



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA 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

**Date:** 2 July 2021

**Language:** English

**Classification:** Public

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**Public Redacted Version of  
Decision on Review of Detention of Kadri Veseli**

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Article 41(6), (10) 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, further to the confirmation of an indictment ("Confirmation Decision"),<sup>2</sup> Kadri Veseli ("Mr Veseli") was arrested pursuant to a decision and an arrest warrant issued by the Pre-Trial Judge.<sup>3</sup>
2. On 22 January 2021, the Pre-Trial Judge rejected Mr Veseli's application for interim release ("First Detention Decision").<sup>4</sup>
3. On 24 February 2021, further to a joint request by the Accused in the present case, who also waived the right to have their detention reviewed before the expiry of the two-month time limit set out in Article 41(10) of the Law and Rule 57(2) of the Rules, the Pre-Trial Judge varied the time limit for Mr Veseli to make submissions on his continued detention until ten days after notification of the decision of the Panel of the Court of Appeals on his appeal against the First Detention Decision.<sup>5</sup>

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

<sup>2</sup> 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*, 26 October 2020, public; F00045/A03, Specialist Prosecutor, *Further Redacted Indictment*, 4 November 2020, public.

<sup>3</sup> KSC-BC-2020-06, F00050, Registrar, *Notification of Arrest of Kadri Veseli Pursuant to Rule 55(4)*, 5 November 2020, public; F00027/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders*, 26 October 2020, public; F00027/A03/RED, Pre-Trial Judge, *Public Redacted Version of Arrest Warrant for Kadri Veseli*, 26 October 2020, public.

<sup>4</sup> KSC-BC-2020-06, F00178, Pre-Trial Judge, *Decision on Kadri Veseli's Application for Interim Release*, 22 January 2021, public.

<sup>5</sup> KSC-BC-2020-06, F00206, Pre-Trial Judge, *Decision on Joint Defence Request for Extension of Time Limit*, 24 February 2021, public, paras 3, 5, 6.

4. On 30 April 2021, the Court of Appeals Panel denied Mr Veseli's appeal against the First Detention Decision ("Court of Appeals Decision").<sup>6</sup>
5. On 7 May 2021, Mr Veseli notified the Pre-Trial Judge that, without prejudice to any future application for interim release, he did not intend to make submissions on his continued detention.<sup>7</sup>
6. On 19 May 2021, after Mr Veseli reconsidered his position and indicated that it would be appropriate to make submissions on his continued detention,<sup>8</sup> the Pre-Trial Judge varied this time limit to 31 May 2021.<sup>9</sup>
7. On 1 June 2021, upon request by Mr Veseli, who waived his right to have his detention reviewed before the expiry of the two-month time limit set out in Article 41(10) of the Law and Rule 57(2) of the Rules once more, the Pre-Trial Judge further varied this time limit to 4 June 2021 and additionally varied the word limit for such submissions to 7,500 words.<sup>10</sup>
8. On 7 June 2021, Mr Veseli filed his submissions on his continued detention, requesting to be released on certain terms and conditions ("Request").<sup>11</sup>

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<sup>6</sup> KSC-BC-2020-06, IA001/F00005, Court of Appeals Panel, *Decision on Kadri Veseli's Appeal Against Decision on Interim Release*, 30 April 2021, public.

<sup>7</sup> KSC-BC-2020-06, F00283, Defence for Mr Veseli, *Veseli Defence Notification pursuant to Decision KSC-BC-2020-06-F00206*, 7 May 2021, public, para. 4.

<sup>8</sup> KSC-BC-2020-06, Transcript, 19 May 2021, public ("19 May 2021 Transcript"), p. 442, lines 2-13.

<sup>9</sup> 19 May 2021 Transcript, p. 451, line 19 – p. 452, line 2.

<sup>10</sup> KSC-BC-2020-06, F00334, Pre-Trial Judge, *Decision on Veseli Requests for Extension of Time and Word Limits*, 1 June 2021, public, paras 2, 3, 10, 11, 13.

<sup>11</sup> KSC-BC-2020-06, F00341, Defence for Mr Veseli, *Veseli Defence Submissions on Detention Review with Confidential Annexes A to C*, 7 June 2021, confidential, para. 38, with Annexes A-C, confidential. Whereas the Request was submitted after the expiry of the time limit, the Pre-Trial Judge, pursuant to Rule 9(5)(b) of the Rules, exceptionally recognises the Request as valid given the importance of the review of Mr Veseli's detention. A public redacted version of the Request was submitted on 25 June 2021, F00341/RED.

The Specialist Prosecutor's Office ("SPO") responded on 17 June 2021 ("Response").<sup>12</sup> Mr Veseli replied on 22 June 2021 ("Reply").<sup>13</sup>

## II. SUBMISSIONS

9. Mr Veseli requests the Pre-Trial Judge to order his release on the basis that his detention is no longer justified and that the preventive purpose thereof can equally be achieved by ordering supervised house arrest subject to the strict and onerous list of conditions set out in the Request.<sup>14</sup>

10. The SPO responds that the continued detention of Mr Veseli remains necessary as there has been no relevant change in circumstances detracting from the established reasons for detention and that the risks under Article 41(6)(b) of the Law have rather increased since the First Detention Decision.<sup>15</sup>

11. In his Reply, Mr Veseli reiterates his request to the Pre-Trial Judge to release him with or without the conditions previously proposed.<sup>16</sup>

## III. APPLICABLE LAW

12. Article 41(6) of the Law provides that the Specialist Chambers ("SC") shall only order the 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 to believe that the person: (i) is a flight risk; (ii) will destroy, hide, change or forge evidence of a crime, or specific circumstances indicate that

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<sup>12</sup> KSC-BC-2020-06, F00354, Specialist Prosecutor, *Prosecution Response to Veseli Defence Submissions on Detention Review with Confidential Annex 1*, 17 June 2021, confidential, with Annex 1, confidential. A public redacted version was submitted on the same day, F00354/RED.

<sup>13</sup> KSC-BC-2020-06, F00365, Defence for Mr Veseli, *Veseli Defence Reply to SPO Response - KSC-BC-2020-06/F00354 (Detention Review)*, 22 June 2021, confidential, with Annex 1, confidential. A public redacted version was submitted on 24 June 2021, F00365/RED.

<sup>14</sup> Request, paras 2, 38.

<sup>15</sup> Response, para. 1.

<sup>16</sup> Reply, p. 7.

the person will obstruct the progress of criminal proceedings; or (iii) will repeat the criminal offence, complete an attempted crime, or commit a crime which he or she has threatened to commit.

13. Article 41(10) of the Law provides that, until a judgment is final or until release, upon the expiry of two (2) months from the last ruling on detention on remand, the Pre-Trial Judge or Panel seized with the case shall examine whether reasons for detention on remand still exist and render a ruling by which detention on remand is extended or terminated. This also follows from Rule 57(2) of the Rules.

14. 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 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.

15. Pursuant to Rule 56(2) of the Rules, the Panel shall ensure that a person is not detained for an unreasonable period prior to the opening of the case and, in case of an undue delay caused by the Specialist Prosecutor, the Panel, having heard the Parties, may release the person under conditions as deemed appropriate.

#### IV. DISCUSSION

16. The Pre-Trial Judge recalls that he has an obligation, under Article 41(10) of the Law, to examine whether the reasons for detention on remand still exist, including the grounds set out in Article 41(6) of the Law, namely whether (i) there is a grounded suspicion that the person has committed the crime(s), and (ii) there are articulable grounds to believe that any of the risks set out in Article 41(6)(b) of

the Law has been fulfilled.<sup>17</sup> The Pre-Trial Judge is not required to make findings on the factors already decided upon in the initial ruling on detention but must examine these reasons or circumstances and determine whether they still exist. What is crucial is that the Pre-Trial Judge is satisfied that, at the time of the review decision, grounds for continued detention still exist.<sup>18</sup> The SPO bears the burden of establishing that the detention of the Accused is necessary.<sup>19</sup>

#### A. GROUNDED SUSPICION

17. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires at the outset a grounded suspicion that the detained person has committed a crime within the jurisdiction of the SC. This is a condition *sine qua non* for the validity of the detained person's continued detention.<sup>20</sup>

18. As to his direct participation in the commission of crimes, Mr Veseli submits that there is no such evidence capable of justifying his continued detention.<sup>21</sup> First, Mr Veseli asserts that the allegation that he was present at [REDACTED] is based solely on testimony provided by one witness but that this witness was not referring to Mr Veseli.<sup>22</sup> Second, in the view of Mr Veseli, the evidence supporting his role in the alleged transfer of [REDACTED] to [REDACTED] is exculpatory, as the witness in question stated that Mr Veseli requested that [REDACTED] be treated well.<sup>23</sup> Lastly, Mr Veseli argues that the evidence pertaining to his alleged

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<sup>17</sup> See for example KSC-BC-2020-07, F00143, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 24 February 2021, public, para. 17.

<sup>18</sup> KSC-BC-2020-07, IA002/F00005, Court of Appeals Panel, *Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention*, 9 February 2021, para. 55.

<sup>19</sup> First Detention Decision, para. 20, with further references. Similarly, ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#) ("*Merabishvili v. Georgia* [GC]"), 28 November 2017, para. 234.

<sup>20</sup> [Merabishvili v. Georgia](#) [GC], para. 222, with further references.

<sup>21</sup> Request, para. 6.

<sup>22</sup> Request, paras 10-16.

<sup>23</sup> Request, paras 17-19.

participation in the crimes committed in [REDACTED] should not be taken into account as it has either not been disclosed or has been disclosed in redacted form.<sup>24</sup>

19. Mr Veseli further contends that the allegations of Joint Criminal Enterprise (“JCE”) and command responsibility are vague and have no direct evidence to support them.<sup>25</sup> Mr Veseli adds that these allegations are the subject of a jurisdictional challenge and that the final resolution of that challenge by the Specialist Chamber of the Constitutional Court is a prerequisite for the effective conduct of defence investigations and the scheduling of any trial.<sup>26</sup>

20. The SPO responds that Article 41(6)(a) of the Law requires only a grounded suspicion that the charged crimes were committed, the Pre-Trial Judge has already concluded that there is a well-grounded suspicion that Mr Veseli committed the crimes charged, and nothing has changed to warrant re-visiting that determination.<sup>27</sup> According to the SPO, the arguments raised by Mr Veseli are standard evidentiary matters which should be disputed and adjudicated at trial.<sup>28</sup> The SPO adds that Mr Veseli is not charged with committing crimes as a direct perpetrator but rather, 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>29</sup> Furthermore, the SPO contends that the preliminary motions submitted by Mr Veseli are strongly contested, remain to be resolved outside the scope of this litigation and, in any event, do not impact the risk assessment under Article 41(6)(b) of the Law.<sup>30</sup> The SPO also avers that there is no indication that the Pre-Trial Judge relied upon any redacted evidence

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<sup>24</sup> Request, paras 20-25.

<sup>25</sup> Request, paras 6, 26.

<sup>26</sup> Request, para. 26.

<sup>27</sup> Response, para. 10.

<sup>28</sup> Response, para. 10.

<sup>29</sup> Response, para. 11.

<sup>30</sup> Response, para. 12.

concerning [REDACTED], and the evidence in question is covered by delayed disclosure and other protective measures.<sup>31</sup>

21. Mr Veseli replies that the SPO concedes that he is not a “direct perpetrator”.<sup>32</sup> He adds that not one item of evidence in the material disclosed under Rule 102(1)(b) of the Rules since the First Detention Decision has been cited in support of the so-called “ever-growing account” of Mr Veseli’s alleged criminality.<sup>33</sup> Furthermore, in the view of Mr Veseli, the incidents involving individual detainees were proffered by the SPO and accepted by the Pre-Trial Judge as a crucial factor common to the subjective element of all four charged modes of liability.<sup>34</sup> Mr Veseli further contends that: (i) by omitting any reference to the incident at [REDACTED], it appears that the SPO has acquiesced in the Defence’s demolition of the allegation that he would have participated [REDACTED];<sup>35</sup> (ii) the SPO seems to agree that the Pre-Trial Judge cannot rely on redacted evidence relating to [REDACTED];<sup>36</sup> and (iii) with respect to the events at [REDACTED], the SPO does not dispute [REDACTED].<sup>37</sup> According to Mr Veseli, the SPO’s inability to substantiate these allegations is a changed circumstance.<sup>38</sup>

22. The Pre-Trial Judge recalls that, in the Confirmation Decision, it was determined that, pursuant to Article 39(2) of the Law, there is a well-grounded suspicion that Mr Veseli is criminally liable for a number of crimes against humanity (persecution, imprisonment, other inhumane acts, torture, murder and enforced disappearance) and war crimes (arbitrary detention, cruel treatment,

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<sup>31</sup> Response, para. 13.

<sup>32</sup> Reply, para. 1.

<sup>33</sup> Reply, para. 3.

<sup>34</sup> Reply, para. 4.

<sup>35</sup> Reply, para. 5.

<sup>36</sup> Reply, para. 5.

<sup>37</sup> Reply, paras 5-6.

<sup>38</sup> Reply, para. 7.



torture and murder) under Articles 13, 14(1)(c) and 16(1)(a) of the Law.<sup>39</sup> These findings were made on the basis of a standard exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a) of the Law.<sup>40</sup>

23. At the outset, the Pre-Trial Judge observes that Mr Veseli argues that the case against him falls into two parts, namely direct evidence of his alleged personal participation in criminal conduct and vague allegations of JCE and command responsibility which have no direct evidence to support them.<sup>41</sup> Mr Veseli, thus, clearly draws a distinction between the modes of liability of, on the one hand, direct perpetration and, on the other hand, JCE and superior responsibility. However, the Pre-Trial Judge emphasises that Mr Veseli has not been charged as a direct perpetrator of any of the crimes set forth in the Confirmation Decision, but rather pursuant to the following modes of liability: JCE I, JCE III, aiding and abetting, and superior responsibility.<sup>42</sup> Therefore, Mr Veseli's arguments regarding his alleged direct participation in the commission of crimes must be assessed against these modes of liability.

24. More fundamentally, and as partially acknowledged by Mr Veseli in the Reply,<sup>43</sup> the findings in the Confirmation Decision that there is a well-grounded suspicion that Mr Veseli directly participated in the commission of crimes was merely one factor, amongst a number of other factors, invoked in relation to different legal requirements regarding Mr Veseli's individual criminal responsibility for various crimes against humanity and war crimes. Thus, Mr Veseli's selective argumentation regarding his alleged personal

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<sup>39</sup> Confirmation Decision, paras 521(a).

<sup>40</sup> See for example KSC-BC-2020-04, F00007/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on the Confirmation of the Indictment Against Pjetër Shala*, 12 June 2020, public, para. 35.

<sup>41</sup> Request, para. 6.

<sup>42</sup> Confirmation Decision, paras 451-454, 460-463, 473, 475-482, 492-498.

<sup>43</sup> Reply, para. 7; KSC-BC-2020-06, F00365, Defence for Mr Veseli, *Annex 1 to Veseli Defence Reply to SPO Response - KSC-BC-2020-06/F00354 (Detention Review)*, 22 June 2021, confidential.

participation in the commission of crimes must be assessed in the context of the Confirmation Decision read as a whole.

25. In this regard, the Pre-Trial Judge observes that Mr Veseli refers to paragraph 447 of the Confirmation Decision in support of his submissions in the Request.<sup>44</sup> This paragraph pertains to the contextual finding that the perpetrators allegedly knew of the attack against the civilian population in connection with charges of crimes against humanity. However, this finding was not exclusively based on Mr Veseli's purported direct participation in crimes or his presence at locations of crimes. It was additionally supported by, in particular, the facts that: (i) police and intelligence structures had been allegedly put in place by the leadership of the Kosovo Liberation Army ("KLA"), of which Mr Veseli formed part, to identify and investigate individuals perceived to be opponents; (ii) the Accused in the present case, including Mr Veseli, purportedly had knowledge of the ongoing pattern of violence, and (iii) the KLA leadership had allegedly issued public statements, regulations, directions and orders encouraging attacks against individuals perceived to be opponents.<sup>45</sup>

26. This is also the case in relation to Mr Veseli's purported significant contribution to the common purpose and his *mens rea* in connection with JCE I. In this regard, the Pre-Trial Judge determined that, in addition to his direct participation in crimes or presence at crime locations, Mr Veseli: (i) was allegedly involved in the formulation, approval, dissemination and implementation of plans, policies and practices in furtherance of the common purpose; and (ii) otherwise allegedly provided information and political, logistical, military or financial support to, as well as coordinated and liaised between, JCE members in furtherance of the common purpose.<sup>46</sup> Similarly, factors other than Mr Veseli's

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<sup>44</sup> Request, footnote 4.

<sup>45</sup> Confirmation Decision, para. 447.

<sup>46</sup> Confirmation Decision, paras 460, 461, 463, 473.

alleged direct participation in crimes or presence at crime locations were invoked in relation to the objective and/or subjective elements for JCE III,<sup>47</sup> aiding and abetting,<sup>48</sup> and superior responsibility.<sup>49</sup>

27. As a result, the Pre-Trial Judge finds that it is not necessary to address Mr Veseli's specific arguments relating to the selected evidence underpinning the findings that he directly participated in the commission of crimes in the aforementioned instances. Without prejudging the merits of these arguments, which may be raised before a trial panel, the Pre-Trial Judge considers that any absence of evidence regarding such purported participation would not disturb the finding that there is a well-grounded suspicion that Mr Veseli bears individual criminal responsibility, pursuant to various forms of liability, for a number of crimes against humanity and war crimes. The reason is that, as demonstrated above, that finding was based on several additional factors. It follows, in turn, that Mr Veseli's selective submissions are also not capable of affecting the overall conclusion that, under Article 41(6)(a) and (10) of the Law, a grounded suspicion exists that Mr Veseli has committed crimes within the subject-matter jurisdiction of the SC. This further entails that, contrary to Mr Veseli's assertion,<sup>50</sup> it is irrelevant whether or not the SPO has additionally substantiated the allegations of Mr Veseli's personal involvement in the commission of crimes through additional disclosure following the First Detention Decision.

28. Moreover, Mr Veseli's additional submission that the allegations of JCE and superior responsibility against him are vague<sup>51</sup> are unsubstantiated and, as such, do not call into question that, as set above, there is a grounded suspicion that he bears individual criminal responsibility pursuant to, *inter alia*, these two modes of

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<sup>47</sup> Confirmation Decision, paras 477.

<sup>48</sup> Confirmation Decision, paras 480-481.

<sup>49</sup> Confirmation Decision, para. 496.

<sup>50</sup> Reply, para. 7.

<sup>51</sup> Request, para. 26.

liability. Lastly, the fact that, as argued by Mr Veseli,<sup>52</sup> these modes of liability are subject to a jurisdictional challenge is immaterial for the purposes of the present decision as these challenges are pending and cannot affect the assessment that, at present, a grounded suspicion that Mr Veseli committed crimes within the subject-matter jurisdiction of the SC continues to exist. To the extent that Mr Veseli is arguing that the final resolution of these challenges will protract his pre-trial detention, the assessment as to any such impact of the Pre-Trial Judge's determination and any further litigation is speculative.<sup>53</sup>

29. The Pre-Trial Judge, therefore, finds that there continues to be a grounded suspicion that Mr Veseli has committed crimes within the subject-matter jurisdiction of the SC for the purposes of Article 41(6)(a) and (10) of the Law.

#### B. NECESSITY OF DETENTION

30. Once the threshold in Article 41(6)(a) of the Law is met, the grounds that would justify the deprivation of a person's liberty must be articulable in the sense that they must be specified in detail.<sup>54</sup> The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"<sup>55</sup> that any of the risks under the three limbs of Article 41(6)(b) of the Law exists, denoting an acceptance of the possibility, not the inevitability, of a future occurrence.<sup>56</sup> In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.<sup>57</sup> When deciding

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<sup>52</sup> Request, para. 26.

<sup>53</sup> See also paras 55-56 below.

<sup>54</sup> First Detention Decision, para. 21; Court of Appeals Decision, paras 18-19.

<sup>55</sup> See *chapeau* of Article 41(6)(b) of the Law.

<sup>56</sup> First Detention Decision, para. 21, with further references.

<sup>57</sup> Court of Appeals Decision, para. 17.

on whether a person should be released or detained, the Pre-Trial Judge must consider alternative measures to prevent the risks in Article 41(6)(b) of the Law.<sup>58</sup>

## 1. Risk of Flight

31. Mr Veseli makes no submissions regarding the risk of flight in the Request. In the Response, the SPO submits that Mr Veseli has an ever-growing account of the evidence against him, which only increases his incentive and opportunity to attempt to evade the proceedings.<sup>59</sup> The SPO further refers to Mr Veseli's position of influence and authority over former subordinates and supporters, and asserts that this potential network remains as active as ever.<sup>60</sup> In this regard, the SPO refers to the campaign in support of the KLA that was set up shortly after Mr Veseli's arrest and the recent statement of the acting chairman of the KLA War Veterans Association that he would publish more confidential SC documents if he would obtain them.<sup>61</sup> Mr Veseli replies that the totality of the disclosed evidence starkly accentuates the increasingly unjust nature of his continued detention.<sup>62</sup> He adds that the SPO has never alleged that he was connected to "obstruction attempts" by the KLA War Veterans Association and that the SPO provides nothing to show that he is even formally acquainted with its acting chairman.<sup>63</sup>

32. The Pre-Trial Judge considers that, after having been made aware of the charges against him and the possibility of a serious sentence in the event of a

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<sup>58</sup> As regards the obligation to consider "alternative measures", see 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*, 26 April 2017, public, para. 114. See also ECtHR, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, [Judgment](#), 5 July 2016, para. 87 *in fine*; ECtHR, *Idalov v. Russia* [GC], no. 5826/03, [Judgment](#), 22 May 2012, para. 140 *in fine*.

<sup>59</sup> Response, para. 6.

<sup>60</sup> Response, para. 7.

<sup>61</sup> Response, paras 7-8.

<sup>62</sup> Reply, para. 1.

<sup>63</sup> Reply, para. 2.

conviction,<sup>64</sup> Mr Veseli has gained increased insight into the evidence underpinning these charges on the basis of the ongoing disclosure process. In addition, Mr Veseli continues to play a significant role in Kosovo on the basis of the previous positions he occupied, namely a founding member of the KLA General Staff, a member of the KLA Political Directorate, Head of the KLA Intelligence Service Department, Head of the Kosovo Intelligence Service, and Chairman of the Kosovo Assembly.<sup>65</sup> The influence he continues to derive from these roles – in particular from his intelligence related positions – may assist him in evading SC proceedings by, for instance, calling upon the support of persons sympathetic to him and/or the KLA, securing access to relevant information, and obtaining funds and means to travel.

33. Therefore, notwithstanding the counter-balancing factors identified in the First Detention Decision,<sup>66</sup> the risk of flight in relation to Mr Veseli continues to exist.

## **2. Risk of Obstructing the Progress of SC Proceedings**

34. Mr Veseli makes no submissions regarding the risk of obstructing the progress of SC proceedings in the Request. In the Response, the SPO invokes the same considerations identified above in connection with the risk of flight.<sup>67</sup> The arguments made by Mr Veseli in the Reply have been set out above as well.<sup>68</sup>

35. The Pre-Trial Judge recalls that it has been found that Mr Veseli has the ability to give instructions to an individual interacting with the SC,<sup>69</sup> and, in doing so, he

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<sup>64</sup> First Detention Decision, para. 32.

<sup>65</sup> Confirmation Decision, para. 460; First Detention Decision, para. 32.

<sup>66</sup> First Detention Decision, para. 33.

<sup>67</sup> Response, paras 6-8; para. 31 above.

<sup>68</sup> Reply, paras 1-2; para. 31 above.

<sup>69</sup> First Detention Decision, para. 44.

directly intervened in a matter involving the SC.<sup>70</sup> This must be considered together with the fact that, as set out above, Mr Veseli has, at present, gained increased insight into the evidence underpinning the serious charges against him on the basis of the ongoing disclosure process, and that he continues to play a significant role in Kosovo on the basis of the previous positions he occupied.<sup>71</sup> In particular, the knowledge, skills and contacts Mr Veseli acquired in his previous intelligence related positions would continue to allow him to, for instance, access information or elicit the support of others.<sup>72</sup> Thus, in the view of the Pre-Trial Judge, the risk that Mr Veseli will obstruct the progress of SC proceedings continues to exist on the basis of a combined assessment of his demonstrated willingness and ability to intervene in matters involving the SC, his increased awareness of the underlying evidence, and his capacity to garner the means to intervene in SC proceedings due to his continued role of significance.

36. The Pre-Trial Judge further recalls that there is a persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members,<sup>73</sup> as exemplified by the aforementioned statement of the acting chairman of the KLA War Veterans Association that he would publish more confidential SC documents if he would obtain them.<sup>74</sup> Even though this factor is, in and of itself, not determinative in relation to the risk of obstructing the progress of the proceedings, it provides the context against which the aforementioned findings, which pertain specifically to Mr Veseli, must be considered. In addition, it is recalled that the risk of obstruction need not materialise in an Accused personally tampering with evidence or exerting influence or pressure on

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<sup>70</sup> Court of Appeals Decision, para. 38.

<sup>71</sup> See para. 32 above.

<sup>72</sup> First Detention Decision, para. 43; Court of Appeals Decision, para. 40.

<sup>73</sup> First Detention Decision, para. 48; Court of Appeals Decision, paras 40, 48.

<sup>74</sup> Response, para. 8.

witnesses. It suffices that an Accused instigates others or contributes in any way to the materialisation of that risk.<sup>75</sup>

37. Accordingly, the Pre-Trial Judge concludes that the risk that Mr Veseli will obstruct the progress of SC proceedings continues to exist.

### 3. Risk of Committing Further Crimes

38. Mr Veseli makes no submissions regarding the risk of committing further crimes in the Request. In the Response, the SPO invokes the same considerations identified above in connection with the risk of flight.<sup>76</sup> The arguments made by Mr Veseli in the Reply have been set out above as well.<sup>77</sup>

39. The Pre-Trial Judge recalls that, even though the existence of a risk of obstruction does not automatically translate into a risk of committing further crimes, the factors underpinning the former are of relevance to the assessment of the latter in the circumstances of the present case.<sup>78</sup> It is further recalled that it suffices that an Accused instigates or assists others to commit such crimes, or contributes in any other way to their commission.<sup>79</sup>

40. Turning to the facts under consideration, besides the climate of witness intimidation, the Pre-Trial Judge takes into account that Mr Veseli has the ability to interfere in SC proceedings and that, at present, his account of the SPO's case against him has increased since the First Detention Decision in view of the ongoing disclosure of material underpinning the serious charges against him.<sup>80</sup> The Pre-Trial Judge also pays heed to the fact that Mr Veseli retains a position of

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<sup>75</sup> KSC-BC-2020-06, IA003/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Interim Release*, 30 April 2021, public, para. 59.

<sup>76</sup> Response, paras 6-8; para. 31 above.

<sup>77</sup> Reply, paras 1-2; para. 31 above.

<sup>78</sup> First Detention Decision, para. 52.

<sup>79</sup> First Detention Decision, paras 25, 52.

<sup>80</sup> See para. 32 above.



significance in Kosovo as a result of, in particular, his intelligence related positions,<sup>81</sup> thus allowing him to garner the means to commit further crimes by, for instance, calling upon the support of sympathisers.

41. On this basis, the Pre-Trial Judge considers that there is a risk that Mr Veseli will, under any form of responsibility, commit crimes similar to the underlying acts charged against those perceived as being opposed to the KLA, including witnesses who have provided or could provide evidence in the case and/or are due to appear before the SC. Accordingly, the Pre-Trial Judge concludes that the risk that Mr Veseli will commit further crimes continues to exist.

#### **4. Conclusion**

42. The Pre-Trial Judge concludes that the risks 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 have provided or could provide evidence in the case and/or are due to appear before the SC, continue to exist. The Pre-Trial Judge will assess below whether these risks can be adequately addressed by any conditions for his release.

#### **C. CONDITIONAL RELEASE**

43. According to Mr Veseli, his trustworthiness is amply demonstrated by his agreement with the SPO for his voluntary surrender, his statement demanding respect for the SC, and his and his family's exemplary conduct during his custodial visit to Kosovo.<sup>82</sup> Mr Veseli proposes a number of terms and conditions focusing in particular on measures to prevent prohibited communications ("Proposed

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<sup>81</sup> See paras 32, 35 above.

<sup>82</sup> Request, paras 31-33.

Conditions”).<sup>83</sup> According to Mr Veseli, his communication with the Director of the Kosovo Police (“Police Director” and “Police”) confirms that these conditions can be enforced.<sup>84</sup> Mr Veseli further submits that, if the Pre-Trial Judge requires elaboration of this information, the appropriate course of action is to address a list of questions to the Police Director.<sup>85</sup>

44. The SPO responds that Mr Veseli’s custodial visit was an exceptional, temporary modification of the conditions of his detention for a strictly limited humanitarian purpose, which cannot be meaningfully compared to interim release.<sup>86</sup> Moreover, as to the Proposed Conditions, the SPO is of the view that an inherent defect of the proposed house arrest is that Mr Veseli will have regular opportunities to speak privately with those who have the freedom to come and go from his residence.<sup>87</sup> It further avers that searches for telecommunications devices and even written documents cannot stop the contents of those unmonitored conversations from reaching the outside world.<sup>88</sup> The SPO also argues that the limitations of the Proposed Conditions are especially apparent in relation to Mr Veseli, who is one of the most experienced intelligence officials in Kosovo, the previous head of the KLA intelligence services and the Kosovo Intelligence Service.<sup>89</sup> In addition, according to the SPO, if no condition can mitigate the risks identified, there is no obligation to assess Kosovo’s willingness and ability to enforce conditions.<sup>90</sup> The SPO avers that, in any event, the latest assurance of the Police Director does not specifically refer to the Proposed Conditions and does nothing more than to repeat a general willingness to implement judicial orders.<sup>91</sup>

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<sup>83</sup> Request, paras 35-36.

<sup>84</sup> Request, para. 37.

<sup>85</sup> Request, para. 37.

<sup>86</sup> Response, para. 15.

<sup>87</sup> Response, para. 17.

<sup>88</sup> Response, para. 17.

<sup>89</sup> Response, para. 18.

<sup>90</sup> Response, para. 19.

<sup>91</sup> Response, para. 20.

45. Mr Veseli replies that, insofar as he can provide a concrete example of his propensity to honour the trust placed in him, such good conduct is entirely relevant to the risk-assessment exercise, as has been the case in proceedings before the International Criminal Court.<sup>92</sup> He adds that the good conduct extended to members of his immediate family.<sup>93</sup> Furthermore, Mr Veseli submits that the email of the Police Director was written by way of a specific response to a letter from his Specialist Counsel in which he set out a list of conditions.<sup>94</sup>

46. As regards the risk of flight, the Pre-Trial Judge considers that, as found in the First Detention Decision, this risk can be sufficiently mitigated on the basis that Mr Veseli has committed himself to remain in house arrest, surrender his travel documents, and respect a prohibition on travelling.<sup>95</sup>

47. However, the Pre-Trial Judge considers that neither the Proposed Conditions nor any additional conditions imposed by the Pre-Trial Judge could sufficiently mitigate the risks under Article 41(6)(b)(ii) and (iii) of the Law.

48. In the view of the Pre-Trial Judge, the Proposed Conditions would not prevent unmonitored conversations between Mr Veseli and his family members or approved visitors. This entails that, even if the proposals to have family members and approved visitors surrender any devices and to consent to subsequent monitoring of their devices could be implemented, messages could be passed on in a number of other ways. For instance, recalling especially that Mr Veseli has a position of significance and that he has particular skills due to his intelligence background, a real possibility exists that Mr Veseli could ask someone to pass on a message orally or to use a device belonging to a third person to do so. In addition, aside from the question whether they can be implemented in practice, any further conditions, such as visits monitored by the Police, would insufficiently

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<sup>92</sup> Reply, para. 8.

<sup>93</sup> Reply, para. 9.

<sup>94</sup> Reply, para. 10.

<sup>95</sup> First Detention Decision, para. 58.

mitigate this risk due to the possibility of using code or obscure language which cannot be easily recognised or prevented by persons not familiar with SC proceedings. It follows that Mr Veseli's communications can only be restricted and monitored in a way to sufficiently mitigate the risks of him obstructing SC proceedings or committing further crimes through the communication monitoring framework at the SC detention facilities.

49. Furthermore, the Pre-Trial Judge observes that, despite Mr Veseli's request to confirm that the Police are willing and able to enforce a detailed list of terms and conditions,<sup>96</sup> the letter provided by the Police Director stipulates, in general, that the Police are able to implement the decisions and orders of the SC.<sup>97</sup> This constitutes a general assertion, which does not specifically address whether the Proposed Conditions can be effectively enforced and, if so, which measures would be adopted. Contrary to Mr Veseli's argument,<sup>98</sup> it cannot be maintained that the general nature of the Police Director's response constitutes an acceptance to enforce the Proposed Conditions, seeing as the detailed request by Mr Veseli merits a specific response. The fact that the Proposed Conditions do not prevent unmonitored conversations and that they would require resource-intensive measures to be adopted further augments the need for a detailed response by the Police Director. This holds especially true in relation to Mr Veseli given his position of significance in Kosovo, and the particular skills he acquired in his intelligence related positions.

50. In relation to Mr Veseli's custodial visit, the Pre-Trial Judge recalls that such visits are fundamentally different from interim release. Concretely, a number of strict conditions were imposed for his temporary release from the SC Detention Unit on compelling humanitarian grounds due to his father's health, including:

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<sup>96</sup> Request, para. 36.

<sup>97</sup> KSC-BC-2020-06, F00341/A03, Defence for Mr Veseli, *Annex C to Veseli Defence Submissions on Detention Review with Confidential Annexes A to C*, 7 June 2021, confidential, p. 7.

<sup>98</sup> Reply, para. 10.

(i) a transfer to a secure detention facility in Kosovo; (ii) remaining in SC custody and being escorted and remaining in the sight of escorting officer(s) at all times; and (iii) refraining from contacting persons other than identified family members and attending medical personal.<sup>99</sup> In view of the specific purpose of Mr Veseli's temporary release from the SC Detention Unit and the need for strict conditions, his and his family's behaviour is not decisive for the purposes of the present decision. In addition, Mr Veseli's agreement with the SPO for his voluntary surrender and his statement demanding respect for the SC have been previously found not to negate any of the identified risks.<sup>100</sup>

51. Therefore, viewed in combination with the seriousness of the considerations set out above in relation to the risks under Article 41(6)(b) of the Law and the inadequacy of the Proposed Conditions and any additional conditions, the three considerations invoked by Mr Veseli must be attributed limited weight and, on balance, do not affect the preceding assessment regarding his conditional release. Accordingly, the Pre-Trial Judge finds that neither the Proposed Conditions nor any additional conditions would sufficiently mitigate the risks under Article 41(6)(b)(ii) and (iii) of the Law.

#### D. PROPORTIONALITY OF DETENTION

52. In Mr Veseli's submission, the SPO is not only conducting the disclosure process in an inefficient manner, but it has also set unreasonable deadlines which it has proved that it cannot meet.<sup>101</sup> Mr Veseli is of the view that the SPO will not be ready for trial until well into next year.<sup>102</sup>

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<sup>99</sup> KSC-BC-2020-06, F00271/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, 30 April 2021, public, para. 18.

<sup>100</sup> First Detention Decision, paras 33, 39; Court of Appeals Decision, para. 50.

<sup>101</sup> Request, para. 27.

<sup>102</sup> Request, para. 29.

53. The SPO responds that the Panel of the Court of Appeals determined that the Pre-Trial Judge was not required to estimate the probable length of detention in the First Detention Decision.<sup>103</sup> It adds that all deadlines in this case have been met or extended for good cause, and there is no indication that the SPO has been dilatory.<sup>104</sup> According to the SPO, Mr Veseli has been detained for seven months on a vast array of war crimes and crimes against humanity committed over a near two-year period, and the scale of these charges affects all aspects of the trial process.<sup>105</sup> It is also of the view that Mr Veseli's insistence that pre-trial proceedings are too long ignores his own responsibility.<sup>106</sup>

54. Mr Veseli replies that his requests for variation of time limits were considered reasonable by the Pre-Trial Judge.<sup>107</sup> In addition, he submits that, after the Response, the SPO submitted another request for a deadline postponement.<sup>108</sup>

55. The Pre-Trial Judge recalls that: (i) Mr Veseli was arrested on 5 November 2020; (ii) he is charged with a number of counts of crimes against humanity and war crimes in relation to events encompassing multiple locations in Kosovo and Albania over an extended period of time; (iii) he could be sentenced to a lengthy sentence, including life-long imprisonment, if convicted; (iv) the risks under Article 41(6)(b)(ii) and (iii) of the Law cannot be mitigated by the Proposed Conditions or any additional conditions; (v) all required procedural steps relating to the pre-trial phase of the present case have been, are being or will be completed with a view to transmitting the case for trial at a point in the foreseeable future; (vi) the relevant time limits have been either met or extended for good cause - also at the request of Mr Veseli on certain occasions - and any additional requests for extension of time will be evaluated against the applicable

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<sup>103</sup> Response, para. 22.

<sup>104</sup> Response, para. 22.

<sup>105</sup> Response, para. 23.

<sup>106</sup> Response, paras 24-25.

<sup>107</sup> Reply, paras 13-14.

<sup>108</sup> Reply, para. 15.

legal criteria; and (vii) Mr Veseli and the SPO continue to differ as to the likely start date of the trial.

56. On this basis, the Pre-Trial Judge finds that the time Mr Veseli has spent in pre-trial detention is not unreasonable. For the same reasons, to the extent that Mr Veseli is arguing that the SPO's conduct is causing undue delay within the meaning of Rule 56(2) of the Rules, the Pre-Trial Judge finds that, at the present stage, any discussion as to the expected total length of Mr Veseli's pre-trial detention remains premature and speculative.<sup>109</sup>

#### DISPOSITION

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

- a) **ORDERS** Mr Veseli's continued detention;
- b) **ORDERS** Mr Veseli, if he wishes to do so, to file submissions on the next review of detention by no later than **Thursday, 12 August 2021**, with responses and replies following the timeline set out in Rule 76 of the Rules;
- c) **ORDERS** the SPO, should Mr Veseli decide not to file any submissions by the aforementioned time limit, to file submissions on the next review of Mr Veseli's detention by no later than **Monday, 16 August 2021**, and Mr Veseli, if he wishes to do so, to file his submissions by no later than **Thursday, 26 August 2021**; and
- d) **ORDERS** the Court Management Unit to reclassify Annex 1 to the Response as public (F00354/A01).

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<sup>109</sup> Court of Appeals Decision, para. 59.



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**Judge Nicolas Guillou**  
**Pre-Trial Judge**

Dated this Friday, 2 July 2021

At The Hague, The Netherlands.