

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

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**Public Redacted Version of
Veseli Defence Reply to Prosecution Consolidated Response to October 2021
Defence Submissions on Detention Review
(F00556, dated 1 November 2021)**

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I. INTRODUCTION

1. The Defence for Mr Veseli (the “Defence”) hereby submits its Reply to SPO filing KSC-BC-2020-06/F00540.¹
2. The only identified risk under Article 41(6)(b)(i)-(iii) that remains unmitigated has been clearly set forth by the Pre-Trial Judge in his Decision on Detention Review.² In that Decision, the Pre-Trial Judge identified the “real possibility [that] Mr Veseli could ask someone to pass on a message orally or to use a device belonging to a third person”³ and that he might manage to use coded or obscure language to do so.⁴
3. On 27 October 2021, the Chief of Police provided a detailed response to the questions posed by the Pre-Trial Judge. That response is attached hereto as Annex 1.
4. The Kosovo Police (“KP”) has now provided responses to both the Defence’s request for additional information and to the Court’s own request. The responses are meticulous, professional, and directly mitigate the sole remaining identified risk posed by house arrest. As a result, the Defence now submits that Mr Veseli’s detention at the Detention Unit in the Hague should end and that he should be remanded to house arrest in Kosovo during the remainder of the pre-trial phase.

¹ F00540, (“Response”).

² F00380.

³ *Id.*, para. 48.

⁴ *Id.*

II. SUBMISSIONS

A. RISK OF FLIGHT

5. The Pre-Trial Judge previously found that any risk of flight is mitigated by house arrest.⁵ This finding should remain unchanged. The SPO raises no new argument in its response; the sole point raised by the SPO is that the increasing volume of evidence made available to Mr Veseli increases his motivation to flee.⁶ This argument was previously addressed by the Court of Appeals, which held that disclosure of evidence is insufficient in itself to justify the denial of provisional release.⁷ Moreover, as the SPO acknowledged, the evidence it has served contains no allegation of Mr. Veseli's direct participation in any specific offence. The lack of any such direct evidence against him only renders flight less likely, not more.

6. More importantly, the Pre-trial Judge already dealt with the risk of flight and found it could be mitigated by house arrest even *before* the receipt of the KP's letter. The KP's detailed response only augments the mitigation previously established, putting this issue beyond any doubt. To find differently here would be incoherent considering the previous ruling from the Pre-Trial Judge and the additional mitigation from the KP.

B. RISK OF OBSTRUCTING THE PROGRESS OF KSC PROCEEDINGS

7. The Defence submits that the sole remaining risk identified by the Pre-Trial Judge under Article 41(6)(b)(ii) has now been addressed and mitigated by the responses from the KP. Mr Veseli should be conditionally released to his home in Kosovo.

⁵ F00380, para. 46.

⁶ Response, para. 7.

⁷ IA010/F00008, para. 38.

1. The Remaining Identified Risk Has Been Fully Mitigated by the Kosovo Police Force

8. The Chief of Police's response reflects a meticulous and professional police organization ready and able to meet any request from this Court. It is a resounding and comprehensive reply to the SPO's criticism that the KP is simply not up to this task. The responses provided by the KP make abundantly clear that they have the resources and commitment to provide the guarantees requested. The KP response comprehensively mitigates any lingering risk connected to house arrest.
9. Importantly, the KP's response now specifically addresses the risk that Mr Veseli could pass a message to someone in person or use coded language to do the same. The KP has a comprehensive protocol to address this: [REDACTED]⁸ [REDACTED],⁹ [REDACTED].¹⁰ Similar to the protocol in The Hague, this will allow the KP to assess in real time any inappropriate disclosure of confidential information or use of coded language. Further, the KP has confirmed it has the resources required to successfully implement any Court order on this matter.
10. Compare the KP regime on this point to the protocols currently in place in the Detention Unit.¹¹ In the Hague all visits are conducted within the general hearing and sight of Detention Officers.¹² Additionally, the Registry may decide to order the recording of, or listening in on, a visit, and "actively monitor" that visit. [REDACTED].¹³

⁸ Annex 1, Q.9, Q.11.

⁹ *Id.*, Q.13.

¹⁰ *Id.*

¹¹ F00536, paras 26-36.

¹² *Id.* at para. 31.

¹³ *Id.*, para. 33.

11. [REDACTED].¹⁴ The KP has the additional advantage of fluency in the Defendant's native language and [REDACTED]. Taken together, the KP's assurances fully mitigate the risk identified by the Pre-Trial Judge.

2. The SPO's Criticism of the Kosovo Police is Misplaced and Unwarranted

12. The SPO identified four reasons why the KP's letter to the Defence is insufficient mitigation. These reasons misunderstand the fundamental premise of the KP's response: it is ready and able to implement *any* order required by this Court. It has the capacity to do so and will allocate whatever resources necessary to do so successfully and professionally. The comprehensive nature of the KP's most recent response renders each of the SPO's points moot.

13. The first point the SPO raises is the KP's lack of resources, which it maintains are "clearly not proportionate to the gravity of the risks."¹⁵ This concern was specifically addressed by the KP in its most recent letter to the Court. The KP confirms that it has the necessary human resources and technological equipment for the job.¹⁶ [REDACTED],¹⁷ [REDACTED].¹⁸ The KP does not lack resources to implement a successful conditional release.

14. Second, the SPO complains that visits cannot be meaningfully monitored. The KP's response on this point is again detailed, comprehensive, and puts this concern beyond doubt. [REDACTED].¹⁹

¹⁴ Annex 1, Q.13.

¹⁵ Response, para. 26.

¹⁶ Annex 1, Q.15.

¹⁷ *Id.*, Q.9.

¹⁸ *Id.*

¹⁹ *Id.*, Q.13.

15. The SPO's third point of concern relates to restricting communication devices. The KP has also directly mitigated this concern. [REDACTED].²⁰ [REDACTED].²¹ [REDACTED].²²
16. The SPO's fourth point is also moot. With respect to training, the KP has specialized units to implement the Court's orders,²³ previous direct experience with this type of conditional release,²⁴ and has confirmed its capability of enforcing any order the Court deems necessary.²⁵ [REDACTED]. It's unclear why the SPO contends that its own police force will "never be able to approximate [the] same detailed understanding" as the DMU. To the contrary, KP officers have the additional advantages of a contextual and cultural understanding of the issues and the criminal allegations arising out of the conflict; speaking the same language as the defendant; [REDACTED].²⁶
17. Finally, the Defence notes the SPO's generalized smears against its own police force. It alleges that "Kosovo" has still not provided sufficient guarantees and that Kosovo's "continued failures betray a simple inability to enforce sufficient measures."²⁷ The SPO questions the KP's sincerity in its responses and the KP's "very understanding of the risks and necessary measures, let alone its ability to execute such measures."²⁸ It impliedly accuses the police of colluding with the Defence.²⁹ This is a remarkable attack by the SPO on its own police force.

²⁰ *Id.*, Q.11.

²¹ *Id.*

²² *Id.*

²³ *Id.*, Q.15.

²⁴ *Id.*, Q.19.

²⁵ *Id.*, Q.16.

²⁶ *Id.* Q.5; Q.13.

²⁷ Response, para. 31.

²⁸ Response, para. 32.

²⁹ Response, para. 33.

18. The KP is a professional force and there is nothing to justify the SPO's scorn for its security proposals.
19. The KP has fully mitigated the remaining risk identified by the Pre-Trial Judge. The SPO's attempt to suggest that the police is not up to this task or doesn't understand the risks involved is misplaced. Importantly, the SPO identifies no *new* risks posed by Mr Veseli's house arrest in its response and therefore, given the mitigation set forth above, the Defence submits that Mr Veseli should be afforded conditional release for the duration of the pre-trial period.

3. The SPO Misrepresents the Risk of Obstructing the Progress of KSC Proceedings

20. Although the SPO has not identified any new risks in its Response to the Defence, it has misrepresented three important points which the Defence must now address.
21. First, the Defence rejects the SPO's contention that Mr Veseli [REDACTED].³⁰
22. This is simply a false representation with respect to Mr Veseli. Neither the Appeals Panel nor the Pre-Trial Judge ever made such a finding. It appears to be meant for one of the other accused. There is no evidence at all that Mr Veseli [REDACTED]. The Appeals Chamber Decision which the SPO cites as authority notes that the Veseli Defence distinguished his case on the basis that Mr Veseli had *never* [REDACTED].³¹ The Appeals Panel ultimately found that this distinction was not relevant to its analysis because a separate risk existed; however, it remains an uncontested fact that Mr Veseli has never demonstrated a willingness and ability to access confidential and sensitive information about this trial or any other.

³⁰ Response, para. 10.

³¹ IA008/F00004, para. 35.

23. The second point involves the SPO's recital of three incidents where individuals died over the past 20 years which the SPO contends are indicative of the "fate of witnesses in KLA trials."³² The Defence objects to this characterisation of these incidents, which amounts to smearing the defendants specifically and the KLA generally with unconnected and unrelated rumours and speculation from events that took place 10-20 years ago.
24. There is categorically no evidence whatsoever to suggest that Mr Veseli or his supporters bear any relationship or connection whatsoever to any of the incidents cited by the SPO:
- With respect to the first incident cited by the SPO, [REDACTED].³³ [REDACTED].³⁴ [REDACTED].³⁵ The SPO's reduction of this incident to the "fate of a witness in a KLA trial" is misleading.
 - With respect to the second incident cited, [REDACTED] was not murdered because of [REDACTED]. It is undisputed that [REDACTED]³⁶ [REDACTED].³⁷ [REDACTED]. While his death is tragic, it took place over [REDACTED] and it is not remotely connected to Mr Veseli, his supporters, or this trial. [REDACTED] and which is self-evidently not indicative of the "fate of witnesses" generally in this or any other KLA trial. For the SPO to rely on [REDACTED] as a basis for denying provisional release to Mr. Veseli is desperate opportunism and should be resoundingly rejected as wholly irrelevant.

³² Response, para. 13.

³³ *Id.*

³⁴ [REDACTED].

³⁵ *Id.*

³⁶ [REDACTED].

³⁷ *Id.*, p. 78.

- The final instance involves the deaths of [REDACTED]. These deaths occurred [REDACTED]. They are not connected in any way to this trial or to the experiences of witnesses in this trial. The deaths occurred at time and in a location in Kosovo [REDACTED].³⁸ There have been no convictions for those murders, let alone findings on the motivation behind those killings. The suggestion that these deaths were connected to the individual's role as a witness remains purely speculative. It is, unfortunately, characteristic of the SPO's response in that it relies in this instance, as in the others cited, on speculation and rumour.³⁹

25. The Defence recognises the inevitable pressure witnesses face when testifying in high profile trials. For that reason, Mr Veseli has actively encouraged all witnesses to come forward and to fully respect the protective regime developed by the Court.⁴⁰ That said, it is incumbent on the SPO not to spread speculation and rumours as though they are facts and not to breathlessly allege that witnesses in KLA trials have been murdered due to their testimony when, as here, that fact has not been established. As the ICTY pointed out commenting on the *Haradinaj* Trial, "such irresponsible statements serve no purpose other than to politicize the Tribunal's work."⁴¹

26. The Defence submits, should the Court wish to assess the "fate of witnesses" testifying in KLA trials, it needs only to consider the high profile ICTY trials dealing with Kosovar Albanians. During the *Haradinaj* I trial there were 97 Prosecution witnesses; none were killed. During *Haradinaj* II there were 58 Prosecution witnesses and none were killed. During the *Limaj et al.* trial, 61 witnesses testified for the Prosecution and none were killed. The examples

³⁸ [REDACTED].

³⁹ [REDACTED].

⁴⁰ F00498.

⁴¹ https://web.archive.org/web/20121026033127/http://www.b92.net/eng/news/crimes-article.php?yyyy=2008&mm=04&dd=10&nav_id=49272

selected by the SPO are speculative and misrepresented incidents which occurred between 10 and 20 years ago and which bear no connection whatsoever to Mr Veseli or to the current proceedings. They should be summarily disregarded.

27. It is true that in the first *Haradinaj* trial, a number of witnesses were reluctant to testify and subpoenas had to be issued for their attendance. In the end, however, all but two of the witnesses the Prosecution wished to call did attend and gave evidence. The Appeals Chamber considered that the Trial Chamber ought to have done more to secure the attendance of those two witnesses and ordered a partial retrial. Both witnesses gave evidence at the retrial, which resulted in the acquittal of Mr. Haradinaj a second time.
28. Finally, the third misrepresentation the Defence must address is the SPO's veiled allegation that the Defence has somehow colluded with the KP to engineer a response to conditional release. The SPO's unwillingness to withdraw any implication of impropriety at the Status conference when asked by Defence Counsel specifically to clarify whether any allegation of improper collusion was being made, underscores the casual willingness with which the SPO is prepared to make entirely unfounded and unjustified accusations in order to present a misleading picture to the Court.
29. The facts here are clear. The Defence tried on two separate occasions to obtain a detailed response from the KP and on both occasions did not receive the answer it sought. This alone should put to rest any suggestion of "engineering".
30. In seeking a more detailed response the Defence finally drafted the letter to the KP which it has shared with the Court. To ensure the letter's strict confidentiality, Co-counsel for Mr Veseli flew to Kosovo to personally deliver it to the Chief of Police. Despite this effort, the Chief of Police did not respond to an email request from Co-counsel requesting a meeting. No meeting took

place. The Chief of Police further did not meet with the Defence investigator to whom the letter was entrusted. The explanation given to the Defence was that [REDACTED]. The letter was finally delivered to the KP by placing it in a sealed envelope and leaving it with the Chief of Police's assistant. The Defence later followed up to ensure that the letter had, in fact, been received.

31. The KP's letter of response came in the immediate aftermath of the Appeals Chamber's ruling. The KP letter therefore directly responded to and addressed the specific concerns that had been before the Appeals Chamber when they allowed Mr. Veseli's appeal on this ground. The SPO is once again, resorting to desperate and entirely unfounded implied accusations against the Defence. Far from supporting such an inference, the truth underscores the fact that the commitments from the KP are fundamentally solid and fully mitigate any risk arising from conditional release. The truth underlines the complete independence of the KP in this regard, and utterly negates any possibility of collusion as alleged.

C. RISK OF COMMITTING FURTHER CRIMES

32. The only "further crime" the SPO notes in its response refers to prior examples of the willingness to obtain confidential information.⁴² As set out in paras 21-22, this allegation is simply inaccurate and appears to be a mistaken response meant for other Accused. With respect to the risk that a message or code could be passed to commit a further crime, the Defence refers to its submissions set forth in paras 7- 19. This risk has now been comprehensively mitigated.

D. CONTINUED DETENTION IS NOT PROPORTIONATE

33. The SPO has failed to respond to its delays, missed deadlines and misrepresentations to the Court which the Defence raised in detail in its

⁴² Response, para. 23.

submission for Detention Review. Nor has it addressed the clear preference of the Kosovo Constitution, and the Law for the imposition of less restrictive alternatives to pre-trial detention. The SPO merely characterises the proceedings as “advancing expeditiously...”⁴³ That is an absurd submission in light of the fact that the SPO claimed at the outset that the case would trial-ready in summer 2021. The Defence refers the Court to its submissions on this matter,⁴⁴ and reiterates that the length of Mr Veseli’s detention is currently indefinite with no trial date in sight. In light of the number of witnesses the Prosecution proposes to call, it is impossible for the trial to begin in earnest before the very end of 2022 or (more likely) the beginning of 2023. Moreover, with nearly 300 witnesses proposed to be called *viva voce*, the trial itself is certain to last approximately three years (an estimate based on the ICTY experience of cases with a similar number of witnesses, cited by Counsel at the last status conference). If Mr. Veseli is denied provisional release for the pre-trial phase, it means he will have served five years in prison before verdict – despite the fact that there is no evidence of his direct participation or involvement in any way in the commission of any particular crime.

III. CONCLUSION

34. The detailed responses provided by the KP fully address and mitigate the risk previously found to exist by the Pre-Trial Judge. Further pre-trial detention of Mr Veseli in the Detention Unit would be wholly disproportionate and can no longer be reasonably justified.

⁴³ *Id.* para. 40.

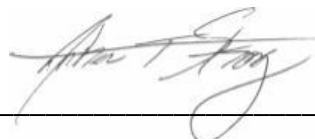
⁴⁴ F00518, paras 38-67.

35. For that reason, the Pre-Trial Judge is respectfully requested to order Mr Veseli to be remanded to house arrest in Kosovo during the remainder of the pre-trial period pursuant to the protocols established by the Court and the KP.

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