

In: KSC-BC-2020-06

Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Counsel for Kadri Veseli

Date: 24 June 2021

Language: English

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**Public Redacted Version of
Veseli Defence Reply to
SPO Response - KSC-BC-2020-06/F00354
(Detention Review)
(F00365 dated 22 June 2021)**

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I. SUBMISSION

A. RECENT DEVELOPMENTS

1. The SPO has, indeed, “disclosed voluminous Rule 102(1)(b) material since the last detention decision”.¹ The Defence has scrupulously examined this information and is confident that what the SPO terms an “ever-growing account of evidence”² against Mr Veseli will be found by the Pre-Trial Judge to be a burgeoning vacuity of the prosecution case. Significantly, the SPO concedes that Mr Veseli is not a “direct perpetrator”.³ Accordingly, far from increasing Mr Veseli’s incentive to “unlawfully obstruct or evade” proceedings, the totality of the disclosed evidence, as it now stands, starkly accentuates the increasingly unjust nature of his continued detention.

2. The tenacity with which the SPO seeks to maintain Mr Veseli’s detention is nowhere better illustrated than by its reliance on an interview given by Faton Klinaku. Faton Klinaku’s rhetoric is cited as additional proof of an ever-present “support-network” sympathetic not just to Mr Veseli but to all KLA accused. The SPO, however, has never alleged that Mr Veseli was in some way connected to “obstruction attempts” made by the KLA War Veterans Association, rather that he was not sufficiently proactive in condemning such subversive activity.⁴ Even now, the SPO provides nothing to show that Mr Veseli is even formally acquainted with Faton Klinaku, let alone able to instruct him to publish “confidential KSC documents”. As stated in the Defence’s earlier submissions, in the absence of a concrete example of obstruction, or even a predisposition to obstruct, Mr Veseli is entitled to the presumption of

¹ KSC-BC-2020-06/F00354 at para. 6.

² *ibid.*

³ *ibid.*, para. 11.

⁴ KSC-BC-2020-06/F00178 at para.30 point v).

trustworthiness which cannot be rebutted by a generic submission regarding Faton Klinaku “copy-pasted” into all of the SPO’s detention review submissions.⁵

B. THE MERITS OF THE CASE

3. Not one item of evidence in the SPO’s “voluminous Rule 102(1)(b) material” disclosed since the last detention decision has been cited in support of the so-called “ever-growing account” of Mr Veseli’s alleged criminality. Had the SPO been able to identify even the slightest hint of such evidence, its past propensity to inflate factual minutiae in support of its legal submissions would have ensured that it was highlighted in the present instance. Accordingly, the argument that the merits of the case should be debated at trial is nothing more than a transparent attempt to kick an empty can down the road at the expense of Mr Veseli’s liberty.

4. The SPO now accuses the Defence of “distorting” the prosecution case by focusing on Mr Veseli’s alleged “interaction with individual detainees” thereby ignoring the actual charged modes of liability. Yet it is those incidents involving individual detainees, proffered by the SPO, which the Pre-Trial Judge accepted as a crucial factor common to the subjective element of all four charged modes of liability - as highlighted in the confidential annex attached to this filing.⁶

5. By omitting any reference to the incident at [REDACTED] in its response, it now appears that the SPO has acquiesced in the Defence’s demolition of the allegation that Mr Veseli participated in the interrogation of a torture victim. The SPO, furthermore, seems to agree that the Pre-Trial Judge cannot rely on redacted evidence relating to [REDACTED].⁷ All that remains, therefore, of the so-called “interaction with individual

⁵ KSC-BC-2020-06/F00345, KSC-BC-2020-06/F00346 & KSC-BC-2020-07/F00228.

⁶ Confidential Annex 1.

⁷ KSC-BC-2020-06/F00354 at para. 13.

detainees", as partial support for the subjective element of indirect participation, is the purported meeting between Mr Veseli and [REDACTED].

6. Yet even with respect to events at [REDACTED], the SPO does not dispute [REDACTED] ⁸ [REDACTED].⁹

7. The Defence, of course, recognizes that the Pre-Trial Judge did not rely on Mr Veseli's alleged "interaction with individual detainees" as the sole ground for confirming the subjective element of indirect participation. However, the SPO's present inability to substantiate the aforementioned instances of Mr Veseli's alleged personal involvement in the crime-base, even with the benefit of evidence disclosed since the last detention decision, is a "changed circumstance". It is thus axiomatic that the Pre-Trial Judge's findings with respect to the subjective element of indirect participation must now be reassessed. The Defence submits that there simply no longer remains a "grounded suspicion" under Rule 46(1)(a) of the KSC Law meriting Mr Veseli's continued detention.

C. THE CUSTODIAL VISIT

8. The Defence strenuously disputes the SPO's argument that the resoundingly successful custodial visit to Kosovo should have no bearing on the Pre-Trial Judge's risk-assessment exercise. Had Mr Veseli violated the terms of the custodial visit, not only would the SPO have rushed to cite such a violation as evidence of a general propensity to abuse trust but it would also have sought to tighten the existing monitoring regime of Mr Veseli in the KSC Detention Unit. The converse, therefore, must apply. In so far, as Mr Veseli can provide a concrete example of his propensity to honour the trust placed in him, then such good conduct is entirely relevant to the risk-

⁸ KSC-BC-2020-06/F00354 at fn 27.

⁹ [PAKR 266/2014, 26 January 2016](#) at p.68. [REDACTED].

assessment exercise. Good conduct in a custodial environment was certainly viewed as a relevant risk-assessment consideration by no less than the President of the KSC – HHJ Ekaterina Trendafilova sitting as the Single Judge in the *Bemba* case at the International Criminal Court.¹⁰

9. In the present case, the good conduct displayed during the custodial visit was not confined to Mr Veseli, but extended to members of his immediate family who the SPO suspects (most unjustifiably) could facilitate obstruction of the criminal process. The SPO has never doubted the extenuating circumstances which prompted the custodial visit and, as a result, should not impliedly accuse Mr Veseli of having cynically exploited the compassion shown to him by the Pre-Trial Judge to perform an "audition for interim release".¹¹

D. THE PROPOSED CONDITIONS

10. On the previous occasion when Counsel for the Defence wrote to the Director of the Kosovo Police ("Director"), he did not propose a detailed list of conditions. The Email of 31 May 2021 which the SPO deems a repetition of a general "willingness to implement judicial orders",¹² was written by way of a specific response to a letter from Counsel dated 26 May 2021 in which he set out conditions crafted in light of observations made by the Appeals Chamber.¹³ Accordingly, the Director's affirmative response to a list of proposed conditions that directly addresses the only true

¹⁰ ICC-01/05-01/08-475 at para. 64: "In this context, the Single Judge observes that, based on the information available to her, up to this day Mr Jean-Pierre Bemba has shown good behaviour in detention and has not tried to interfere with the proceedings before this Court in any way. This conclusion of the Single Judge finds support in six reports by the Registrar which address the monitoring of Mr Jean-Pierre Bemba's non-privileged telephone communications over several months".

https://www.icc-cpi.int/CourtRecords/CR2009_05602.PDF

¹¹ KSC-BC-2020-06/F00354 at para.15.

¹² KSC-BC-2020-06/F00354 at para. 20.

¹³ KSC-BC-2020-06/F00341 at Confidential Annex C.

justification for his continued detention (i.e., the risk of clandestine communications with supporters) is quite clearly a change of circumstances.

11. The Pre-Trial Judge will recall that there is not only a presumption of innocence but a presumption of liberty. These two presumptions must be rebutted in order to justify continued detention. Should the brevity of the Director's response require further elaboration, the Defence respectfully submits that the onus now shifts to the Pre-Trial Judge to seek any clarification necessary pursuant to the procedure in Rule 198. The Director should, if necessary, be required to comment, either in the affirmative or in the negative, on the enforceability of each of the proposed conditions.

E. PROSECUTORIAL DELAY

12. The SPO's unabashed shifting of procedural deadlines has been amply detailed elsewhere.¹⁴ This dilatory conduct would have been somewhat more palatable were it not for the SPO's initial swagger in promoting a date for trial in the summer months of 2021 while simultaneously denigrating the Defence's assertion that such a short timeframe would be unworkable. Summer has all but commenced and a date has not even been set for the delivery of a pre-trial brief. The next status conference will not take place until 22 July 2021 and the SPO's mysterious dealings with the information providers of Rule 107 materials remain, suspiciously, in the shadows.

13. Regardless of the aforementioned, and without the grace to accept its own fault, the SPO goes on the offensive and assigns partial responsibility for its delay to the Defence citing the latter's requests for a variation of time limits to file submissions on detention review and the preliminary motions.¹⁵ Both of these requests, however, were evaluated by the Pre-Trial Judge and considered reasonable in the circumstances.

¹⁴ KSC-BC-2020-06-F00341 at paras 27-29.

¹⁵ KSC-BC-2020-06/F00354 at para.24.

14. Detention review is a right which a suspect may exercise at any time. Indeed, an unnecessary deadline was only imposed as a result of a specific request emanating from Mr Thaçi's former counsel¹⁶ and not from Mr Veseli. The Pre-Trial Judge will further recall that the request for a variation of the deadline for filing preliminary motions was both modest and filed immediately after the disclosure of 1760 documents which required assimilation over the winter-holiday period.¹⁷

15. To compound matters, and before the ink has even dried on the filing to which these submissions form a reply, the SPO now comes before the Pre-Trial Judge with yet another request for a deadline postponement, this time couched – artfully - in terms of "streamlining" the judicial process.¹⁸

II. CONCLUSION

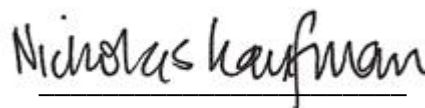
The Pre-Trial Judge is respectfully requested to order the interim release of Mr Veseli with or without the conditions previously proposed.

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¹⁶ KSC-BC-2020-06/F00284 at para.6.

¹⁷ KSC-BC-2020-06/F00137 at para.10.

¹⁸ KSC-BC-2020-06/F00356 at para 1.