52</sup> VESELI Submissions, KSC-BC-2020-06/F00341, para.26.

<sup>53</sup> VESELI Submissions, KSC-BC-2020-06/F00341, para.26. This assertion comes mere pages after the VESELI Defence argues that the Pre-Trial Judge should examine the evidence against the accused for purposes of the current detention review. VESELI Submissions, KSC-BC-2020-06/F00341, para.4.

<sup>54</sup> Rule 98(1).

increase the length of pre-trial detention, it will do so in a manner attributable to the VESELI Defence alone.

26. Nothing about the Accused's detention thus far has been unreasonable. There have not been any unjustified delays. The Accused's rights have been fully respected. Defence arguments on the proportionality of detention must therefore be rejected.

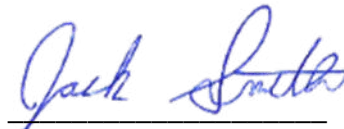
### III. CLASSIFICATION

27. The present submission is filed confidentially in accordance with Rule 82(4). A public redacted version of this submission will be filed, and the SPO has no objection to the annex to this submission being reclassified as 'public'.

### IV. RELIEF REQUESTED

28. For the foregoing reasons, the relief sought by the VESELI Defence should be rejected.

**Word count: 3832**



**Jack Smith**  
**Specialist Prosecutor**

Thursday, 17 June 2021  
At The Hague, the Netherlands.