



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**In:** KSC-BC-2020-06  
**Before:** Pre-Trial Judge  
Judge Nicolas Guillou  
  
**Registrar:** Dr Fidelma Donlon  
**Filing Participant:** Specialist Prosecutor  
**Date:** 2 May 2022  
**Language:** English  
**Classification:** Public

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**Prosecution Submissions on Veseli Detention Review**

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## I. INTRODUCTION

1. The SPO files these submissions pursuant to the Pre-Trial Judge's oral order during the 9<sup>th</sup> Status Conference and the Pre-Trial Judge's subsequent extension of time limit for submissions on the review of Veseli's detention.<sup>1</sup> The SPO notes that Veseli has not filed submissions.<sup>2</sup>

2. The continued detention of Veseli remains necessary. There has been no relevant change in circumstances detracting from the established reasons for detention. Rather, the Appeals Panel confirmed that proposed conditions do not mitigate the identified risks.<sup>3</sup>

3. In its latest decision on detention review, the Appeals Panel confirmed the Pre-Trial Judge's findings that: (i) the proposed conditions were insufficient to mitigate the identified risks;<sup>4</sup> (ii) no *proprio motu* additional conditions which could have been reasonably considered could sufficiently mitigate the identified risks;<sup>5</sup> and (iii) no undue delay was caused by the SPO, nor is ongoing detention disproportionate.<sup>6</sup>

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<sup>1</sup> Transcript of Hearing, KSC-BC-2020-06, 15 December 2021, pp.763-764; Decision on Veseli Request for Extension of Time Limit, KSC-BC-2020-06/F00762, 7 April 2022.

<sup>2</sup> The Veseli Defence informed the Pre-Trial Judge and the SPO by email on 22 April 2022 that it will not file submissions.

<sup>3</sup> Public Redacted Version of Decision on Kadri Veseli's Appeal against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA014/F00008/RED, 31 March 2022 ('Veseli Third Appeal Decision'), paras 24, 27, 34-45. See Article 41 of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'); Rule 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Article' or 'Articles' herein refer to articles of the Law, and all references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

<sup>4</sup> Veseli Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED, paras 34-45, 49-53; Public Redacted Version of Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00576/RED, 23 November 2021 ('Veseli Third Detention Decision'), paras 49, 55, 59, 89, 95, 99.

<sup>5</sup> Veseli Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED, paras 56-57; Veseli Third Detention Decision, KSC-BC-2020-06/F00576/RED, paras 98-99.

<sup>6</sup> Veseli Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED, paras 61-67; Veseli Third Detention Decision, KSC-BC-2020-06/F00576/RED, paras 110-111.

## II. SUBMISSIONS

4. For purposes of a detention review under Rule 57(2), the reasons or circumstances underpinning detention must be reviewed in order to determine whether these reasons continue to exist under Article 41(6) of the Law.<sup>7</sup> That determination inevitably concerns what has changed, if anything, since the previous ruling on detention.

### A. GROUNDED SUSPICION UNDER ARTICLE 41(6)(A)

5. The Pre-Trial Judge found that there continues to be a grounded suspicion that Veseli committed crimes within the subject-matter jurisdiction of the SC for the purposes of Article 41(6)(a) and (10) of the Law.<sup>8</sup> The Veseli Defence Appeal did not challenge this finding.<sup>9</sup> Nor is there any change in circumstances to warrant a new determination as to the existence of a grounded suspicion. The Pre-Trial Judge's conclusion continues to stand.

### B. NECESSITY OF DETENTION

6. Articulate grounds remain for Veseli's continued detention. The applicable standard is less than certainty, but more than a mere possibility of a risk materialising, as established by the Pre-Trial Judge<sup>10</sup> and confirmed by the Appeals Panel.<sup>11</sup> Thus, based on the evidence available, the specific articulable grounds must support the belief that any of the risks under Article 41(6)(b) of the Law exist. It is sufficient for

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<sup>7</sup> *Prosecutor v. Gucati and Haradinaj*, Decision on Nasim Haradinaj's Appeal on Decision Reviewing Detention, KSC-BC-2020-07/IA002/F00005, 9 February 2021, para.55.

<sup>8</sup> Veseli Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.45.

<sup>9</sup> Public Redacted Version of Veseli Defence Appeal Against Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/IA014/F00004, 3 December 2021. See Veseli Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED.

<sup>10</sup> Veseli Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.46; Decision on Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00380/RED, 2 July 2021 ('Veseli Second Detention Decision'), para.30.

<sup>11</sup> Veseli Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED, para. 35; Decision on Rexhep Selimi's Appeal against Public Redacted Version of Decision on Review of Detention, KSC-BC-2020-06/IA007/F00005/RED, 1 October 2021, para.19.

one of the risks to be met for detention to be maintained, as the conditions set forth in Article 41(6)(b) are alternative to one another.<sup>12</sup>

7. All risks under Article 41(6)(b) continue to be met for the reasons set forth below.

### **1. Risk of flight**

8. The ever-growing account of the evidence disclosed to Veseli, in conjunction with the possibility of a serious sentence in the event of a conviction, may provide the necessary incentive for Veseli to obtain funds and means to travel and eventually evade KSC proceedings. That Veseli would have the means to do so is supported by his continued influence in Kosovo, confirmed by the Pre-Trial Judge and previously upheld by the Appeals Panel, including due to his previous intelligence-related positions.<sup>13</sup>

### **2. Risk of obstructing the progress of KSC proceedings**

9. There remains a real risk that Veseli will obstruct the progress of KSC proceedings if he is released. This is based, *inter alia*, on a combined assessment of the persistent climate of intimidation of witnesses and interference with criminal proceedings against former KLA members, Veseli's demonstrated ability to intervene in such matters, and his increased awareness of the underlying evidence.

10. The risk of obstruction need not materialise by way of an Accused personally tampering with evidence or exerting influence or pressure on witnesses. It is sufficient

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<sup>12</sup> Public Redacted Version of Decision on Jakup Krasniqi's Appeal against Decision on Review of Detention, KSC-BC-2020-06/IA006/F00005/RED, 1 October 2021, para.37.

<sup>13</sup> Veseli Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.48; Veseli Second Appeal Decision, KSC-BC-2020-06/IA008/F00004, para.34.

that Veseli instigates others or otherwise contributes to the materialisation of that risk.<sup>14</sup>

11. Veseli's public stature and influential positions give him access to confidential or sensitive information and allow him to mobilise a network of supporters to obstruct the progress of SPO investigations and the conduct of criminal proceedings.<sup>15</sup> Veseli is a founding member of the KLA and General Staff. He is the former chairman of the Kosovo Assembly. He is one of the most experienced intelligence officials in Kosovo, the previous head of the KLA intelligence services and the Kosovo Intelligence Service ('SHIK'). The Appeals Panel has upheld the Pre-Trial Judge's finding that Veseli's influence derives from the knowledge, skills and contacts that he acquired in his previous intelligence related positions.<sup>16</sup>

12. There are numerous indicators of Veseli's ability to obstruct justice. SHIK members answerable to him were involved in surveilling, threatening and bribing witnesses testifying against former KLA members at the ICTY.<sup>17</sup> Veseli also has a demonstrated ability to give instructions to those involved with interference against potential SPO witnesses.<sup>18</sup>

13. The risk of obstruction has only increased since the last decision on the review of detention, as Veseli has obtained increasing access to incriminating evidentiary material, as well as to the identities of witnesses with in-court protective measures. Importantly, the SPO's Pre-Trial Brief, together with its witness and exhibit list was filed on 17 December 2021. The number of witnesses for whom delayed disclosure or non-disclosure of identities has been granted is limited, and Veseli will be provided

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<sup>14</sup> Veseli Second Detention Decision, KSC-BC-2020-06/F00380/RED, para.36.

<sup>15</sup> Decision on Kadri Veseli's Application for Interim Release, KSC-BC-2020-06/F00178, 22 January 2021 ('Veseli First Detention Decision'), para.39.

<sup>16</sup> Veseli Second Appeal Decision, KSC-BC-2020-06/IA008/F00004/RED, para.34.

<sup>17</sup> Veseli Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.52.

<sup>18</sup> Decision on Kadri Veseli's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA001/F00005, 30 April 2021, paras 38-40; Arrest Warrant Application, KSC-BC-2020-06/F00005, paras 8, 12.

with the identities of most of the protected witnesses before the trial.<sup>19</sup> Protective measures alone are an insufficient precaution against the inherently high risk of witness intimidation or interference.<sup>20</sup>

14. These elements should moreover be placed in a context of a persisting climate of witness intimidation and interference in Kosovo, which is well-established and was recently confirmed by former ICTY head of investigations Bob Reid, called as a defence witness in *Gucati and Haradinaj*. Relying on his extensive experience investigating international crimes in Kosovo, Mr Reid confirmed that witness intimidation in Kosovo is 'very underground and always there'.<sup>21</sup> Witnesses who cooperate with prosecution authorities are regarded as 'a traitor to the cause'.<sup>22</sup> Mr Reid went on to recall a particular incident where a witness, after coming to The Hague and taking the witness stand, preferred to be charged with contempt of court and imprisoned rather than give evidence against former KLA members.<sup>23</sup> The fate of witnesses in former KLA trials further demonstrate the risks posed by Veseli's easily mobilised supporters and sympathisers.<sup>24</sup>

15. Absent any change in circumstances identified by the Defence, the Pre-Trial Judge's<sup>25</sup> and Appeals Panel's previous findings<sup>26</sup> continue to stand, even more so

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<sup>19</sup> Veseli Third Detention Decision, KSC-BC-2020-06/F00576/RED, para. 53; See Public Redacted Version of Decision on Jakup Krasniqi's Appeal against Decision on Review of Detention, KSC-BC-2020-06/IA006/F00005/RED, 1 October 2021, para.35.

<sup>20</sup> Public Redacted Version of Decision on Jakup Krasniqi's Appeal against Decision on Review of Detention, KSC-BC-2020-06/IA006/F00005/RED, 1 October 2021, para.35.

<sup>21</sup> KSC-BC-2020-07, Trial Hearing 24 January 2022, p.3306, line 17 and line 24.

<sup>22</sup> KSC-BC-2020-07, Trial Hearing 24 January 2022, p.3307, lines 9-13.

<sup>23</sup> KSC-BC-2020-07, Trial Hearing 24 January 2022, p.3307, lines 15-21.

<sup>24</sup> Arrest Warrant Application, KSC-BC-2020-06/F00005, paras 19-20, 24; ICTY, *Prosecutor v Haradinaj et al.*, IT-04-84-T, Judgment, 2 April 2006, para.6.

<sup>25</sup> Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders, KSC-BC-2020-06/F00027/RED, 26 October 2020, para. 33; Veseli First Detention Decision, KSC-BC-2020-06/F00178, paras 39-48; Veseli Second Detention Decision, KSC-BC-2020-06/F00380/RED, paras 35-37; Veseli Third Detention Decision, KSC-BC-2020-06/F00576/RED, paras 52-55.

<sup>26</sup> Decision on Kadri Veseli's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA001/F00005, 30 April 2021, paras 36-48; Veseli Second Appeal Decision, paras 33-36; Veseli Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED, para.24.

when placed in the context of Mr Reid's testimony. There remain articulable grounds to believe that Veseli will obstruct the progress of criminal proceedings if he is released.

### 3. Risk of committing further crimes

16. In assessing the risk of committing further crimes, it suffices that an Accused instigates or assists others to commit such crimes, or contributes in any other manner to their commission. 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 have; and (iii) the significant influential positions the Accused still retain in Kosovo.<sup>27</sup> Considering Veseli's ability to obtain confidential information, this risk remains high.

#### C. NO CONDITIONS SUFFICIENTLY MITIGATE THE RISKS

24. No conditions of release in Kosovo can mitigate the particular risks at issue.

25. The Appeals Panel has upheld the Pre-Trial Judge's finding that neither the previously proposed conditions nor any additional measures ordered *proprio motu* could sufficiently mitigate the existing risks.<sup>28</sup>

26. Conditional release to Kosovo, monitored by the Kosovo Police, would not address the possibility that Veseli could use coded messages, ask a family member or approved visitor to pass on messages, or use a device belonging to a third person for

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<sup>27</sup> Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders, KSC-BC-2020-06/F00027/RED, 26 October 2020, para.34; Veseli First Detention Decision, KSC-BC-2020-06/F00178, para.52; Veseli Second Detention Decision, KSC-BC-2020-06/F00380/RED, paras 39-41; Veseli Third Detention Decision, KSC-BC-2020-06/F00576/RED, paras 58-59.

<sup>28</sup> Veseli Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED, paras 34-45, 49-53, 56-57; Veseli Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.99.

the purpose of obstructing SC proceedings or committing further crimes.<sup>29</sup> This risk is especially acute given Veseli's experience in intelligence-related positions.<sup>30</sup>

27. In contrast, as confirmed by the Appeals Panel, the SC Detention Facilities 'offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented'.<sup>31</sup> That is why the Pre-Trial Judge found that only the monitoring framework of the SC Detention Facilities can provide sufficient safeguards to restrict and monitor Veseli's communications.<sup>32</sup> The Pre-Trial Judge considered this decisive to the conclusion that the proposed conditions remain insufficient to adequately mitigate the risks under Article 41(6)(b)(ii)-(iii) of the Law'.<sup>33</sup> Crucially, no additional conditions could affect this conclusion.<sup>34</sup>

28. The Pre-Trial Judge's previous findings, upheld by the Appeals Panel, mean that Veseli's conditional release to Kosovo is unworkable under any circumstances. The Appeals Panel has also upheld the Pre-Trial Judge's conclusion that he will not be assisted by further submissions from the Kosovo Police.<sup>35</sup>

29. By declining to file submissions or proposing additional conditions, the Defence appears to have accepted this reality. While this does not absolve the Pre-Trial Judge of his duty to review Veseli's detention and consider conditions *proprio motu*, the scope of this enquiry is not boundless. Having satisfied himself that the risks under Article 41(6)(b) of the Law continue to exist, the Pre-Trial Judge's task must be viewed in the context of the parties' submissions. He is not required to raise all possible conditions *proprio motu* 'if these were neither widely used in the context of

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<sup>29</sup> Veseli Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.82; Veseli Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED, para.35.

<sup>30</sup> Veseli Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.82.

<sup>31</sup> Veseli Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED, para.38.

<sup>32</sup> Veseli Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.99.

<sup>33</sup> Veseli Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.99.

<sup>34</sup> Veseli Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.99.

<sup>35</sup> Veseli Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.97; Veseli Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED, paras 35, 57.



interim release nor raised by the Parties'.<sup>36</sup> Moreover, in the assessment of the conditions of release, the Pre-Trial Judge need only consider conditions that are reasonable.<sup>37</sup>

#### D. DETENTION REMAINS PROPORTIONATE

30. Since the Accused's detention is reviewed on a regular basis, the Pre-Trial Judge has in the past assessed the reasonableness of Veseli's detention against the length of pre-trial detention at the time of each review and has refused to speculate as to any expected total length of detention.<sup>38</sup> The Appeals Panel has upheld this approach.<sup>39</sup>

31. In November 2021, the Pre-Trial Judge found that detention remained proportionate.<sup>40</sup> The Appeals Panel upheld this finding at the end of March 2022.<sup>41</sup> Since that time, the case has continued to actively progress towards trial. The SPO has filed its Pre-Trial Brief and witness and exhibits lists and has continued to disclose Rule 102(3) and Rule 103 materials. All necessary pre-trial processes in the case are advancing expeditiously and in parallel.

32. In this context, given, *inter alia*, the scope and complexity of the instant case, the continuing expeditious progress in pre-trial milestones, the lengthy custodial sentence, if convicted, and the inability of the proposed conditions to mitigate the risks identified, pre-trial detention continues to be reasonable and proportionate.

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<sup>36</sup> Veseli Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED, para.42.

<sup>37</sup> Veseli Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED, para. 56.

<sup>38</sup> Veseli Third Detention Decision, KSC-BC-2020-06/F00576/RED, para. 112.

<sup>39</sup> Public Redacted Version of Decision on Jakup Krasniqi's Appeal against Decision on Review of Detention, KSC-BC-2020-06/IA0016/F00005/RED, 25 March 2022, para.58.

<sup>40</sup> Veseli Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.110.

<sup>41</sup> Veseli Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED, para.67.

III. RELIEF REQUESTED

17. For the foregoing reasons, Veseli's detention should be extended.

**Word count: 2427**



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**Jack Smith**  
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Monday, 2 May 2022

At The Hague, the Netherlands.