

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

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Public Redacted Version of

Veseli Defence Reply to Prosecution Response to Kosovo Police Submissions

on Detention with Public Annex 1

(F00563, dated 11 November 2021)

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I. PROCEDURAL BACKGROUND

1. On 1 October 2021, the Court of Appeals directed the Pre-Trial Judge to assess whether the Kosovo Police can effectively enforce the Provisional Release conditions proposed by the Defence or any further condition the Pre-Trial Judge identifies as necessary.¹
2. On 8 October 2021, the Pre-Trial judge issued an Order to the Kosovo Police to provide information on their authority and capability to enforce conditions attaching to interim release as specified by the Appeals Chamber.²
3. On 8 October 2021, the Pre-Trial Judge issued an Order Seeking Observations from the Defence on the Timeline for the Next Review of Detention requested parties to indicate their preference as to whether they preferred to (a) keep the original schedule set by the Pre-Trial Judge; (b) have the detention of the Accused reviewed together with the Pre-Trial Judge's reconsideration of the Detention Decisions and allow the parties to make observations on the Kosovo Police's submissions; or (c) postpone the next review of detention until two months after the Pre-Trial Judge has reconsidered the Detention Decisions.³
4. On 10 October 2021, the Defence for Kadri Veseli ("Defence") indicated their preference for Option A and proceeded to make submissions on the basis of the timetable set forth by the Pre-Trial Judge.⁴

¹ IA006/F00005, Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention, 1 October 2021, paras 58, 60; IA007/F00005, Decision on Rexhep Selimi's Appeal Against Decision on Review of Detention, 1 October 2021, paras 58-59; IA008/F00004, Decision on Kadri Veseli's Appeal Against Decision on Review of Detention, 1 October 2021, paras 53-54. Public redacted versions were filed the same day.

² F00513, Pre-Trial Judge, Order to the Kosovo Police to Provide Information, 8 October 2021, public, with one confidential Annex.

³ F00514, Order Seeking Observations from the Defence on the Timeline for the Next Review of Detention, 8 October 2021 ("8 October Order"), page 4.

⁴ F00515, Veseli Defence Observations Pursuant to Order of 8 October 2021 (F00514), 10 October 2021.

5. On 11 October 2021, the Defence submitted its application for Detention Review.⁵
6. On 22 October 2021, the SPO submitted its response to the Defence application.⁶
7. On 27 October 2021, the Kosovo Police (“KP”) filed its submissions in response to the Pre-Trial Judge’s Order.⁷
8. On 1 November 2021 the Defence submitted its reply to the SPO’s response.⁸
9. On 8 November 2021, the SPO submitted a “Response to Kosovo Police Submissions on detention with public Annex 1.”⁹

II. SUBMISSIONS

A. **The SPO’s “Response” as it Relates to Mr Veseli is Improper and it Compels a Reply**

10. Pursuant to schedule set forth by the Pre-Trial Judge under Option (A) from the 8 October 2021 Order Seeking Observations from the Defence, the litigation on this issue concerning Mr Veseli should have concluded with the Defence’s 1 November 2021 reply to the SPO.
11. As it relates to Mr Veseli, the SPO’s “Response” to the KP Submissions, amounts to a sur-reply for which the Court has not granted leave. This is not

⁵ F00518, Veseli Defence Submissions on Second Detention Review, 11 October 2021.

⁶ F00540, Prosecution consolidated response to October 2021 Defence Submissions on Detention Review, 22 October 2021 (“22 October 2021 Response”).

⁷ F00548, Answer to the Request number KSC-BC-2020-06, dated 13 October 2021, 27 October 2021. An official English translation was filed on 3 November 2021.

⁸ F00556, Veseli Defence Reply to Prosecution Consolidated Response to October 2021 Defence Submissions on Detention Review, 1 November 2021 (“1 November 2021 Reply”).

⁹ F00562, Prosecution response to Kosovo Police submissions on detention with public Annex 1, 8 October 2021 (“Response”).

the first time the SPO has improperly sought to sur-reply to the Veseli Defence. The SPO has been cautioned on this very point in the past.¹⁰

12. As the parties are well aware, the statutory framework of the Kosovo Specialist Chambers ("KSC") does not recognize the concept of a "sur-reply." Here, without seeking leave from the Court, the SPO has once again ignored the basic procedural guard rails and attempted unilaterally to help itself to the "last word" with respect to Mr Veseli.
13. By ignoring the Court's schedule pursuant to 'Option A', by failing to obtain leave from the Court to sur-reply, and by unilaterally sur-replying to points directly related to the Veseli Defence,¹¹ the SPO has pushed the Veseli Defence into 'Option B' from the 8 October 2021 Court Order, and in so doing created an obligation for the Veseli Defence to now reply.
14. With the principle of equality of arms firmly in mind, and in the interest of justice, the Defence submits this reply to the "SPO's Response to Kosovo Police Submissions on detention with Public Annex 1" pursuant to 'Option B' of the 8 October 2021 Court Order.

B. The Matters the SPO Raises in its "Response" that do not Address the KP's Submissions Must be Struck from the Record

15. Even on the understanding that the SPO has simply ignored the Pre-Trial Judge's schedule set forth in 'Option A' and pursued 'Option B', the SPO's "Response" to the KP Submissions wildly exceeds the scope of both the Defence's reply and the Court-ordered "observations on the KP's submissions."¹² The fundamental thrust of that Court Order was to provide an opportunity to the parties to respond to the specific answers provided by the

¹⁰ F00326, Decision on SPO Request for Leave to Sur-Reply, 28 May 2021, para 5.

¹¹ Response, *e.g.* para 9.

¹² F00514, para. 6(b).

Kosovo Police. Much of the SPO's submission does not respond to the KP submissions, it makes allegations of no probative value which are raised for the first time and have been made tactically. These sections of the SPO "response" should be struck from the record.

16. The SPO does not content itself with responding to the Kosovo Police. Instead of providing observations to the KP's submissions, the SPO makes sweeping and entirely new allegations of corruption and criminality against Mr Veseli personally¹³ as well as allegations of corruption and/or criminality against the Kosovo Police,¹⁴ the Kosovo Judiciary,¹⁵ the Kosovar government,¹⁶ the Kosovo Liberation Army¹⁷ and Kosovo Intelligence Services¹⁸ generally.
17. What's more the sources relied upon by the SPO are little more than rumours and website "news" which is of no probative value. The SPO has taken the opportunity provided by the 8 October Order and used its "Response" to dredge up from depths of the internet a fistful of wild rumours based on unverified "news" sources¹⁹ and an unsourced block quote from an unnamed individual.²⁰ This type of 'evidence' is without value and is not fit for a legal submission. It only serves to advance personal and character attacks on Mr Veseli specifically and on Kosovar institutions generally. Labelling this submission a "response" to the KP submissions is intentionally misleading. It does not remotely address the KP's thoughtful and detailed submissions; these "sources" are frankly a waste of the SPO's translation resources.

¹³ Response, paras 5, 7.

¹⁴ *Id.*, paras 5-6, 8.

¹⁵ *Id.*, para. 7.

¹⁶ *Id.*, para. 3.

¹⁷ *Id.*, para. 23.

¹⁸ *Id.*, para. 6.

¹⁹ *Id.*, Annex 1.

²⁰ *Id.*, para. 24.

18. Moreover, the sweeping allegations now made by the SPO of criminality and corruption throughout the Kosovo Police force are entirely new; they do not relate to the specific submissions made by the KP, or to the Defence's reply; and they must therefore be struck from the record and disregarded.
19. Finally, on this point the Defence notes that the timing of these allegations is such that they are clearly tactical and have not been made in good faith. If the SPO intended to rely on the fact that its own police force is criminal and corrupt, as a basis for denying conditional release, this issue should have been raised forcefully and clearly right at the beginning of the submissions on Detention Review. This issue has been discussed for nearly one year and the SPO is only raising now these poorly supported and sensational allegations.
20. What possible reason could the SPO have to wait until now, at the very last moment, *after* the KP has provided detailed and comprehensive assurances for house arrest to raise this issue? The obvious answer is that now, it is clear the KP has provided an answer that is unhelpful to the SPO. Instead of dealing with those fact, the SPO has pivoted to smear its own police force, it has scraped the internet for disparaging gossip concerning Kosovar institutions and it has put all of them into an improper filing because the KP's responses don't fit the SPO's agenda and argument.
21. The SPO's submissions here amount to an abuse of process motivated by its desperate attempt to prevent the release of an individual who has been detained for over one year already and who by right is presumed innocent, even under the robust conditions of strictly supervised house arrest.
22. With this in mind the Defence respectfully requests the Pre-Trial Judge to issue a specific ruling to strike the paragraphs from the SPO's "Response" which exceed the scope of the Defence's reply, add no probative value to the process,

and which do not specifically relate to the submissions made by the Kosovo Police, namely: paragraphs 2-3, 5-9 and 23-25.

C. The SPO's Submissions Fail to Provide a Basis to Keep Mr Veseli in Detention

23. Leaving to one side for the moment the fact that the SPO has unilaterally ignored the schedule set forth by the Pre-Trial Judge with respect to Mr Veseli, and the fact that much of their submission is not a "Response" to the Police but rather a vehicle to put forward disparaging rumours based on internet research; the SPO's submissions still fall short of providing a basis to keep Mr Veseli in Detention.

i. The SPO has Failed to Address the Delays Caused by their Dilatory Conduct

24. The SPO has failed entirely to address the length of time Mr Veseli has been detained, the delays caused by the SPO, its missed deadlines and, most concerning, its misrepresentations to the Court which the Defence has raised in detail in its submission.²¹ On July 21, 2021 eight months into this process, the SPO represented to this Court 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."²² It then proceeded to disclose 79% of its case to the Defence over the next three months totalling over 100,000 pages of evidence. The SPO has no response to this glaring misrepresentation and wild dereliction of its duty.

25. The SPO's failure to explain this misrepresentation leaves the Defence and the Court with a single certainty: the SPO cannot be relied upon to accurately estimate its case. This fact, coupled with the late disclosure of tens of thousands

²¹ F00518, paras 38-67.

²² Transcript, 21 July 2021, p. 459.

of documents, on top of the SPO's ambition to call 327 witnesses in this trial, ensures that the pre-trial period will be far longer than ever envisaged. Even under the most ambitious projections, the expected trial date is now realistically at least a year away

ii. *The SPO Seeks to Resurrect its Argument on the Generalized Feeling of Fear and Uncertainty as a Basis to Deny Release*

26. The SPO appears to have retreated from its previous position in response to the Defence in which it cited specific speculation and rumours as indicative of the 'fate of KLA witnesses'.²³ It now argues that, "[w]itnesses do not need to be physically harmed to be intimidated; even the prospect of releasing the Accused in Kosovo creates fear and uncertainty amongst witnesses in this case."²⁴ Here the SPO is resurrecting an old argument from its initial filings on Detention Review, namely that the public perception surrounding Mr Veseli's release would lead to generalized fear and uncertainty amongst witnesses.

27. In response to this point, the Defence submits that the SPO's argument is directly undercut by the 6 June 2005 ICTY decision in the *Haradinaj* case which found that generalized fear and uncertainty was not sufficient to deny Conditional Release:

[...] since it has not been shown that the Accused could pose a concrete danger to anyone, including victims and witnesses, the Trial Chamber is not satisfied that a negative impact on the public perception of the safety of potential witnesses suffices as a ground for denying provisional release. As stated by the Trial Chamber in Prlic, "even if the Accused continues to enjoy influence, it does not necessarily follow that he will exercise it unlawfully"²⁵

²³ F00540, para. 13.

²⁴ Response, para. 2.

²⁵ ICTY, *Prosecutor v. Ramush Haradinaj et al*, Case No. IT-04-84-PT, Pre-Trial Chamber, [Decision on Ramush Haradinaj's Motion for Provisional Release](#), 6 June 2005, para 47.

28. That case took place in 2005, much closer in time to events alleged, in a much less stable environment and against the backdrop of numerous allegations of direct participation in crimes – here, as the SPO admits, there are none.
29. Moreover, having previously pointed out this decision to the Pre-Trial Judge,²⁶ it can be inferred that the SPO's argument was rejected as this issue did not form any part of the Pre-Trial Judge's previous decisions on Detention Review and quite rightly formed no part of his justification for denying conditional release. It cannot now be relied upon, to deny conditional release.
30. Finally, the Defence submits that this issue was not raised by the Defence in its initial 11 October 2021 application for Detention Review, it was not raised by the SPO's in its 22 October 2021 Response or by the Defence in the 1 November 2021 Reply. It has no connection whatsoever to the KP Submissions on the condition of house arrest. It is therefore improper for the SPO to raise the issue now and it should be foreclosed to the SPO as a basis for denying conditional release.

iii. The SPO Seeks to Undermine its Own Police Force

31. The SPO use its "Response" to level unwarranted scorn towards the Kosovo Police. When finally addressing the specific details of the KP's submissions, the SPO's "Response" boils down to (i) pedantic nit-picking of the resources the KP has specifically enumerated; (ii) accusations that the answers lack specificity, are vague or evasive; and (iii) generalized allegations of incompetence and corruption.
32. With respect to the resources detailed in the KP's submissions, the SPO argues specifically that [REDACTED].²⁷ This fundamentally misses the point. The KP

²⁶ F00151, Application for Interim Release of Kadri Veseli, 17 December 2020, para. 15.

²⁷ Response, paras 11-12.

has confirmed that it has all resources necessary to successfully execute the Court's order and enumerated some that it could use.²⁸ A lack of precise detail is to be expected given that the KP are answering these questions in the abstract and without a specific Court Order to enforce.

33. If the SPO isn't satisfied with [REDACTED], it is open to the SPO to simply submit to the Pre-Trial Judge that the Order should include more [REDACTED]. It remains open to the Pre-Trial Judge to make such an order *ex proprio motu*. The important point is that the Director of Kosovo Police has explicitly and repeatedly confirmed that the KP will impose [REDACTED] as the Pre-Trial Judge considers necessary. There is accordingly nothing whatsoever in the SPO's objections that the Director of Kosovo Police lacked clairvoyance in predicting [REDACTED] that the Pre-Trial Judge would consider necessary. Inevitably the final protocol will be specifically established and fine-tuned by the Court to ensure that its objectives are satisfied.
34. In sum, the critical point here, which has been completely ignored by the SPO, is that the KP has clearly stated that they have the capacity to ensure a successful conditional release, it has set forth detailed and specific measures which answer the Pre-Trial Judge's questions, and it has indicated a willingness to make whatever resources necessary available to secure any Order from the Court. There is nothing of any probative value in the evidence to dispute that position.
35. With respect to the second accusation that the KP's responses lack specificity, the Defence submits again that the KP is answering highly detailed questions with detailed technical answers in the abstract. If an answer lacks specificity and it is relevant to the reasoning of the conditional release decision, then it is

²⁸ F00548, Answer Q. 3.

incumbent on the Court to seek further clarification. This was clearly set out in the Appeal Chamber Decision remanding the issue to the Pre-Trial judge.

36. In spite of the straightforward and common sense solution to simply seek clarification, the SPO disparages the KP's efforts to answer the questions and still complains about a lack of specificity with respect to: [REDACTED].²⁹ The Defence submits that on each of these issues the KP has provided detailed and comprehensive responses which do not lack specificity on a good faith reading of the response. If the Pre-Trial Judge finds that more detail is necessary, then the Court simply should seek clarification.
37. What's more, the SPO's criticism is not made in good faith. For instance, the SPO complain that [REDACTED]. While it's true the KP don't specifically mention [REDACTED], any good faith understanding of their response would recognize the fact that the KP wasn't specifically asked about [REDACTED]. The SPO cannot seriously expect the KP to list [REDACTED] in the KP's response to the Court and hold any omission against the Police. With respect to this specific issue, the KP has set forth a protocol [REDACTED].³⁰ That protocol is *stricter* than the protocol which exists in The Hague. More importantly, any good faith reading of their response indicates to the reader that the KP has the ability to [REDACTED]. If there is any doubt, the Defence submits again that the SPO should refrain from reflexively disparaging the police's capacity and instead seek clarification of the point in good faith.
38. The final point of criticism from the SPO includes generalized allegations of incompetence and corruption. The SPO alleges directly that the KP is not competent to successfully oversee conditional release. It provides no probative evidence to support this position. The Defence submits that allegations of

²⁹ Response, paras. 11-20.

³⁰ F00548, p.15.

incompetence are unwarranted, tactical, and unsupported by the evidence. This is made clear by the fact that the SPO relies on the KP when convenient for their case. For instance, the SPO were content to rely upon the KP to help in coordinating the execution of arrest warrants, searching the premises of defendant's residence and securing the evidence recovered therein. Additionally, the Defence notes the possibility that forensic evidence relevant to the SPO may be handled or entrusted to the Kosovo Police and will wait to see whether the SPO will denounce the KP's incompetence in that scenario with such sweeping and generalized allegations.

39. As a corollary to the issue of the KP's competence, the SPO seems to challenge the Defence and the KP to cite an example of someone comparable to the Accused who had conditional release in Kosovo without incident.³¹ This is not the Defence's obligation but in order to assist the Court the Defence points out the obvious example of Ramush Haradinaj who was Prime Minister when the ICTY indicted him. Similar to Mr Veseli, he immediately stepped down from his political position and surrendered to the Court. As noted above, Mr Haradinaj's indictment was issued at a time much closer to the armed conflict in 2005 and included numerous direct allegations against him. Still, the ICTY granted him provisional release and allowed him free movement throughout Prishtina and his home village of Gllogjan. This provisional release went seamlessly without any difficulties or incidents and Mr Haradinaj was commended on his behaviour and conduct.³²
40. Finally, with respect to corruption of the KP, the Defence reiterates that there is simply no probative evidence at all to support this allegation³³ and that it

³¹ Response, para. 3.

³² ICTY, *Prosecutor v. Haradinaj and al.*, Case No. IT-04-84-PT, [Decision on the Motion on Behalf of Ramush Haradinaj for Provisional Release](#), 20 July 2007, paras 22-30.

³³ It is drawn from news articles and in one case an unsourced multi-paragraph block quote from an unnamed individual.

does not relate to the specific submissions made by the KP. It should be struck from the record and disregarded.

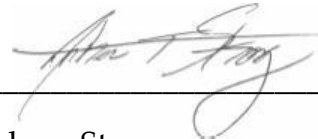
III. CONCLUSION

41. For the foregoing reasons, the Pre-Trial Judge is respectfully requested to strike from the record and disregard paragraphs 2-3, 5-9 and 23-25 of the SPO “Response” and 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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