



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA 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: 26 May 2022

Language: English

Classification: Public

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

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THE PRE-TRIAL JUDGE,¹ 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"),² Kadri Veseli ("Mr Veseli" or "Accused") was arrested pursuant to a decision and an arrest warrant issued by the Pre-Trial Judge.³
2. On 22 January 2021, the Pre-Trial Judge rejected Mr Veseli's application for interim release ("First Detention Decision").⁴
3. On 30 April 2021, the Court of Appeals upheld the First Detention Decision ("First Court of Appeals Decision").⁵

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

² KSC-BC-2020-06, F00026, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, strictly confidential and *ex parte*. A confidential redacted version was filed on 19 November 2020, F00026/CONF/RED. A public redacted version was filed on 30 November 2020, F00026/RED. The Specialist Prosecutor submitted the confirmed indictment in F00034, Specialist Prosecutor, *Submission of Confirmed Indictment and Related Requests*, 30 October 2020, confidential, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential; F00045/A03, Specialist Prosecutor, *Further Redacted Indictment*, 4 November 2020, public; F00134, Specialist Prosecutor, *Lesser Redacted Version of Redacted Indictment*, KSC-BC-2020-06/F00045/A02, 4 November 2020, 11 December 2020, confidential. A further corrected confirmed indictment was submitted on 3 September 2021, strictly confidential and *ex parte* (F00455/A01), with confidential redacted (F00455/CONF/RED/A01) and public redacted (F00455/RED/A01) versions. On 17 January 2022, the SPO submitted a confidential, corrected, and lesser redacted version of the Confirmed Indictment, F00647/A01. A confirmed amended indictment was filed on 29 April 2022 ("Confirmed Indictment"), strictly confidential and *ex parte* (F00789/A01), with confidential redacted (F00789/A02) and public redacted (F00789/A05) versions.

³ 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; F00027/A03/RED, Pre-Trial Judge, *Public Redacted Version of Arrest Warrant for Kadri Veseli*, 26 October 2020, public.

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

⁵ 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").⁶

5. 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 Decision")⁷ – in which it, *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.⁸

6. 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").⁹ On 20 October 2021, the Registrar provided the information requested pursuant to the Registrar Order.¹⁰

7. On 26 October 2021, the Kosovo Police, further to an order by the Pre-Trial Judge,¹¹ 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, administer house arrest, and the enforceability of conditions attaching to interim release; and

⁶ KSC-BC-2020-06, F00380, Pre-Trial Judge, *Decision on Review of Detention of Kadri Veseli*, 2 July 2021, confidential. A public redacted version was filed on the same day, F00380/RED.

⁷ KSC-BC-2020-06, IA008/F00004, Court of Appeals, *Decision on Kadri Veseli's Appeal Against Decision on Review of Detention*, 1 October 2021, confidential. A public redacted version was filed on the same day, IA008/F00004/RED.

⁸ Second Court of Appeals Decision, paras 51-53.

⁹ 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.

¹⁰ KSC-BC-2020-06, F00536, Registrar, *Registry Submissions Pursuant to the Order to Provide Information on the Detention Regime (F00522)*, 20 October 2021, confidential.

¹¹ KSC-BC-2020-06, F00513, Pre-Trial Judge, *Order to the Kosovo Police to Provide Information*, 8 October 2021, public, with one Annex, confidential.

(ii) previous instances of enforcing conditions attaching to the interim release or detention of persons accused of severe crimes (“Kosovo Police Submissions”).¹²

8. On 23 November 2021, the Pre-Trial Judge issued a decision whereby he confirmed the Second Detention Decision to the extent that it was remanded by the Court of Appeals and further ordered Mr Veseli’s continued detention pursuant to the periodic review of his detention (“Third Detention Decision”).¹³

9. On 3 December 2021, the Defence for Mr Veseli (“Defence”) appealed against the Third Detention Decision.¹⁴

10. On 15 December 2021, further to a request by, *inter alios*, Mr Veseli, who also waived the right to have his detention reviewed before the expiry of the two-month time limit set out in Article 41(10) of the Law and Rule 57(2) of the Rules, the Pre-Trial Judge varied the time limit for Mr Veseli to make submissions on his continued detention until ten days after notification of the decision of the Panel of the Court of Appeals on his appeal against the Third Detention Decision.¹⁵

11. On 31 March 2022, the Court of Appeals upheld the Third Detention Decision (“Third Court of Appeals Decision”).¹⁶

¹² KSC-BC-2020-06, F00548, 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 issued on 3 November 2021, F00548/eng.

¹³ KSC-BC-2020-06, F00576, Pre-Trial Judge, *Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli*, 23 November 2021, confidential. A public redacted version was issued on 8 December 2021, F00576/RED.

¹⁴ KSC-BC-2020-06, IA014/F00004, Defence for Mr Veseli, *Veseli Defence Appeal Against Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli*, 3 December 2021, confidential, with Annex 1, public. A public redacted version was filed on 6 January 2022, IA014/F00004/RED.

¹⁵ KSC-BC-2020-06, Transcript of Hearing, 15 December 2021, public, p. 763, line 6 to p. 764, line 4.

¹⁶ KSC-BC-2020-06, IA014/F00008, Court of Appeals, *Decision on Kadri Veseli’s Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention*, 31 March 2022, confidential. A public redacted version was issued on the same day, IA014/F00008/RED.

12. On 7 April 2022, pursuant to a request of the Defence,¹⁷ the Pre-Trial Judge extended the deadline to provide submissions on whether reasons for the continued detention of Mr Veseli still exist to 22 April 2022.¹⁸

13. On 2 May 2022, as the Defence decided not to file any submissions within the set time-limit, the SPO filed its submissions on the review of Mr Veseli's detention ("SPO submissions").¹⁹ The Defence responded on 12 May 2022 ("Response").²⁰

II. SUBMISSIONS

14. The SPO maintains 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 proposed conditions do not mitigate the identified risks.²¹

15. In the Response, the Defence focuses on three specific points arising from the SPO Submissions, namely the SPO's alleged mischaracterisation of proceedings at the International Criminal Tribunal for the former Yugoslavia ("ICTY"),²² the Defence's position not to file any submissions on the detention review,²³ and the allegations made by an individual with regard to the alleged Kosovo intelligence service's ("SHIK") involvement in witness interference.²⁴ The Defence concludes

¹⁷ KSC-BC-2020-06, F00760, Defence for Mr Veseli, *Defence Request for Variation of Time Limit with Respect to Submissions on Continued Detention*, 6 April 2022, public.

¹⁸ KSC-BC-2020-06, F00762, Pre-Trial Judge, *Decision on Veseli Request for Extension of Time*, 7 April 2022, public, para. 9(b).

¹⁹ KSC-BC-2020-06, F00790, Specialist Prosecutor, *Prosecution Submissions on Veseli Detention Review*, 2 May 2022, public, para. 1 and footnote 2.

²⁰ KSC-BC-2020-06, F00800, Defence for Mr Veseli, *Veseli Defence Response to Prosecution Submissions on Veseli Detention Review* (KSC-BC-2020-06/F00790), 12 May 2022, confidential, with Annex 1, confidential.

²¹ SPO Submissions, para. 2.

²² Response, paras 3-9.

²³ Response, para. 10.

²⁴ Response, paras 11-12.

that the SPO has failed to substantiate its burden to prove that the continued detention of Mr Veseli is required.²⁵

III. APPLICABLE LAW

16. 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.

17. 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.

18. 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.

19. 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

²⁵ Response, para. 13.

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. APPLICABLE STANDARD

20. In examining whether the reasons for detention on remand still exist, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, the Pre-Trial Judge adopts the standard established in previous decisions.²⁶

B. GROUNDED SUSPICION

21. 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.²⁷

22. The SPO avers that the Pre-Trial Judge's finding that there continues to be a grounded suspicion that Mr Veseli has committed crimes within the subject-matter jurisdiction of the SC continues to stand, absent any change in circumstances.²⁸ The Defence has not made submissions regarding this criterion.

23. 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,

²⁶ See, among many others, Third Detention Decision, para. 41, with further references.

²⁷ Similarly ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222.

²⁸ SPO Submissions, para. 5.

torture and murder) under Articles 13, 14(1)(c) and 16(1)(a) of the Law.²⁹ Moreover, the Pre-Trial Judge recalls that a well-grounded suspicion has also been established with regard to the new charges brought by the SPO against Mr Veseli with the requested amendments to the indictment.³⁰ 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.³¹

24. Accordingly, the Pre-Trial Judge finds that the requirement set forth in Article 41(6)(a) and (10) of the Law continues to be met.

C. NECESSITY OF DETENTION

25. 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.³² The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"³³ 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.³⁴ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.³⁵ When deciding

²⁹ Confirmation Decision, paras 521(a)(i)-(ii); Second Court of Appeals Decision, para. 24.

³⁰ KSC-BC-2020-06, F00777, Pre-Trial Judge, *Decision on the Confirmation of Amendments to the Indictment*, 22 April 2022, strictly confidential and *ex parte*, para. 183. A confidential redacted version (F00777/CONF/RED) and a public redacted version (F00777/RED) were filed, respectively, on 22 April 2022 and 6 May 2022. A confidential lesser redacted version was filed on 16 May 2022 (F00777/CONF/RED2). The requested amendments are detailed at para. 11.

³¹ Second Court of Appeals Decision, para. 21.

³² First Detention Decision, para. 21; First Court of Appeals Decision, paras 18-19.

³³ See *chapeau* of Article 41(6)(b) of the Law.

³⁴ First Detention Decision, para. 21.

³⁵ First Court of Appeals Decision, para. 17.

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.³⁶

1. Risk of Flight

26. 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.³⁷ It adds that Mr Veseli's continued influence in Kosovo, including due to his previous intelligence-related positions, establishes that he would have the means to do so.³⁸ The Defence has not made submissions regarding this articulable ground.

27. Having examined the factors and circumstances invoked in the decisions reviewing Mr Veseli's detention, the Pre-Trial Judge remains satisfied that they continue to exist. More specifically, the Pre-Trial Judge considers 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.³⁹ Furthermore, the Pre-Trial Judge considers 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

³⁶ 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*.

³⁷ SPO Submissions, para. 8.

³⁸ SPO Submissions, para. 8.

³⁹ First Detention Decision, para. 32; Second Detention Decision, para. 32; Third Detention Decision, para. 48.

sympathetic to him and/or the KLA, securing access to relevant information, and obtaining funds and means to travel.⁴⁰

28. On this basis, and notwithstanding the counter-balancing factors identified in the First Detention Decision,⁴¹ 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

29. The SPO submits that a risk of obstruction remains as: (i) Mr Veseli's public stature and influential political and intelligence 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;⁴² and (ii) he has increased insight into the incriminatory evidence following the last detention review decision, as well as access to the identities of witnesses with in-court protective measures.⁴³ The SPO further submits that there are numerous indicators of Mr Veseli's ability to obstruct justice, such as the fact 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 the fact that Mr Veseli has the ability to give instructions to those involved with interference against potential SPO witnesses.⁴⁴ According to the SPO, protective measures alone are an insufficient precaution against the inherently high risk of witness intimidation or interference.⁴⁵ The SPO further submits that these elements should be placed in a context of a persistent climate of intimidation of witnesses and interference with

⁴⁰ Confirmation Decision, para. 460; First Detention Decision, para. 32; Second Detention Decision, para. 32; Third Detention Decision, para. 48.

⁴¹ First Detention Decision, para. 33.

⁴² SPO Submissions, paras 9, 11.

⁴³ SPO Submissions, para. 13.

⁴⁴ SPO Submissions, para. 12.

⁴⁵ SPO Submissions, para. 13.

criminal proceedings against former Kosovo Liberation Army (“KLA”) members, which was recently confirmed by former ICTY head of investigation Bob Reid, called as a defence witness in another case before the SC.⁴⁶ The SPO adds that the latter, in particular, besides stating that witness interference is well rooted in Kosovo, recalled a particular incident where an ICTY 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.⁴⁷ Lastly, the SPO avers that, absent any change in circumstances, the finding that Mr Veseli will obstruct the progress of the SC proceedings, if released, stands.⁴⁸

30. The Defence responds at the outset that the SPO mischaracterises the *Haradinaj* case before the ICTY.⁴⁹ In particular, with regard to the witness that refused to testify, the Defence avers that the ICTY did not explicitly find that the reasons for him refusing to testify had been witness interference.⁵⁰ Moreover, the Defence avers that when the same witness’s previous testimony in 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.⁵¹

31. The Defence further responds that the allegations which led to the finding that members of the intelligence service answerable to Mr Veseli were involved in surveilling, threatening and bribing witnesses testifying against former KLA members at the ICTY, are unproven and that there are reasons to believe that [REDACTED]Mr Bllaca[REDACTED] was an intelligence agent of the Serbian State [REDACTED].⁵²

⁴⁶ SPO Submissions, para. 14.

⁴⁷ SPO Submissions, para. 14

⁴⁸ SPO Submissions, para. 15.

⁴⁹ Response, para. 3.

⁵⁰ Response, paras 4-8.

⁵¹ Response, para. 9.

⁵² Response, para. 11.

32. The Pre-Trial Judge recalls that it has been previously found that Mr Veseli: (i) 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;⁵³ and (ii) continues to play a significant role in Kosovo on the basis of the previous positions he occupied,⁵⁴ which would continue to allow him to, for instance, access information or elicit the support of others.⁵⁵ The Pre-Trial Judge further recalls that he found that the evidence reveals that, while Mr Veseli was at the head of the SHIK, members of the SHIK were involved in witness interference.⁵⁶ Insofar as the Defence reiterates⁵⁷ its claim that Mr Bllaca[REDACTED] was an intelligence agent of the Serbian State, the Pre-Trial Judge notes at the outset that he is not required to revisit previously addressed arguments.⁵⁸ In any event, with regard to the Defence's allegation that Mr Bllaca was most likely never a SHIK member, the Pre-Trial Judge considers that this argument does not alter the findings contained in the judgment of the District Court of Prishtinë/Priština that [REDACTED].⁵⁹ With regard to the document allegedly confirming that Mr Bllaca was an intelligence agent of the Serbian State,⁶⁰ the Pre-Trial Judge considers that such a document does not affect the above-mentioned finding. In fact, the Pre-Trial Judge notes that the document [REDACTED]. This is further confirmed by the judgment of the District Court of Prishtinë/Priština which found that [REDACTED].⁶¹ Regardless

⁵³ First Detention Decision, para. 44; First Court of Appeals Decision, para. 38; Second Detention Decision, para. 35; Second Court of Appeals Decision, para. 34; Third Detention Decision, para. 52.

⁵⁴ See para. 27 above.

⁵⁵ First Detention Decision, para. 43; First Court of Appeals Decision, para. 40; Second Detention Decision, para. 35; Second Court of Appeals Decision, para. 34; Third Detention Decision, para. 52.

⁵⁶ Third Detention Decision, para. 52, with further references.

⁵⁷ See, for example, KSC-BC-2020-06, F00151, Defence for Mr Veseli, *Application for Interim Release of Mr Veseli*, 17 December 2020, public, paras 25-27, with confidential Annexes 1-7.

⁵⁸ See, among many others, KSC-BC-2020-04, IA003/F00005, Court of Appeals, *Decision on Pjetër Shala's Appeal Against Decision on Review of Detention*, 11 February 2022, confidential, para. 18. A public redacted version was issued on the same day, IA003/F00005/RED.

⁵⁹ Third Court of Appeals Decision, para. 23, with further references.

⁶⁰ See Annex 1 to the Response. The Pre-Trial Judge notes that the translation of the original document contained in Annex 1 is not an official one.

⁶¹ Third Court of Appeals Decision, para. 23, with further references.

of the foregoing, the Pre-Trial Judge recalls that, at this stage, it is not necessary to establish with certainty that Mr Veseli has contributed or attempted to obstruct ICTY proceedings in the past, but rather that there is *a risk* that he will obstruct SC proceedings in the future. In addition, this finding does not affect the findings set out above that Mr Veseli directly intervened in a matter involving the SC and continues to play a significant role in Kosovo. Therefore, the Pre-Trial Judge is still persuaded that [REDACTED]⁶² 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.

33. Recalling that the protective measures in place are not entirely sufficient to mitigate the risk of obstruction,⁶³ the Pre-Trial Judge considers 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.⁶⁴ In this regard, the Pre-Trial Judge notes that the existence of such a climate of witness intimidation has been lately confirmed in a judgment concerning another case before the SC.⁶⁵ In light of these findings, it is not necessary to address the Parties' submissions regarding events concerning witnesses in other KLA-related proceedings. The Pre-Trial Judge further recalls that the risk of obstruction need not materialise in an

⁶² [REDACTED].

⁶³ Third Detention Decision, para. 53.

⁶⁴ First Detention Decision, para. 48; First Court of Appeals Decision, paras 40, 48; Second Detention Decision, para. 36; Third Detention Decision, para. 54; In relation to the assessment of previously proposed conditions of interim release, the Court of Appeals confirmed that the persisting climate of witness intimidation and interference in Kosovo are relevant "contextual considerations", see KSC-BC-2020-06, IA015/F00005, Court of Appeals, *Decision on Rexhep Selimi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention* ("Selimi's Appeals Decision"), 25 March 2022, confidential, para. 43. A public redacted version was filed on the same day, IA015/F00005/RED.

⁶⁵ KSC-BC-2020-07, F00611/RED, Trial Panel II, *Public Redacted Version of the Trial Judgment*, 18 May 2022, public, paras 576-579.

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.⁶⁶

34. Lastly, the Pre-Trial Judge considers that the advancement of the pre-trial proceedings following the Third Detention Decision – in particular, the filing of the SPO's pre-trial brief and witness list,⁶⁷ as well as the disclosure of the identities of witnesses with in-court protective measures – increases the risk of obstruction considering that it will provide Mr Veseli with more details as to the case against him. On this basis, the Pre-Trial Judge further concludes that, in view of the fact that Mr Veseli 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 Third Detention Decision increases the risk of obstruction.⁶⁸

35. Accordingly, the Pre-Trial Judge concludes that the risk that Mr Veseli will obstruct the progress of SC proceedings continues to exist.

3. Risk of Committing Further Crimes

36. The SPO submits that this risk must be considered in light of: (i) a well-established and ongoing climate of witness intimidation and interference; (ii) Mr Veseli's increased awareness of incriminatory evidence; and (iii) the significant influential position the Accused still retains in Kosovo.⁶⁹

⁶⁶ 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.

⁶⁷ KSC-BC-2020-06, F00631, Specialist Prosecutor, *Submission of Pre-Trial Brief with Witness and Exhibit Lists ("Rule 95(4) Material")*, 17 December 2021, confidential, with Annexes 1-3, strictly confidential and *ex parte*. A public redacted version with confidential redacted Annexes 1-3 was issued on 21 December 2021, F00631/RED. A corrigendum with two strictly confidential *and ex parte* Annexes and one confidential Annex was submitted on 24 February 2022, F00709.

⁶⁸ See also Second Court of Appeals Decision, paras 31-33.

⁶⁹ SPO Submissions, para. 16.

37. 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.⁷⁰ 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.⁷¹

38. Turning to the facts under consideration, the Pre-Trial Judge finds, at the outset, 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 in view of the advancement of the pre-trial proceedings since the Third Detention Decision, especially the submission of the SPO's pre-trial brief and the disclosure of the identities of witnesses with in-court protective measures.⁷²

39. On this basis, the Pre-Trial Judge considers that there continues to be 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.

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

⁷⁰ First Detention Decision, para. 52; Second Detention Decision, para. 39; Third Detention Decision, para. 57.

⁷¹ First Detention Decision, paras 25, 52; Second Detention Decision, para. 39; Third Detention Decision, para. 57.

⁷² See paras 32-34 above.

4. Conclusion

41. 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.

D. CONDITIONAL RELEASE

42. The SPO submits that no conditions of release in Kosovo can mitigate the particular risks at issue.⁷³ In particular, the SPO recalls the Pre-Trial Judge's finding, as upheld by the Court of Appeals, that neither the previously proposed conditions nor any additional measures ordered *proprio motu* could sufficiently mitigate the existing risks.⁷⁴ The SPO further avers that, by declining to file submissions or proposing additional conditions, the Defence appears to have accepted this reality.⁷⁵

43. The Defence responds that the decision not to file any submissions on detention review should not be interpreted as an acceptance that neither the previously proposed conditions nor any additional measures ordered *proprio motu* could sufficiently mitigate the existing risks.⁷⁶

44. As found in previous 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 travelling.⁷⁷

⁷³ SPO Submissions, para. 24.

⁷⁴ SPO Submissions, paras 25-27.

⁷⁵ SPO Submissions, para. 29.

⁷⁶ Response, para. 10.

⁷⁷ First Detention Decision, para. 58; Second Detention Decision, para. 46; Third Detention Decision, para. 79.

This conclusion is underscored by the guarantees provided by the Kosovo Police that [REDACTED].⁷⁸

45. Turning to the risks of obstructing the progress of SC proceedings and committing further crimes, the Pre-Trial Judge recalls that he previously found that neither the previously proposed conditions nor any additional measures ordered *proprio motu* could sufficiently mitigate the existing risks.⁷⁹ In the absence of any intervening developments regarding this matter, this conclusion continues to hold true at present.

46. With particular regard to potential additional measures, and recalling that the obligation for the Pre-Trial Judge to inquire and evaluate, *proprio motu*, all reasonable conditions and not just those raised by the Defence, is not limitless,⁸⁰ and in particular that 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,⁸¹ the Pre-Trial Judge considers that, on the basis of the available information as to the capacity of the Kosovo Police to implement monitoring measures, no additional measures, which could be reasonably considered, could sufficiently mitigate the identified risks.⁸²

47. In this regard the Pre-Trial Judge recalls that 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.⁸³ Moreover, they offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented.⁸⁴

⁷⁸ Third Detention Decision, para. 79; Kosovo Police Submissions, pp. 2-4, 6.

⁷⁹ Third Detention Decision, para. 99.

⁸⁰ Third Court of Appeals Decision, para. 56; *see also* Selimi's Appeals Decision, para. 50.

⁸¹ Third Court of Appeals Decision, paras 42, 57.

⁸² Third Detention Decision, para. 98; *see also* Selimi's Appeals Decision, para. 50.

⁸³ Third Detention Decision, para. 89.

⁸⁴ Third Court of Appeals Decision, para. 38.

Recalling that it is within the Pre-Trial Judge's discretion to compare the conditions proposed by the Defence with the conditions in the SC Detention Facilities,⁸⁵ the Pre-Trial Judge remains persuaded that it is only through the communication monitoring framework applicable at the SC Detention Facilities that Mr Veseli's communications can be restricted in a manner to sufficiently mitigate the aforementioned risks. Accordingly, the Pre-Trial Judge finds that neither the conditions already proposed nor any other conditions imposed by the Pre-Trial Judge would sufficiently mitigate the risk of Mr Veseli obstructing the progress of SC proceedings or committing further crimes.

E. PROPORTIONALITY OF DETENTION

48. The SPO submits that the Pre-Trial Judge has always assessed the reasonableness of Mr Veseli's detention in light of the specific circumstances of the case at the time of the review in question, refusing to speculate as to any expected total length of detention.⁸⁶ It also argues that such findings have always been upheld by the Court of Appeals.⁸⁷ The SPO further avers that the case has further actively progressed towards trial, with the SPO filing its pre-trial brief, witness and exhibits list, and continuing to disclose Rule 102(3) and Rule 103 materials.⁸⁸ Therefore, having also regard to the scope and complexity of the case, the lengthy custodial sentence, if convicted, and the inability of the proposed conditions to mitigate the risks identified, SPO is of the view that continued detention is reasonable and proportionate.⁸⁹ The Defence has not provided any submissions in relation to this matter.

⁸⁵ Selimi's Appeals Decision, para. 35.

⁸⁶ SPO Submissions, para. 30.

⁸⁷ SPO Submissions, para. 30.

⁸⁸ SPO Submissions, para. 31.

⁸⁹ SPO Submissions, para. 32.

49. 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.⁹⁰ 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.⁹¹ 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.⁹²

50. Mr Veseli was arrested on 5 November 2020 and, as a result, he has been detained for slightly more than eighteen months 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.

51. The Pre-Trial Judge recalls that: (i) 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;⁹³ (ii) it is alleged that he played a significant role in these crimes;⁹⁴ (iii) he could be sentenced to a lengthy sentence, if convicted; (iv) the proceedings against Mr Veseli are complex;⁹⁵ and (v) the risks under Article 41(6)(b)(ii) and (iii) of the Law

⁹⁰ 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.

⁹¹ 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.

⁹² ECtHR, *Buzadji v. the Republic of Moldova* [GC], para. 90.

⁹³ Confirmed Indictment, para. 179.

⁹⁴ Confirmed Indictment, paras 5, 32, 39, 40, 43, 44, 49, 51, 55-57, 178.

⁹⁵ Third Detention Decision, para. 107, with further references. The Pre-Trial Judge also notes that the SPO intends to rely on 326 witnesses, see Annex 2 to Rule 95(4) Material.

cannot be mitigated by the proposed conditions and/or any additional conditions.⁹⁶

52. The Pre-Trial Judge further observes that, following the Third Detention Decision, substantial procedural steps have been completed with a view to transmitting the case for trial at a point in the foreseeable future.⁹⁷ In particular: (i) the SPO's pre-trial brief as well as the chart according to Rule 109(c) of the Rules have been filed;⁹⁸ (ii) the SPO completed its disclosure under Rule 102(1)(b) of the Rules;⁹⁹ (iii) the SPO completed its review of the Rule 103 material in its possession at the date of 31 January 2022;¹⁰⁰ (iv) the SPO shall complete its review of Rule 103 material that was obtained after 31 January 2022 and to file protective measure requests or disclose such material by 30 June 2022;¹⁰¹ (v) the SPO, in relation to currently pending Defence requests for the disclosure of Rule 102(3) material shall finalise its processing of these requests, request protective measures or submit materiality challenges, and disclose all material not subject to protective measures requests or materiality challenges by 30 September 2022;¹⁰² (vi) the Pre-Trial Judge ordered the Defence to file its pre-trial brief by 21 October 2022 with a view to transmitting the case in the following weeks to the trial panel;¹⁰³ and

⁹⁶ See para. 47 above.

⁹⁷ In this regard the Pre-Trial Judge recalls that, for the purposes of assessing the 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, see Third Detention Decision, para. 109.

⁹⁸ Rule 95(4) Material; KSC-BC-2020-06, F00663, Specialist Prosecutor, *Prosecution Submission of Rule 109(c) Chart*, 28 January 2022, public, with Annex 1, strictly confidential and *ex parte* and Annex 2, confidential.

⁹⁹ KSC-BC-2020-06, F00670, Specialist Prosecutor, *Prosecution Notice of Rule 102(1)(b) Disclosure and Related Requests*, 31 January 2022, strictly confidential and *ex parte*, para. 1, with Annexes 1-9, strictly confidential and *ex parte*. A confidential redacted version was filed on the same day, F00670/CONF/RED; see also Transcript of Hearing, 24 March 2022, public, p. 1067, line 24 to p. 1068, line 13.

¹⁰⁰ KSC-BC-2020-06, Transcript of Hearing ("20 May 2022 Transcript"), 20 May 2022, public, p. 1224, line 23 to p. 1226, line 16.

¹⁰¹ 20 May 2022 Transcript, p. 1323, lines 10-14.

¹⁰² 20 May 2022 Transcript, p. 1323, lines 18-24.

¹⁰³ 20 May 2022 Transcript, p. 1324, lines 3-5.

(vii) discussions on ways to streamline the case are ongoing.¹⁰⁴ Furthermore, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, Mr Veseli's detention shall be reviewed every two months or as soon as a change in circumstances arises.

53. On this basis, the Pre-Trial Judge concludes that, for the purposes of the periodic review of the detention of Mr Veseli pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, the time Mr Veseli has spent in pre-trial detention is not disproportionate.

V. DISPOSITION

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

- a) **ORDERS** Mr Veseli's continued detention;
- b) **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 **Wednesday, 29 June 2022**, with responses and replies following the timeline set out in Rule 76 of the Rules; and
- c) **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 **Wednesday, 6 July 2022**, and

¹⁰⁴ See, for example, 20 May 2022 Transcript, p. 1299, line 16 to p. 1319, line 11; KSC-BC-2020-06, F00810, Krasniqi Defence, *Krasniqi Defence Proposal for Streamlining the Case*, 20 May 2022, confidential.

the Defence, if it wishes to do so, to file their submissions by no later than **Monday, 18 July 2022**; and

- d) **ORDERS** the Defence to submit a public redacted version of the Response, or to indicate whether it could be reclassified as public, by no later than **Friday, 3 June 2022**.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Thursday, 26 May 2022

At The Hague, The Netherlands.