

**In:** KSC-BC-2020-06  
**Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi**

**Before:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Counsel for Kadri Veseli

**Date:** 25 November 2021

**Language:** English

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**Public Redacted Version of  
Corrected Version of Veseli Defence Submissions on  
Second Detention Review (KSC-BC-2020-06/F00518 dated 11 October 2021)  
(F00518/COR dated 14 October 2021)**

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## I. INTRODUCTION

1. Pursuant to Rule 41(10) of the Law 05/L-053 (“Law”) and the “Decision on Veseli Request for Extension of Time Limit”,<sup>1</sup> the Defence for Mr Kadri Veseli (“Defence”) hereby submits the following.

## II. PROCEDURAL BACKGROUND

2. Mr Veseli was first detained on 5 November 2020.<sup>2</sup> Two subsequent applications for his interim release were denied.<sup>3</sup>
3. The Veseli Defence filed its most recent request for Detention Review before the Pre-Trial Judge on 4 June 2021.<sup>4</sup> In support of that Request, Counsel for Mr Veseli sent a letter by email, dated 26 May 2021, to Mr Samedin Mehmeti, the General Director of the Kosovo Police Service (“KPS”). Counsel asked Mr Mehmeti to confirm that the KPS was able to enforce the 11 proposed conditions for Mr Veseli’s release, set out in the letter. Counsel further explained that, in Mr Mehmeti’s previous response regarding the enforceability of conditions, the Court had found that it contained insufficient details to satisfy the Court of the matters it needed to address.<sup>5</sup>
4. Mr Mehmeti responded on 31 May 2021, stating that [REDACTED].<sup>6</sup>

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<sup>1</sup> F00430, Decision on Veseli Request for Extension of Time Limit, 10 August 2021.

<sup>2</sup> F00050, Notification of Arrest of Kadri Veseli Pursuant to Rule 55(4), 5 November 2020 (strictly confidential and *ex parte*, reclassified as public on 20 November 2020), para. 4.

<sup>3</sup> F00178, Decision on Kadri Veseli’s Application for Interim Release, 22 January 2021; IA001/F00005, Decision on Kadri Veseli’s Appeal Against Decision on Interim Release, 30 April 2021; F00380/RED, Public Redacted Version of Decision on Review of Detention of Kadri Veseli, 2 July 2021.

<sup>4</sup> F00341/RED, Public Redacted Version of Veseli Defence Submissions on Detention Review with Confidential Annexes A to C (F00341 dated 4 June 2021).

<sup>5</sup> F00341/RED/A03, Confidential Annex C to Veseli Defence Submissions on Detention Review.

<sup>6</sup> F00341/RED/A03.

5. In its reply of 22 June 2021, the Defence further submitted that should the Director's response require further elaboration, this should be sought by the Pre-Trial Judge, pursuant to Rule 198.<sup>7</sup>
6. On 2 July 2021, the Pre-Trial Judge denied Mr Veseli's Request for interim release and did not request additional information from KPS. The Pre-Trial judge held that the conditions proposed by the Veseli Defence, or any additional conditions imposed by the Pre-Trial Judge, could not sufficiently mitigate the risk of obstructing the progress of Specialist Chambers proceedings or the risk of committing further crimes.<sup>8</sup>
7. The Pre-Trial Judge concluded that Mr Mehmeti's response constituted "a general assertion, which does not specifically address whether the Proposed Conditions can be effectively enforced and, if so, which measures would be adopted."<sup>9</sup> And specifically, the Pre-Trial Judge noted that "the Proposed Conditions would not prevent unmonitored conversations between Mr Veseli and his family members or approved visitors."<sup>10</sup>
8. On 15 July 2021, the Defence appealed the Pre-Trial Judge's Decision.<sup>11</sup>
9. In preparation for its third application for Detention review, on 22 September 2021, the Veseli Defence drafted a third letter to the Director of Police, which was intended to directly address the Pre-Trial Judge's concerns about the "general assertions" made in the previous response and the specific risk raised by the Pre-Trial Judge in his 2 July 2021 decision. The co-counsel for Mr Veseli

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<sup>7</sup> F00365/RED, Public Redacted Version of Veseli Defence Reply to SPO Response – KSC-BC-2020-06/F00354 (Detention Review), para. 11.

<sup>8</sup> F00380/RED, paras 47-48.

<sup>9</sup> F00380/RED, paras 49.

<sup>10</sup> F00380/RED, paras. 48.

<sup>11</sup> IA008/F00001, Veseli Defence Appeal of Decision KSC-BC-2020-06/F00380 (First Detention Review), 15 July 2021 (confidential).

emailed Mr Mehmeti on the same day in order to hand-deliver the letter to best ensure that it remained confidential.<sup>12</sup>

10. Mr Mehmeti was unable to meet that week due to [REDACTED].
11. On 24 September 2021, the co-counsel left Kosovo and entrusted the letter to the Chief Investigator for the Veseli Defence, Mr Kujtim Kerveshi, for confidential delivery to Mr Mehmeti. On 1 October 2021, the Defence delivered the letter to Mr Mehmeti.
12. The same day, the Court of Appeals Panel issued its Decision on Kadri Veseli's Appeal Against Decision on Review of Detention.<sup>13</sup> The Appeals Panel held that the Pre-Trial Judge had "abused his discretion when concluding that none of the Proposed Conditions nor any other additional condition could mitigate the identified risks, without first seeking additional submissions from the Police Director."<sup>14</sup> The Appeals Panel further noted that the "measures contained in Veseli's Proposed Conditions are very extensive" but stressed the need to assess the answers from KPS to ensure that the Kosovo Police had the willingness and ability to effectively enforce the Proposed Conditions.<sup>15</sup>
13. On 7 October 2021, the Defence for Mr Veseli had received no response from the Director of Police and submitted a request to the Pre-Trial Judge for an expedited order directing the Kosovo Police Force to provide a detailed

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<sup>12</sup> Annex 1.

<sup>13</sup> IA008/F00004/RED, Decision on Kadri Veseli's Appeal Against Decision on Review of Detention 1 October 2021.

<sup>14</sup> IA008/F00004/RED, para. 52.

<sup>15</sup> IA008/F00004/RED, paras 45, 48.

response to the Proposed Conditions and any other conditions that the Pre-Trial Judge deemed necessary.<sup>16</sup>

14. On 8 October 2021, the Pre-Trial Judge issued an Order to the Kosovo Police to Provide Information.<sup>17</sup>
15. Later that day, the Defence for Mr Veseli received a response to its list of questions from the Director of Police, which he requested be kept strictly confidential. In his response, Mr Mehmeti provided detailed and categorical assurances for each of the 11 proposed conditions put to him and provided a comprehensive guarantee for the ability of the Police to implement any condition required by the Court. His letter is attached hereto as Annex 2.

### III. APPLICABLE LAW

16. Article 46(1) of the Law provides that the Kosovo Specialist Chambers (“KSC”) 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 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 has threatened to commit.
17. Article 41(10) of the Law and Rule 57(2) of the Rules of Procedure and Evidence (“Rules”) 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

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<sup>16</sup> F00509, Veseli Defence Request for an Expedited Order with Annex 1, 7 October 2021.

<sup>17</sup> F00513, Order to the Kosovo Police to Provide Information with confidential Annex, 8 October 2021.

detention on remand still exist. When determining whether these reasons still exist, the Pre-Trial Judge or Panel must consider alternative measures to prevent the risks in Article 41(6)(b).<sup>18</sup>

18. As confirmed by the Appeals Chamber Panel, the burden to demonstrate that pre-trial detention remains necessary lies with the SPO.<sup>19</sup>
19. Rule 56(2) of the Rules provides that 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.
20. The European Court of Human Rights interpreting Article 5 of the European Convention has consistently held that the longer the duration of pre-trial detention, the more compelling the reasons justifying further for detention must be.<sup>20</sup>

#### IV. SUBMISSIONS

21. Article 46(10) of the Law requires that the Pre-Trial Judge examine each application for detention review every two months to determine whether the reasons for detention on remand still exist. While the Court must review each

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<sup>18</sup> KSC-CC-PR-2017-01/F00004, [Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017](#), 26 April 2017, para. 114. See also ECtHR, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, [Judgment](#), 5 July 2016, para. 87; ECtHR, *Idalov v. Russia* [GC], no. 5826/03, [Judgment](#), 22 May 2012, para. 140..

<sup>19</sup> IA001-F00005, Decision on Kadri Veseli's Appeal Against Decision on Interim Release, 30 April 2021, para. 14.

<sup>20</sup> [Kalashnikov v. Russia](#), para. 114: "The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. The Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also be satisfied that the national authorities displayed "special diligence" in the conduct of the proceedings. The complexity and special characteristics of the investigation are factors to be considered in this respect".

case, the onus inevitably falls to the applicant to show that there is a change in circumstances from the last decision to justify provisional release.

22. The Defence for Mr Veseli submits that at the present time, there are two clear changes in circumstance that have arisen since the last detention review decision and that both provide a clear basis to end Mr Veseli's detention at the Special Court's Detention Unit and remand him to house arrest under the strict conditions proposed by the Defence and detailed in Annex 2 by the Director of Police.
23. First, the Director of Police has now provided an unequivocal guarantee which directly addresses and mitigates the only risk identified by the Pre-Trial Judge in his previous decision: namely that unmonitored conversations between Mr Veseli and his family and visitors could obstruct the progress of Specialist Chambers proceedings or the risk of committing further crimes.<sup>21</sup>
24. The letter confirms that Kosovo Police Forces are more than capable and willing to enforce any terms or orders set by the Pre-Trial Judge for Provisional Release or any other matters.<sup>22</sup> A careful review of the specific measures the Kosovo Police Forces are willing and able to undertake suggests that in some respects, Kosovo Police Forces are *better* equipped to enforce the Courts conditions than their counterparts at the Special Court Detention Unit. The detailed commitment undertaken by the Kosovo Police is a clear change in circumstances and directly mitigates the identifiable risk which the Pre-Trial Judge found previously posed by House Arrest.
25. Second, the length of time that has passed since the initial indictment and the SPO's delay in prosecuting this case make Mr Veseli's continued detention at

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<sup>21</sup> F00380/RED, paras 47-48.

<sup>22</sup> Annex 2 paras 1-3.

the Special Court Detention Unit disproportionate, burdensome and unlawful under Article 41(10) of the Law and Articles 56(2) and 57(2) of the Rules.

**A. The Preventative Purpose of Mr Veseli's Detention can be Achieved by Less Restrictive Means**

26. The Defence submits that the preventative purpose of Mr Veseli's detention can now clearly be achieved through less restrictive means – namely supervised house arrest in Kosovo subject to the strict and onerous list of conditions set out in Annex 2 attached hereto, and enforced by the Kosovo Police through specific oversight measures detailed in their letter (Annex 2).
27. As noted above, on 2 July 2021, the Pre-Trial Judge found that provisional release would mitigate the risk of flight but that given the generalized nature of the previous response by the Director of Police, the proposed conditions nor any other conditions imposed by the Pre-Trial Judge could not mitigate Article 41(6)(b)(ii) and (iii) of the Law. The Pre-Trial Judge noted specifically the risk of unmonitored conversations between Mr Veseli and his family members and visitors.<sup>23</sup>
28. The Appeals Panel reversed and remanded that decision and specifically took issue with the suggestion that there can be no condition which could sufficiently mitigate the risks of Provisional Release. The Appeals Panel noted that the “measures contained in Veseli's Proposed Conditions are very extensive” but stressed the need to assess them to ensure that Kosovo Police had the willingness and ability to effectively enforce the Proposed Conditions.<sup>24</sup>
29. The response provided to the Veseli Defence by Mr Mehmeti now puts this matter beyond dispute. In his letter, the Director of Police “emphasizes” that

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<sup>23</sup> F00380/RED, paras 47-48.

<sup>24</sup> Appeals Decision paras 45, 48.



[REDACTED].<sup>25</sup> The willingness of the Kosovo Police Force to implement the Special Court's Order and/or conditions is not in question.

30. Mr Mehmeti then addressed the Police's ability to enforce these conditions noting, [REDACTED].<sup>26</sup> This confirms the Police Force's ability in general to implement the Court's orders.

31. With respect to the Police's specific ability to enforce the Courts conditions, Mr Mehmeti's letter goes on to provide a detailed explanation of the specific measures the Police will implement. These measures are comprehensive and will be effective. They include:

- [REDACTED];
- [REDACTED];
- [REDACTED];
- [REDACTED];
- [REDACTED].

32. It is obvious from Mr Mehmeti's letter and his commitment to implementing the orders from the Court that his Police Force will fully mitigate any risks posed by Provisional Release. From a security perspective, the house arrest envisaged by these conditions is categorically as robust a security protocol as those provided by the Special Court's Detention Unit. The only relevant difference is that these protocols allow Mr Veseli to spend the pre-trial period with his wife and young children.

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<sup>25</sup> Annex 2, para. 1.

<sup>26</sup> Annex 2, paras 2-3.

33. Finally, the Defence recalls the specific remaining concern of the Pre-Trial Judge, which concerned the risk of unsupervised clandestine communication between Mr Veseli and his supporters to interfere with the course of justice.
34. The Defence first notes the protocols in place in The Hague at the Special Court's Detention Unit include the following security measures: visitors to the detainee will conduct their visit within sight and hearing of Detention Officers, and Detention Officers may order the recording, listening to, and transcribing of visits with certain visitors. Unmonitored communications are strictly limited.<sup>27</sup>
35. The response provided by Mr Mehmeti above makes it absolutely clear that the Kosovo Police Force is similarly – if not better – equipped to do the same thing. [REDACTED].<sup>28</sup> [REDACTED].
36. Unlike the Detention Unit, however, under house arrest, [REDACTED]. This indisputably is an addition to the existing protocols, which provides increased security.
37. The comprehensive enforcement guarantee by the Kosovo Police fully and specifically mitigates any risk of interference previously used to justify Mr Veseli's pre-trial detention, and therefore constitutes an adequate alternative to detention under Articles 46(1) and 41(10) of the Law, and Rule 57(2) of the Rules. The grounds for Mr Veseli's detention at the Detention Unit no longer exist, and his continued detention there is unreasonable and unwarranted. Mr Veseli should be immediately released to House Arrest under the conditions and constraints described in Annex 2 attached hereto.

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<sup>27</sup> IA008/F00004/RED, footnote 95.

<sup>28</sup> [REDACTED].

**B. The Length of Mr Veseli's Detention Has Become Disproportionately Burdensome and Unlawful**

38. Recent revelations concerning the SPO's management of disclosure and its trial readiness have recast the estimated duration of the pre-trial period. At the seventh Status conference, it became clear that there now is no firm date by which the SPO will complete its disclosure obligations,<sup>29</sup> the SPO is not prepared to file its Pre-Trial Brief and refused to provide even an estimate of that deadline,<sup>30</sup> and there will be no trial date in the foreseeable future.
39. As such, the Defence submits that both the duration of the pre-trial period and the SPO's responsibility for the delay in the proceedings have created a situation where continued detention at the Special Court Detention Unit is unlawful.
40. In a previous finding on the issue, the Pre-Trial Judge held that the time Mr Veseli had spent in detention was reasonable on the basis that, *inter alia*: all required procedural steps relating to the pre-trial phase of the present case had been or will be completed with a view to transmitting the case for trial at a point in the foreseeable future; the relevant time limits had been either met or extended for a good cause, and the Defence and the SPO continue to differ as to the likely start date of the trial.<sup>31</sup> The Pre-Trial Judge was of the view then that "any discussion as to the expected total length of Mr Veseli's pre-trial detention remains premature and speculative."<sup>32</sup>
41. The Defence respectfully submits that the seventh Status Conference laid bare the extent to which the SPO had misestimated its own timelines and

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<sup>29</sup> Transcript, 14 September 2021, pp. 550-553, 570-571, 589-592.

<sup>30</sup> Transcript, 14 September 2021, p. 602.

<sup>31</sup> First Detention Review Decision, paras. 55-56.

<sup>32</sup> First Detention Review Decision, para. 56. The Appeals Chamber Panel in Krasniqi's and Selimi's respective appeals on Detention Review found that it was reasonable and within the Pre-Trial Judge's discretion to consider as purely speculative any determination at the *present stage* as to the expected

obligations. As a result, this case will not be transmitted to a trial panel in the foreseeable future.

42. In fact, there are no longer ‘persisting different positions’ on the likely length of the pre-trial period.<sup>33</sup> Now, *both* parties agree that the pre-trial proceedings in the present case are still not at a sufficiently advanced stage and that the case will not be transmitted to a trial panel in the foreseeable future.<sup>34</sup>

43. The SPO’s estimates regarding the disclosure timelines and the substance of its pre-trial obligations have been consistently inaccurate. As a result, Mr Veseli has been in custody for nearly one year and:

- The Rule 102(1)(b) disclosure of material the SPO intends to rely upon at trial remains incomplete. With respect to the disclosure of other relevant material – Rule 103 and Rule 102(3), this is also incomplete, and the SPO is not able to provide even an estimate of when they will complete their obligations;<sup>35</sup>
- The Pre-Trial Brief has not been provided to the Defence, and the SPO is not willing to hazard even an estimate as to when they will be in a position to provide that document to the Defence;<sup>36</sup>
- Despite the representations of the SPO at the outset of the trial, there remains no reasonably foreseeable Trial Date.

44. The Defence’s position on this has been clear and consistent throughout the proceedings. This is the Prosecution’s case. They chose the time to indict Mr

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total length of pre-trial detention, given the current early stage of the pre-trial proceedings and the Parties’ persisting different positions as to the likely start date for the trial (IA006-F00005, para. 43; IA007-F00005, para. 47).

<sup>33</sup> *Contra* IA006-F00005, para. 43; IA007-F00005, para. 47.

<sup>34</sup> The SPO implicitly acknowledged this position when it argued on 21 September that its proposed amendments to the Indictment would not cause any prejudice to the Defence.

<sup>35</sup> Transcript, 14 September 2021, pp. 570-571, 589-592.

<sup>36</sup> Transcript, 14 September 2021, p. 602.

Veseli with a clear understanding of their responsibility to disclose their case in a timely manner. Their estimates were used by the Court to set the initial deadlines. They have failed to meet those deadlines, and the manner in which they have conducted their disclosure obligations ensures that trial will not start in the foreseeable future. The length of Mr Veseli's custodial period remains indefinite as of the date of this filing, 11 months after his initial incarceration.

1. The SPO's Disclosure Obligations are Delayed and Remain Incomplete Rule 102(1)(b)

45. During the first Status conference, the SPO undertook to complete disclosure of Rule 102(1)(b) by 31 May 2021.<sup>37</sup> Accordingly, the Pre-Trial Judge set the deadline for this date.<sup>38</sup> The Pre-Trial Judge extended this deadline *proprio motu* to 23 July 2021 in light of his Decision on categorisation.<sup>39</sup>
46. Only two days before the expiration of the 23 July 2021 deadline, the SPO indicated that it was 'substantially on track' with respect to Rule 102(1)(b) disclosure and that "[it] will have largely disclosed Rule 102(1)(b) materials [by the 23 July deadline], subject to the limited number of discrete exceptions."<sup>40</sup> The SPO requested an extension of time with respect to these 'discrete exceptions'.<sup>41</sup> Consequently, the Pre-Trial Judge extended the deadline to 27 September 2021.<sup>42</sup>
47. Between 23 July and 27 September 2021, the SPO disclosed 8964 items of Rule 102(b)(1) material to the Defence, representing 91,860 pages of evidence which

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<sup>37</sup> Transcript, 18 November 2020, p. 125.

<sup>38</sup> F00099, Framework Decision on Disclosure of Evidence and Related Matters, 23 November 2020 ("Framework Decision"), para. 60.

<sup>39</sup> F00218, Decision on Categorisation of Evidence Under Rule 109(c) and Related Matters, 12 March 2021, para. 22.

<sup>40</sup> Transcript, 21 July 2021, p. 458-459.

<sup>41</sup> Transcript, 21 July 2021, p. 459-460.

<sup>42</sup> Transcript, 21 July 2021, p. 536.

the SPO intends to rely upon at trial. This is a stark contrast to the position the SPO represented to the Court two days earlier. It is misleading to call this volume of material 'a limited number of discrete exceptions.' It constitutes no less than 76% of the total Rule 102(1)(b) materials.<sup>43</sup>

48. On 14 September 2021, during the seventh Status Conference, the SPO requested a further extension of time to disclose the remaining Rule 102(1)(b) materials; the deadline was set to 1 November 2021.<sup>44</sup>

49. Today, 11 months after Mr Veseli's surrender and after 11 months of his imprisonment, the SPO has still failed to complete disclosure of the material it intends to rely upon at trial. Meanwhile, the Defence cannot responsibly rely upon the basic information the SPO represents about this material to the Court (i.e. that it is 'substantially on track' and that the evidence remaining constitutes 'a limited number of discrete exceptions') in order to efficiently plan the Defence case and estimate the timing of Trial. Not only has the delay and the large volume of disclosure significantly increased the length of time Mr Veseli has been detained (and the corresponding burden it creates), the SPO's misrepresentations as to their progress with respect to rule 102(1)(b) disclosure makes estimating the true length of pre-trial detention impossible. The current state of Mr Veseli's detention is indefinite, and the corresponding burden created by this is expanding.

### Rule 102(3)

50. The SPO has also badly estimated its progress with respect to Rule 102(3) materials. The SPO declared at the first Status conference that it anticipated providing its 'detailed' Notice by 30 April 2021<sup>45</sup> and, based on the SPO's

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<sup>43</sup> Disclosure Packages 52-55; 57-69; 72; 79-81 and 87.

<sup>44</sup> Transcript, 14 September 2021, p. 550-554; 625.

<sup>45</sup> Transcript, 18 November 2020, p. 137.

estimate, the Pre-Trial Judge set the deadline for that date.<sup>46</sup> On 24 March 2021, the SPO requested and was granted an extension of time to provide his 'detailed' Notice until 25 June 2021.<sup>47</sup> On 18 June 2021 – a week prior to the expiration of the deadline – the SPO once again requested an extension of time until 30 July 2021 to provide its Rule 102(3) Notice, arguing a more 'efficient process.'<sup>48</sup> The Pre-Trial Judge granted the request.<sup>49</sup>

51. When the SPO finally provided its Rule 102(3) Notice on 31 July 2021,<sup>50</sup> it contained a list of descriptions for 68,753 documents. After an initial review of those documents, the Defence believes that tens of thousands of the documents are relevant to the Defence Case and some, as the SPO acknowledged, contain exculpatory Rule 103 information.
52. The release of the Rule 102(3) Notice immediately triggered extensive litigation because the level of detail provided to describe certain items on the list was insufficient.<sup>51</sup> This litigation is ongoing. Additionally, it appears that despite the extension of time afforded to the SPO described above, the SPO still needs to assess any Rule 102(3) material requested by the Defence and apply the appropriate redactions and witness protection measures.<sup>52</sup>
53. In light of the volume of 102(3) material, the ongoing litigation, and the need to apply protective measures, disclosure of the 102(3) will not be completed by

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<sup>46</sup> Framework Decision, para. 65.

<sup>47</sup> Transcript, 24 March 2021, p. 360, 390-391.

<sup>48</sup> F00356, Prosecution request for extension of time limit to provide its Rule 102(3) notice, 18 June 2021.

<sup>49</sup> F00370, Decision on Prosecution Request for Extension of Time Limit to Provide its Rule 102(3) Notice, 24 June 2021.

<sup>50</sup> F00421, Prosecution Rule 102(3) notice with confidential Annex 1 and confidential *ex parte* Annex 2, 30 July 2021.

<sup>51</sup> F00460, Decision on the Defence Request for an Amended Rule 102(3) Notice, para. 20.

<sup>52</sup> See e.g., F00439/CONF/RED, Conf Red Version of 'Request for protective measures for Rule 102(3) materials requested by the Thaçi Defence', KSC-BC-2020-06-F00439, dated 24 August 2021, 25 August 2021; F00497, Prosecution request for extension of time limit, 29 September 2021; F00501/CONF/RED, Confidential Redacted Version of 'Request for protective measures for Rule 102(3) materials requested by the Krasniqi Defence', KSC-BC-2020-06-F00501, 4 October 2021.

the end of the year or the foreseeable future. This greatly exceeds the initial 30 April 2021 estimate of the SPO, and the inevitable result will be a significantly longer pre-trial detention than the one originally estimated or considered. Here again, the protracted and still expanding timeline of the pre-trial period renders Mr Veseli's continued detention disproportional and unreasonable under the applicable law.

### Rule 103

54. The SPO is unable to provide an estimate of when they will finalize disclosure of exculpatory information except to say that it is 'ongoing' and will be disclosed on a 'rolling basis.' This information is obviously highly relevant to any proper Defence Investigation and is essential to have well in front of a Trial Date.
55. It is highly concerning to the Defence that within the Rule 102(3) list, which contains 68,753 documents, there contains material that is self-evidently exculpatory. The SPO has agreed that the Rule 102(3) list contains exculpatory material but conceded at the seventh Status conference that the list has not yet been read to assess the documents for such material. It is impossible for the Defence to calculate the time that such an exercise will take, but it is safe to assume that this will be a lengthy endeavour and will further delay the completion of the SPO's disclosure obligations.

### 2. After 11 Months the SPO has Not Filed its Pre-Trial Brief and Declines Even to Estimate a Date by Which to do so

#### Pre-Trial Brief

56. The SPO's estimates in relation to its Pre-Trial Brief and related 95(4) materials have been equally plagued by unrealistic promises of expediency. At the first Status conference, the SPO anticipated providing complete witness and exhibit



lists by 31 May 2021.<sup>53</sup> However, at the second Status conference, the SPO had revised its estimate and proposed early July for submitting its Pre-Trial Brief and related 95(4) materials.<sup>54</sup>

57. By the fourth Status conference, the envisaged date had been postponed yet again to the second week of September 2021.<sup>55</sup> During the fifth Status conference, the SPO once again revised its estimate and proposed mid-October as the new target date.<sup>56</sup> The SPO then confirmed on 21 July 2021 that there was no change in its mid-October estimate.<sup>57</sup>
58. It was only on 14 September 2021 that the SPO admitted that it was neither in a position to submit its Pre-Trial Brief and related 95(4) materials in mid-October as anticipated nor even to commit to a concrete date for such a submission.<sup>58</sup> There is no good reason given by the SPO for these repeated delays. They have put forward justifications for their delays such as the global pandemic, the volume of disclosure they are dealing with and the scope of the trial; but these were all easily foreseeable in December 2020 and indeed, not only were they foreseeable, they were specifically pointed out by the Defence.<sup>59</sup>
59. A deadline for submission of the SPO Pre-Trial Brief and related 95(4) materials has yet to be set.<sup>60</sup> The result is that after nearly one year in prison with no end to the pre-trial process in sight, Mr Veseli does not know the case against him, and the burden created by his continued detention throughout a slow and increasingly delayed pre-trial phase far exceeds any compelling reason to keep

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<sup>53</sup> F00076, Prosecution Submissions for first Status Conference, 13 November 2020, para. 2.

<sup>54</sup> Transcript, 17 December 2020, p. 199.

<sup>55</sup> Transcript, 24 March 2021, p. 363.

<sup>56</sup> Transcript, 19 May 2021, p. 420.

<sup>57</sup> Transcript, 21 July 2021, p. 509.

<sup>58</sup> Transcript, 14 September 2021, p. 602.

<sup>59</sup> F00151, Application for Interim Release of Kadri Veseli, 17 December 2021, para. 65.

<sup>60</sup> Transcript, 14 September 2021, p. 602.

him in custody. His continued detention at the SC Detention Unit has now become unlawful and he must be released.

### 3. There Remains No Foreseeable Trial Date

#### Trial Date

60. It follows that the various estimates provided by the SPO for commencement of trial were equally unsound. The SPO's 'urge' to set a trial date "this summer and no later than September 2021",<sup>61</sup> then December 2021<sup>62</sup> proved unreasonable and fully disconnected from the present case's particular circumstances. It has also resulted in the unduly lengthy pre-trial detention of the accused.
61. The Defence's own estimate at the outset of this Trial was that the pre-trial phase would take 18 months which, in light of the above, may also have been optimistic. It was, at least, a reasonable estimate drawn from comparable trials and giving consideration to the scope of this indictment and the proposed number of witnesses the SPO intended to call.
62. The SPO responded to argue against Mr Veseli's first application for provisional release. They stated:

First, the VESELI Defence argues that the trial commencement date is a relevant consideration for interim release. Thereafter, by arbitrarily alleging a distant trial date it attempts to manufacture a basis for interim release out of thin air. This gambit fails for several reasons.

Moreover, the VESELI Defence's prediction of the anticipated length of the pre-trial process is unreasonable and contrary to the interests of justice. Based on little more than a simplistic numerical average from other institutions, it conveniently ignores both the particular circumstances that

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<sup>61</sup> F00097, Prosecution submissions further to the status conference of 18 November 2020, 23 November 2020, para. 14; *see also* Transcript, 17 December 2020, p. 199; F00191, Prosecution submissions for third status conference, 8 February 2021, para. 14.

<sup>62</sup> F00235, Prosecution submissions for fourth status conference and request for adjustment of time limits, 22 March 2021, para. 7.

gave rise to those numbers, and the fact that the KSC framework was specifically fashioned in light of, and in response to, past experience at other institutions. It is also tainted with a clear ulterior motive of making pre-trial detention in this case appear impossibly burdensome so as to support an otherwise unpersuasive application for interim release.<sup>63</sup>

63. Unsurprisingly, it is now clear that the SPO was incorrect here too. The Defence's 'motive' in estimating 18 months was in good faith to draw upon the experience of Courts that have heard similar cases and make an informed estimate based on facts and reason. The 'simplistic numerical averages' it used to do this were, in fact, instructive.
64. On the basis of the above, the Defence reiterates that the case will not be trial-ready before summer/autumn 2022 at the earliest.<sup>64</sup> This estimate is not speculative or based on 'simplistic averages.' It is based on the progress of the case so far, and the failure of the SPO to meet their own deadlines, as well as the many procedural steps to be completed before the case is transmitted to a trial panel.
65. This delay and the SPO's responsibility for it is highly relevant to the present application because it has given rise to a situation where the length of pre-trial detention is unquestionably far greater than initially envisaged. The reason this has come about is entirely due to the SPO's failure to discharge its disclosure obligations in a timely, efficient manner. This has created an increasing burden for Mr Veseli, who remains in detention despite the clear presumption of his innocence and the clear preference of the Kosovo Constitution and the Law.
66. The simple fact that a full year after Mr Veseli's surrender, he remains in prison without knowledge of the case against him and without a foreseeable trial date is the clearest indication of the SPO's dilatory conduct. The fact that a clearly

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<sup>63</sup> F00161, Prosecution response to Application for Interim Release on behalf of Mr Kadri Veseli with Confidential Annex 1, paras 8-9, 4 January 2021.

<sup>64</sup> F00151, para. 65.

comprehensive, less restrictive alternative now exists firmly compels a finding that further detention of Mr Veseli in The Hague can no longer be reasonably justified.

67. In sum, a less restrictive alternative to detention now exists through house arrest under the strict and onerous terms specifically detailed by the Kosovo Police in its 7 October 2021 Letter (Annex 2). At the same time, the lengthy nature of the pre-trial process and of the trial itself can no longer be regarded as 'premature and speculative'. Mr Veseli's detention has become unreasonable.

#### V. CONCLUSION

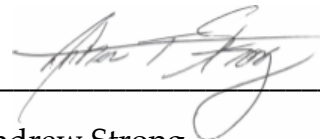
68. In light of all the aforementioned, the Pre-Trial Judge is respectfully requested to order Mr Veseli's release on the terms and conditions set out in Annex 2.

**Word Count: 5469**



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