



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**In:** KSC-BC-2020-06

**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi,  
and Jakup Krasniqi**

**Before:** Pre-Trial Judge

Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Date:** 23 November 2021

**Language:** English

**Classification:** Public

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**Public Redacted Version of Decision on Remanded Detention Review Decision  
and Periodic Review of Detention of Kadri Veseli**

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Article 41(6), (10) and (12) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 56(2) and 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 5 November 2020, further to the confirmation of an indictment ("Confirmation Decision" and "Confirmed Indictment"),<sup>2</sup> Kadri Veseli ("Mr Veseli" or "Accused") was arrested pursuant to a decision and an arrest warrant issued by the Pre-Trial Judge.<sup>3</sup>
2. On 22 January 2021, the Pre-Trial Judge rejected Mr Veseli's application for interim release ("First Detention Decision").<sup>4</sup>
3. On 30 April 2021, the Court of Appeals upheld the First Detention Decision ("First Court of Appeals Decision").<sup>5</sup>

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

<sup>2</sup> KSC-BC-2020-06, F00026/RED, Pre-Trial Judge, *Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, public; F00045/A03, Specialist Prosecutor, *Further Redacted Indictment*, 4 November 2020, public. A confidential further lesser redacted version of the Confirmed Indictment was submitted on 11 December 2020, F00134. Following the Decision on Defects in the Form of the Indictment (F00413/RED), a confidential redacted version and a public redacted version of the corrected Confirmed Indictment were submitted on 8 September 2021, F00455/CONF/RED/A01 and F00455/RED/A01.

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

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

<sup>5</sup> KSC-BC-2020-06, IA001/F00005, Court of Appeals, *Decision on Kadri Veseli's Appeal Against Decision on Interim Release*, 30 April 2021, public.

4. On 2 July 2021, the Pre-Trial Judge ordered Mr Veseli's continued detention ("Second Detention Decision").<sup>6</sup>
5. On 21 July 2021, after the Pre-Trial Judge had requested the Defence for Mr Veseli ("Defence") to indicate whether it intended to request a postponement of the next review of detention in view of its appeal against the Second Detention Decision or whether it preferred to have Mr Veseli's detention reviewed within two months of the Second Detention Decision, the Defence stated that it does not seek an extension and requested the Pre-Trial Judge to "continue with [his] obligation to review detention at the statutory period".<sup>7</sup>
6. On 9 August 2021, the Defence informed the Pre-Trial Judge that it had reassessed its position expressed on 21 July 2021, requested that the Pre-Trial Judge receive submissions on the review of Mr Veseli's detention within ten days of the decision of the Court of Appeals on the Defence's appeal against the Second Detention Decision, and further indicated that Mr Veseli waived his right to review of his detention in the interim ("9 August 2021 Request").<sup>8</sup>
7. On 10 August 2021, the Pre-Trial Judge, further to the 9 August 2021 Request, varied the time limit for the Defence to provide submissions on whether reasons for the continued detention of Mr Veseli still exist and ordered it to do so by no later than ten days after notification of the decision of the Court of Appeals on the appeal against the Second Detention Decision ("10 August 2021 Decision").<sup>9</sup>
8. On 1 October 2021, the Court of Appeals issued the decision on Mr Veseli's appeal against the Second Detention Decision ("Second Court of Appeals

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<sup>6</sup> KSC-BC-2020-06, F00380/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Review of Detention of Kadri Veseli*, 2 July 2021, public.

<sup>7</sup> KSC-BC-2020-06, Transcript, 21 July 2021, public, p. 532, lines 10-18, p. 533, lines 13-15.

<sup>8</sup> KSC-BC-2020-06, F00429, Specialist Counsel, *Veseli Defence Request with Respect to the Second Detention Review*, 9 August 2021, public, para. 2.

<sup>9</sup> KSC-BC-2020-06, F00430, Pre-Trial Judge, *Decision on Veseli Request for Extension of Time Limit*, 10 August 2021, public, paras 9, 11.

Decision")<sup>10</sup> – the Court of Appeals, *inter alia*, remanded the Second Detention Decision to the Pre-Trial Judge for further consideration in order to assess whether the Kosovo Police can effectively enforce the conditions proposed by the Accused or any further condition identified by the Pre-Trial Judge as necessary to mitigate the identified risks.<sup>11</sup>

9. On 8 October 2021, the Pre-Trial Judge ordered the Kosovo Police to provide information regarding: (i) the authority and capability of the Kosovo Police to restrict the movements of individuals subject to conditional release, monitor and restrict such individuals' communications, administer house arrest, and the enforceability of conditions attaching to interim release; and (ii) previous instances of enforcing conditions attaching to the interim release or detention of persons accused of severe crimes ("Kosovo Police Order").<sup>12</sup>

10. On 8 October 2021, the Pre-Trial Judge ordered the Defence to indicate whether it wishes to: (a) have the detention of Mr Veseli reviewed in accordance with the schedule defined in the 10 August 2021 Decision; (b) have the detention of Mr Veseli reviewed together with the Pre-Trial Judge's reconsideration of the Second Detention Decision in light of the directions of the Court of Appeals in one consolidated decision, in which case the schedule set out in the 10 August 2021 Decision would remain in place – in addition, it was indicated that, should the Parties wish to make observations on the Kosovo Police's submissions, the Specialist Prosecutor was expected to do so within five days of notification of the English translation of said submissions and the Defence within three days of notification of the Specialist Prosecutor's observations; or (c) postpone the next

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<sup>10</sup> KSC-BC-2020-06, IA008/F00004/RED, Court of Appeals, *Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Review of Detention*, 1 October 2021, public.

<sup>11</sup> Second Court of Appeals Decision, paras 51-53.

<sup>12</sup> KSC-BC-2020-06, F00513, Pre-Trial Judge, *Order to the Kosovo Police to Provide Information*, 8 October 2021, public, with one Annex, confidential.

review of detention until two months after the Pre-Trial Judge has reconsidered the Second Detention Decision (“8 October 2021 Order”).<sup>13</sup>

11. On 10 October 2021, the Defence requested to have Mr Veseli’s detention reviewed in line with the schedule defined in the 10 August 2021 Decision (“10 October 2021 Observations”).<sup>14</sup>

12. On 11 October 2021, the Defence filed its submissions on the review of Mr Veseli’s detention,<sup>15</sup> including information obtained upon the Defence’s request from the Kosovo Police on their ability to enforce conditions of interim release (“First Kosovo Police Submissions”),<sup>16</sup> thereby requesting that Mr Veseli be released on certain terms and conditions (“Request”).<sup>17</sup>

13. On 13 October 2021, the Pre-Trial Judge ordered the Registrar to provide information on the detention regime applicable to Mr Veseli at the Detention Facilities of the Specialist Chambers (“SC”) (“Registrar Order”).<sup>18</sup>

14. On 20 October 2021, the Registrar provided the information requested pursuant to the Registrar Order (“Registry Submissions”).<sup>19</sup>

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<sup>13</sup> KSC-BC-2020-06, F00514, Pre-Trial Judge, *Order Seeking Observations from the Defence on the Timeline for the Next Review of Detention*, 8 October 2021, public, para. 6.

<sup>14</sup> KSC-BC-2020-06, F00515, Pre-Trial Judge, *Veseli Defence Observations Pursuant to Order of 8 October 2021 (F00514)*, 10 October 2021, public, para. 4.

<sup>15</sup> KSC-BC-2020-06, F00518, Specialist Counsel, *Veseli Defence Submissions on Second Detention Review*, 11 October 2021, confidential, with Annexes 1-2, confidential. A corrected version was submitted on 14 October 2021, F00518/COR, confidential, with Annexes 1-3, confidential.

<sup>16</sup> KSC-BC-2020-06, F00518/COR/A01, Specialist Counsel, *Annex 1 to Corrected Version of Veseli Defence Submissions on Second Detention Review (KSC-BC-2020-06/F00518 dated 11 October 2021)*, 14 October 2021, confidential; F00518/COR/A02, Specialist Counsel, *Annex 2 to Corrected Version of Veseli Defence Submissions on Second Detention Review (KSC-BC-2020-06/F00518 dated 11 October 2021)*, 14 October 2021, confidential.

<sup>17</sup> Request, paras 22, 68.

<sup>18</sup> KSC-BC-2020-06, F00522, Pre-Trial Judge, *Order to the Registrar to Provide Information on the Detention Regime*, 13 October 2021, confidential, para. 7.

<sup>19</sup> KSC-BC-2020-06, F00536, Registrar, *Registry Submissions Pursuant to the Order to Provide Information on the Detention Regime (F00522)*, 20 October 2021, confidential.

15. On 22 October 2021, the Specialist Prosecutor's Office ("SPO") responded to the Request ("Response").<sup>20</sup>
16. On 26 October 2021, the Kosovo Police provided the information requested pursuant to the Kosovo Police Order ("Second Kosovo Police Submissions").<sup>21</sup>
17. On 29 October 2021, the Defence indicated that it would incorporate the Second Kosovo Police Submissions in its impending reply to the Response, sought to have the matter dealt with immediately, and requested and was granted an extension of the word limit for its impending reply of 1,500 words.<sup>22</sup>
18. On 1 November 2021, the Defence replied to the Response ("Reply").<sup>23</sup>
19. On 8 November 2021, the SPO provided observations on the Second Kosovo Police Submissions ("SPO Observations").<sup>24</sup>
20. On 11 November 2021, the Defence replied to the SPO Observations ("Defence Observations").<sup>25</sup>

## II. SUBMISSIONS

21. The Defence submits that there are two changes in circumstance providing a clear basis to end Mr Veseli's detention at the SC Detention Facilities and remand

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<sup>20</sup> KSC-BC-2020-06, F00540, Specialist Prosecutor, *Prosecution Consolidated Response to October 2021 Defence Submissions on Detention Review*, 22 October 2021, confidential. A public redacted version was submitted on 2 November 2021, F00540/RED.

<sup>21</sup> KSC-BC-2020-06, F00548/eng, Kosovo General Police Directorate, *Answer to the Request Number KSC-BC-2020-06, Dated 13 October 2021*, 26 October 2021, confidential. The translation into English of said submission was filed on 3 November 2021.

<sup>22</sup> KSC-BC-2020-06, Transcript, 29 October 2021, public ("29 October 2021 Transcript"), p. 711, line 18 – p. 712, line 9; p. 749, lines 19-21.

<sup>23</sup> KSC-BC-2020-06, F00556, Specialist Counsel, *Veseli Defence Reply to Prosecution Consolidated Response to October 2021 Defence Submissions on Detention Review*, 1 November 2021, confidential, with Annexes 1-2, confidential.

<sup>24</sup> KSC-BC-2020-06, F00562, Specialist Prosecutor, *Prosecution Response to Kosovo Police Submissions on Detention*, 8 November 2021, confidential, with Annex 1, public.

<sup>25</sup> KSC-BC-2020-06, F00563, Specialist Counsel, *Veseli Defence Reply to Prosecution Response to Kosovo Police Submissions on Detention with Public Annex 1*, 11 November 2021, confidential.

him to house arrest, namely: (i) the First Kosovo Police Submissions contain guarantees that the Kosovo Police are more than capable and willing to enforce any terms or orders set by the Pre-Trial Judge for provisional release or any other matter; and (ii) the length of time that has passed since the Confirmed Indictment and the SPO's delay in prosecuting this case make Mr Veseli's continued detention at the SC Detention Facilities disproportionate, burdensome and unlawful.<sup>26</sup>

22. The SPO responds that the Request should be rejected.<sup>27</sup> It avers that the continued detention of Mr Veseli remains necessary since there has been no relevant change in circumstances detracting from the established reasons for detention and that the Court of Appeals has rather confirmed that the risks under Article 41(6)(b) of the Law continue to exist.<sup>28</sup>

23. The Defence replies that, in view of the Second Kosovo Police Submissions, Mr Veseli's detention at the SC Detention Facilities should end and that he should be remanded to house arrest in Kosovo.<sup>29</sup>

24. In the SPO Observations, the SPO contends that the Second Kosovo Police Submissions do nothing to change the previous findings that conditional release is not effectively enforceable given the risks posed by Mr Veseli.<sup>30</sup>

25. In the Defence Observations, the Defence, besides challenging the procedure followed by the SPO in relation to the 8 October 2021 Order and the scope of the SPO Observations,<sup>31</sup> asserts that the SPO Observations fall short of providing a basis to keep Mr Veseli in detention.<sup>32</sup>

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<sup>26</sup> Request, paras 22-25, 68.

<sup>27</sup> Response, para. 42.

<sup>28</sup> Response, para. 1.

<sup>29</sup> Reply, paras 4, 35.

<sup>30</sup> SPO Observations, para. 1.

<sup>31</sup> Defence Observations, paras 10-22.

<sup>32</sup> Defence Observations, paras 23, 41.

### III. APPLICABLE LAW

26. Article 41(6) of the Law provides that the SC shall only order the detention of a person when there is a grounded suspicion that the person has committed a crime within the jurisdiction of the SC, and there are articulable grounds to believe that the person: (i) is a flight risk; (ii) will destroy, hide, change or forge evidence of a crime, or specific circumstances indicate that the person will obstruct the progress of criminal proceedings; or (iii) will repeat the criminal offence, complete an attempted crime, or commit a crime which he or she has threatened to commit.

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

28. Article 41(12) of the Law provides that, in addition to detention on remand, the following measures may be ordered to ensure the presence of the accused, to prevent reoffending or ensure successful conduct of criminal proceedings: summons, arrest, bail, house detention, promise not to leave residence, prohibition on approaching specific places or persons, attendance at police station or other venue, and diversion.

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



#### IV. DISCUSSION

##### A. PRELIMINARY MATTERS

###### 1. 8 October 2021 Order

30. The Defence asserts that, pursuant to schedule set forth by the Pre-Trial Judge under option A in the 8 October 2021 Order, the litigation on this issue concerning Mr Veseli should have concluded with the Defence Reply.<sup>33</sup> It adds that, as it relates to Mr Veseli, the SPO Observations amount to a sur-reply for which the Court has not granted leave.<sup>34</sup> According to the Defence, the SPO has pushed the Defence into option B from the 8 October 2021 Order, and in so doing created an obligation for the Defence to reply.<sup>35</sup>

31. The Pre-Trial Judge recalls that the 8 October 2021 Order drew a distinction between, on the one hand, the review of Mr Veseli's detention pursuant to the bi-monthly statutory period arising from Article 41(10) of the Law and Rule 57(2) of the Rules and, on the other hand, a consolidated decision combining this periodic review with the reconsideration of the Second Detention Decision to the extent that it was remanded by the Court of Appeals.<sup>36</sup> It follows that, pursuant to the first option, two separate decisions were envisaged, namely: (i) a decision on the bi-monthly review of Mr Veseli's decision excluding the Second Kosovo Police Submissions; and (ii) a decision on the reconsideration of the Second Detention Decision to the extent that it was remanded by the Court of Appeals on the basis of the Second Kosovo Police Submissions and the Parties' observations on these submissions.

32. Whereas the Defence initially requested the Pre-Trial Judge to proceed with the third bi-monthly review under Article 41(10) of the Law,<sup>37</sup> it subsequently

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<sup>33</sup> Defence Observations, para. 10.

<sup>34</sup> Defence Observations, paras 11-13.

<sup>35</sup> Defence Observations, paras 13-14.

<sup>36</sup> 8 October 2021 Order, para. 6.

<sup>37</sup> 10 October 2021 Observations, para. 4.

indicated that it would incorporate the Second Kosovo Police Submissions in its Reply.<sup>38</sup> Therefore, the Defence effectively requested the Pre-Trial Judge to combine the Article 41(10) bi-monthly decision with the decision on the remanded issue. As a result, the SPO Observations fall in line with the 8 October 2021 Order and do not constitute a sur-reply. Importantly, reasons of fairness also require the SPO to have an opportunity to comment on the Second Kosovo Police Submissions as the Defence has had.<sup>39</sup> Moreover, having received the Defence Observations, the Defence has not suffered any prejudice as it has been in a position to, in line with the principle of equality of arms, provide its observations twice on the Second Kosovo Police Submissions and the SPO Observations.

33. In light of the foregoing, the Pre-Trial Judge finds it appropriate to further clarify the nature of the present decision. The Pre-Trial Judge will issue a consolidated decision combining the bi-monthly statutory review of Mr Veseli's detention with the assessment of the issue remanded by the Court of Appeals. This means, specifically, that the Pre-Trial Judge will carry out the periodic review of Mr Veseli's detention in accordance with the established practice arising from Article 41(6), (10) and (12) of the Law and Rule 57(2) of the Rules, whereas, in the section on conditional release, the Pre-Trial Judge will additionally reconsider the Second Detention Decision, to the extent that it was remanded by the Court of Appeals, in view of the First and Second Kosovo Police Submissions, the SPO Observations, the Registry Submissions and the Defence Observations.

## **2. Request to Strike**

34. The Defence avers that, even on the understanding that the SPO was entitled to file observations on the Second Kosovo Police Submissions, the

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<sup>38</sup> 29 October 2021 Transcript, p. 711, line 22 – p. 712, line 2.

<sup>39</sup> It is noted that, in the Response, the SPO had indicated that it intended to provide submissions on the Second Kosovo Police Submissions, *see* Response para. 35.

SPO Observations wildly exceed the scope of the Reply and the Second Kosovo Police Submissions.<sup>40</sup> According to the Defence, the SPO instead makes sweeping and entirely new allegations of corruption and criminality against Mr Veseli personally as well as allegations of corruption and/or criminality against the Kosovo Police, the Kosovo Judiciary, the Kosovo government, the Kosovo Liberation Army (“KLA”) and Kosovo Intelligence Services generally.<sup>41</sup> The Defence adds that the sources relied upon by the SPO are little more than rumours and website news which is of no probative value.<sup>42</sup> Furthermore, according to the Defence, the timing of these allegations is such that they are clearly tactical and have not been made in good faith as this issue should have been raised right at the beginning of the submissions on detention review.<sup>43</sup> On this basis, the Defence requests the Pre-Trial Judge to strike paragraphs 2-3, 5-9 and 23-25 of the SPO Observations from the record.<sup>44</sup>

35. The issue remanded by the Court of Appeals in connection with the Second Detention Decision concerns the question whether the Kosovo Police can “effectively enforce” the conditions of release proposed by the Defence.<sup>45</sup> Furthermore, the Pre-Trial Judge specifically ordered the Kosovo Police to provide information on, *inter alia*: (i) [REDACTED]; and (ii) [REDACTED].<sup>46</sup> In the view of the Pre-Trial Judge and without prejudice to any assessment of the merits of the SPO Observations at this point, arguments seeking to demonstrate criminality or corruption, whether in relation to Mr Veseli personally, the Kosovo Police or other Kosovo authorities, are relevant to the issue under consideration and fall within

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<sup>40</sup> Defence Observations, para. 15.

<sup>41</sup> Defence Observations, paras 16, 18, 21.

<sup>42</sup> Defence Observations, para. 17.

<sup>43</sup> Defence Observations, paras 19-20.

<sup>44</sup> Defence Observations, paras 22, 41.

<sup>45</sup> Second Court of Appeals Decision, para. 53.

<sup>46</sup> [REDACTED].

the broad matter remanded by the Court of Appeals and the specific questions posed by the Pre-Trial Judge.

36. As to the probative value of the disputed paragraphs of the SPO Observations, this matter may possibly become relevant for the ensuing discussion on the merits but not for the question whether these paragraphs should be struck from the record. Thus, the Pre-Trial Judge will, if necessary, determine the probative value to be assigned to the SPO's allegations and, accordingly, finds that the Defence fails to demonstrate that the paragraphs under discussion should be struck from the record on this basis.

37. Furthermore, in respect of the timing of the SPO's allegations, the Pre-Trial Judge finds that it is the SPO's responsibility and prerogative to decide, within the limits of the provisions regulating the Parties' submissions, when it brings particular allegations in accordance with its burden to demonstrate the existence of reasons for the Accused's continued detention. This is all the more so in view of the fact that, as mentioned, the SPO has made these allegations in relation to the specific issue remanded by the Court of Appeals and the corresponding questions posed to the Kosovo Police by the Pre-Trial Judge. It follows that the aforementioned paragraphs do not require to be struck from the record as a result of the timing of the allegations in the SPO Observations.

38. Consequently, the Pre-Trial Judge rejects the Defence's request to strike paragraphs 2-3, 5-9 and 23-25 from the SPO Observations from the record.

## B. APPLICABLE STANDARD

39. The Defence avers that, while the Court must review each 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.<sup>47</sup>

40. The SPO responds that the determination whether, pursuant to Rule 57(2) of the Rules, the reasons or circumstances underpinning detention continue to exist under Article 41(6) of the Law inevitably concerns what has changed, if anything, since the previous ruling on detention.<sup>48</sup> The SPO adds that the Pre-Trial Judge should not be expected to entertain submissions that merely repeat arguments that have already been addressed in previous decisions.<sup>49</sup>

41. The Pre-Trial Judge recalls that he has an obligation, under Article 41(10) of the Law, to examine whether the reasons for detention on remand still exist, including the grounds set out in Article 41(6) of the Law, namely whether: (i) there is a grounded suspicion that the person has committed the crime(s); and (ii) there are articulable grounds to believe that any of the risks set out in Article 41(6)(b) of the Law has been fulfilled.<sup>50</sup> The duty to determine whether the circumstances underpinning detention still exist imposes on the competent panel the task to, *proprio motu*, assess whether it is still satisfied that, at the time of the review and under the specific circumstances of the case when the review takes place, the detention of the Accused remains warranted.<sup>51</sup> Although the automatic review every two-months under Rule 57(2) of the Rules is not strictly limited to whether or not a change of circumstances occurred, such a change can nonetheless be

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<sup>47</sup> Request, para. 21.

<sup>48</sup> Response, para. 3.

<sup>49</sup> Response, para. 3.

<sup>50</sup> See for example KSC-BC-2020-07, IA002-F00005, Court of Appeals, *Decision on Nasim Haradinaj's Appeal against Decision Reviewing Detention*, 9 February 2021, public ("*Haradinaj Detention Appeal*"), para. 55.

<sup>51</sup> KSC-BC-2020-06, IA006-F00005/RED, Court of Appeals, *Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention*, 1 October 2021, public ("*Krasniqi Detention Appeal*"), para. 15.

determinative and shall be taken into consideration if raised by a Party or *proprio motu*.<sup>52</sup> The Pre-Trial Judge is neither required to make findings on the factors already decided upon in the initial ruling on detention nor to entertain submissions that merely repeat arguments that have already been addressed in previous decisions.<sup>53</sup> What is crucial is that the Pre-Trial Judge is satisfied that, at the time of the review decision, grounds for continued detention still exist.<sup>54</sup> The SPO bears the burden of establishing that the Accused's detention is necessary.<sup>55</sup>

### C. GROUNDED SUSPICION

42. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires at the outset a grounded suspicion that the detained person has committed a crime within the jurisdiction of the SC. This is a condition *sine qua non* for the validity of the detained person's continued detention.<sup>56</sup>

43. The Defence has not made submissions regarding this criterion in the Request. In the Response, the SPO avers that the Court of Appeals has confirmed the Pre-Trial Judge's conclusion set forth in the Second Detention Decision that a grounded suspicion continues to exist that Mr Veseli has committed crimes within the subject-matter jurisdiction of the SC.<sup>57</sup>

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

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<sup>52</sup> *Krasniqi Detention Appeal*, para. 16.

<sup>53</sup> *Haradinaj Detention Appeal*, para. 55; *Krasniqi Detention Appeal*, para. 17.

<sup>54</sup> *Haradinaj Detention Appeal*, para. 55.

<sup>55</sup> *First Detention Decision*, para. 20; *First Court of Appeals Decision*, para. 14.

<sup>56</sup> *Similarly* ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222.

<sup>57</sup> *Response*, paras 1, 2, 4.

torture and murder) under Articles 13, 14(1)(c) and 16(1)(a) of the Law.<sup>58</sup> These findings were made on the basis of a standard exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a) of the Law.<sup>59</sup>

45. The Pre-Trial Judge finds that, in view of the findings set forth in the Confirmation Decision and in the absence of any intervening developments regarding this matter, there continues to be a grounded suspicion that Mr Veseli has committed crimes within the subject-matter jurisdiction of the SC for the purposes of Article 41(6)(a) and (10) of the Law.

#### D. NECESSITY OF DETENTION

46. Once the threshold in Article 41(6)(a) of the Law is met, the grounds that would justify the deprivation of a person's liberty must be articulable in the sense that they must be specified in detail.<sup>60</sup> The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"<sup>61</sup> that any of the risks under the three limbs of Article 41(6)(b) of the Law exists, denoting an acceptance of the possibility, not the inevitability, of a future occurrence.<sup>62</sup> In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.<sup>63</sup> When deciding on whether a person should be released or detained, the Pre-Trial Judge must consider alternative measures to prevent the risks in Article 41(6)(b) of the Law.<sup>64</sup>

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<sup>58</sup> Confirmation Decision, paras 521(a); Second Court of Appeals Decision, para. 24.

<sup>59</sup> Second Court of Appeals Decision, para. 21.

<sup>60</sup> First Detention Decision, para. 21; First Court of Appeals Decision, paras 18-19.

<sup>61</sup> See *chapeau* of Article 41(6)(b) of the Law.

<sup>62</sup> First Detention Decision, para. 21.

<sup>63</sup> First Court of Appeals Decision, para. 17.

<sup>64</sup> KSC-CC-PR-2017-01, F00004, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office*, 26 April 2017, public, para. 114. See also ECtHR, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, [Judgment](#), 5 July 2016 ("*Buzadji v. the Republic of Moldova* [GC]"), para. 87 *in fine*; ECtHR, *Idalov v. Russia* [GC], no. 5826/03, [Judgment](#), 22 May 2012, para. 140 *in fine*.

## 1. Risk of Flight

47. The Defence has not made submissions regarding this articulable ground in the Request. In the Response, the SPO submits that the ever-growing account of the evidence disclosed to Mr Veseli, in conjunction with the possibility of a serious sentence in the event of a conviction, may provide the necessary incentive for him to obtain funds and means to travel and eventually evade SC proceedings.<sup>65</sup> It adds that Mr Veseli's continued influence in Kosovo, including due to his former functions, establishes that he would have the means to do so.<sup>66</sup> The Defence replies that the disclosure of evidence is in itself insufficient to justify the denial of provisional release, and that the lack of any direct evidence of Mr Veseli's direct participation in any specific offence only renders flight less likely.<sup>67</sup>

48. The Pre-Trial Judge recalls that Mr Veseli has been made aware of the charges against him and the possibility of a serious sentence in the event of a conviction.<sup>68</sup> Whether or not there is evidence of Mr Veseli's direct participation in any specific offence is beside the point, considering that, as established above, there is a grounded suspicion that Mr Veseli has committed crimes within the subject-matter jurisdiction of the SC, which could result in a lengthy term of imprisonment, should he be convicted.<sup>69</sup> Furthermore, it is recalled that Mr Veseli continues to play a significant role in Kosovo on the basis of the previous positions he occupied. Hence, the influence he continues to derive from these roles – in particular from his intelligence related positions – may assist him in evading SC proceedings by, for instance, calling upon the support of persons sympathetic to

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<sup>65</sup> Response, para. 7.

<sup>66</sup> Response, para. 7.

<sup>67</sup> Reply, para. 5. The Defence's submissions in its Reply regarding the mitigation of the risk of flight will be addressed in the section on conditional release.

<sup>68</sup> First Detention Decision, para. 32; Second Detention Decision, para. 32.

<sup>69</sup> See also Second Court of Appeals Decision, para. 24.



him and/or the KLA, securing access to relevant information, and obtaining funds and means to travel.<sup>70</sup>

49. On this basis, and notwithstanding the counter-balancing factors identified in the First Detention Decision,<sup>71</sup> the Pre-Trial Judge finds that the risk of flight in relation to Mr Veseli continues to exist.

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

50. The Defence has not made submissions regarding this articulable ground in the Request. In the Response, the SPO submits that there is a real risk of Mr Veseli obstructing the progress of SC proceedings, if he were to be released.<sup>72</sup> According to the SPO, there is a persistent climate of intimidation of witnesses and interference with criminal proceedings against former KLA members.<sup>73</sup> The SPO further asserts that the risk of obstruction is heightened by the Accused's increasing access to incriminating evidentiary material, as well as [REDACTED], and that the Court of Appeals has found that the protective measures in place are not sufficient to mitigate the inherently high risk of witness intimidation or interference.<sup>74</sup> The SPO also refers to three instances of witnesses in other KLA-related proceedings being killed or injured and recalls that the *Haradinaj et al.* Trial Chamber of the International Criminal Tribunal for the former Yugoslavia ("ICTY") observed that many witnesses cited fear as a prominent reason for not wishing to give evidence.<sup>75</sup> It is also of the view that Mr Veseli wields massive influence over former KLA members and Kosovo in general, including on the basis

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<sup>70</sup> Confirmation Decision, para. 460; First Detention Decision, para. 32; Second Detention Decision, para. 32.

<sup>71</sup> First Detention Decision, para. 33.

<sup>72</sup> Response, paras 2, 8.

<sup>73</sup> Response, para. 8.

<sup>74</sup> Response, paras 8, 11.

<sup>75</sup> Response, para 13.

of the positions he previously occupied.<sup>76</sup> Lastly, the SPO avers that there are numerous indicators that there is a risk that Mr Veseli can obstruct justice, including information that members of the intelligence service answerable to him were involved in surveilling, threatening and bribing witnesses testifying against former KLA members at the ICTY, and that Mr Veseli has a demonstrated ability to give instructions to those involved with interference against potential SPO witnesses.<sup>77</sup>

51. The Defence replies<sup>78</sup> that neither the Court of Appeals nor the Pre-Trial Judge made a finding that Mr Veseli [REDACTED].<sup>79</sup> It adds that there is no evidence that Mr Veseli or his supporters bear any relationship or connection to any of the three incidents where individuals died over the past 20 years which the SPO contends are indicative of the fate of witnesses in KLA trials.<sup>80</sup> According to the Defence, [REDACTED].<sup>81</sup> Furthermore, the Defence contends that, in the KLA-related proceedings before the ICTY, no witnesses were killed and, although witnesses were reluctant to come forward in the *Haradinaj et al.* case, all of them eventually testified in the trial or retrial.<sup>82</sup>

52. The Pre-Trial Judge recalls that it has been found that Mr Veseli has the ability to give instructions to an individual interacting with the SC and, in doing so, he directly intervened in a matter involving the SC.<sup>83</sup> In addition, as mentioned, Mr Veseli continues to play a significant role in Kosovo on the basis of the previous positions he occupied,<sup>84</sup> which would continue to allow him to, for

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<sup>76</sup> Response, paras 12, 14.

<sup>77</sup> Response, para. 15.

<sup>78</sup> The Defence's submissions in its Reply regarding the mitigation of the risk of obstruction will be addressed in the section on conditional release.

<sup>79</sup> [REDACTED].

<sup>80</sup> Reply, paras 23-25.

<sup>81</sup> [REDACTED].

<sup>82</sup> Reply, paras 26-27.

<sup>83</sup> First Detention Decision, para. 44; First Court of Appeals Decision, para. 38; Second Detention Decision, para. 35; Second Court of Appeals Decision, para. 34.

<sup>84</sup> See para. 48 above.

instance, access information or elicit the support of others.<sup>85</sup> In this regard, the Pre-Trial Judge further recalls that the evidence reveals that, while Mr Veseli was at the head of the intelligence service from 1999 to 2008,<sup>86</sup> members of the intelligence service were, [REDACTED], involved in: (i) [REDACTED], including by threatening [REDACTED] one witness [REDACTED]; and (ii) following [REDACTED] and [REDACTED] in order to discover [REDACTED], as well as threatening [REDACTED] and [REDACTED].<sup>87</sup> In the view of the Pre-Trial Judge, these incidents exemplify the risk that, in combination with his demonstrated intervention in a matter involving the SC by giving instructions to an individual, Mr Veseli could wield his influence in Kosovo to obstruct SC proceedings.

53. The Pre-Trial Judge also finds that the protective measures in place are not entirely sufficient to mitigate the risk of obstruction arising from the preceding findings, considering that, notwithstanding the adoption of additional decisions on protective measures following the Second Detention Decision,<sup>88</sup> [REDACTED] and, irrespective of these measures, Mr Veseli [REDACTED].<sup>89</sup> On this basis, the Pre-Trial Judge further concludes that, in view of the fact that Mr Veseli

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<sup>85</sup> First Detention Decision, para. 43; First Court of Appeals Decision, para. 40; Second Detention Decision, para. 35; Second Court of Appeals Decision, para. 34.

<sup>86</sup> [REDACTED].

<sup>87</sup> Arrest Warrants Decision, para. 33; [REDACTED]; KSC-BC-2020-06, F00005/RED, Specialist Prosecutor, *Public Redacted Version of 'Request for Arrest Warrants and Related Orders' filing KSC-BC-2020-06/F00005 dated 28 May 2020*, 17 November 2020, public, with public redacted Annex 1 and public Annexes 2-3, para. 8.

<sup>88</sup> KSC-BC-2020-06, F00407, Pre-Trial Judge, *Seventh Decision on Specialist Prosecutor's Request for Protective Measures*, 21 July 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00407/CONF/RED); F00438, Pre-Trial Judge, *Eighth Decision on Specialist Prosecutor's Request for Protective Measures*, 24 August 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00438/CONF/RED); F00466, Pre-Trial Judge, *Ninth Decision on Specialist Prosecutor's Request for Protective Measures*, 13 September 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00466/CONF/RED); F00467, Pre-Trial Judge, *Tenth Decision on Specialist Prosecutor's Request for Protective Measures*, 13 September 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day, F00467/CONF/RED); F00559, Pre-Trial Judge, *Eleventh Decision on Specialist Prosecutor's Request for Protective Measures*, 5 November 2021, strictly confidential and *ex parte*; F00571, Pre-Trial Judge, *Twelfth Decision on Specialist Prosecutor's Request for Protective Measures*, 17 November 2021, strictly confidential and *ex parte* (a confidential redacted version was issued on the same day).

<sup>89</sup> [REDACTED].

demonstrably intervened in a matter involving the SC and continues to play a significant role in Kosovo, his increased insight into the evidence underpinning the serious charges against him following the Second Detention Decision increases the risk of obstruction.<sup>90</sup>

54. Furthermore, the Pre-Trial Judge reiterates that there is a persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members in Kosovo, which, even though not determinative in and of itself, provides the context against which the findings pertaining specifically to Mr Veseli must be considered.<sup>91</sup> In addition, the risk of obstruction need not materialise in an Accused personally tampering with evidence or exerting influence or pressure on witnesses as it suffices that an Accused instigates others or contributes in any way to the materialisation of that risk.<sup>92</sup>

55. Accordingly, the Pre-Trial Judge concludes that, within the overall context of a persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members in Kosovo, the risk that Mr Veseli will obstruct the progress of SC proceedings continues to exist on the basis of a combined assessment of his demonstrated willingness and ability to intervene in matters involving the SC, his capacity to garner the means to intervene in SC proceedings due to his continued role of significance, and his increased awareness of the underlying evidence. In view of this determination, the Pre-Trial Judge finds that, even though the Defence correctly asserts that no finding has been made that Mr Veseli [REDACTED], it is not necessary to further address either this argument or the Parties' submissions regarding events concerning witnesses in other KLA-related proceedings.

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<sup>90</sup> See also Second Court of Appeals Decision, paras 31-33.

<sup>91</sup> First Detention Decision, para. 48; First Court of Appeals Decision, paras 40, 48; Second Detention Decision, para. 36.

<sup>92</sup> KSC-BC-2020-06, IA003/F00005/RED, Court of Appeals, *Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Interim Release*, 30 April 2021, public, para. 59.

### 3. Risk of Committing Further Crimes

56. Mr Veseli makes no submissions regarding the risk of committing further crimes in the Request. In the Response, the SPO argues that 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 has; and (iii) the significant influential position the Accused still retains in Kosovo.<sup>93</sup> The SPO contends that [REDACTED].<sup>94</sup> The Defence replies that [REDACTED].<sup>95</sup>

57. The Pre-Trial Judge recalls that, even though the existence of a risk of obstruction does not automatically translate into a risk of committing further crimes, the factors underpinning the former are of relevance to the assessment of the latter in the circumstances of the present case.<sup>96</sup> It is further recalled that it suffices that an Accused instigates or assists others to commit such crimes, or contributes in any other way to their commission.<sup>97</sup>

58. Turning to the facts under consideration, the Pre-Trial Judge finds, at the outset, that [REDACTED]. However, the Pre-Trial Judge recalls that, besides the prevailing climate of witness intimidation, Mr Veseli has: (i) the ability and demonstrated willingness to interfere in SC proceedings; (ii) the capacity to garner the means to intervene in SC proceedings due to his continued role of significance in Kosovo; and (iii) an increased account of the SPO's case against him since the

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<sup>93</sup> Response, para. 23.

<sup>94</sup> [REDACTED].

<sup>95</sup> [REDACTED]. The Defence's further submissions in its Reply regarding the mitigation of the risk of further crimes being committed will be addressed in the section on conditional release.

<sup>96</sup> First Detention Decision, para. 52; Second Detention Decision, para. 39.

<sup>97</sup> First Detention Decision, paras 25, 52; Second Detention Decision, para. 39.

Second Detention Decision in view of the ongoing disclosure of material underpinning the serious charges against him.<sup>98</sup>

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

60. Accordingly, the Pre-Trial Judge concludes that the risk that Mr Veseli will commit further crimes continues to exist.

#### **4. Conclusion**

61. The Pre-Trial Judge concludes that the risks that Mr Veseli will abscond, obstruct the progress of SC proceedings, or commit further crimes against those perceived as being opposed to the KLA, including witnesses who have provided or could provide evidence in the case and/or are due to appear before the SC, continue to exist. The Pre-Trial Judge will assess below whether these risks can be adequately addressed by any conditions for his release.

#### **E. CONDITIONAL RELEASE**

##### **1. Submissions**

###### **(a) Request**

62. The Defence avers that, in the First Kosovo Police Submissions, [REDACTED] the Kosovo Police is a professional law enforcement agency ready to implement

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<sup>98</sup> See paras 48, 52-54 above.

and enforce the SC's decisions.<sup>99</sup> The Defence also submits that the proposed measures are comprehensive and effective.<sup>100</sup>

63. As to the risk of unsupervised clandestine communication, the Defence is of the view that the Kosovo Police are similarly – if not better – equipped to apply the security measures existing at the SC Detention Facilities, seeing as: (i) [REDACTED]; and (ii) [REDACTED].<sup>101</sup> The Defence adds that, unlike at the SC Detention Facilities, [REDACTED].<sup>102</sup>

(b) Response

64. The SPO responds that no conditions of release in Kosovo can mitigate the particular risks at issue.<sup>103</sup> In its view, the Court of Appeals 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.<sup>104</sup> According to the SPO, analysing the necessary conditions 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.<sup>105</sup>

65. The SPO further avers that the Kosovo Police guarantees set out in the First Kosovo Police Submissions remain insufficient,<sup>106</sup> since: (i) [REDACTED];<sup>107</sup> (ii) [REDACTED];<sup>108</sup> (iii) [REDACTED];<sup>109</sup> and (iv) [REDACTED].<sup>110</sup> In addition, the SPO maintains that the Kosovo Police have failed to provide sufficient answers

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<sup>99</sup> [REDACTED].

<sup>100</sup> Request, para. 31.

<sup>101</sup> [REDACTED].

<sup>102</sup> [REDACTED].

<sup>103</sup> Response, para. 24.

<sup>104</sup> Response, para. 24.

<sup>105</sup> Response, paras 25, 34.

<sup>106</sup> Response, paras 25, 31.

<sup>107</sup> [REDACTED].

<sup>108</sup> [REDACTED].

<sup>109</sup> [REDACTED].

<sup>110</sup> [REDACTED].

in all three instances, which calls into question their understanding of the risks, and their willingness and ability to sufficiently enforce the conditions of release.<sup>111</sup>

66. The SPO adds that it is clear that the Defence and the Kosovo Police are working closely in progressively developing these conditional release responses, but that the question of practical implementation remains.<sup>112</sup>

(c) Reply

67. The Defence replies that the finding that any risk of flight is mitigated by house arrest should remain unchanged, and that the Second Kosovo Police Submissions augment the previously established mitigation of this risk.<sup>113</sup>

68. As to the risk of obstruction, the Defence avers that the assurances of the Kosovo Police fully mitigate this risk.<sup>114</sup> In particular, the Second Kosovo Police Submissions specifically address the risk that Mr Veseli could pass a message to someone in person or use coded language to do the same in a manner similar to the protocols in place at the SC Detention Facilities: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; and (iv) [REDACTED].<sup>115</sup> It adds that the Kosovo Police have the additional advantage of fluency in the Accused's native language and [REDACTED].<sup>116</sup>

69. The Defence further contends that the reasons identified by the SPO why the First Kosovo Police Submissions are insufficient mitigation misunderstand that the Kosovo Police are ready and able to implement any order required by the SC.<sup>117</sup> As to the specific reasons mentioned by the SPO, the Defence adds that the

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<sup>111</sup> Response, paras 32-33.

<sup>112</sup> Response, para. 33.

<sup>113</sup> Reply, paras 5-6.

<sup>114</sup> Reply, para. 8.

<sup>115</sup> [REDACTED].

<sup>116</sup> [REDACTED].

<sup>117</sup> Reply, para. 12.



Second Kosovo Police Submissions establish that the Kosovo Police have: (i) the necessary human resources and technological equipment for the job; (ii) [REDACTED]; (iii) directly mitigated any concerns to restricting communication devices; and (iv) specialised units to implement the Court's orders, previous direct experience, and confirmed their capability of enforcing any order the SC deems necessary.<sup>118</sup> The Defence also avers that there is nothing to justify the SPO's scorn for the Kosovo Police's security proposals.<sup>119</sup>

70. Lastly, the Defence asserts that the SPO's allegation that the Defence has colluded with the Kosovo Police is a misrepresentation as: (i) the Defence did not obtain the answer it sought from the Kosovo Police on two previous occasions; and (ii) subsequently sought a more detailed response from the Kosovo Police.<sup>120</sup>

(d) SPO Observations

71. The SPO asserts that the conditions proposed are not sufficient and, even if they were, the Kosovo Police cannot effectively enforce them.<sup>121</sup>

72. According to the SPO, the well-established climate of interference with the judicial process in Kosovo is not a historical relic.<sup>122</sup> It adds that [REDACTED].<sup>123</sup> The SPO further avers that [REDACTED].<sup>124</sup>

73. The SPO also submits that [REDACTED].<sup>125</sup> It additionally argues that there are media reports regarding the influence of former members of the Kosovo

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<sup>118</sup> [REDACTED].

<sup>119</sup> Reply, paras 17-18.

<sup>120</sup> Reply, paras 28-31.

<sup>121</sup> SPO Observations, paras 4, 27.

<sup>122</sup> SPO Observations, para. 2.

<sup>123</sup> [REDACTED].

<sup>124</sup> [REDACTED].

<sup>125</sup> [REDACTED].

Intelligence Service over the Kosovo Police.<sup>126</sup> Furthermore, according to the SPO, corruption within Kosovo's criminal justice system is widely recognised.<sup>127</sup>

74. In addition, in the view of the SPO, the Second Kosovo Police Submissions add no meaningful assurances beyond the ones addressed by the SPO previously:  
(i) [REDACTED];<sup>128</sup> (ii) [REDACTED];<sup>129</sup> (iii) [REDACTED];<sup>130</sup> and  
(iv) [REDACTED].<sup>131</sup>

75. In addition, the SPO contends that the Kosovo Police cannot effectively enforce conditions of interim release as: (i) they have failed to demonstrate that they are willing and able to enforce sufficient conditions of release after four attempts;<sup>132</sup> (ii) prominent figures in the Kosovo Police leadership have connections to the KLA;<sup>133</sup> and (iii) Mr Veseli remains enormously influential.<sup>134</sup>

(e) Defence Observations

76. The Defence submits that 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.<sup>135</sup>

77. It adds that the SPO's old argument that the public perception surrounding Mr Veseli's release would lead to generalized fear and uncertainty amongst witnesses is directly undercut by an ICTY decision in the *Haradinaj et al.* case finding that generalized fear and uncertainty was not sufficient to deny

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<sup>126</sup> SPO Observations, para. 5.

<sup>127</sup> SPO Observations, para. 7.

<sup>128</sup> [REDACTED].

<sup>129</sup> [REDACTED].

<sup>130</sup> [REDACTED].

<sup>131</sup> [REDACTED].

<sup>132</sup> SPO Observations, paras 21-22.

<sup>133</sup> SPO Observations, paras 23-24.

<sup>134</sup> SPO Observations, paras 3, 25.

<sup>135</sup> Defence Observations, paras 24-25.

conditional release.<sup>136</sup> The Defence further asserts that it can be inferred that the SPO's argument was rejected as it did not form any part of the Pre-Trial Judge's previous decisions on detention review.<sup>137</sup> It also avers that it is improper for the SPO to raise this issue as it has not done so previously in the present litigation and has no connection to the Second Kosovo Police Submissions.<sup>138</sup>

78. In addition, regarding the SPO's submissions concerning the Second Kosovo Police Submissions, the Defence maintains that the SPO Observations boil down to: (i) pedantic nit-picking of the resources the Kosovo Police have specifically enumerated as the Kosovo Police have confirmed that they have all resources necessary to successfully execute the SC's order;<sup>139</sup> (ii) bad-faith accusations that the answers lack specificity, are vague or evasive, in which case it is incumbent on the SC to seek further clarification;<sup>140</sup> and (iii) generalised allegations of incompetence and corruption, which are unwarranted, tactical, and unsupported by the evidence – as illustrated by the fact the SPO relies on the Kosovo Police when convenient for their case – as well as contradicted by the example of the conditional release of Ramush Haradinaj (“Mr Haradinaj”).<sup>141</sup>

## 2. Discussion

### (a) Risk of Flight

79. As found in the First and Second Detention Decisions, the risk of flight can be sufficiently mitigated on the basis that Mr Veseli has committed himself to remain in house arrest, surrender his travel documents, and respect a prohibition on

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<sup>136</sup> Defence Observations, paras 26-28.

<sup>137</sup> Defence Observations, para. 29.

<sup>138</sup> Defence Observations, para. 30.

<sup>139</sup> Defence Observations, paras 31-34.

<sup>140</sup> Defence Observations, paras 31, 35-37.

<sup>141</sup> Defence Observations, paras 31, 38-40.

travelling.<sup>142</sup> This conclusion is underscored by the guarantees provided by the Kosovo Police that [REDACTED].<sup>143</sup>

(b) Risks of Obstruction and Committing further Crimes

80. At the outset, the Pre-Trial Judge notes that the Court of Appeals determined that, while the list of conditions proposed by the Defence in relation to the Second Detention Decision was detailed and may, in the abstract, restrict and monitor his communications, it remains to be assessed whether such measures can be effectively enforced by the Kosovo Police.<sup>144</sup> Accordingly, the Pre-Trial Judge will, on the basis of the information contained in the First and Second Kosovo Police Submissions, assess whether: (i) these conditions sufficiently mitigate these risks; and (ii) the Kosovo Police have the capacity to effectively implement the conditions under consideration in view of the risks that Mr Veseli will obstruct SC proceedings and/or commit further crimes.

(i) Monitoring Communications with Family Members and Pre-Approved Visitors

81. The Kosovo Police indicate that [REDACTED].<sup>145</sup> Furthermore, the Kosovo Police are prepared to [REDACTED].<sup>146</sup> At the same time, the Kosovo Police specify that [REDACTED].<sup>147</sup>

82. As regards communications with family members in particular, this means that [REDACTED]. In addition, Mr Veseli could use coded or obscure language that [REDACTED]. Therefore, the conditions do not address the possibility that,

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<sup>142</sup> First Detention Decision, para. 58; Second Detention Decision, para. 46.

<sup>143</sup> [REDACTED].

<sup>144</sup> Second Court of Appeals Decision, paras 48-53.

<sup>145</sup> [REDACTED].

<sup>146</sup> [REDACTED].

<sup>147</sup> [REDACTED].

[REDACTED], Mr Veseli could ask a family member to pass on a message orally or to use a device belonging to a third person to do so,<sup>148</sup> or that he could transmit covert messages for the purposes of obstructing SC proceedings or committing further crimes. Such considerations apply similarly for monitored visits with pre-approved visitors, notably the possibility of using coded or obscure language [REDACTED]. Mr Veseli's experience in intelligence-related positions further increases this risk.

83. By contrast, at the SC Detention Facilities, unmonitored communications are strictly limited considering that detainees are only allowed unmonitored "private visits" for certain close family members and within limited time periods.<sup>149</sup> In addition, in person and video visits are, as a rule, conducted within the sight and general hearing of SC Detention Officers.<sup>150</sup> The Registrar may also impose additional safeguards for such visits, including active monitoring and after-the-fact-listening.<sup>151</sup> This allows for visits to be reviewed subsequently, while an actively monitored visit may be terminated immediately in order to, for example, prevent the unauthorised disclosure of confidential information or, if it is perceived that a detainee is using coded language, interference with the safe and secure conduct of proceedings.<sup>152</sup>

84. Furthermore, under Article 34(8) and (12) of the Law, the SC Registry is responsible for managing and administering the detention function and facilities for the SC, as well as [REDACTED].<sup>153</sup> Thus, the Registry is in the unique position of managing and administering the SC Detention Facilities [REDACTED]. [REDACTED].<sup>154</sup>

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<sup>148</sup> Second Detention Decision, para. 48.

<sup>149</sup> Second Court of Appeals Decision, footnote 95.

<sup>150</sup> Registry Submissions, para. 31; Second Court of Appeals Decision, para. 47, footnote 95.

<sup>151</sup> Registry Submissions, para. 32.

<sup>152</sup> Registry Submissions, paras 32-33.

<sup>153</sup> [REDACTED].

<sup>154</sup> [REDACTED].

85. It is also significant that, unlike Mr Veseli's private residence, the SC Detention Facilities are a high-security environment.<sup>155</sup> Most significantly, the SC Detention Officers are highly qualified, [REDACTED], and receive training on applying the visits and communications regime at the SC Detention Facilities.<sup>156</sup>

86. The Kosovo Police [REDACTED]. Furthermore, in the view of the Pre-Trial Judge, it is decisive that [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. The Pre-Trial Judge has reached this conclusion on the basis that: (i) [REDACTED]; (ii) [REDACTED];<sup>157</sup> and (iii) [REDACTED].

87. [REDACTED].<sup>158</sup> [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].<sup>159</sup>

88. Furthermore, the fact that Kosovo Police officers are, as highlighted by the Defence,<sup>160</sup> fluent in Mr Veseli's native language and may be familiar with the general context in Kosovo is insufficient to ensure the effective monitoring of visits and communications given that [REDACTED].

89. In conclusion, while the risk of illicit messages and instructions cannot be entirely eliminated, the measures in place at the SC Detention Facilities, viewed as a whole, provide robust assurances against unmonitored visits and communications with family members and pre-approved visitors with a view to minimising the risks of obstruction and commission of further crimes.<sup>161</sup> In the view of the Pre-Trial Judge, the Kosovo Police have not provided guarantees

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<sup>155</sup> Registry Submissions, para. 43.

<sup>156</sup> [REDACTED].

<sup>157</sup> [REDACTED].

<sup>158</sup> [REDACTED].

<sup>159</sup> [REDACTED].

<sup>160</sup> Reply, para. 11.

<sup>161</sup> Similarly KSC-BC-2020-06, IA010/F00008/RED, Court of Appeals, *Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 27 October 2021, public ("*Thaçi Detention Appeal*"), para. 68.

establishing that they have the capacity to implement corresponding measures that sufficiently minimise the existing risks.

(ii) Contextual Considerations

90. [REDACTED].<sup>162</sup> In addition, despite the Pre-Trial Judge's request to liaise with any other entity in Kosovo,<sup>163</sup> [REDACTED].<sup>164</sup> [REDACTED].<sup>165</sup>

91. In this regard, the Defence submits that the conditional release of Mr Haradinaj proceeded without difficulties.<sup>166</sup> However, the Pre-Trial Judge observes that the Defence cites to a decision rejecting a request for provisional release on the basis that Mr Haradinaj's interests were outweighed by the need to ensure the integrity of the proceedings in view of the fact that witnesses indicated that they were fearful of testifying.<sup>167</sup> In any event, whereas Mr Haradinaj had been released prior to the start of his trial at the ICTY,<sup>168</sup> the conditions of his release were enforced by the United Nations Mission in Kosovo and not the Kosovo Police.<sup>169</sup> Thus, in addition to the fact that every case must be assessed individually, the case of Mr Haradinaj before the ICTY is distinguishable from the proposed conditional release of Mr Veseli.

92. Therefore, the Pre-Trial Judge is of the view that it has been insufficiently demonstrated that the Kosovo Police have established and recognised experience in enforcing the conditional release of individuals accused of serious crimes (who occupy or have previously occupied high-ranking positions).

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<sup>162</sup> [REDACTED].

<sup>163</sup> Kosovo Police Order, para. 9.

<sup>164</sup> [REDACTED].

<sup>165</sup> [REDACTED].

<sup>166</sup> Defence Observations, para. 39.

<sup>167</sup> ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84-T, [Decision on Motion on Behalf of Ramush Haradinaj for Provisional Release](#), 20 July 2007 ("*Haradinaj* 20 July 2007 Decision"), paras 24-30.

<sup>168</sup> ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84-PT, [Decision on Ramush Haradinaj's Motion for Provisional Release](#), 6 June 2005 ("*Haradinaj* 6 June 2005 Decision"), para. 53.

<sup>169</sup> [Haradinaj 6 June 2005 Decision](#), paras 37-43, 51, 53, 54; [Haradinaj 20 July 2007 Decision](#), para. 15.

93. In addition, the Pre-Trial Judge observes that [REDACTED].<sup>170</sup> This is an objective fact establishing a direct link between the Kosovo Police and the intelligence sector in Kosovo. On this basis, a real possibility exists that Mr Veseli could use his demonstrated influence in Kosovo, which has been acquired on the basis of, *inter alia*, his intelligence related positions, for the purposes of circumventing the conditions of house arrest. This is all the more so considering that, as mentioned, members of the intelligence service were involved in interfering with witnesses [REDACTED] at the ICTY during the time when Mr Veseli was at the head of the intelligence service.<sup>171</sup>

94. Lastly, the Pre-Trial Judge recalls that the very reason for establishing the SC was that criminal proceedings against (high-ranking) former KLA members could not be conducted in Kosovo.<sup>172</sup> As a result, these proceedings were relocated away from Kosovo,<sup>173</sup> and the procedural framework and operational practice of the SC have been specifically designed to ensure, to the maximum extent possible, the protection of witnesses, victims and others at risk with a view to implementing

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<sup>170</sup> [REDACTED].

<sup>171</sup> See para. 52 above.

<sup>172</sup> 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.

<sup>173</sup> Law No. 04/L-274, pp. 8-9 (“If the SITF investigation culminates in an indictment and trial proceedings, an environment conducive to the proper administration of justice should be provided. Accordingly, a specialist court within the Kosovo court system and a specialist prosecutor’s office would be used for any trial and appellate proceedings arising from the SITF investigation. This court would have a seat in Kosovo, but sensitive proceedings, including hearing of witnesses, would take place outside of the country in view of the nature of the allegations”); Agreement between the Kingdom of the Netherlands and the Republic of Kosovo concerning the Hosting of the Kosovo Relocated Specialist Judicial Institution in the Netherlands, 15 February 2016, preamble (“Referring to the exchange of letters between the President of the Republic of Kosovo and the High Representative of the European Union for Foreign Affairs and Security Policy dated 14 April 2014, ratified by Kosovo Law No. 04/L-274 of 15 May 2014, containing the commitment of the Republic of Kosovo to establish Specialist Chambers and a Specialist Prosecutor’s Office within the Kosovo judicial system to be used for trial and appellate proceedings arising from the investigation of the Special Investigative Task Force of the Special Prosecution Office of the Republic of Kosovo related to the Council of Europe Parliamentary Assembly Report Doc 12462 of 7 January 2011 and which may be relocated to a third State subject to the conclusion of a Host State Agreement with the Host State”), article 3 (“The Kosovo Relocated Specialist Judicial Institution shall have a seat in the Host State”).



the mandate of the SC. Moreover, as mentioned, there is a persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members in Kosovo.<sup>174</sup> In addition, the Pre-Trial Judge further notes that various international organisations have recently documented that corruption continues to affect the criminal justice sector in Kosovo.<sup>175</sup>

95. The Pre-Trial Judge considers that the aforementioned considerations are, as such, not determinative of the matter under discussion. However, the assessment of the conditions of house arrest to be enforced by the Kosovo Police cannot be divorced from the context in which the house arrest would take place insofar as it affects the conduct of the proceedings before the SC. On this basis, the Pre-Trial Judge finds that, in view of the compelling indications set out above, the context in which the house arrest would take place strengthens the finding that the proposed measures would not adequately mitigate the risks of obstruction and/or further crimes being committed in relation to Mr Veseli specifically.

(iii) Additional Measures

96. The Pre-Trial Judge is mindful of the fact that the Kosovo Police undertake, in general, to ensure the strict enforcement of any SC decisions.<sup>176</sup> However, this undertaking does not, in and of itself, provide a sufficient basis for the Pre-Trial Judge to *proprio motu* order any additional measures to mitigate the identified risks. In view of the Pre-Trial Judge's order to provide specific information to a list of detailed questions and to add any other relevant information (in particular as to any additional measures that the Kosovo Police would implement),<sup>177</sup> such a

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<sup>174</sup> See para. 54 above.

<sup>175</sup> United Nations Interim Administration Mission in Kosovo, *Report of the Secretary-General*, U.N.Doc. S/2020/964, 1 October 2020, para. 30; European Union Rule of Law Mission, *Justice Monitoring Report*, October 2020, p. 21; European Commission, *Kosovo Report 2021*, 19 October 2021, pp. 23, 25.

<sup>176</sup> First Kosovo Police Submissions, p. 8; Second Kosovo Police Submissions, pp. 1-2; Request, paras 29-30; Reply, para. 12; Defence Observations, paras 31-34.

<sup>177</sup> Kosovo Police Order, para. 8; Annex to Kosovo Police Order, para. 12.

general undertaking does not, as such, amount to an acceptance that any measures ordered by the Pre-Trial Judge will be adequately implemented, let alone a guarantee that the fundamental concerns about illicit communications, as elaborated above, can be mitigated.

97. Lastly, the Pre-Trial Judge finds that there is no basis to request any further information from the Kosovo Police. The Kosovo Police have been approached by the Defence on three separate occasions and the Pre-Trial Judge has formulated a detailed list of questions, which also left room for the Kosovo Police to provide any additional information considered to be relevant for the present determination. Therefore, the Kosovo Police have had ample opportunity to provide the required information and any additional information would not assist the Pre-Trial Judge any further in relation to this matter.

98. Accordingly, the Pre-Trial Judge finds that no additional measures ordered *proprio motu* could sufficiently mitigate the existing risks.

#### (iv) Conclusion

99. Accordingly, the Pre-Trial Judge concludes that, even with the benefit of the First and Second Kosovo Police Submissions, the conditions proposed by the Defence remain insufficient to adequately mitigate the risks under Article 41(6)(b)(ii)-(iii) of the Law in relation to Mr Veseli and, in addition, any additional conditions imposed by the Pre-Trial Judge would not affect this conclusion. It follows that, as argued before, Mr Veseli's communications can only be effectively restricted and monitored in a way to sufficiently mitigate the risks of him obstructing SC proceedings or committing further crimes through the monitoring framework at the SC Detention Facilities. Having assessed and weighed the Parties' submissions in their entirety, the Pre-Trial Judge considers that the preceding considerations continue to be decisive in adopting this

conclusion and, as a result, it is not necessary to further address the Parties' remaining arguments for the present purposes – without any prejudice as to the outcome of any assessment of such arguments.

100. Therefore, having assessed the Second Detention Decision to the extent that it was remanded by the Court of Appeals in accordance with the Second Court of Appeals Decision, the Pre-Trial Judge confirms the Second Detention Decision. By the same token, the aforementioned conclusion applies, for the same reasons, to the current periodic review of Mr Veseli's detention arising from Article 41(6), (10) and (12) of the Law and Rule 57(2) of the Rules.

## F. PROPORTIONALITY OF DETENTION

### 1. Submissions

101. In the Request, 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 Mr Veseli's continued detention at the SC Detention Facilities is unlawful.<sup>178</sup> According to the Defence, both Parties agree that the case will not be transmitted to a trial panel in the foreseeable future in light of the following factors.<sup>179</sup> First, the Defence asserts that the disclosure of material under Rule 102(1)(b) of the Rules remains incomplete following numerous variations of the time limit and that the SPO has mischaracterised the progress that it has made in the disclosure of this material.<sup>180</sup> Second, the Defence avers that the SPO has badly estimated its progress with respect to the disclosure of Rule 102(3) materials as, after different variations of the time limit, the release of its notice pursuant to this provision led to ongoing litigation and, in addition, it appears that the SPO still needs to assess any Rule 102(3) material requested by the Defence and apply

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<sup>178</sup> Request, paras 39, 65-67.

<sup>179</sup> Request, paras 38, 41-42, 44.

<sup>180</sup> Request, paras 38, 43, 45-49.

the appropriate redactions and witness protection measures.<sup>181</sup> Third, the Defence contends that the SPO is unable to provide an estimate of when it will finalise disclosure of exculpatory information and that it is highly concerning that the notice under Rule 102(3) of the Rules contains material that is self-evidently exculpatory.<sup>182</sup> Fourth, in the view of the Defence, the SPO's estimates in relation to its Pre-Trial Brief and related Rule 95(4) materials have been equally plagued by unrealistic promises of expediency.<sup>183</sup> Lastly, it submits that the various estimates provided by the SPO for commencement of trial were equally unsound and, on the basis of the above, it reiterates that the case will not be trial-ready before summer/autumn 2022 at the earliest.<sup>184</sup>

102. The SPO responds that continued detention is proportional.<sup>185</sup> In its view, 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 Court of Appeals.<sup>186</sup> Moreover, the SPO avers that 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, the Parties' filing of appeals in relation to preliminary motions, and the filing of a preliminary witness list on 22 October 2021.<sup>187</sup> It adds that, as all necessary pre-trial processes in the case are advancing, the Defence's suggestion that the justified extensions for disclosure of a relatively small number of remaining Rule 102(1)(b) materials has either delayed the start of trial or prolonged the detention of the Accused is without merit.<sup>188</sup>

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<sup>181</sup> Request, paras 38, 43, 50-53.

<sup>182</sup> Request, paras 38, 43, 54-55.

<sup>183</sup> Request, paras 38, 43, 56-59.

<sup>184</sup> Request, paras 38, 43, 60-64.

<sup>185</sup> Response, paras 36, 41.

<sup>186</sup> Response, para. 38.

<sup>187</sup> Response, para. 39.

<sup>188</sup> Response, para. 40.

103. The Defence replies that the SPO has failed to respond to its delays, missed deadlines and misrepresentations.<sup>189</sup> It adds that the SPO has also not addressed the clear preference of the Kosovo Constitution and the Law for the imposition of less restrictive alternatives to pre-trial detention.<sup>190</sup> Furthermore, according to the Defence, the SPO's characterisation of the proceedings as advancing expeditiously is absurd in light of the fact that the SPO claimed at the outset that the case would be trial-ready in summer 2021.<sup>191</sup> Lastly, the Defence asserts that, in light of the number of witnesses the SPO 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, and the trial itself is certain to last approximately three years.<sup>192</sup>

## 2. Discussion

104. At the outset, the Pre-Trial Judge recalls the importance of the proportionality principle in the determination of the reasonableness of pre-trial detention – as reflected in Rule 56(2) of the Rules.<sup>193</sup> The duration of time in detention pending trial is a factor that needs to be considered along with the degree of the risks that are described in Article 41(6)(b) of the Law, in order to determine whether, all factors being considered, the continued detention “stops being reasonable” and the individual needs to be released.<sup>194</sup> However, the question whether a period of time spent in pre-trial detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed on the facts of each case and according to its specific features.<sup>195</sup>

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<sup>189</sup> Reply, para. 33.

<sup>190</sup> Reply, para. 33.

<sup>191</sup> Reply, para. 33.

<sup>192</sup> Reply, para. 33.

<sup>193</sup> KSC-BC-2020-07, IA001/F00005, Court of Appeals, *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention*, 9 December 2020, public, paras 72-73.

<sup>194</sup> Similarly KSC-BC-2020-06, IA002/F00005/RED, Court of Appeals, *Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release*, 30 April 2021, public, para. 69.

<sup>195</sup> ECtHR, [Buzadji v. the Republic of Moldova \[GC\]](#), para. 90.

105. Mr Veseli was arrested on 5 November 2020 and, as a result, he has been detained for slightly more than one year at the time of the present review of his detention. Accordingly, the Pre-Trial Judge will assess whether this period of time is reasonable in the specific circumstances relating to Mr Veseli.

106. First and foremost, the Pre-Trial Judge observes that the charges levelled against Mr Veseli are of the utmost gravity.<sup>196</sup> Specifically, Mr Veseli is charged with ten counts of serious international crimes, namely persecution on political and/or ethnic grounds, imprisonment/illegal or arbitrary arrest and detention, other inhumane acts, cruel treatment, torture, murder, and enforced disappearance of persons.<sup>197</sup> It is further alleged that Mr Veseli played a significant role in these crimes.<sup>198</sup> As such, he could be sentenced to a lengthy sentence, including life-long imprisonment, in the event of a conviction.

107. It further follows that the proceedings against Mr Veseli are complex.<sup>199</sup> The purported crimes extended over a lengthy period of time (from at least March 1998 through September 1999), covered a significant geographical area (numerous locations throughout Kosovo and different districts in northern Albania) and

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<sup>196</sup> See also ECtHR, *Shabani v. Switzerland*, no. 29044/06, [Judgment](#), 5 November 2009 (“*Shabani v. Switzerland*”), paras 65, 66, 69; ICTY, *Prosecutor v. Delalić et al.*, IT-96-21, [Decision on Motion for Provisional Release Filed by the Accused Zejnil Delalic](#), 25 September 1996, paras 20, 26; *Prosecutor v. Ademi*, IT-01-46-PT, [Order on Motion for Provisional Release](#), 20 February 2002 (“*Ademi Decision*”), para. 25; ICTR, *Prosecutor v. Ndayambaje*, ICTR-98-42-T, [Decision on the Defence Motion for the Provisional Release of the Accused](#), 21 October 2002 (“*Ndayambaje Decision*”), para. 23; *Prosecutor v. Ngirumpatse et al.*, ICTR-98-44-T, [Decision on the Motion by Ngirumpatse’s Defence to Find the Accused’s Detention Unlawful or, in the Alternative, to Order his Provisional Release](#), 18 August 2003 (“*Ngirumpatse Decision*”), para. 25.

<sup>197</sup> Confirmed Indictment, para. 173.

<sup>198</sup> Confirmed Indictment, paras 5, 32, 39, 40-42, 47, 49, 53-55, 172.

<sup>199</sup> See also ECtHR, *Shabani v. Switzerland*, paras 65, 69; ICTY, [Ademi Decision](#), para. 26; ICTR, [Ndayambaje Decision](#), para. 23; *Ngirumpatse Decision*, para. 25.

involved scores of victims.<sup>200</sup> Furthermore, the SPO preliminarily indicated that it intends to rely upon a significant number of witnesses,<sup>201</sup> [REDACTED].

108. Furthermore, the Pre-Trial Judge considers that it is highly significant that, as established, the risks that Mr Veseli, if released, will obstruct the progress of SC proceedings or commit further crimes continue to exist, and that these risks cannot be sufficiently mitigated by means of less restrictive measures.

109. In addition, as to the conduct of the Parties,<sup>202</sup> the Pre-Trial Judge observes that, following the Second Detention Decision, substantial procedural steps have been completed with a view to transmitting the case to trial in the future. In more specific terms, several decisions on requests for protective measures have been adopted,<sup>203</sup> the Defence's preliminary motions have been adjudicated,<sup>204</sup> the date for the SPO's Pre-Trial Brief has been set to 17 December 2021 and for its Rule 109(c) chart to 28 January 2022,<sup>205</sup> the SPO shall complete its disclosure under Rule 102(1)(b) of the Rules by 31 January 2022,<sup>206</sup> and the SPO has submitted a preliminary list of witnesses, which will also facilitate any investigations by the Defence.<sup>207</sup> With regard to the delays and the SPO's representations of the projected time limits highlighted by the Defence, the Pre-Trial Judge recalls that the relevant time limits have been extended upon good cause being demonstrated. In any event, the Pre-Trial Judge considers that, for the purposes of assessing the

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<sup>200</sup> Confirmed Indictment, paras 16, 32, 57-171, schedules A-C.

<sup>201</sup> KSC-BC-2020-06, F00542, Specialist Prosecutor, *Prosecution Submission of Preliminary Witness List*, 22 October 2021, public ("SPO Preliminary Witness List"), with strictly confidential and *ex parte* Annex 1 and confidential redacted Annex 2.

<sup>202</sup> See also ECtHR, *Shabani v. Switzerland*, paras 67-68.

<sup>203</sup> See footnote 88 above.

<sup>204</sup> KSC-BC-2020-06, F00412, Pre-Trial Judge, *Decision on Motions Challenging the Jurisdiction of the Specialist Chambers*, 22 July 2021, public; F00413/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Defence Motions Alleging Defects in the Form of the Indictment*, 22 July 2021, public; F00450, Pre-Trial Judge, *Decision on Motions Challenging the Legality of the SC and SPO and Alleging Violations of Certain Constitutional Rights of the Accused*, 31 August 2021, public.

<sup>205</sup> 29 October 2021 Transcript, p. 752, line 20 – p. 753, line 5.

<sup>206</sup> 29 October 2021 Transcript, p. 752, line 20 – p. 753, line 5, p. 753, line 6 – p. 754, line 4.

<sup>207</sup> SPO Preliminary Witness List.

proportionality of Mr Veseli's detention, the actual length of time spent in pre-trial detention must be assessed as opposed to any estimates by the SPO that proved to be inaccurate. This is especially so considering that, notwithstanding the delays regarding particular time limits, progress continues to be made towards completing the pre-trial phase in the foreseeable future.

110. In conclusion, the Pre-Trial Judge finds that, in the specific circumstances of the present case, the period that Mr Veseli has spent in pre-trial detention, which slightly exceeds one year, is not unreasonable given: (i) the extreme gravity of the crimes with which Mr Veseli is charged and his allegedly important role in the commission of these crimes; (ii) the possibility of a serious sentence in the event of a conviction; (iii) the complexity of the case against Mr Veseli; (iv) the continued existence of risks under Article 41(6)(b)(ii)-(iii) of the Law and the impossibility to sufficiently mitigate these risks by means of less restrictive measures; and (v) the progress achieved in the present proceedings notwithstanding the delays regarding particular time limits.

111. The Pre-Trial Judge further finds that, to the extent the Defence is arguing that an undue delay has been caused by the SPO within the meaning of the second sentence of Rule 56(2) of the Rules, such an argument also fails given that, as mentioned, good cause has been demonstrated for delays regarding particular time limits and progress continues to be made towards completing the pre-trial proceedings in the foreseeable future.

112. Lastly, insofar as the Defence is requesting that the expected total length of Mr Veseli's pre-trial detention be reviewed, the Pre-Trial Judge observes that, while no start date of the trial has been established at this point in time, Mr Veseli's detention shall be reviewed every two months or as soon as a change in circumstances arises pursuant to Article 41(10) of the Law and Rule 57(2) of the



Rules.<sup>208</sup> In these circumstances, the Pre-Trial Judge finds that, at the present stage, any discussion as to the expected total length of Mr Veseli's pre-trial detention remains premature and speculative.<sup>209</sup>

## V. DISPOSITION

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

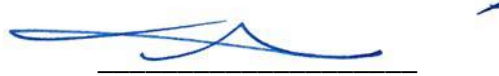
- a) **CONFIRMS** the Second Detention Decision;
- b) **ORDERS** Mr Veseli's continued detention;
- c) **REJECTS** the Defence's request to strike paragraphs 2-3, 5-9 and 23-25 from the SPO Observations from the record;
- d) **ORDERS** the Defence, the SPO and the Registry to submit public redacted versions of, as the case may be, the Request, Reply, SPO Observations, Defence Observations and Registry Submissions by no later than **Monday, 29 November 2021**, or to indicate that the classification of any of these documents must be maintained by the same date;
- e) **ORDERS** the Defence, if it wishes to do so, to file submissions on the next review of Mr Veseli's detention by no later than **Friday, 17 December 2021**, with responses and replies following the timeline set out in Rule 76 of the Rules; and
- f) **ORDERS** the SPO, should the Defence decide not to file any submissions by the aforementioned time limit, to file submissions on the next review of Mr Veseli's detention by no later than **Friday, 31 December 2021**, and

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<sup>208</sup> Similarly ECtHR, *Eren v. Germany*, no. 67522/09, [Judgment](#), 6 November 2014, para. 64.

<sup>209</sup> First Court of Appeals Decision, para. 59; *Krasniqi Detention Appeal*, para. 43; *Thaçi Detention Appeal*, para. 51.

the Defence, if it wishes to do so, to file their submissions by no later than  
**Monday, 10 January 2022.**



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

Dated this Tuesday, 23 November 2021

At The Hague, The Netherlands.