



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

**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:** Specialist Prosecutor

**Date:** 6 September 2022

**Language:** English

**Classification:** Public

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**Prosecution Submissions on Detention Review of Mr Veseli**

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## I. Introduction

1. Mr Veseli has been repeatedly found to pose a risk of flight, obstruction to the progress of proceedings at the Kosovo Specialist Chambers and/or committing further crimes against those perceived as being opposed to the KLA, including (potential) witnesses.<sup>1</sup> The requirements under Article 41(6) of the Law<sup>2</sup> remain satisfied and no alternative, reasonable measures to detention exist that sufficiently mitigate the risks identified.

2. There has been no change in circumstances since the Pre-Trial Judge's unchallenged decision of 22 August 2022, ordering the continued detention of Mr Veseli.<sup>3</sup> Mr Veseli's detention remains necessary and proportional.

## II. Procedural background

3. The Accused went into custody on 5 November 2020 and was transferred to the seat of the Kosovo Specialist Chambers in The Hague. The Pre-Trial Judge issued orders for his continued detention on 22 January 2021,<sup>4</sup> 2 July 2021,<sup>5</sup> 23 November 2021,<sup>6</sup> 26 May 2022,<sup>7</sup> and most recently on 26 July 2022.<sup>8</sup>

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<sup>1</sup> See for example Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00897, 26 July 2022 ('Fifth PTJ Detention Decision'); Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00819, 26 May 2022 (public redacted version notified on 8 June 2022) ('Fourth PTJ Detention Decision'); Decision on Kadri Veseli's Application for Interim Release, KSC-BC-2020-06/F00178, 22 January 2021 ('First PTJ Detention Decision').

<sup>2</sup> Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

<sup>3</sup> Fifth PTJ Detention Decision, KSC-BC-2020-06/F00897.

<sup>4</sup> First PTJ Detention Decision, KSC-BC-2020-06/F00178.

<sup>5</sup> Decision on Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00380, 2 July 2021 (public redacted version notified on 2 July 2021).

<sup>6</sup> Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00576, 23 November 2021 (public redacted version notified on 8 December 2021).

<sup>7</sup> Fourth PTJ Detention Decision, KSC-BC-2020-06/F00819.

<sup>8</sup> Fifth PTJ Detention Decision, KSC-BC-2020-06/F00897.

4. The Appeals Panel confirmed orders for Mr Veseli's continued detention on 30 April 2021 and 31 March 2022.<sup>9</sup>

### III. Submissions

5. For purposes of a detention review under Rule 57(2),<sup>10</sup> 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>11</sup> That determination inevitably concerns what has changed, if anything, since the previous ruling on detention.

6. The Pre-Trial Judge is not required to make findings on the factors already decided upon in the initial ruling on detention.<sup>12</sup> The Defence has not identified any relevant change in circumstances since the last ruling on detention, and indeed, no such changes have occurred.

#### A. EXISTENCE OF A GROUNDED SUSPICION

7. The Pre-Trial Judge has determined that there is a 'well-grounded' suspicion that Mr Veseli is criminally liable for the crimes contained in the confirmed indictment. 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

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<sup>9</sup> Decision on Kadri Veseli's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA001/F00005, 30 April 2021 ('First Appeals Panel Detention Decision'); Decision on Kadri Veseli's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA014/F00008, 31 March 2022 (public redacted version notified on 31 March 2022) ('Third Appeals Panel Detention Decision').

<sup>10</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

<sup>11</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>12</sup> KSC-BC-2020-07/IA002/F00005, para.55.

Law'.<sup>13</sup> There has been no development capable of changing this finding or warranting its re-examination by the Pre-Trial Judge. The Article 41(6)(a) criterion remains met.

B. THERE ARE ARTICULABLE GROUNDS TO BELIEVE THAT THE ARTICLE 41(6) RISKS EXIST

8. In assessing the Article 41(6)(b) criteria, the panel must consider whether there exists a *risk*, in other words whether it is *possible* – rather than inevitable - for the person to abscond, destroy, hide, change or forge evidence of a crime, obstruct the progress of criminal proceedings, or repeat the criminal offence, complete an attempted crime, or commit a crime that the person threatened to commit.<sup>14</sup>

9. The Article 41(6)(b) criteria are in the alternative. While only one of the criteria needs to be met for a person to be detained,<sup>15</sup> all three Article 41(6)(b) criteria have been found to exist with respect to Mr Veseli. Indeed, absent any change in circumstance since the Pre-Trial Judge's last detention decision, Mr Veseli continues to pose a risk of flight as he still has an incentive and the means to evade proceedings.<sup>16</sup> In particular, he has been made aware of the charges brought against him and the potential for a serious sentence, and he has an increased insight into the evidence upon which the SPO is relying. Furthermore, Mr Veseli maintains a position of influence, derived from his previous roles as *inter alia* founding member of the KLA General Staff, Head of the Intelligence, head of SHIK, and Chairman of the Kosovo Assembly.<sup>17</sup> The 'knowledge, ability, and skills' that Mr Veseli acquired in his roles further increase his risk of flight.<sup>18</sup>

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<sup>13</sup> Fifth PTJ Detention Decision, KSC-BC-2020-06/F00897, para.15.

<sup>14</sup> *Prosecutor v. Gucati and Haradinaj*, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, KSC-BC-2020-07/F00005, 9 December 2020, para.67. *See also* First Appeals Panel Detention Decision, KSC-BC-2020-06/IA001/F00005, paras 17-19.

<sup>15</sup> First Appeals Panel Detention Decision, KSC-BC-2020-06/IA001/F00005, para.53.

<sup>16</sup> Fifth PTJ Detention Decision, KSC-BC-2020-06/F00897, paras 18-20.

<sup>17</sup> Fifth PTJ Detention Decision, KSC-BC-2020-06/F00897, para.19; First PTJ Detention Decision, KSC-BC-2020-06/F00178, para.32.

<sup>18</sup> First PTJ Detention Decision, KSC-BC-2020-06/F00178, para.32.

10. Viewed in the context of a well-established and persistent climate of intimidation,<sup>19</sup> Mr Veseli's previous roles and continued significant influential position which enable him to access and mobilize supporters, his ability to instruct others interacting with the SPO, and his intervention in a matter involving the Specialist Chambers, continue to support a finding that a risk continues to exist that he will obstruct the progress of the proceedings at the Specialist Chamber if released.<sup>20</sup> In conjunction with his increased knowledge of the SPO case, these factors also establish grounds to believe that there remains a risk that Mr Veseli will commit crimes similar to those for which he is charged.<sup>21</sup>

11. Each of these articulable grounds continue to necessitate Mr Veseli's detention.

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

12. No alternative measures sufficiently mitigate all the Article 41(6)(b) risks posed by the Accused. Past proposals for conditional release, such as closely monitored house detention, random house searches, surrender of travel documents, and commitments to not contact potential witnesses,<sup>22</sup> have been found to not sufficiently mitigate the risks of obstructing the progress of proceedings at the Specialist Chambers and committing further crimes.<sup>23</sup>

13. The Veseli Defence has not made submissions as part of the current round of detention review. Although the Pre-Trial Judge must *proprio motu* consider all reasonable mitigation measures beyond those raised by the Defence, the list of reasonable measures is not unlimited<sup>24</sup> and measures need to be realistic.<sup>25</sup> All

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<sup>19</sup> Fifth PTJ Detention Decision, KSC-BC-2020-06/F00897, para.25.

<sup>20</sup> Fifth PTJ Detention Decision, KSC-BC-2020-06/F00897, paras 24 and 27; *see also* First PTJ Detention Decision, KSC-BC-2020-06/F00178, para.39.

<sup>21</sup> Fifth PTJ Detention Decision, KSC-BC-2020-06/F00897, para.31.

<sup>22</sup> Application for Interim Release of Kadri Veseli, KSC-BC-2020-06/F00151, 17 December 2020, para.10.

<sup>23</sup> First PTJ Detention Decision, KSC-BC-2020-06/F00178, paras 59-60.

<sup>24</sup> Fifth PTJ Detention Decision, KSC-BC-2020-06/F00897, para.38.

<sup>25</sup> Decision on Jakup Krasniqi's Appeal Against Decision on Periodic Review of Detention, KSC-BC-2020-06/IA020/F00005, 2 August 2022 (public redacted version notified 2 August 2022), paras 33-34.

reasonable, realistic alternatives to detention in the controlled environment of the Detention Facilities in The Hague have been duly considered and rightfully rejected.

#### D. MR VESELI'S CONTINUED DETENTION IS REASONABLE

14. In addition to being necessary, the continued detention of the Accused is reasonable. Mr Veseli is charged with 10 counts of war crimes and crimes against humanity and, if convicted, could face a lengthy sentence.<sup>26</sup> Additionally, key milestones in the pre-trial stage have either been met or will be met imminently. Importantly, the SPO has submitted its pre-trial brief and updated witness list<sup>27</sup> to the Accused, and is also on track to supplement its Rule 102(3) notice, complete the disclosure of items requested from the original Rule 102(3) notice, and supplement its Rule 109(c) chart in accordance with ordered deadlines.

15. The continued detention of Mr Veseli is reasonable considering the progress of this case towards trial, its scope and complexity, the lengthy custodial sentence in the event of a conviction, and the risks posed.

#### IV. Relief Requested

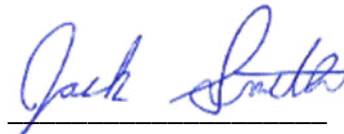
16. For the foregoing reasons, the Pre-Trial Judge should order the continued detention of Mr Veseli.

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<sup>26</sup> Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00026, 26 October 2020 (public redacted version notified on 30 November 2020); Decision on the Confirmation of Amendments to the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00777, 22 April 2022 (public redacted version notified 6 May 2022); Decision on Motion Alleging Defects in the Form of the Amended Indictment, KSC-BC-2020-06/F00895, 22 July 2022. *See also* Fifth PTJ Detention Decision, KSC-BC-2020-06/F00897, para.43.

<sup>27</sup> Prosecution submission of revised witness list, KSC-BC-2020-06/F00948, 2 September 2022 (with three annexes).

**Word count: 1520**



**Jack Smith**

**Specialist Prosecutor**

Tuesday, 6 September 2022

At The Hague, the Netherlands.