



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
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**Public redacted version of Prosecution consolidated response to October 2021
Defence Submissions on Detention Review**

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I. INTRODUCTION

1. The continued detention of Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (collectively, 'the Accused') remains necessary.¹ There has been no relevant change in circumstances detracting from the established reasons for detention.² Rather, the Appeals Panel confirmed that Article 41(6)(b) risks continue to exist.³

2. In its latest decisions on detention review, the Appeals Panel confirmed the Pre-Trial Judge's findings of: (i) a grounded suspicion that the Accused committed crimes within the jurisdiction of the Specialist Chambers ('KSC');⁴ and (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.⁵ The Appeals Panel remanded to the Pre-Trial Judge only the assessment whether the conditions proposed in relation to their conditional release ('Proposed Conditions') or any other conditions could mitigate the identified risks.⁶

¹ *Contra* Veseli Defence Submissions on Second Detention Review, KSC-BC-2020-06/F00518, 11 October 2021, Confidential, ('Veseli Submissions'), Selimi Defence Submissions on Review of Detention and Response to Order of the Pre-Trial Judge, KSC-BC-2020-06/F00523, 13 October 2021, Confidential, ('Selimi Submissions'), Krasniqi Defence Observations on Detention Review and Submissions on Second Detention Review, KSC-BC-2020-06/F00524, 13 October 2021, Confidential ('Krasniqi Submissions').

² 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.

³ Public Redacted Version of Decision on Kadri Veseli's Appeal against Decision on Review of Detention, KSC-BC-2020-06/IA008/F00004/RED, 1 October 2021 ('Veseli Appeal Decision'), Decision on Rexhep Selimi's Appeal against Public Redacted Version of Decision on Review of Detention, KSC-BC-2020-06/IA007/F00005/RED, 1 October 2021 ('Selimi Appeal Decision'), Public Redacted Version of Decision on Jakup Krasniqi's Appeal against Decision on Review of Detention, KSC-BC-2020-06/IA006/F00005/RED, 1 October 2021 ('Krasniqi Appeal Decision').

⁴ See Veseli Appeal Decision, KSC-BC-2020-06/IA008/F00004/RED, para.24.

⁵ Veseli Appeal Decision, KSC-BC-2020-06/IA008/F00004/RED para. 37, Selimi Appeal Decision, KSC-BC-2020-06/IA006/F00005/RED, para.40, Krasniqi Appeal Decision, KSC-BC-2020-06/IA006/F00005/RED, para.30.

⁶ Veseli Appeal Decision, KSC-BC-2020-06/IA008/F00004/RED, para.52.

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.⁷ That determination inevitably concerns what has changed, if anything, since the previous ruling on detention. The Pre-Trial Judge should not be expected to entertain submissions that merely repeat arguments that have already been addressed in his previous decisions.⁸

A. GROUNDED SUSPICION UNDER ARTICLE 41(6)(A)

4. The Pre-Trial Judge found that, under Article 41(6)(a) and (10) of the Law, a grounded suspicion that Veseli, Selimi and Krasniqi have committed crimes within the subject-matter jurisdiction of the KSC exists.⁹ The Appeals Panel confirmed the Pre-Trial Judge's conclusion and found that no change in circumstances has been raised by the Defence to warrant a new determination as to the existence of a grounded suspicion pursuant to Article 41(6)(a).¹⁰ This conclusion continues to stand.

B. NECESSITY OF DETENTION

5. Articulable grounds remain for the continued detention of the accused. The applicable standard is less than certainty, but more than a mere possibility of a risk materialising, as established by the Pre-Trial Judge¹¹ and confirmed by the Appeals

⁷ *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.

⁸ Krasniqi Appeal Decision, KSC-BC-2020-06/IA006/F00005/RED, para.17.

⁹ Public Redacted Version of Decision on Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00380/RED, 2 July 2021, ('Veseli Review Decision'), para. 22, Public Redacted Version of Decision on Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F00372/RED, 30 June 2021, paras 19-20, Public Redacted Version of Decision on Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F00371/RED, 30 June 2021, paras 22-23.

¹⁰ Veseli Appeal Decision, KSC-BC-2020-06/IA008/F00004/RED, para.24.

¹¹ Veseli Review Decision, KSC-BC-2020-06/F00380/RED, para.30.

Panel.¹² Thus, based on the evidence available, the specific articulable grounds must support the belief that any of the risks under Article 41(6)(b) of the Law exists. It is sufficient for one of the risks to be met for detention to be maintained, as the conditions set forth in Article 41(6)(b) are alternative to one another.¹³

6. All risks under Article 41(6)(b) continue to be met for the reasons set forth below.

1. Risk of flight

7. The ever-growing account of the evidence disclosed to the Accused, in conjunction with the possibility of a serious sentence in the event of a conviction, may provide the necessary incentive for the Accused to obtain funds and means to travel and eventually evade KSC proceedings. That the Accused would have the means to do so is supported by their continued influence in Kosovo, confirmed by the Pre-Trial Judge and upheld by the Appeals Panel,¹⁴ including due to their former functions.

2. Risk of obstructing the progress of KSC proceedings

8. There is a real risk of the Accused obstructing the progress of KSC proceedings, if they were to be released. This is based, *inter alia*, on a combined assessment of the persistent climate of intimidation of witnesses and interference with criminal proceedings against former KLA members, the Accused's demonstrated willingness and ability to intervene in such matters, and their increased awareness of the underlying evidence.

9. Furthermore, the risk of obstruction need not materialise by way of an Accused personally tampering with evidence or exerting influence or pressure on witnesses. It

¹² Selimi Appeal Decision, KSC-BC-2020-06/IA007/F00005/RED, para.19.

¹³ Krasniqi Appeal Decision, KSC-2020-06/IA006/F00005/RED, para.37.

¹⁴ Krasniqi Appeal Decision, KSC-BC-2020-06/IA006/F00005/RED, para.27, Selimi Appeal Decision, KSC-BC-2020-06/IA007/F00005/RED, para.34, Veseli Appeal Decision, KSC-BC-2020-06/IA008/F00004/RED, para.34.

is sufficient that the Accused instigates others or otherwise contributes to the materialisation of that risk.¹⁵

10. The Appeals Panel additionally upheld the Pre-Trial Judge's conclusion that [REDACTED] if released, they will obstruct the progress of the criminal proceedings.¹⁶

11. The risk of obstruction is further heightened by the Accused's increasing access to incriminating evidentiary material, as well as [REDACTED]. As affirmed by the Appeals Panel, 'the protective measures in place are not sufficient to mitigate the "inherently high" risk of witness intimidation or interference'.¹⁷ [REDACTED].¹⁸ Given the high risk identified, and the demonstrated ability of the Accused to obtain confidential information, the insufficiency of the applicable protective measures to mitigate the risk of witness intimidation/interference, if the Accused are released, is reinforced.

12. The Accused wield massive influence over former KLA members and Kosovo in general. Both individually and collectively, they have the ability to manipulate government bodies to evade and thwart proceedings against them. Specific instances demonstrating the Accused's interference and attempts to obstruct justice have already been brought to the attention of the Pre-Trial Judge in previous filings.¹⁹

¹⁵ Veseli Review Decision, KSC-BC-2020-06/F00380/RED, para.36.

¹⁶ Krasniqi Appeal Decision, KSC-BC-2020-06/IA006/F00005/RED, para. 29, Selimi Appeal Decision, KSC-BC-2020-06/IA007/F00005/RED, para. 40, Veseli Appeal Decision, KSC-BC-2020-06/IA008/F00004/RED, para.35.

¹⁷ Krasniqi Appeal Decision, KSC-BC-2020-06/IA006/F00005/RED, para.35.

¹⁸ Krasniqi Appeal Decision, KSC-BC-2020-06/IA006/F00005/RED, para.35.

¹⁹ Request for arrest warrants and related orders, KSC-BC-2020-06/F00005, 28 May 2020, Strictly confidential and *ex parte* ('Arrest Warrant Application'); Public Redacted Version of Prosecution response to Application for Interim Release on behalf of Mr Rexhep Selimi, KSC-BC-2020-06/F00514/RED, 22 December 2020; Public Redacted Version of Prosecution response to Application for Interim Release on behalf of Mr. Jakup Krasniqi, KSC-BC-2020-06/F000153/RED, 22 December 2020; Public Redacted Version of 'Prosecution response to Application for Interim Release on behalf of Mr Kadri Veseli', KSC-BC-2020-06/F00161/RED, 15 January 2021.

13. The fate of witnesses in former KLA trials further demonstrate the risks posed by the easily mobilised supporters and sympathisers of the Accused, including the following:

- i. On [REDACTED] was shot dead and [REDACTED] was seriously injured. They were both witnesses in the [REDACTED] case concerning crimes related to the [REDACTED] detention site.²⁰
- ii. On [REDACTED] former KLA member [REDACTED] was found [REDACTED]. He was the key witness in the case against [REDACTED], for crimes related to the [REDACTED] detention site.²¹
- iii. [REDACTED] witnesses in the *Balaj et al.* case, were killed [REDACTED] following the guilty verdict in that trial. [REDACTED] was killed [REDACTED], whereas [REDACTED] was gunned down and killed.²²
- iv. The ICTY Trial Chamber in the *Haradinaj et al.* case specifically observed that many witnesses cited fear as a prominent reason for not wishing to give evidence and that this was due to a number of factors such as Kosovo's small communities and tight family and community networks which do not guarantee anonymity.²³

(a) Veseli

14. Veseli is a founding member of the KLA and General Staff. He is the former chairman of the Kosovo Assembly. 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"). The Appeals Panel has upheld the Pre-Trial Judge's finding that Veseli's influence derives from the knowledge, skills and contacts that he acquired in his previous intelligence related positions.²⁴

15. There are numerous indicators that there is a risk Veseli can obstruct justice, including information that SHIK members answerable to him were involved in

²⁰ Arrest Warrant Application, KSC-BC-2020-06/F00005, para.19.

²¹ Arrest Warrant Application, KSC-BC-2020-06/F00005, para.20.

²² Arrest Warrant Application, KSC-BC-2020-06/F00005, para.24.

²³ ICTY, *Prosecutor v Haradinaj et al.*, IT-04-84-T, Judgment, 2 April 2006, para.6.

²⁴ Veseli Appeal Decision, KSC-BC-2020-06/IA008/F00004/RED, para. 34.

surveilling, threatening and bribing witnesses testifying against former KLA members at the ICTY.²⁵ Veseli also has a demonstrated ability to give instructions to those involved with interference against potential SPO witnesses.²⁶ Veseli's release would only significantly increase the risk of obstruction in an already persisting climate of witness intimidation and fear.

(b) Selimi

16. Selimi is a founding member of the KLA General Staff and the Minister of Public Order for the Provisional Government of Kosovo. At the time of his arrest he was a member of the Kosovo Assembly. The Appeals Panel has upheld that Selimi continues to enjoy an influential position in Kosovo by virtue of his former functions.²⁷

17. [REDACTED].²⁸

18. [REDACTED].²⁹

19. [REDACTED].

(c) Krasniqi

20. Krasniqi was a member of the KLA General Staff and was for a time the KLA's Deputy Commander. He is the former acting President of Kosovo and chairman of the Kosovo Assembly. The Appeals Panel has upheld the finding that Krasniqi continues to enjoy an influential position in Kosovo by virtue of his former functions.³⁰

²⁵ [REDACTED].

²⁶ Decision on Kadri Veseli's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA001/F00005, 30 April 2021, paras 38-43; Arrest Warrant Application, KSC-BC-2020-06/F00005, para. 8, 12.

²⁷ Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA003/F00005/RED, 30 April 2021, paras 63, 68.

²⁸ Selimi Appeal Decision, KSC-BC-2020-06/IA007/F00005/RED, para.40.

²⁹ Selimi Appeal Decision, KSC-BC-2020-06/IA007/F00005/RED, para.37.

³⁰ Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA002/F00005/RED, 30 April 2021, para.52.

21. Krasniqi's overt opposition to KSC, [REDACTED] must be placed in the context of a general, well-established and ongoing climate of intimidation of witnesses and interference with criminal proceedings against KLA members. The risk of obstruction is further substantiated by Krasniqi's belief that anyone who expresses agreement with the allegations included in the Council of Europe report should be labelled as 'collaborators' in the 'service of Milošević's policy of genocide'.³¹

22. The Appeals Panel confirmed the Pre-Trial Judge's finding that Krasniqi's [REDACTED], if released, Krasniqi will obstruct the progress of the criminal proceedings.³² Absent any change in circumstances identified by the Defence, the conclusion of the Appeals Panel stands.

3. Risk of committing further crimes

23. In assessing the risk of committing further crimes, it suffices that an Accused instigates or assists others to commit such crimes, or contributes in any other manner to their commission. This risk must be considered in light of: (i) a well-established and ongoing climate of witness intimidation and interference; (ii) the increased awareness of incriminatory evidence the Accused have; and (iii) the significant influential positions the Accused still retain in Kosovo. Considering the prior examples of the willingness and ability of the Accused to obtain confidential information, this risk remains high.

C. NO CONDITIONS SUFFICIENTLY MITIGATE THE RISKS IDENTIFIED

24. No conditions of release in Kosovo can mitigate the particular risks at issue. The Appeals Panel did not find that the conditions of release proposed by the Accused

³¹ Annex 2 to Arrest Warrant Application, KSC-BC-2020-06/F00005/A02, p.22; Public Redacted Version of the Decision on Jakup Krasniqi, KSC-BC-2020-06/F00180/RED, 22 January 2021, para.36.

³² Krasniqi Appeal Decision, KSC-BC-2020-06/IA006/F00005/RED, para.30.

would be sufficient to justify conditional release.³³ The Appeals Panel rather found that the conditions proposed are extensive, and that in the abstract they ‘may’ restrict and monitor communications.³⁴ The Appeals Panel did not reach the question of whether these conditions restrict and monitor communications *enough* to justify conditional release, instead reasoning that further information is required to make such a determination.³⁵ In light of the high risks which exist and the specific circumstances of the Accused, the Pre-Trial Judge should determine that the conditions proposed are insufficient to justify release and, even if they were, Kosovo is unwilling and unable to enforce them.

25. Analysing the conditions necessary to mitigate the severe risks identified must reflect the well-recognised climate of witness intimidation in Kosovo – including the interference to date in this case - and the influence the Accused have in Kosovo.³⁶ The potential of the Accused to communicate protected information into this environment is manifestly dangerous. The conditions proposed to combat such risks remain defective in key areas, as can be seen from the Veseli Defence’s proposals cross-referenced by the other defence teams³⁷ and the KP’s responses to them. The KP’s latest guarantees remain insufficient, and as such do not amount to a change in circumstances.³⁸

³³ *Contra* Selimi Submissions, KSC-BC-2020-06/F00523, para.8; Krasniqi Submissions, KSC-BC-2020-06/F00524, para.27.

³⁴ Veseli Appeals Decision, KSC-BC-2020-06/IA008/F00004/RED, para.48; Selimi Appeals Decision, KSC-BC-2020-06/IA007/F00005/RED, para.54; Krasniqi Appeals Decision, KSC-BC-2020-06/IA006/F00005/RED, para.54.

³⁵ Veseli Appeals Decision, KSC-BC-2020-06/IA008/F00004/RED, para.52; Selimi Appeals Decision, KSC-BC-2020-06/IA007/F00005/RED, para.57; Krasniqi Appeals Decision, KSC-BC-2020-06/IA006/F00005/RED, para.57.

³⁶ *Contra* Krasniqi Submissions, KSC-BC-2020-06/F00524, para.23.

³⁷ Selimi Submissions, KSC-BC-2020-06/F00523, para.14; Krasniqi Submissions, KSC-BC-2020-06/F00524, para.26. To the extent the Selimi and Krasniqi Defence propose conditions of their own, they heavily overlap with those of the Veseli Defence and are defective for similar reasons. *See* Krasniqi Submissions, KSC-BC-2020-06/F00524, paras 24-25.

³⁸ *Contra* Veseli Submissions, KSC-BC-2020-06/IA008/F00004/RED, para.24.

26. First, the KP's responses to the surveillance of residence conditions foresee a use of limited resources that is clearly not proportionate to the gravity of the risks.³⁹ The KP proposes to have a single officer guard the apartment with a single camera at the apartment front door and a second outside the building. The perimeter of the residence cannot be secured without more resources, leaving large parts of the property unmonitored. In particular, except for those parts of the residence a guard can see from the front door, the inside of the property would be unobservable. This is in clear contrast to the Detention Centre, which has a team of detention officers whose primary tasks include maintaining a secure detention environment.⁴⁰

27. Second, and relatedly, visits cannot be meaningfully monitored under these conditions.⁴¹ The proposed conditions permit family and personal visits outside the sight or hearing of any KP officer as the general rule. The regime of private visits at the Detention Centre – which exceptionally permits unsupervised visits for up to three hours at least once every three months⁴² – is not comparable. The general rule for visits is that they must occur within the sight and hearing of Detention Officers.⁴³ At the Detention Centre, the only people generally allowed to visit the Accused outside both the sight and hearing of Detention Officers are the ICRC, Ombudsperson, Registrar (or someone acting on his/her behalf) or the judges (or someone acting on their behalf).⁴⁴

³⁹ Annex 2 to the Veseli Submissions, KSC-BC-2020-06/F00518/A02, p.8 (conditions 1-2), Krasniqi Submissions, KSC-BC-2020-06/F00524, para.24(a)-(c).

⁴⁰ See generally Registry Submissions Pursuant to the Order to Provide Information on the Detention Regime (F00522), KSC-BC-2020-06/F00536, 20 October 2021, Confidential.

⁴¹ *Contra* Annex 2 to the Veseli Submissions, KSC-BC-2020-06/F00518/A02, p.9 (conditions 5-6); Selimi Submissions, KSC-BC-2020-06/F00523, para.16; Krasniqi Submissions, KSC-BC-2020-06/F00524, para.24(f).

⁴² Article 24 of the Registry Practice Direction on Detainees: Visits and Communications, KSC-BD-09/Rev1/2020, 23 September 2020 ('Visit Rules').

⁴³ Article 15 of the Visit Rules.

⁴⁴ Articles 21-23(1) of the Visit Rules. See also Section 20 of Annex A to House Rules of the Detention Facilities, KSC-BD-29/Annex A, 23 September 2020.

28. The conditions proposed by Veseli extend such a regime to all family members and approved visitors of the Accused. This is fundamentally different from the regime at the Detention Centre.⁴⁵ The Veseli Defence betrayed awareness of this fact when it asked if the KP could confirm whether visitors could be given recording equipment as they entered the residence.⁴⁶ The KP failed to even comment on this proposition.

29. Third, the communication device restrictions are both incomplete and ineffective.⁴⁷ The Accused focus on telecommunication and internet enabled devices, but sensitive information can be transferred on many kinds of devices outside these categories (a USB is an obvious example). This is why the Detention Centre regulations prohibit any device which is capable of saving information in addition to electronic communication devices.⁴⁸ More significantly still, the failure to properly monitor the conversations of the Accused inside the residence makes it all-too-easy to orally convey messages which cannot subsequently be traced by the conditions proposed.

30. Fourth, the conditions proposed provide no information on the training of the officer concerned. The Veseli Defence explains that KP officers will easily be able to detect potential issues,⁴⁹ but when it specifically asked the KP to comment on their ability to prevent coded or obscure language⁵⁰ the KP was silent. The Registry has access to all the confidential filings in the case record, and is capable of providing information to Detention Officers as needed in order to at least mitigate the risk of potential coded language in the context of these proceedings. KP officers will never

⁴⁵ *Contra* Selimi Submissions, KSC-BC-2020-06/F00523, para.16.

⁴⁶ Annex 1 to the Veseli Submissions, KSC-BC-2020-06/F00518/A01, p.3.

⁴⁷ *Contra* Annex 2 to the Veseli Submissions, KSC-BC-2020-06/F00518/A02, pp.8-9 (conditions 3-4, 7); Krasniqi Submissions, KSC-BC-2020-06/F00524, para.24(d)-(e), (g).

⁴⁸ Section 3(1)(P)-(Q) of the Detention Management Unit Instruction on Items and Substances Prohibited in the Detention Facilities, KSC-BD-31, 23 September 2020.

⁴⁹ Veseli Submissions, KSC-BC-2020-06/F00518, para.28, n.28.

⁵⁰ Annex 1 to the Veseli Submissions, KSC-BC-2020-06/F00518/A01, p.3.

be able to approximate that same detailed understanding, calling into question whether measures like random searches will be reliably executed.⁵¹

31. Kosovo has still not provided adequate guarantees to mitigate the serious risks posed by the Accused. These continued failures betray a simple inability to enforce sufficient measures.

32. The procedural history of the KP responses regarding conditional release is troubling in itself. By now, the KP has tried three times to give written assurances and in all instances failed to provide sufficient answers.⁵² Some of the answers given call into question the KP's very understanding of the risks and necessary measures, let alone its ability to execute such measures.

33. Further, the extended process in getting to these answers seriously calls into question the KP's willingness and ability to sufficiently enforce release conditions. It is clear that the Veseli Defence and the KP are working closely in progressively developing these conditional release responses, illustrated by the Veseli Defence mentioning information not in the public case record when corresponding with the KP.⁵³ Even if the KP can eventually list satisfactory conditions with enough attempts, the question of practical implementation still remains. Presenting a paper replica of

⁵¹ *Contra* Annex 2 to the Veseli Submissions, KSC-BC-2020-06/F00518/A02, p.10 (conditions 10-11); Krasniqi Submissions, KSC-BC-2020-06/F00524, para.24(h).

⁵² Annex 2 to the Veseli Submissions, KSC-BC-2020-06/F00518/A02; Annex C to Public Redacted Version of Veseli Defence Submissions on Detention Review with Confidential Annexes A to C (F00341 dated 4 June 2021), KSC-BC-2020-06/F00341/A03, 25 June 2021 (with three annexes), p.7; 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.

⁵³ Annex 1 to the Veseli Submissions, KSC-BC-2020-06/F00518/A01, p.2 (third states to which Hashim Thaçi sought release). *See also* Koha, Saranda Ramaj, Kosovo justice institutions are serving to Veseli's defense, 27 January 2021, available at https://www.koha-net.translate.google.com/arberi/255981/institucionet-e-drejtësisë-ne-kosovë-vihen-ne-shërbim-te-mbrojtjes-se-veselit/?x_tr_sl=sq&x_tr_tl=en&x_tr_hl=en&x_tr_pto=nui.sc.

the Detention Centre measures falls short of providing the confidence of security which the KSC facility instils.⁵⁴

34. The KSC/SPO's existence is predicated on the reality that high profile KLA accused like those charged in this case could not have a trial in Kosovo without justice being obstructed.⁵⁵ The KSC/SPO is necessary because releasing such high profile KLA accused in Kosovo is simply unworkable. By virtue of their positions and responsibilities during and after the war in Kosovo, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi remain enormously influential. Releasing them places victims, witnesses and the integrity of the proceedings at risk, and thereby threatens the KSC/SPO's entire mandate.

35. The Pre-Trial Judge has discretion to seek and receive all submissions considered necessary to a proper determination of this matter, and has already addressed further detailed questions to the KP. To that end, the SPO intends to file further submissions on conditional release following the KP's forthcoming submission.

D. DETENTION REMAINS PROPORTIONATE

36. The Appeals Panel emphasised the importance of considering the length of pre-trial detention alongside the risks under Article 41(6)(b) when determining its

⁵⁴ See *United States, United States v. Bergrin*, 2009 WL 1560039, 29 May 2009, p.9; *United States, United States v. Benatar*, 2002 WL 31410262, 10 October 2002, p.3; *United States, United States v. Gotti*, 776 F. Supp. 666 (E.D.N.Y. 1991), 23 October 1991, pp.672-73.

⁵⁵ See Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights, Report: Inhumane treatment of people and illicit trafficking in human organs in Kosovo, Doc.12462, 7 January 2011, para.10 ('[t]he Kosovo police still has to prove itself and to win the full confidence of its international partners, including its counterparts in the EULEX mission. We sensed lingering doubts among internationals as to whether or not all the leaders of the police force share the necessary political resolve to go after all forms of crime in the most robust fashion possible, especially where the police are called upon to combat organised crime, and/or crimes in which highly placed political figures are implicated, and notably in ensuring truly effective protection of witnesses, a very sensitive and vital tool in the prosecution of the most notorious and dangerous criminals').

proportionality.⁵⁶ In this instance, continued detention is not only proportional, but – in light of the risks at issue - also necessary to ensure that no interference with SC proceedings takes place, and to guarantee witnesses’ safety and lack of intimidation.

37. The Appeals Panel also endorsed the Pre-Trial Judge’s considerations of factors such as: date of arrest, the subject-matter and temporal scope of the charges against the Accused, the lengthy sentences, if convicted, and the pre-trial procedural steps still to be completed before transmitting the case for trial.⁵⁷ What is proportionate in terms of pre-trial detention depends upon the specific circumstances of the case.⁵⁸ Against all relevant criteria, detention remains proportionate in this instance.

38. Proportionality needs to be assessed at the relevant time and remains subject to regular periodic reviews in accordance with the Rules. Estimates, past or present, are not determinative of the proportionality of the pre-trial detention’s length, and have not been the basis for prior findings by either the Pre-Trial Judge or the Appeals Panel.

39. Moreover, the case has further actively progressed towards trial, with the SPO indicating 17 December 2021 as a date to file its Pre-Trial Brief, the SPO’s completion of the vast majority of Rule 102(1)(b) disclosure and the parties’ filing of appeals in relation to preliminary motions. Last but not least, a preliminary witness list has been filed on 22 October 2021.

40. All necessary pre-trial processes in the case are advancing expeditiously and in parallel. Many of these steps – such as final resolution of all preliminary motions – are necessary pre-conditions to the case going to trial. As such, the Defence’s suggestion that the justified extensions for disclosure of a relatively small number of remaining

⁵⁶ Selimi Appeal Decision, KSC-BC-2020-06/IA007/F00005/RED, para.46.

⁵⁷ Krasniqi Appeal Decision, KSC-BC-2020-06/IA006/F00005/RED, para.42; Selimi Appeal Decision, KSC-BC-2020-06/IA007/F00005/RED, para.45.

⁵⁸ ECtHR, *Shabani v Switzerland*, 29044/06, Judgment, 5 November 2009 (even a pre-trial detention of five years was not too excessive under the ECHR).

Rule 102(1)(b) materials has either delayed the start of trial or prolonged the detention of the Accused is without merit.

41. In this context, given, *inter alia*, the scope and complexity of the instant case, the continuing expeditious progress in pre-trial milestones, the lengthy custodial sentence, if convicted, and the heightened risks of obstruction if released, pre-trial detention continues to be reasonable and proportionate.


III. CLASSIFICATION

41. The present submission is filed confidentially in accordance with Rule 82(4). A public redacted version of this submission will be filed.

IV. RELIEF REQUESTED

42. For the foregoing reasons, the relief sought by the Veseli, Selimi and Krasniqi Defence should be rejected.

Word count: 4109



Jack Smith
Specialist Prosecutor

Monday, 2 November 2021

At The Hague, the Netherlands.