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In:	**KSC-BC-2020-06**
	Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi
Before:	**Pre-Trial Judge** Judge Nicolas Guillou
Registrar:	Dr Fidelma Donlon
Filing Participant:	Counsel for Kadri Veseli
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Public Redacted Version of Veseli Defence Response to Prosecution Submissions on Veseli Detention Review (KSC-BC-2020-06/F00790) with Confidential Annex 1 (F00800, dated 12 May 2022)

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I. INTRODUCTION

1. The Defence for Mr Kadri Veseli ("Defence"), hereby files this brief response to the SPO's submissions on Mr Veseli's continued detention, dated 2 May 2022.[1]

2. The Defence for Mr Veseli has already stated that it did not intend to file submissions regarding Mr Veseli's continued detention before the Pre-Trial Judge, at this point in time.[2] It files this response to briefly address three points that arise out of the SPO submissions, which mischaracterise proceedings at the ICTY and the position of the Defence.

II. SUBMISSIONS

3. The first issue relates to mischaracterisations of the *Haradinaj* case before the ICTY. The SPO makes reference to the "fate of witnesses" in former KLA trials, for which it cites the first (Ramush) *Haradinaj* Trial Judgment.[3] To the extent that the SPO's submissions once again[4] create the impression that witnesses in the *Haradinaj* trial suffered a particular "fate" – *i.e.*, were murdered – the following needs to be placed on record.

4. Two weeks after the first *Haradinaj* Trial Judgment was issued, the then-Spokesperson for Registry and Chambers had cause to issue a press release to address the misinformation regarding witnesses and witness protection that were being spread by Serbia and other actors. The relevant excerpt reads:

> In light of continuing malicious statements emanating from Serbia and other sources about the trial and judgement in the case of Ramush Haradinaj et al., I would like to stress once more that the Trial Chamber's findings in this case – like in any other

[1] F00790, Prosecution Submissions on Veseli Detention Review, 2 May 2022.
[2] Email of 22 April 2022 from Co-Counsel Mr Strong to SPO and Chambers entitled 'Detention Review.'
[3] ICTY, IT-04-84-T, *Prosecutor v Haradinaj et al.*, Judgment, 3 April 2008, para. 6.
[4] This is not the first occasion on which the Defence has had to correct the record in this regard – *see* F00556, Veseli Defence Reply to Prosecution Consolidation Response to October 2021 Defence Submissions on Detention Review, 1 November 2021, paras. 25-27.

> before the Tribunal – was based on the Trial Chamber's assessment of the evidence before it. It did not find conclusive evidence which showed beyond reasonable doubt that the accused bore criminal responsibility for the crimes alleged. As such, the Trial Chamber acquitted the accused. This is a basic rule that guides all democratic judicial systems.
>
> There are 30 days in which the Prosecution can appeal this decision if it believes it is warranted. Furthermore, if new evidence should come to light, the Prosecution can file an application for review of the Trial judgement.
>
> Meantime, allow me to revisit the particular issue of witness protection that has been systematically misrepresented in Serbia. Contrary to the misinformation placed in the public realm by Serbian officials, allegations that witnesses who testified in this case were killed are simply untrue. The Trial Chamber clearly stated that the proceedings were held in an atmosphere where witnesses felt unsafe. To extrapolate from that assessment that numerous witnesses were killed is bogus and inaccurate. With respect to witnesses who were reluctant to testify, most responded to the subpoenas issued by the court. Those that did not are subject to contempt proceedings. [5]

5. As is known, the Prosecution in that case did appeal, successfully, and a retrial was held, at which all witnesses who were called appeared and testified – with the exception of Mr Shefqet Kabashi. Mr Kabashi appeared, but substantially refused to testify. He was then charged with, and convicted of, contempt.[6]

6. Mr Kabashi is the witness that was referred to by Mr Reid in his testimony in the *Gucati & Haradinaj* trial, which is recalled at paragraph 14 of the SPO's submissions. There, they state that "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."[7] Indeed, he is the only witness whose circumstances match this description.

[5] ICTY Weekly Press Briefing – 16 April 2008, available at https://www.icty.org/en/press/icty-weekly-press-briefing-16-april-2008.
[6] ICTY, *Prosecutor v. Shefqet Kabashi*, IT-04-84-R77.1, Sentencing Judgment, 16 September 2011.
[7] KSC-BC-2020-05, Transcript, 24 January 2022, p. 3306.

7. The SPO's depiction of events gives the distinct impression that Mr Kabashi refused to testify out of fear of retribution on behalf of the Accused. This, however, is not an accurate reflection of the judicial findings in that case.

8. As the Court observed when considering the appropriate sentence for Mr Kabashi:

> On two occasions in 2007, Mr Kabashi contumaciously refused or failed to answer questions as a witness in the Haradinaj et al. case. In doing so, Mr Kabashi deprived the Haradinaj et al. Trial Chamber of evidence relevant for an effective ascertainment of truth in the adjudication of that case. The Chamber considers the Defence's sentencing submissions offering explanations for Mr Kabashi' s reasons for not answering questions as a witness. The Defence submitted that Mr Kabashi was deeply disappointed and frustrated that his expectations in relation to investigations into and prosecution of crimes such as the "Dubrava prison massacre" were not met. Although it contended that Mr Kabashi had expressed repeatedly that he was not afraid for his own safety, it pointed out that when asked in the *Haradinaj et al. re-trial* whether he was afraid for his family's safety he responded "I don't know". The Defence submitted that witness intimidation coupled with Mr Kabashi' s distrust in the effectiveness of the 'tribunal's system of protective measures may have contributed to his refusal or failure to answer questions. The Defence also stated that Mr Kabashi's war experience considerably contributed to his feeling of inability to answer questions in the courtroom. Despite these submissions, the Chamber finds that any additional motives Mr Kabashi may have had for refusing or failing to answer questions remain vague. As a result, the Chamber finds that any such additional motives, while not affecting Mr Kabashi' s criminal responsibility for contempt of the Tribunal, also cannot be considered in determining the appropriate sentence. [8]

9. It should also be noted that Mr Kabashi's prior testimony from the *Limaj* case was admitted into evidence in the *Haradinaj* retrial. The issue of witness interference did not form any part of the Chamber's reasoning in admitting that evidence.[9] This concludes the Defence observations on the first issue.

10. The second issue that the Defence would like to address is the SPO's observation at paragraph 29, where it submits that "[b]y declining to file submissions or proposing additional conditions, the Defence appears to have accepted this reality" [that conditional release would be unworkable under

[8] ICTY, *Prosecutor v. Shefqet Kabashi*, IT-04-84-R77.1, Sentencing Judgment, 16 September 2011, para. 13.
[9] ICTY, *Prosecutor v. Ramush Haradinaj and al.*, IT-04-84*bis*, Oral Decision on Admission of Shefqet Kabashi's testimony in the *Limaj* Trial, 24 August 2011, T.454-462. *See further,* Transcript of 22 and 23 August 2011, and Decision on Joint Defence Oral Motion Pursuant to Rule 89(D), 28 September 2011.

any circumstances]. The Defence would like simply to clarify that the decision not to file any submissions on detention review should not be interpreted as an acceptance of this purported reality.

11. The third issue concerns unproven allegations [REDACTED] that SHIK members were "involved in surveilling, threatening and bribing witnesses testifying against former KLA members at the ICTY".[10] The Defence recalls its previous submissions before the Court of Appeals Panel (to which the SPO has never responded) that Mr Bllaca was most likely never a member of SHIK; that further, there are reasons to believe he was an intelligence agent of the Serbian State [REDACTED].[11]

12. The Defence further notes that the Court of Appeals Panel found itself unable to consider the evidence that the Defence presented on this issue, because it had not been submitted in English.[12] Despite that the Court of Appeals Panel was indeed able to request translations of such documents,[13] the Defence hereby submits a courtesy translation in English for the Pre-Trial Judge's consideration.[14]

[10] F00790, para. 12.
[11] IA014-F00004, Veseli Defence Appeal Against Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli, 3 December 2021, para. 8.
[12] IA014-F00008, Decision on Kadri Veseli's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, 31 March 2022, fn. 50.
[13] F00072, Decision on Working Language, 11 November 2020, para. 22(2).
[14] The Defence notes that this evidence (*see* Annex 1) was unavailable at the time that the District Court of Prishtina found Mr Bllaca to be an "overall credible" witness. The evidence only came to light in 2019: RTK, Nazim Bllaca agent of Serbia's BIA since 1997, 8 February 2019. More to the point, no court has **ever** accepted that Bllaca was ever a member of SHIK [REDACTED]. [REDACTED]. *See* also, IA014-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.

III. CONCLUSION

13. The Defence respectfully requests the Pre-Trial Judge to find that the SPO has failed to substantiate its burden to prove that continued detention of Mr Veseli is required.

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