



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: 6 July 2022
Language: English
Classification: Public

Prosecution Submissions on Detention Review

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I. INTRODUCTION

1. The Specialist Prosecutor's Office ('SPO') files these submissions pursuant to the Pre-Trial Judge's latest decision on detention review ('May 2022 Decision').¹ The SPO notes that Veseli has not filed submissions.²

2. The continued detention of Veseli remains necessary. There has been no relevant change in circumstances since the May 2022 Decision, in which the Pre-Trial Judge found that: (i) the Article 41(6)(b) risks continued to exist;³ (ii) neither the previously proposed conditions nor any *proprio motu* additional conditions could sufficiently mitigate the identified risks;⁴ and (iii) ongoing detention remained proportionate.⁵ Since that detention review, substantial progress continues to be made towards transmitting the case file for trial.

II. SUBMISSIONS

3. 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.⁶ That determination inevitably concerns what has changed, if anything, since the previous ruling on detention.

¹ Public Redacted Version of Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00819/RED, 26 May 2022, para.54(c). 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.

² However, a request for protection of legality against the May 2022 Decision is pending with the Supreme Court Panel, see Public Redacted Version of Veseli Defence Request for Protection of Legality Against Decision on Appeal Concerning Remanded Detention Review and Periodic Review of Detention (IA014/F00008), KSC-BC-2020-06/PL001/F00001/RED, 29 June 2022.

³ May 2022 Decision, KSC-BC-2020-06/F00819/RED, paras 28, 35, 40, 41.

⁴ May 2022 Decision, KSC-BC-2020-06/F00819/RED, paras 45-47.

⁵ May 2022 Decision, KSC-BC-2020-06/F00819/RED, para.53.

⁶ *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.

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

4. 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.⁷ The most recent Veseli Defence Appeal did not challenge this finding.⁸ 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

5. 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 Judge⁹ and confirmed by the Appeals Panel.¹⁰ 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 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.¹¹

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

⁷ May 2022 Decision, KSC-BC-2020-06/F00819/RED, para.24.

⁸ 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* 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 ('Third Appeal Decision').

⁹ 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 ('Third Detention Decision'), para.46; Decision on Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00380/RED, 2 July 2021 ('Second Detention Decision'), para.30.

¹⁰ 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.

¹¹ 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.

1. Risk of flight

7. 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, *inter alia*, 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.¹²

2. Risk of obstructing the progress of KSC proceedings

8. 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 willingness and ability to intervene in such matters, and his increased awareness of the underlying evidence.

9. 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 that Veseli instigates others or otherwise contributes to the materialisation of that risk.¹³

10. 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.¹⁴ Veseli

¹² May 2022 Decision, KSC-BC-2020-06/F00819/RED, paras 26-27; Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.48; Second Appeal Decision, KSC-BC-2020-06/IA008/F00004, para. 34.

¹³ May 2022 Decision, KSC-BC-2020-06/F00819/RED, para.33.

¹⁴ Decision on Kadri Veseli's Application for Interim Release, KSC-BC-2020-06/F00178, 22 January 2021 ('First Detention Decision'), para.39; *see also* May 2022 Decision, KSC-BC-2020-06/F00819/RED, paras 32, 34.

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.¹⁵

11. 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.¹⁶ Veseli also has a demonstrated ability to give instructions to those who were involved with potential interference against SPO witnesses.¹⁷

12. The risk of obstruction remains high, as Veseli has obtained access to incriminating evidentiary material, as well as the identities of witnesses with in-court protective measures.¹⁸ Protective measures alone are an insufficient precaution against the inherently high risk of witness intimidation or interference.¹⁹

13. These elements should moreover be placed in a context of a persisting climate of witness intimidation and interference in Kosovo, which was recently confirmed by the Trial Panel in the *Gucati and Haradinaj* trial judgment.²⁰ The Trial Panel found beyond reasonable doubt that Hysni Gucati and Nasim Haradinaj, by publicly revealing confidential information about protected witnesses, 'contributed to and amplified the serious fears and concerns of many of those who gave evidence to the

¹⁵ Second Appeal Decision, KSC-BC-2020-06/IA008/F00004/RED, para.34.

¹⁶ Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.52.

¹⁷ 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; May 2022 Decision, KSC-BC-2020-06/F00819/RED, para.32.

¹⁸ May 2022 Decision, KSC-BC-2020-06/F00819/RED, para.34.

¹⁹ 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.

²⁰ *Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2020-07/F00611/RED, 18 May 2022, paras 577-579 ('Gucati and Haradinaj Trial Judgment').

SC/SPO or who were likely to do so'.²¹ Significantly, this included the public dissemination of confidential documents relating to the investigation of against Kadri Veseli and other suspects, who have been now been charged in these proceedings,²² which underscores that the serious threat of witness intimidation in Kosovo remains current.²³ The Trial Panel also found that Gucati and Haradinaj acted on behalf of the KLA War Veteran's Association, 'which represented thousands of persons, some of whom could be subject to proceedings before the SC'.²⁴ Indeed, the Trial Panel noted that the organisation's 23-person leadership committee formally approved the accused's criminal actions.²⁵ The fate of witnesses in former KLA trials further demonstrate the risks posed by Veseli's easily mobilised supporters and sympathisers.²⁶

14. Absent any change in circumstances identified by the Defence, the Pre-Trial Judge's²⁷ and Appeals Panel's previous findings²⁸ continue to stand, even more so when placed in the context of the evidence heard and findings made in KSC-BC-2020-07. There remain articulable grounds to believe that Veseli will obstruct the progress of criminal proceedings if he is released.

²¹ Gucati and Haradinaj Trial Judgment, KSC-BC-2020-07/F00611/RED, para.581, 585.

²² Gucati and Haradinaj Trial Judgment, KSC-BC-2020-07/F00611/RED, paras 353, 380, 458.

²³ Gucati and Haradinaj Trial Judgment, KSC-BC-2020-07/F00611/RED, para.579.

²⁴ Gucati and Haradinaj Trial Judgment, KSC-BC-2020-07/F00611/RED, para.580.

²⁵ Gucati and Haradinaj Trial Judgment, KSC-BC-2020-07/F00611/RED, para.580.

²⁶ 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; *Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2020-07/F00611/RED, 18 May 2022, paras 577-578.

²⁷ Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders, KSC-BC-2020-06/F00027/RED, 26 October 2020, para.33; First Detention Decision, KSC-BC.2020-06/F00178, paras 39-48; Second Detention Decision, KSC-BC-2020-06/F00380/RED, paras 35-37; Third Detention Decision, KSC-BC-2020-06/F00576/RED, paras 52-55; May 2022 Decision, KSC-BC-2020-06/F00819/RED, paras 32-35.

²⁸ Decision on Kadri Veseli's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA001/F00005, 30 April 2021, paras 36-48; Second Appeal Decision, paras 33-36; Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED, para.24.

3. Risk of committing further crimes

15. 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. The factors relevant to the risks of flight and obstruction also contribute to the risk of further crimes in Veseli's case. This risk must also be considered in light of: (i) a well-established and ongoing climate of witness intimidation and interference; (ii) the increased awareness of incriminatory evidence the Accused has; and (iii) the significant influential positions the Accused still retains in Kosovo.²⁹ Considering the prior examples of Veseli's willingness and ability to interfere in judicial proceedings,³⁰ 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 previously 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.³¹

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

²⁹ Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders, KSC-BC-2020-06/F00027/RED, 26 October 2020, para.34; First Detention Decision, KSC-BC.2020-06/F00178, para.52; Veseli Second Detention Decision, KSC-BC-2020-06/F00380/RED, paras 39-41; Third Detention Decision, KSC-BC-2020-06/F00576/RED, paras 58-59; May 2022 Decision, KSC-BC-2020-06/F00819/RED, para.38.

³⁰ May 2022 Decision, KSC-BC-2020-06/F00819/RED, para.38; Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders, KSC-BC-2020-06/F00027/RED, 26 October 2020, para.33; First Detention Decision, KSC-BC.2020-06/F00178, paras 39, 43-44; Decision on Kadri Veseli's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA001/F00005, 30 April 2021, paras 36-40; Second Appeal Decision, KSC-BC-2020-06/IA008/F00004, para.34.

³¹ Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED, paras 34-45, 49-53, 56-57; Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.99; May 2022 Decision, KSC-BC-2020-06/F00819/RED, paras 45-46.

the purpose of obstructing SC proceedings or committing further crimes.³² This risk is especially acute given Veseli's intelligence experience.³³

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'.³⁴ 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.³⁵ 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'.³⁶ Crucially, no additional conditions could affect this conclusion.³⁷

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 submission from the Kosovo Police.³⁸

29. While the Pre-Trial Judge must continue to periodically 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

³² May 2022 Decision, KSC-BC-2020-06/F00819/RED, Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.82; Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED, para. 35.

³³ Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.82.

³⁴ Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED, para.38; May 2022 Decision, KSC-BC-2020-06/F00819/RED, para.47.

³⁵ Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.99; May 2022 Decision, KSC-BC-2020-06/F00819/RED, para. 47.

³⁶ Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.99; May 2022 Decision, KSC-BC-2020-06/F00819/RED, para. 47.

³⁷ Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.99; May 2022 Decision, KSC-BC-2020-06/F00819/RED, para. 47.

³⁸ Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.97; Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED, paras 35, 57.

these were neither widely used in the context of interim release nor raised by the Parties'.³⁹ Moreover, in the assessment of the conditions of release, the Pre-Trial Judge need only consider conditions that are reasonable.⁴⁰

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.⁴¹ The Appeals Panel has upheld this approach.⁴²

31. At the end of March 2022, the Appeals Panel upheld the Pre-Trial Judge's finding that detention remained proportionate.⁴³ On 26 May 2022, the Pre-Trial Judge again found that Veseli's detention remained proportionate.⁴⁴ Since that time, the case has continued to actively progress towards trial. The SPO has now completed its review of Rule 103 materials registered up to 16 June 2022 and has disclosed those items containing Rule 103 information, with the exception of a small number of items for which protective measures have been requested.⁴⁵ The SPO has already filed its Pre-Trial Brief and Rule 109(c) chart, and has finalised disclosure under Rule 102(1)(b). Currently pending Defence requests for disclosure under Rule 102(3) will be processed by 30 September 2022.⁴⁶

³⁹ Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED, para.42.

⁴⁰ Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED, para. 56.

⁴¹ Third Detention Decision, KSC-BC-2020-06/F00576/RED, para. 112.

⁴² 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.

⁴³ Third Appeal Decision, KSC-BC-2020-06/IA014/F00008/RED, para.67; Third Detention Decision, KSC-BC-2020-06/F00576/RED, para.110.

⁴⁴ May 2022 Decision, KSC-BC-2020-06/F00819/RED, para.53.

⁴⁵ Confidential Redacted Version of Third Prosecution request for protective measures for items containing Rule 103 information; KSC-BC-2020-06/F00861/CONF/RED, 1 July 2022, para.1.

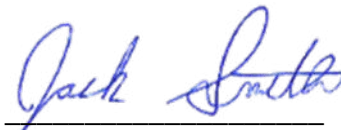
⁴⁶ Transcript, 20 May 2022, p.1323.

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.

III. RELIEF REQUESTED

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

Word count: 2579



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Wednesday, 6 July 2022

At The Hague, the Netherlands.