



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

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

**Before:** **A Panel of the Court of Appeals Chamber**  
Judge Michèle Picard  
Judge Emilio Gatti  
Judge Nina Jørgensen

**Registrar:** Fidelma Donlon

**Date:** 31 March 2022

**Original language:** English

**Classification:** Public

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**Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision  
on Remanded Detention Review and Periodic Review of Detention**

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**THE PANEL OF THE COURT OF APPEALS CHAMBER** of the Kosovo Specialist Chambers (“Court of Appeals Panel”, “Appeals Panel” or “Panel” and “Specialist Chambers”, respectively)<sup>1</sup> acting pursuant to Article 33(1)(c) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 169 of the Rules of Procedure and Evidence (“Rules”) is seised of an appeal filed on 3 December 2021 by Kadri Veseli (“Appeal” and “Veseli”, respectively),<sup>2</sup> against the “Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli” (“Impugned Decision”).<sup>3</sup> The Specialist Prosecutor’s Office (“SPO”) responded on 16 December 2021 (“Response”) that the Appeal should be denied in its entirety.<sup>4</sup> Veseli replied on 21 December 2021 (“Reply”).<sup>5</sup>

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<sup>1</sup> F00005, Decision Assigning a Court of Appeals Panel, 6 December 2021 (confidential, reclassified as public on 21 March 2022).

<sup>2</sup> F00004/RED, Public Redacted Version of Veseli Defence Appeal Against Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli (IA014-F00004 dated 3 December 2021), 6 January 2022 (confidential version filed on 3 December 2021) (“Appeal”).

<sup>3</sup> F00576/RED, Public Redacted Version of Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli, 8 December 2021 (confidential version filed on 23 November 2021) (“Impugned Decision”).

<sup>4</sup> F00006/RED, Public redacted version of Response to Veseli Defence Appeal of November 2021 Detention Decision, 17 January 2022 (confidential version filed on 16 December 2021) (“Response”), paras 2, 35.

<sup>5</sup> F00007/RED, Public Redacted Version of Veseli Defence Reply to Prosecution Response to Veseli Defence Appeals Against Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli (IA014-F00007, dated 21 December 2021), 7 January 2022 (confidential version filed on 21 December 2022) (“Reply”).

## I. BACKGROUND

1. On 5 November 2020, Veseli was arrested in Kosovo pursuant to an arrest warrant issued by the Pre-Trial Judge,<sup>6</sup> further to the confirmation of an indictment against him.<sup>7</sup>
2. On 22 January 2021, the Pre-Trial Judge rejected Veseli's application for interim release.<sup>8</sup>
3. On 30 April 2021, the Court of Appeals Panel denied Veseli's appeal against the First Detention Decision.<sup>9</sup>
4. On 2 July 2021, the Pre-Trial Judge reviewed Veseli's detention and ordered his continued detention.<sup>10</sup>
5. On 15 July 2021, Veseli filed an appeal against the Second Detention Decision, in which he submitted *inter alia* that the Pre-Trial Judge erred in setting an unreasonably high standard for the conditions proposed for mitigating the risks under

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<sup>6</sup> F00027/RED, Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders, 26 November 2020 (strictly confidential and *ex parte* version filed on 26 October 2020, reclassified as confidential on 25 November 2020) ("Arrest Warrant Decision"); F00027/A03/RED, Public Redacted Version of Arrest Warrant for Kadri Veseli, 5 November 2020 (strictly confidential and *ex parte* version filed on 26 October 2020); F00050, Notification of Arrest of Kadri Veseli Pursuant to Rule 55(4), 5 November 2020 (strictly confidential and *ex parte*, reclassified as public on 20 November 2020).

<sup>7</sup> F00026/RED, Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, 30 November 2020 (original version filed on 26 October 2020). The operative indictment was filed on 3 September 2021; see F00455/A01, Public Redacted Version of 'Indictment', KSC-BC-2020-06/F00455/A01/RED, dated 3 September 2021, 8 September 2021 (strictly confidential and *ex parte* version on 3 September 2021) ("Indictment"). A confidential lesser redacted version of the corrected indictment was filed on 17 January 2022. See F00647/A01, Confidential Lesser Redacted Version of 'Indictment', KSC-BC-2020-06/F00455/A01, dated 3 September 2021, 17 January 2022 (confidential).

<sup>8</sup> F00151, Application for Interim Release of Kadri Veseli, 17 December 2020 (confidential, reclassified as public on 22 January 2021) ("Application for Interim Release"); F00178, Decision on Kadri Veseli's Application for Interim Release, 22 January 2021 ("First Detention Decision").

<sup>9</sup> F00005, Decision on Kadri Veseli's Appeal Against Decision on Interim Release, 30 April 2021 ("First Appeal Decision").

<sup>10</sup> F00380/RED, Public Redacted Version of Decision on Review of Detention of Kadri Veseli, 2 July 2021 (confidential version filed on 2 July 2021) ("Second Detention Decision").

Article 41(6)(b) of the Law,<sup>11</sup> and that the Pre-Trial Judge should have requested or instructed the General Director of the Kosovo Police (“Police Director”) to provide answers regarding the enforceability of such conditions.<sup>12</sup>

6. On 1 October 2021, the Court of Appeals Panel granted in part Veseli’s appeal against the Second Detention Decision, finding that the Pre-Trial Judge abused his discretion when concluding that none of the Proposed Conditions nor any other additional condition could mitigate the identified risks without first seeking additional submissions from the Police Director,<sup>13</sup> and remanded the matter to the Pre-Trial Judge for further consideration in order to assess whether the Kosovo Police can effectively enforce the conditions proposed by Veseli or any further condition identified by the Pre-Trial Judge as necessary to mitigate the identified risks (“Remanded Issue”).<sup>14</sup>

7. On 10 October 2021, in response to an order of the Pre-Trial Judge,<sup>15</sup> Veseli requested to have his detention reviewed separately from the Pre-Trial Judge’s determination of the Remanded Issue.<sup>16</sup> Accordingly, he filed his submissions on the review of his detention on 11 October 2021,<sup>17</sup> together with information obtained from

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<sup>11</sup> F00001/RED, Public Redacted Version of Veseli Defence Appeal of Decision KSC-BC-2020-06/F00380 (First Detention Review) (IA008-F00001 dated 15 July 2021), 27 October 2021 (confidential version filed on 15 July 2021) (“Appeal of Second Detention Decision”), paras 9-10 (ground of appeal iii).

<sup>12</sup> Appeal of Second Detention Decision, paras 11-12 (ground of appeal iv).

<sup>13</sup> F00004/RED, Public Redacted Version of Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021) (“Second Appeal Decision”), paras 52, 54.

<sup>14</sup> Second Appeal Decision, paras 51-54. See also F00005/RED, Public Redacted Version of Decision on Jakup Krasniqi’s Appeal Against Decision on Review of Detention, 1 October 2021, (confidential version filed on 1 October 2021), paras 56-60; F00005/RED, Public Redacted Version of Rexhep Selimi’s Appeal Against Decision on Review of Detention, 1 October 2021 (confidential version filed on 1 October 2021), paras 56-59.

<sup>15</sup> F00514, Order Seeking Observations from the Defence on the Timeline for the Next Review of Detention, 8 October 2021.

<sup>16</sup> F00515, Veseli Defence Observations Pursuant to Order of 8 October 2021 (F00514), 10 October 2021.

<sup>17</sup> F00518/COR/RED, Public Redacted Version of Corrected Version of Veseli Defence Submissions on Second Detention Review (KSC-BC-2020-06/F00518 dated 11 October 2021) (F00518/COR dated 14 October 2021), 25 November 2021 (confidential version filed on 11 November 2021, corrected confidential version filed on 14 October 2021) (“Veseli’s Submissions”).

the Kosovo Police at Veseli's request regarding its ability to enforce interim release conditions.<sup>18</sup>

8. On 20 October 2021, the Registrar, further to an order by the Pre-Trial Judge,<sup>19</sup> provided information on the detention regime applicable to Veseli at the Detention Facilities of the Specialist Chambers ("Detention Facilities").<sup>20</sup>

9. On 22 October 2021, the SPO responded to Veseli's Submissions.<sup>21</sup>

10. On 27 October 2021, the Kosovo Police, further to an order by the Pre-Trial Judge,<sup>22</sup> provided 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, and administer house arrest, as well as regarding the enforceability of conditions attached to interim release; and (ii) previous instances in which the Kosovo Police enforced either the conditional release or conditions of imprisonment of Kosovo Liberation Army ("KLA") members and other persons accused of severe crimes.<sup>23</sup>

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<sup>18</sup> F00518/COR/A01, 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) (uncorrected version filed on 11 October 2021).

<sup>19</sup> F00522, Order to the Registrar to Provide Information on the Detention Regime, 13 October 2021 (confidential) ("Order to Registrar"), paras 7-8.

<sup>20</sup> F00536, Registry Submissions Pursuant to the Order to Provide Information on the Detention Regime (F00522), 20 October 2021 (confidential) ("Registry Submissions").

<sup>21</sup> F00540/RED, Public redacted version of Prosecution consolidated response to October 2021 Defence Submissions on Detention Review, 22 November 2021 (confidential version filed on 22 October 2021) ("SPO Response to Veseli's Submissions").

<sup>22</sup> F00513, Order to the Kosovo Police to Provide Information, 8 October 2021 ("Order to Kosovo Police"). See also F00513/A01, Confidential Annex to Order to the Kosovo Police to Provide Information, 8 October 2021 (confidential) ("Annex to Order to Kosovo Police").

<sup>23</sup> F00548/eng, Kosovo General Police Directorate, Answer to the Request Number KSC-BC-2020-06, Dated 13 October 2021, 27 October 2021 (confidential) ("Kosovo Police Submissions"). The translation into English of this submission was filed on 3 November 2021.

11. On 1 November 2021, Veseli replied to the SPO Response to Veseli's Submissions,<sup>24</sup> having indicated on 29 October 2021 that he would deal with the Kosovo Police Submissions in this reply.<sup>25</sup>
12. On 8 November 2021, the SPO responded to the Kosovo Police Submissions.<sup>26</sup>
13. On 11 November 2021, Veseli replied to the SPO Response to Kosovo Police Submissions.<sup>27</sup>
14. On 23 November 2021, the Pre-Trial Judge issued the Impugned Decision, confirming *inter alia* the Second Detention Decision and ordering Veseli's continued detention on the basis that the risks that Veseli will abscond, obstruct the progress of Specialist Chambers proceedings or commit further crimes against those perceived as being opposed to the KLA, including potential witnesses, continue to exist.<sup>28</sup>
15. In the Appeal, Veseli develops six grounds of appeal consisting of alleged errors of law and fact, and abuse of discretion committed by the Pre-Trial Judge.<sup>29</sup> Veseli requests that the Court of Appeals Panel grant the Appeal and order his interim release, subject to appropriate conditions, without remanding the matter back to the Pre-Trial Judge.<sup>30</sup>

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<sup>24</sup> F00556/RED, Public Redacted Version of Veseli Defence Reply to Prosecution consolidated Response to October 2021 Defence Submissions on Detention Review (F00556, dated 1 November 2021), 25 November 2021 (confidential version filed on 1 November 2021).

<sup>25</sup> Transcript of 29 October 2021, p. 711, line 18 – p. 712, line 9.

<sup>26</sup> F00562/RED, Public redacted version of Prosecution response to Kosovo Police submissions on detention, 29 November 2021 (confidential version filed on 8 November 2021) ("SPO Response to Kosovo Police Submissions").

<sup>27</sup> F00563/RED, Public Redacted Version of Veseli Defence Reply to Prosecution Response to Kosovo Police Submissions on Detention (F00563, dated 11 November 2021), 25 November 2021 (confidential version filed on 11 November 2021).

<sup>28</sup> Impugned Decision, paras 61, 113.

<sup>29</sup> Appeal, para. 6.

<sup>30</sup> Appeal, paras 5, 51-52; Reply, para. 22; see also Response, para. 27.

## II. STANDARD OF REVIEW

16. The Court of Appeals Panel adopts the standard of review for interlocutory appeals established in its first decision and applied subsequently.<sup>31</sup>

## III. DISCUSSION

### A. ALLEGED ERRORS REGARDING ASSESSMENT OF THE RISK OF OBSTRUCTING THE PROGRESS OF PROCEEDINGS (GROUND 1)

#### 1. Submissions of the Parties

17. Veseli submits that the Pre-Trial Judge abused his discretion and exhibited bias by relying on previous incidents of witness interference [REDACTED] to find that Veseli “could wield his influence in Kosovo to obstruct [Specialist Chambers] proceedings”.<sup>32</sup> He specifically submits that the Pre-Trial Judge engaged in *ex post facto* reasoning by giving significant weight for the first time to incidents arising from Mr Nazim Bllaca’s suspect interview, which the Defence had refuted in its first application for interim release and which the SPO did not raise in the present detention litigation.<sup>33</sup> In his view, the Pre-Trial Judge acted arbitrarily by failing to discuss evidence showing Veseli’s remoteness from the incidents in question, in violation of his presumption of innocence and the presumption in favour of liberty.<sup>34</sup> Moreover, Veseli submits that the Pre-Trial Judge gave too much weight to an incident involving him giving instructions to Mr Driton Lajçi, as this, even when taken together

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<sup>31</sup> KSC-BC-2020-07, F00005, Decision on Hysni Gucati’s Appeal on Matters Related to Arrest and Detention, 9 December 2020, paras 4-14. See also First Appeal Decision, paras 4-8.

<sup>32</sup> Appeal, paras 7-8, citing Impugned Decision, para. 52. The Appeals Panel notes that, although in his Reply Veseli dedicates a separate section to overarching allegations of bias on the Pre-Trial Judge’s part (see Reply, para. 22), he had not raised this as a separate ground in the Appeal. Therefore, the Panel will deal with the several instances of alleged bias as they arise in each ground of appeal.

<sup>33</sup> Appeal, paras 8-9; Reply, paras 3, 22.

<sup>34</sup> Appeal, paras 5, 9, 12; Reply, para. 22.

with the remaining risk factors, does not reasonably support a finding that a risk of obstruction exists.<sup>35</sup>

18. The SPO responds that Veseli fails to show that the Pre-Trial Judge erred in the exercise of his discretion.<sup>36</sup> In its view, findings underpinning detention need not be set out in subsequent reviews, nor is the Pre-Trial Judge expected to entertain submissions that merely repeat previously addressed arguments.<sup>37</sup> It argues that the Pre-Trial Judge has consistently relied on the persisting climate of witness intimidation and interference with criminal proceedings against KLA members, and the SPO has consistently relied on the obstruction in the [REDACTED] by members of the Kosovo Intelligence Service (“SHIK”), meaning that the Pre-Trial Judge has already considered Veseli’s arguments and evidence thereon.<sup>38</sup> In any event, the SPO contends that the Pre-Trial Judge would have been entitled to rely on these incidents for the first time in the Impugned Decision.<sup>39</sup> Moreover, according to the SPO, there is no indication that the Pre-Trial Judge weighed the evidence concerning Mr Lajçi differently in the Impugned Decision than he had done previously, and Veseli mischaracterises the findings made based on this incident and contextual factors.<sup>40</sup>

19. Veseli replies that the SPO only relied on the issue of obstruction in the [REDACTED] once (in *ex parte* proceedings) and failed to rebut Defence evidence thereon.<sup>41</sup> He also submits that, in any event, Mr Bllaca made no allegations against him.<sup>42</sup> Veseli moreover takes issue with the weight given to the incident involving

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<sup>35</sup> Appeal, paras 10-12.

<sup>36</sup> Response, para. 16.

<sup>37</sup> Response, paras 11-13.

<sup>38</sup> Response, para. 12.

<sup>39</sup> Response, para. 12.

<sup>40</sup> Response, paras 13, 15.

<sup>41</sup> Reply, para. 3.

<sup>42</sup> Reply, para. 3.

Mr Lajçi compared to the proposed mitigation and the passage of time, which, in his view, has made the periodic review test a mere formality.<sup>43</sup>

## 2. Assessment of the Court of Appeals Panel

20. The Panel turns first to Veseli's argument that the Pre-Trial Judge erred in relying on past instances of witness interference by former SHIK members.<sup>44</sup> The Panel is not persuaded by this argument for the following reasons.

21. First, as Veseli acknowledges in his Reply, the Pre-Trial Judge did not rely on this factor for the first time in the Impugned Decision, as he had already relied on it in the Arrest Warrant Decision, after the SPO had raised it in its Arrest Warrant Application. In any event, there would have been no error even if the Pre-Trial Judge had relied on this factor for the first time in the Impugned Decision, as an additional factor reinforcing his initial conclusion that the risk of obstruction exists. Moreover, the Panel considers that the fact that a certain factor was not mentioned by the Pre-Trial Judge in a previous detention decision does not necessarily mean that he considered that factor to be irrelevant or not worthy of any weight.

22. Second, the Appeals Panel finds no error in the Pre-Trial Judge's assessment of the evidence. The Pre-Trial Judge relied on the information given by Mr Bllaca during a suspect interview, which factually supports the Pre-Trial Judge's findings about witness interference being carried out by members of SHIK while Veseli was its head.<sup>45</sup> On appeal, Veseli points to submissions he had made previously before the Pre-Trial Judge, in which he relied on the contents of a judgment to argue that Mr Bllaca was

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<sup>43</sup> Reply, para. 4.

<sup>44</sup> Impugned Decision, para. 52. The Appeals Panel notes that Veseli's quotation, at paragraph 8 of the Appeal, of the Pre-Trial Judge's findings regarding past witness interference omits parts of the text and therefore misrepresents paragraph 52 of the Impugned Decision. The Panel cautions the Parties to be more careful in this regard.

<sup>45</sup> Impugned Decision, para. 52 and fn. 87, citing, *inter alia*, [REDACTED].

most likely never a SHIK member and that there were reasons to believe he was an intelligence member of the Serbian State.<sup>46</sup>

23. The Panel notes that, as the SPO points out, the Pre-Trial Judge had already considered the above-mentioned judgment in a previous detention decision.<sup>47</sup> Moreover, the Panel notes that the above-mentioned judgment contains findings that, [REDACTED].<sup>48</sup> The court also found that: (i) [REDACTED]; (ii) in any event, [REDACTED]; and (iii) [REDACTED].<sup>49</sup> Moreover, the Panel was unable to find any support in the judgment for Veseli's appellate (and previous) allegations that the individual was a member of the intelligence service of the Serbian State, which fail to point to any specific part of the judgment.<sup>50</sup>

24. The Panel therefore finds that the Pre-Trial Judge did not err in his assessment of the various pieces of evidence taken together, and in particular in his alleged failure to rely on the Defence's evidence to undermine that of the SPO. Veseli's arguments are therefore rejected.

25. Finally, the Appeals Panel notes that, as Veseli himself acknowledges, his arguments on the incident involving Mr Lajçi have already been addressed by the Pre-Trial Judge, and the latter's findings were twice upheld on appeal.<sup>51</sup> The Panel finds that Veseli again merely disagrees with the Pre-Trial Judge's weighing of various factors and repeats unsuccessful arguments previously made before the Pre-Trial

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<sup>46</sup> Application for Interim Release, paras 25-27; F00004/A02, Annex 2 to Veseli Defence Appeal Against Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli, 3 December 2021 (confidential) ("Annex 2 to Appeal"). The Appeal also points out that [REDACTED]; see Appeal, fn. 7, citing [REDACTED].

<sup>47</sup> First Detention Decision, para. 43.

<sup>48</sup> Annex 2 to Appeal, pp. 54-55.

<sup>49</sup> Annex 2 to Appeal, pp. 25, 56-57.

<sup>50</sup> The Panel notes that the judgment is preceded, in the same filing annex, by a number of documents which are not in English and for which an English translation has not been provided; see F00072, Decision on Working Language, 11 November 2020, para. 8. The Panel was therefore unable to consider these documents.

<sup>51</sup> Second Appeal Decision, para. 34.

Judge and Appeals Panel, which do not affect the Pre-Trial Judge's previous determination. On that basis, Veseli's arguments are dismissed.

26. For the above-mentioned reasons, Ground 1 of Veseli's Appeal is dismissed.

**B. ALLEGED ERRORS REGARDING ASSESSMENT OF THE RISK OF COMMITTING FURTHER CRIMES (GROUND 2)**

27. Given that the Panel has found no error in the Pre-Trial Judge's conclusion that a risk of obstruction existed under Article 41(6)(b)(ii) of the Law, making continued detention necessary, the Panel does not need to address alleged errors with regard to Article 41(6)(b)(iii) of the Law.<sup>52</sup> Therefore, Veseli's second ground of appeal is dismissed.

**C. ALLEGED ERRORS REGARDING ASSESSMENT OF CONDITIONS OF RELEASE (GROUNDS 3, 4 AND 5)**

**1. Alleged Errors Regarding Assessment of Proposed and Potential Conditions of Release (Ground 3)**

**(a) Submissions of the Parties**

28. Veseli submits that the Pre-Trial Judge erroneously applied a standard of risk elimination to the measures proposed by the Kosovo Police, and exhibited bias by failing to consider the presumption in favour of liberty and the obligation to implement lesser restrictive measures where possible.<sup>53</sup>

29. Specifically, Veseli considers that the Pre-Trial Judge failed to impartially exercise his discretion when finding that the proposed conditions did not address the possibility that "[REDACTED], [he] could ask a family member to pass on a message orally or to use a device belonging to a third person", without having asked the

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<sup>52</sup> See e.g. Second Appeal Decision, para. 37.

<sup>53</sup> Appeal, paras 5, 16, 22; Reply, para. 22.

Kosovo Police about this.<sup>54</sup> Veseli argues that, in any event, unmonitored family visits also take place at the Detention Facilities without such incidents,<sup>55</sup> and that it was not open to the Pre-Trial Judge to find that Veseli's children pose a risk of obstruction.<sup>56</sup> Veseli also argues that the Pre-Trial Judge again gave too much weight to the incident involving Mr Lajçi, this time in relation to conditions of release.<sup>57</sup>

30. Veseli submits that the Pre-Trial Judge further abused his discretion by arbitrarily finding that during monitored pre-approved visits there is a possibility of using coded or obscure language [REDACTED], and by considering it decisive that [REDACTED], thus showing that he had no intention of genuinely reconsidering his previous decision in light of the Kosovo Police's submissions.<sup>58</sup> According to Veseli, the Pre-Trial Judge failed to consider that the Kosovo Police would apply the same measures as the Detention Facilities, whose officers ("Detention Officers") [REDACTED] and who, in any event, face a language barrier.<sup>59</sup> In his view, given that the Kosovo Police have agreed to record visits and share this with the Registry, there would be no material difference compared to the Detention Facilities' procedures.<sup>60</sup> He argues that, on the contrary, the Pre-Trial Judge unreasonably failed to consider the Kosovo Police's language advantages.<sup>61</sup>

31. Finally, Veseli considers that the Pre-Trial Judge's finding that Kosovo Police officers are less competent than the Detention Officers was baseless and biased.<sup>62</sup>

32. The SPO responds that, despite claiming that the Pre-Trial Judge erred in law, Veseli proposes a test consistent with the Impugned Decision.<sup>63</sup> Moreover, in its view,

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<sup>54</sup> Appeal, paras 17-18, 23, citing Impugned Decision, para. 82.

<sup>55</sup> Appeal, paras 19, 22.

<sup>56</sup> Appeal, paras 19-20, 22.

<sup>57</sup> Appeal, paras 21-22.

<sup>58</sup> Appeal, paras 24, 26, 32, citing Impugned Decision, paras 82, 84, 86. See also Reply, paras 13, 22.

<sup>59</sup> Appeal, paras 25, 27, 30 [REDACTED]; Reply, para. 10.

<sup>60</sup> Appeal, paras 28-30; Reply, para. 10.

<sup>61</sup> Appeal, para. 31, citing Impugned Decision, para. 88.

<sup>62</sup> Appeal, para. 33, citing Impugned Decision, paras 84-86, 89; Reply, para. 22; see also Appeal, para. 5.

<sup>63</sup> Response, para. 18.

Veseli misrepresents the Impugned Decision, since: (i) the Pre-Trial Judge did ask the Kosovo Police about [REDACTED]; (ii) the Kosovo Police did not propose that [REDACTED]; and (iii) the Kosovo Police's language advantages were considered.<sup>64</sup> The SPO also argues that the Kosovo Police's lack of [REDACTED].<sup>65</sup> According to the SPO, the Pre-Trial Judge correctly assessed the clear [REDACTED] and linguistic disparities between the Detention Facilities and the Kosovo Police, and Veseli raises for the first time on appeal the possibility of the Registry reviewing visits recorded by the Kosovo Police.<sup>66</sup> Finally, the SPO considers that the issue of training was properly weighed, since, unlike the Kosovo Police, the Registry provided information regarding Detention Officers.<sup>67</sup> Finally, the SPO considers that Veseli's accusations of bias against the Pre-Trial Judge should be rejected as inappropriate.<sup>68</sup>

33. In reply, Veseli argues that the Pre-Trial Judge did not specifically ask the Kosovo Police about unmonitored *family* visits.<sup>69</sup> Regarding non-family visits, Veseli replies that the Kosovo Police did set out the same regime as the Detention Facilities, and the Pre-Trial Judge can order further measures.<sup>70</sup> He moreover submits that Article 34(10) of the Law and Rule 56(5) of the Rules allow for the Registry to review Kosovo Police recorded visits.<sup>71</sup> Finally, Veseli submits that the Registry merely stated that its officers are "highly qualified and receive training", while the Kosovo Police provided sufficient information thereon.<sup>72</sup>

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<sup>64</sup> Response, para. 19(i)-(iii).

<sup>65</sup> Response, para. 21.

<sup>66</sup> Response, para. 22.

<sup>67</sup> Response, para. 23.

<sup>68</sup> Response, para. 27.

<sup>69</sup> Reply, para. 6.

<sup>70</sup> Reply, paras 8-9.

<sup>71</sup> Reply, paras 11-12.

<sup>72</sup> Reply, para. 14.

(b) Assessment of the Court of Appeals Panel

34. At the outset, Veseli's argument that the Pre-Trial Judge failed to apply the correct standard for determining whether a risk exists under Article 41(6)(b) of the Law misrepresents the Impugned Decision.<sup>73</sup> The Panel notes that the Pre-Trial Judge recalled the correct legal standard in the Impugned Decision, which requires less than certainty, but more than a mere possibility of a risk materialising.<sup>74</sup> Moreover, Veseli offers no explanation or substantiation for his allegations of bias against the Pre-Trial Judge.<sup>75</sup> The Panel notes that, as it is for Veseli to bring adequate and reliable evidence to overcome the high threshold of rebutting the presumption of the Pre-Trial Judge's impartiality,<sup>76</sup> his unsupported arguments in this regard are inappropriate and must be dismissed.

35. Turning to Veseli's arguments regarding contact with his family, the Panel considers that the Pre-Trial Judge reasonably concluded that the measures described by the Kosovo Police would allow for [REDACTED], and consequently [REDACTED].<sup>77</sup> This conclusion applies primarily to [REDACTED].<sup>78</sup> The Panel notes that the proposed conditions do not include the [REDACTED] and which currently take place under restrictions in the Detention Facilities. This is despite the Pre-Trial Judge having asked "[REDACTED]", which necessarily includes [REDACTED].<sup>79</sup> Moreover, the Panel considers that it was not unreasonable for the Pre-Trial Judge to base the Impugned Decision on the information he had received following at least six requests to the Kosovo Police to provide relevant information, including in response

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<sup>73</sup> Appeal, para. 16, citing First Appeal Decision, paras 17, 19.

<sup>74</sup> Impugned Decision, para. 46.

<sup>75</sup> Appeal, para. 16.

<sup>76</sup> See e.g. ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-A, Judgment, 1 June 2001, para. 91; ICTY, *Prosecutor v. Furundžija*, IT-95-17/1-A, Judgement, 21 July 2000, paras 196-197.

<sup>77</sup> See Impugned Decision, paras 82, 86.

<sup>78</sup> See Impugned Decision, paras 82, 86. [REDACTED]. The Appeals Panel also notes that Veseli offers no substantiation as to why, in his view, it was not open to the Pre-Trial Judge to include his children in findings concerning the risk of obstruction; see Appeal, para. 20. As such, this argument is dismissed.

<sup>79</sup> Annex to Order to Kosovo Police, para. 16 (emphasis added).

to the specific questions asked by the Pre-Trial Judge. Therefore, contrary to Veseli's arguments, the Pre-Trial Judge did not act unreasonably by choosing not to exercise his discretion to pose further clarifying questions to the Kosovo Police in advance of issuing the Impugned Decision.

36. Veseli also argues that the Kosovo Police identified the possibility of [REDACTED], but gives no specific reference to support this contention and the Panel was unable to identify such a proposal.<sup>80</sup> Even if there were a legal basis for [REDACTED], such a measure would be, in the Panel's view, unrealistic both in terms of the resources required to [REDACTED] and in terms of the scope of [REDACTED].

37. Moreover, the Panel is not persuaded by Veseli's argument that, because illicit messages could also be passed during unmonitored family visits at the Detention Facilities, the lesser restrictive measure of house arrest should have been considered. The Panel recalls that to fully comply with the constitutional standards, a panel must consider more lenient measures when deciding whether a person should be detained.<sup>81</sup> This means that an accused can only be detained if such lesser measures would be insufficient to mitigate the risks of flight, obstruction or commission of further crimes.<sup>82</sup>

38. In light of this, the Panel agrees with the Pre-Trial Judge that, in the current circumstances, the Detention Facilities offer a controlled environment where a

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<sup>80</sup> See Appeal, para. 18. The Panel reminds the Parties of the need to properly reference their appellate submissions, including by providing paragraph or page numbers of cited documents. Improperly referenced appellate submissions may be summarily dismissed; see KSC-BC-2020-07, F00007, Decision on the Defence Appeals Against Decision on Preliminary Motions, 23 June 2021, para. 16.

<sup>81</sup> KSC-CC-PR-2020-09, F00006, Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted by the Plenary on 29 and 30 April 2020, 26 May 2020, para. 70 and jurisprudence therein. See also KSC-CC-PR-2017-01, F00004, 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, para. 114

<sup>82</sup> See ECtHR, *Ilmseher v. Germany*, nos 10211/12 and 27505/14, Judgment, 2 February 2017, para. 137; ECtHR, *Stanev v. Bulgaria*, no. 36760/06, Judgment, 17 January 2012, para. 143. See also Article 187 of the Kosovo Code of Criminal Procedure, Code No. 04/L-123, 13 December 2012.

potential breach of confidentiality could be more easily identified and/or prevented.<sup>83</sup> In this regard, contrary to Veseli's arguments, the Panel finds that limitations on [REDACTED] at the Detention Facilities are relevant to the Pre-Trial Judge's reasoning. Furthermore, in addition to visits at the Detention Facilities being supervised as a rule, more measures of recording and listening – even of all visits – are possible if considered necessary and proportionate.<sup>84</sup>

39. Moreover, for the reasons set out above, Veseli's arguments concerning Mr Lajçi are also dismissed in the context of Ground 3 of the Appeal.<sup>85</sup>

40. The Panel turns next to Veseli's arguments concerning pre-approved visitors. Veseli takes issue in particular with the Pre-Trial Judge finding it "decisive" that the Kosovo Police [REDACTED] and argues that this shows that he had pre-judged the matter,<sup>86</sup> but fails to acknowledge that the Kosovo Police themselves stated that they [REDACTED].<sup>87</sup>

41. The Panel further observes that while the Detention Officers [REDACTED] at the time of visits, the Panel notes that the Kosovo Police officers would additionally [REDACTED].<sup>88</sup> In the Panel's view, the Chief Detention Officer, an official of the Specialist Chambers appointed by the Registrar,<sup>89</sup> is in a better position to promptly bring to the Registrar's attention any communications that raise concerns, [REDACTED].<sup>90</sup> In addition, the Chief Detention Officer has broad authority to take further measures to restrict the communications of detainees, if deemed necessary.<sup>91</sup> [REDACTED]. This is even more true of situations where, as Veseli suggests, the

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<sup>83</sup> See Impugned Decision, para. 83.

<sup>84</sup> Registry Submissions, paras 31-34. See also Registry Submissions, paras 37-39.

<sup>85</sup> See above, para. 25.

<sup>86</sup> Impugned Decision, para. 86.

<sup>87</sup> Kosovo Police Submissions, pp. 7-8; see also Impugned Decision, para. 81.

<sup>88</sup> Impugned Decision, paras 84, 86.

<sup>89</sup> Registry Practice Direction on Rules of Detention, KSC-BD-08/Rev1/2020, 23 September 2020, Rule 2.

<sup>90</sup> Registry Submissions, paras 20-21.

<sup>91</sup> Registry Submissions, paras 15-16, 19, 26, 35-36, 40-41, 45.

Kosovo Police would transfer the recorded communications to the Registry, to be checked for the first time by the latter for any illicit communications.

42. In any event, the Panel notes that Veseli raises for the first time on appeal the possibility of the Kosovo Police making recordings available to the Registry to review. The Panel considers that the reasonableness of the scope of the Pre-Trial Judge's enquiry must be seen, *inter alia*, in the context of the Parties' submissions thereon. In other words, there is no requirement for the Pre-Trial Judge to raise all possible conditions *proprio motu*, if these were neither widely used in the context of interim release nor raised by the Parties. The Panel therefore dismisses Veseli's arguments concerning this monitoring arrangement.

43. Moreover, as the SPO rightly points out, the Pre-Trial Judge did consider the linguistic advantages that the Kosovo Police would have during direct monitoring compared to the Detention Officers.<sup>92</sup> The Panel agrees with the Pre-Trial Judge that the fact that Kosovo Police officers speak the Accused's native language is insufficient for the effective monitoring of visits and communications. Knowing the public contours of the case is inadequate to identify confidential information, as the Kosovo Police [REDACTED]. The Panel therefore sees no error in the Pre-Trial Judge's finding.

44. Finally, Veseli takes issue with the Pre-Trial Judge's findings on the Kosovo Police's training. While the Panel agrees that the Pre-Trial Judge only had generic information regarding the general level of training of both the Kosovo Police officers and the Detention Officers,<sup>93</sup> it notes that the Pre-Trial Judge did not rely on the general level of training of either group of officers. Rather, he relied on the Detention Officers' [REDACTED] and high qualifications, and the fact that the latter receive

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<sup>92</sup> Impugned Decision, para. 88.

<sup>93</sup> Registry Submissions, para. 44; Kosovo Police Submissions, pp. 1-2, 19.

training which is specific to [REDACTED] and the Detention Facilities' visits and communications regime.<sup>94</sup> Veseli fails to identify an error in this approach.

45. Therefore, for the reasons set out above, the Panel dismisses Ground 3 of Veseli's Appeal.

## **2. Alleged Errors in Assessment of Contextual Considerations (Ground 4)**

### **(a) Submissions of the Parties**

46. Veseli challenges the Pre-Trial Judge's reliance on a number of "contextual considerations" to support his finding on the proposed conditions.<sup>95</sup> Specifically, Veseli argues that: (i) the Kosovo Police could not answer for the [REDACTED] three individuals' cases in which it was not involved; (ii) the Pre-Trial Judge should have requested information about previous examples of the Kosovo Police enforcing the proposed conditions; and (iii) in any event, once the Kosovo Police confirmed having experience with previous cases, it was not open to the Pre-Trial Judge to doubt their veracity in the absence of evidence to the contrary.<sup>96</sup> Moreover, he considers that the Pre-Trial Judge erroneously distinguished the ICTY example of conditional release, given that it was successfully monitored by Kosovo Police officers.<sup>97</sup> Finally, in Veseli's view, no reasonable trier of fact could have concluded that [REDACTED] gives rise to a real possibility that Veseli could use his influence to circumvent conditional house arrest.<sup>98</sup>

47. The SPO responds that Veseli misrepresents the Impugned Decision since the Kosovo Police was asked to: (i) give examples of conditionally released high-profile individuals, so the Pre-Trial Judge was right to give weight to its failure to do so; and (ii) liaise with other departments or authorities in Kosovo to get the relevant

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<sup>94</sup> Impugned Decision, paras 85-86.

<sup>95</sup> Appeal, para. 34, citing Impugned Decision, paras 90-95.

<sup>96</sup> Appeal, paras 35-36; Reply, para. 15; see also Appeal, para. 5.

<sup>97</sup> Appeal, paras 37-39; Reply, para. 17.

<sup>98</sup> Appeal, para. 40.

information.<sup>99</sup> According to the SPO, the Pre-Trial Judge rightly gave no weight to the ICTY decision concerning the climate of interference.<sup>100</sup> Finally, the SPO considers that the Pre-Trial Judge was reasonable in considering evidence relevant to Veseli's intelligence connections.<sup>101</sup>

48. In the Reply, Veseli submits that, contrary to the SPO's submissions: (i) the wording of the Pre-Trial Judge's order did not oblige the Kosovo Police to liaise with [REDACTED], which is [REDACTED], rather than a Kosovo institution; and (ii) the Kosovo Police were not asked to give *examples* of conditionally released high-profile individuals, but rather it was asked *whether* it had previously enforced conditions of interim release for those in high-ranking positions, which the Kosovo Police answered in the affirmative.<sup>102</sup>

(b) Assessment of the Court of Appeals Panel

49. The Panel considers that the generic response of the Kosovo Police that "[REDACTED]", does not provide sufficiently specific information with respect to the enforcement of measures, including against high-ranking accused, despite the explicit question of the Pre-Trial Judge.<sup>103</sup> The Panel considers that it was clear from the questions' wording, as well as from the overall purpose of the questions posed (namely to gather specific information to allow the Pre-Trial Judge to assess the

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<sup>99</sup> Response, para. 19(iv)-(v).

<sup>100</sup> Response, para. 24.

<sup>101</sup> Response, para. 25.

<sup>102</sup> Reply, paras 15-16.

<sup>103</sup> Impugned Decision, para. 90, referring to Kosovo Police Submissions, p. 23. Contra Appeal, para. 36. Cf. Kosovo Police Submissions, p. 19 (where the Kosovo Police submits that they "[REDACTED]"). See also Second Appeal Decision, para. 49 (wherein the Appeals Panel found that a response of "general and generic character" by the Kosovo Police cannot be considered as constituting a positive response to the detailed questions posed to them). See also Order to Kosovo Police, para. 8 (requesting the Kosovo Police to provide information on, *inter alia*, previous instances of enforcing conditions attaching to the interim release or detention of persons accused of severe crimes); Annex to Order to Kosovo Police, paras 21-22.

Kosovo Police's experience and capabilities), that giving a generic response with no specific examples would be insufficient.

50. Moreover, contrary to Veseli's submissions, the Kosovo Police state that they were involved in the cases of [REDACTED].<sup>104</sup> In any event, and irrespective of the [REDACTED], these cases are indicative of the difficulties of securing the presence of high-ranking individuals and/or those accused of serious crimes<sup>105</sup> and, therefore, are relevant as "contextual considerations". Moreover, the Appeals Panel notes that the Pre-Trial Judge ordered the Kosovo Police to liaise with other entities in Kosovo if necessary to obtain information and to raise with him any impediment preventing the proper execution of the Order.<sup>106</sup> In light of this, the Panel finds that the Pre-Trial Judge did not err in ruling that the Kosovo Police failed to provide the requested information.<sup>107</sup>

51. With respect to the Pre-Trial Judge's findings regarding the ICTY decision in the *Haradinaj et al.* case, the Appeals Panel sees no error in the Pre-Trial Judge's finding that the decision was distinguishable from Veseli's situation, since in the ICTY decision, the United Nations Mission in Kosovo ("UNMIK"), rather than the Kosovo Police, provided the guarantees.<sup>108</sup> The fact that UNMIK had stated generically that its overall capabilities had been enhanced *inter alia* by additional Kosovo Police personnel, does not render the Pre-Trial Judge's conclusion unreasonable.

52. Finally, regarding the [REDACTED], the Panel notes that the Appeal misrepresents the Impugned Decision. The Pre-Trial Judge did not rely on this factor in isolation,<sup>109</sup> but rather considered it alongside Veseli's influence in Kosovo, *inter alia* due to his former position as the head of SHIK, and the fact that SHIK members had

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<sup>104</sup> See Kosovo Police Submissions, p. 22.

<sup>105</sup> See Impugned Decision, para. 90.

<sup>106</sup> Order to Kosovo Police, para. 9; see also Annex to Order to Kosovo Police, para. 1.

<sup>107</sup> Contra Reply, para. 15.

<sup>108</sup> Impugned Decision, para. 91.

<sup>109</sup> Appeal, para. 40.

interfered with witnesses in an ICTY case when Veseli was its head.<sup>110</sup> The Panel sees no error in this finding.

53. In light of the above, the Panel dismisses Ground 4 of Veseli's Appeal.

### **3. Alleged Errors Regarding Assessment of Additional Measures *Proprio Motu* (Ground 5)**

#### (a) Submissions of the Parties

54. Veseli submits that the Pre-Trial Judge erred by illogically finding that the Kosovo Police's undertaking to ensure the enforcement of any judicial order from the Specialist Chambers did not "amount to an acceptance that any measures ordered by the Pre-Trial Judge will be adequately implemented".<sup>111</sup> He argues that this is contrary to the Appeals Panel's finding that it is the Pre-Trial Judge's responsibility to suggest additional measures for the Kosovo Police to implement, which he failed to do.<sup>112</sup>

55. In response, the SPO submits that the Pre-Trial Judge considered measures other than the ones proposed by the Kosovo Police, and that it was reasonable for him to find that no additional information from the Kosovo Police would assist, after the latter had been given four chances to provide it.<sup>113</sup>

#### (b) Assessment of the Court of Appeals Panel

56. At the outset, the Panel recalls that, in the assessment of the conditions of release, the Pre-Trial Judge is required, *proprio motu*, to inquire and evaluate all *reasonable* conditions that could be imposed on an accused and not just those raised by the Defence.<sup>114</sup>

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<sup>110</sup> Impugned Decision, para. 93; see above, paras 20-24.

<sup>111</sup> Appeal, para. 42, citing Impugned Decision, para. 96.

<sup>112</sup> Appeal, paras 41-43; Reply, para. 18.

<sup>113</sup> Response, para. 26.

<sup>114</sup> F00005/RED, Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Interim Release, 30 April 2021 (confidential version filed on 30 April 2021), para. 86 (emphasis added).

57. The Appeals Panel notes that Veseli misrepresents the Pre-Trial Judge's reasoning. Contrary to Veseli's arguments,<sup>115</sup> the Pre-Trial Judge did not disregard the submission of the Kosovo Police that any order of the Specialist Chambers would be enforced, but found that this submission amounts to a "general undertaking" that is neither an acceptance nor a guarantee that "fundamental concerns about illicit communications" can be mitigated, and does not provide, in and of itself, a sufficient basis for ordering *proprio motu* additional measures.<sup>116</sup> As noted above, the reasonableness of the scope of the Pre-Trial Judge's *proprio motu* additional measures must be assessed in light of the submissions he receives thereon, in this case from the Kosovo Police.<sup>117</sup> The Panel notes that the Kosovo Police were approached on at least five occasions by the Defence and once by the Pre-Trial Judge, who asked specific questions.<sup>118</sup> The Panel recalls that a response of a "general and generic character" by the Kosovo Police cannot be considered as constituting a sufficient response to the detailed questions posed to them<sup>119</sup> and, therefore, agrees with the Pre-Trial Judge that this statement is not a sufficient basis to order *proprio motu* additional measures.<sup>120</sup> Consequently, the Appeals Panel dismisses Ground 5 of Veseli's Appeal.

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<sup>115</sup> See Appeal, para. 42.

<sup>116</sup> See Impugned Decision, para. 96.

<sup>117</sup> See above, para. 42.

<sup>118</sup> See F00174/A11, Annex 11 to Defence Reply to the SPO's response to the Provisional Release Application of Kadri Veseli, 13 January 2021; F00341/A03, Annex C to Veseli Defence Submissions on Detention Review, 7 June 2021 (confidential); F00358/A01, Annex 1 to Krasniqi Defence Reply to Prosecution Response to Defence Submissions on Detention Review, 18 June 2021 (confidential); F00361/A01, Annex 1 to Selimi Defence Reply to SPO Response to Defence Submissions on Review of Detention, 18 June 2021 (confidential); F00361/A02, Annex 2 to Selimi Defence Reply to SPO Response to Defence Submissions on Review of Detention, 18 June 2021 (confidential); Order to Kosovo Police; F00518/COR/A02, 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) (non-corrected version filed on 11 October 2021). See also Impugned Decision, para. 97.

<sup>119</sup> Second Appeal Decision, para. 49.

<sup>120</sup> See Impugned Decision, para. 96.

D. ALLEGED ERRORS REGARDING ASSESSMENT OF THE PROPORTIONALITY OF DETENTION  
(GROUND 6)

**1. Submissions of the Parties**

58. Veseli submits that the Pre-Trial Judge failed to tailor his proportionality findings to the circumstances of this case, and failed to consider that, in order to continue outweighing Veseli's liberty interest (which increases over time), the factors weighing in favour of detention must also increase over time.<sup>121</sup> Specifically, he argues that the Pre-Trial Judge: (i) relied selectively on jurisprudence of the European Court of Human Rights ("ECtHR"), ignoring its consistent jurisprudence criticising heavy reliance on the gravity of the charges;<sup>122</sup> (ii) did not distinguish the complexity of this case from that of comparable international criminal cases;<sup>123</sup> (iii) in support of a risk of obstruction, simply recalled alleged incidents from previous rounds of litigation, which have become less weighty over time in the absence of further developments;<sup>124</sup> and (iv) misinterpreted Rule 56(2) of the Rules in finding that time limits have been extended for good cause, whereas the Pre-Trial Judge is obliged to ensure that pre-trial detention is reasonable irrespective of whether there was good cause for delays.<sup>125</sup> In Veseli's view, the fact that no trial date has been set and that the commencement of the trial is at least one year away, is sufficient to find that detention has become unreasonable and disproportionate.<sup>126</sup>

59. The SPO responds that it was reasonable for the Pre-Trial Judge to conclude that detention remained proportionate since the previous detention review.<sup>127</sup> According to the SPO, the Pre-Trial Judge gave every indication that the factors underlying proportionality were weighed against the additional length of detention,

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<sup>121</sup> Appeal, paras 44-45, 48.

<sup>122</sup> Appeal, para. 46, citing Impugned Decision, fn. 196.

<sup>123</sup> Appeal, para. 47, citing Impugned Decision, para. 107.

<sup>124</sup> Appeal, para. 48, citing Impugned Decision, para. 108.

<sup>125</sup> Appeal, para. 49, citing Impugned Decision, paras 109, 111.

<sup>126</sup> Appeal, para. 50.

<sup>127</sup> Response, paras 30-31.

reasonably relying on the progress made in the proceedings since the previous review.<sup>128</sup> The SPO contends that the gravity and complexity of the case remains important, which is substantially factually broader than the one ICTY example Veseli gives elsewhere in his Appeal.<sup>129</sup> It submits that, in addition to the initial risks, the Impugned Decision considered facts specific to Veseli and alternative measures.<sup>130</sup>

60. Veseli replies that the SPO fails to engage with the legal principles set out in the cited ECtHR case law regarding risk of obstruction.<sup>131</sup> Regarding delays, he contends that the SPO's submissions support his arguments, and that the start of the trial will be delayed by at least one year by the SPO filing an *ex parte* and outsized pre-trial brief.<sup>132</sup>

## 2. Assessment of the Court of Appeals Panel

61. At the outset, the Panel recalls that, according to Rule 56(2) of the Rules, the Pre-Trial Judge "shall ensure that a person is not detained for an unreasonable period prior to the opening of the case".<sup>133</sup> The reasonableness of an accused person's continued detention must be assessed on the facts of each case and according to its special features.<sup>134</sup> The length of time spent in detention pending trial is a factor that needs to be considered along with the risks described in Article 41(6)(b) of the Law, to determine whether, all factors being considered, the continued detention "stops being reasonable" and the individual needs to be released.<sup>135</sup>

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<sup>128</sup> Response, para. 31.

<sup>129</sup> Response, para. 32.

<sup>130</sup> Response, para. 33.

<sup>131</sup> Reply, para. 20.

<sup>132</sup> Reply, para. 21.

<sup>133</sup> Rule 56(2) of the Rules. See also Appeal, para. 50.

<sup>134</sup> See F00008/RED, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, 27 October 2021 (confidential version filed on 27 October 2021), para. 49, referring to ECtHR, *Buzadji v. The Republic of Moldova*, no. 23755/07, Judgment, 5 July 2016, para. 90; ECtHR, *Wemhoff v. Germany*, no. 2122/64, Judgment, 27 June 1968, para. 10 (p. 20).

<sup>135</sup> First Appeal Decision, para. 79 and jurisprudence cited therein; Second Appeal Decision, para. 46.

62. The Panel notes that the Pre-Trial Judge considered the following factors to reach his conclusion that the time Veseli spent in pre-trial detention thus far is not unreasonable and that a discussion on the expected total length of such pre-trial detention remains premature and speculative at the present stage: (i) Veseli was arrested on 5 November 2020; (ii) Veseli is charged with committing crimes of extreme gravity and his alleged role in the commission of the crimes is important; (iii) if convicted, Veseli's sentence could be lengthy; (iv) the proceedings against him are complex; (v) the risks under Article 41(6)(b)(ii) and (iii) of the Law continue to exist and cannot be mitigated by any less restrictive measures than detention; (vi) substantial procedural steps have been completed with a view to transmitting the case to trial in the foreseeable future, notwithstanding the delays regarding specific time limits, which have been extended for good cause.<sup>136</sup>

63. Veseli relies on several ECtHR judgments to argue that the Pre-Trial Judge erred in his assessment of proportionality with respect to the factors of gravity and complexity of Veseli's case, and in his reliance on the risk of obstruction without accounting for the passage of time. For the factors of gravity and complexity, Veseli relies on jurisprudence stating that the ECtHR "has frequently found a violation of Article 5 § 3 of the Convention where the domestic courts have extended an applicant's detention relying essentially on the gravity of the charges and using stereotyped formulae without addressing specific facts or considering alternative preventive measures".<sup>137</sup> For the Pre-Trial Judge's reliance on the risk of obstruction without accounting for the passage of time, Veseli refers to ECtHR case law stating that the domestic court in question had merely referred to the initial reasons for ordering pre-trial detention, while disregarding the passage of time and making it clear that it was for the defence to show that detention was no longer justified.<sup>138</sup>

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<sup>136</sup> Impugned Decision, paras 105-112.

<sup>137</sup> ECtHR, *Idalov v. Russia*, no. 5826/03, Judgment, 22 May 2012, para. 147.

<sup>138</sup> ECtHR, *Merabishvili v. Georgia*, no. 72508/13, Judgment, 28 November 2017, para. 234.

64. The Panel is not persuaded by Veseli's selective interpretation of the ECtHR case law, which clearly criticises instances where the courts in question relied exclusively or too heavily on factors such as gravity, and/or disregarded relevant factors such as the passage of time. The decisions of these courts can be distinguished from the Impugned Decision by the fact that the Pre-Trial Judge provided detailed reasoning on the risks of obstruction and of committing further crimes,<sup>139</sup> sought further information on and carefully examined measures alternative to detention,<sup>140</sup> clearly acknowledged that it was for the SPO to show that continued detention is necessary and for the Pre-Trial Judge to be satisfied of this necessity,<sup>141</sup> and carefully assessed the proportionality of continued detention in light of the circumstances of this case, including the clear consideration of the passage of time.<sup>142</sup> The Panel is therefore satisfied that the Pre-Trial Judge's reasoning is not inconsistent with the cited ECtHR case law.

65. Finally, Veseli argues that the Pre-Trial Judge erred in taking good cause into account when assessing delays in the proceedings under Rule 56(2) of the Rules. The Panel notes that Rule 56(2) of the Rules provides in two separate sentences that detention shall not be for "an unreasonable period prior to the opening of the case" and that interim release may be granted due to an "undue delay caused by the Specialist Prosecutor". The Panel is of the view that the second sentence of this provision is not entirely independent from the first, in that undue delay caused by the SPO can be one of the reasons for which an accused's pre-trial detention might last for an "unreasonable period". The Rules explicitly recognise both the Pre-Trial Judge's general obligation to ensure that pre-trial detention does not last for an unreasonable

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<sup>139</sup> Impugned Decision, paras 50-61.

<sup>140</sup> Order to Kosovo Police; Annex to Order to Kosovo Police; Order to Registrar; Impugned Decision, paras 80-100.

<sup>141</sup> Impugned Decision, para. 41.

<sup>142</sup> Impugned Decision, paras 105, 109-112. See also above, para. 62.

period of time and the specific situation in which the SPO's undue delay renders the length of pre-trial detention unreasonable.

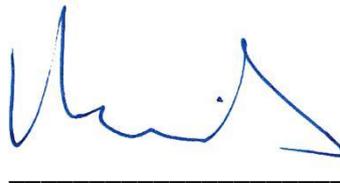
66. The Panel finds that Veseli's arguments fail to address why, in his view, considering whether any delays to the proceedings were supported by good cause is irrelevant to the question of whether the period spent in detention prior to the opening of the case is "unreasonable". Additionally, and in any event, good cause was only one of the factors which the Pre-Trial Judge took into account at this juncture. Similarly, the Panel considers that Veseli does not substantiate his arguments that the fact that a trial date had yet to be set after he had spent one year in detention, is in itself sufficient to find that the detention is unreasonable and disproportionate.

67. In light of the above, the Appeals Panel dismisses Ground 6 of Veseli's Appeal.

#### IV. DISPOSITION

68. For these reasons, the Court of Appeals Panel:

**DENIES** the Appeal in its entirety.



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**Judge Michèle Picard,  
Presiding Judge**

Dated this Thursday, 31 March 2022

At The Hague, the Netherlands