



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA 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 September 2022

**Language:** English

**Classification:** Public

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**Decision on Periodic Review of Detention of Kadri Veseli**

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**Specialist Prosecutor**  
Jack Smith

**Counsel for Victims**  
Simon Laws

**Counsel for Hashim Thaçi**  
Gregory Kehoe

**Counsel for Kadri Veseli**  
Ben Emmerson

**Counsel for Rexhep Selimi**  
David Young

**Counsel for Jakup Krasniqi**  
Venkateswari Alagenda

THE PRE-TRIAL JUDGE,<sup>1</sup> 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"),<sup>2</sup> Kadri Veseli ("Mr Veseli" or "Accused") was arrested pursuant to a decision and an arrest warrant issued by the Pre-Trial Judge.<sup>3</sup>

2. On 22 January 2021, the Pre-Trial Judge rejected Mr Veseli's application for interim release ("First Detention Decision").<sup>4</sup> This decision was upheld on appeal by the Court of Appeals on 30 April 2021 ("First Court of Appeals Decision").<sup>5</sup>

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

<sup>2</sup> 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 Specialist Prosecutor 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.

<sup>3</sup> 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.

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

<sup>5</sup> KSC-BC-2020-06, IA001/F00005, Court of Appeals, *Decision on Kadri Veseli's Appeal Against Decision on Interim Release*, 30 April 2021, public.

3. On 2 July 2021, the Pre-Trial Judge ordered Mr Veseli's continued detention ("Second Detention Decision").<sup>6</sup> This decision was appealed by Mr Veseli, and on 1 October 2021, the Court of Appeals remanded it 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 ("Second Court of Appeals Decision").<sup>7</sup>
4. On 23 November 2021, following submissions by the Registrar<sup>8</sup> and the Kosovo Police,<sup>9</sup> the Pre-Trial Judge 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").<sup>10</sup> On 31 March 2022, the Court of Appeals upheld the Third Detention Decision ("Third Court of Appeals Decision").<sup>11</sup>
5. On 26 May 2022, the Pre-Trial Judge ordered Mr Veseli's continued detention ("Fourth Detention Decision").<sup>12</sup>

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> KSC-BC-2020-06, F00536, Registrar, *Registry Submissions Pursuant to the Order to Provide Information on the Detention Regime (F00522)*, 20 October 2021, confidential. A public redacted version was filed on 29 November 2021, F00536/RED. *See also* F00522, Pre-Trial Judge, *Order to the Registrar to Provide Information on the Detention Regime*, 13 October 2021, confidential.

<sup>9</sup> KSC-BC-2020-06, F00548, Kosovo General Police Directorate, *Answer to the Request Number KSC-BC-2020-06, Dated 13 October 2021*, 27 October 2021, confidential ("Kosovo Police Submissions"). The translation into English of said submission was issued on 3 November 2021, F00548/eng. *See also* F00513, Pre-Trial Judge, *Order to the Kosovo Police to Provide Information*, 8 October 2021, public, with one Annex, confidential.

<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> KSC-BC-2020-06, F00819, Pre-Trial Judge, *Decision on Periodic Review of Detention of Kadri Veseli*, 26 May 2022, confidential. A public redacted version was issued on 8 June 2022, F00819/RED.

6. On 26 July 2022, the Pre-Trial Judge ordered Mr Veseli's continued detention ("Fifth Detention Decision").<sup>13</sup>

7. On 15 August 2022 a Panel of the Supreme Court Chamber dismissed Mr Veseli's request for protection of legality against the Third Court of Appeals Decision.<sup>14</sup>

8. On 6 September 2022, pursuant to the time-frame laid out in the Fifth Detention Decision,<sup>15</sup> the Specialist Prosecutor's Office ("SPO") filed submissions in relation to the periodic review of detention ("SPO Submissions").<sup>16</sup> The Defence did not file any such submissions.

## II. SUBMISSIONS

9. The SPO maintains that the continued detention of Mr Veseli remains necessary and proportional since there has been no relevant change in circumstances since the Fifth Detention Decision.<sup>17</sup>

## III. APPLICABLE LAW

10. Article 41(6) of the Law provides that the Specialist Chambers ("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

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<sup>13</sup> KSC-BC-2020-06, F00897, Pre-Trial Judge, *Decision on Periodic Review of Detention of Kadri Veseli*, 26 July 2022, public.

<sup>14</sup> KSC-BC-2020-06/PL001, F00008, Supreme Court Chamber, *Decision on Kadri Veseli's Request for Protection of Legality*, 15 August 2022, public.

<sup>15</sup> Fifth Detention Decision, para. 46(c).

<sup>16</sup> KSC-BC-2020-06, F00956, Specialist Prosecutor, *Prosecution Submissions on Detention Review of Mr Veseli*, 6 September 2022, public.

<sup>17</sup> SPO Submissions, para. 2.

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.

11. 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.

12. 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.

13. 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 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

14. 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.<sup>18</sup>

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<sup>18</sup> See, among many others, Third Detention Decision, para. 41, with further references.

## B. GROUNDED SUSPICION

15. 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.<sup>19</sup>

16. The SPO submits that the Article 41(6)(a) criterion remain met. In its view, there has been no development capable of changing the Pre-Trial Judge's previous finding of a well-grounded suspicion that Mr Veseli is criminally liable for crimes contained in the Confirmed Indictment.<sup>20</sup>

17. 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, torture and murder) under Articles 13, 14(1)(c) and 16(1)(a) of the Law.<sup>21</sup> Moreover, 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.<sup>22</sup> 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.<sup>23</sup>

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<sup>19</sup> Similarly ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222.

<sup>20</sup> SPO Submissions, para. 7.

<sup>21</sup> Confirmation Decision, para. 521(a)(i)-(ii); Second Court of Appeals Decision, para. 24.

<sup>22</sup> 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.

<sup>23</sup> Second Court of Appeals Decision, para. 21.

18. 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

19. 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.<sup>24</sup> The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"<sup>25</sup> 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.<sup>26</sup> In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.<sup>27</sup> When deciding 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.<sup>28</sup>

#### 1. Risk of Flight

20. The SPO submits that Mr Veseli continues to pose a flight risk as he still has the incentive and the means to evade proceedings. Specifically, it submits that Mr Veseli: (i) has been made aware of the charges against him and the potential for a serious sentence; (ii) has increasing insight into the evidence upon which the SPO intends to rely; and (iii) as a result of his previous roles, maintains a position

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<sup>24</sup> First Detention Decision, para. 21; First Court of Appeals Decision, paras 18-19.

<sup>25</sup> See chapeau of Article 41(6)(b) of the Law.

<sup>26</sup> First Detention Decision, para. 21.

<sup>27</sup> First Court of Appeals Decision, para. 17.

<sup>28</sup> 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*.

of influence and has acquired knowledge, abilities and skills, all of which further increase his flight risk.<sup>29</sup>

21. 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. In particular, 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.<sup>30</sup> Mr Veseli has also gained increased insight into the evidence underpinning these charges, in particular following the SPO's filing of its Pre-Trial Brief and related material as well as its Rule 109(c) chart,<sup>31</sup> the completion of the disclosure of Rule 102(1)(b) material,<sup>32</sup> and further disclosure of Rule 103 material.<sup>33</sup> Since the Fifth Detention Decision, Mr Veseli has also been provided with further details of the case against him through, *inter alia*, the SPO's submission of a revised witness list including mode of questioning and presentation times<sup>34</sup> and an amended exhibit list.<sup>35</sup> Moreover, the Pre-Trial Judge considers that the influence Mr Veseli continues to derive from his previous roles

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<sup>29</sup> SPO Submissions, para. 9.

<sup>30</sup> First Detention Decision, para. 32; Second Detention Decision, para. 32; Third Detention Decision, para. 48; Fourth Detention Decision, para. 27; Fifth Detention Decision, para. 19.

<sup>31</sup> KSC-BC-2020-06, F00631, Specialist Prosecutor, *Submission of Pre-Trial Brief with Witness and Exhibit Lists*, 17 December 2021, confidential, with Annexes 1-3, strictly confidential and *ex parte*. A public redacted version with confidential redacted Annexes 1-3 was filed on 21 December 2021, F00631/RED. A corrigendum with two strictly confidential and *ex parte* Annexes, and one confidential Annex was filed on 24 February 2022, F00709; F00663, Specialist Prosecutor, *Prosecution Submission of Rule 109(c) Chart ("Rule 109(c) Chart")*, 28 January 2022, public, with Annex 1, strictly confidential and *ex parte* and Annex 2, confidential.

<sup>32</sup> KSC-BC-2020-06, F00670, Specialist Prosecutor, *Prosecution Notice of Rule 102(1)(b) Disclosure and Related Requests ("Notice of Rule 102(1)(b) Disclosure")*, 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; Transcript of Hearing, 24 March 2022, public, p. 1067, line 24 to p. 1068, line 13.

<sup>33</sup> See e.g. Disclosure Packages: 395, 418 and 456.

<sup>34</sup> KSC-BC-2020-06, F00948, Specialist Prosecutor, *Prosecution Submission of Revised Witness List ("Revised Witness List")*, 2 September 2022, public, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential.

<sup>35</sup> KSC-BC-2020-06, F00967, *Prosecution Submission of Amended Exhibit List ("Amended Exhibit List")*, 13 September 2022, confidential, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential. The SPO previously amended its exhibit list on 25 July 2022 (F00896), 29 April 2022 (F00788) and 18 March 2022 (F00738).



in Kosovo – in particular from his intelligence related positions – may assist him in evading SC proceedings by, for instance, calling upon the support of persons sympathetic to him and/or the Kosovo Liberation Army (“KLA”), securing access to relevant information, and obtaining funds and means to travel.<sup>36</sup>

22. On this basis, and notwithstanding the counter-balancing factors identified in the First Detention Decision,<sup>37</sup> 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**

23. The SPO submits that there remains a real risk that Mr Veseli will obstruct the progress of SC proceedings if he is released in light of Mr Veseli’s: (i) previous roles and continued significant influential position which enable him to access and mobilise supporters; (ii) ability to instruct others interacting with the SPO; and (iii) intervention in a matter involving the SC. The SPO adds that these factors must be viewed in the context of a well-established and persistent climate of intimidation.<sup>38</sup>

24. 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;<sup>39</sup> (ii) continues to play a significant role in Kosovo on the basis of the previous positions he occupied,<sup>40</sup> which would continue to allow him to, for instance, access information

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<sup>36</sup> Confirmation Decision, para. 460; First Detention Decision, para. 32; Second Detention Decision, para. 32; Third Detention Decision, para. 48; Fourth Detention Decision, para. 27; Fifth Detention Decision, para. 19.

<sup>37</sup> First Detention Decision, para. 33.

<sup>38</sup> SPO Submissions, para. 10.

<sup>39</sup> 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; Fourth Detention Decision, para. 32; Fifth Detention Decision, para. 24.

<sup>40</sup> See para. 21 above.

or elicit the support of others.<sup>41</sup> Furthermore, the Pre-Trial Judge recalls that he found that the evidence reveals that, while Mr Veseli was at the head of the Kosovo Intelligence Service (“SHIK”), members of the SHIK were involved in witness interference.<sup>42</sup>

25. Recalling that the protective measures in place are not entirely sufficient to mitigate the risk of obstruction,<sup>43</sup> 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.<sup>44</sup> In this regard, the Pre-Trial Judge notes that the existence of such a climate of witness intimidation has been confirmed in the *Gucati and Haradinaj* trial judgment.<sup>45</sup>

26. The Pre-Trial Judge further notes that the risk of obstruction need not materialise in an 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.<sup>46</sup>

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<sup>41</sup> 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; Fourth Detention Decision, para. 32; Fifth Detention Decision, para. 24.

<sup>42</sup> Third Detention Decision, para. 52; Third Court of Appeals Decision, paras 22-24; Fourth Detention Decision, para. 32; Fifth Detention Decision, para. 24.

<sup>43</sup> Third Detention Decision, para. 53; Fourth Detention Decision, para. 33; Fifth Detention Decision, para. 25.

<sup>44</sup> First Detention Decision, para. 48; First Court of Appeals Decision, paras 40, 48; Second Detention Decision, para. 36; Third Detention Decision, para. 54; Fourth Detention Decision, para. 33; Fifth Detention Decision, para. 25. 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.

<sup>45</sup> Fifth Detention Decision, para. 25 referring to KSC-BC-2020-07, F00611/RED, Trial Panel II, Public Redacted Version of the Trial Judgement, 18 May 2022, public, para. 577.

<sup>46</sup> KSC-BC-2020-06, IA003/F00005, Court of Appeals, *Decision on Rexhep Selimi’s Appeal Against Decision on Interim Release*, 30 April 2021, confidential, para. 59. A public redacted version was filed on the same day, IA003/F00005/RED.

27. Lastly, the Pre-Trial Judge considers that with the advancement of the pre-trial proceedings, in particular the SPO's filing of its Pre-Trial Brief, related material and Rule 109(c) Chart, the completion of the disclosure of Rule 102(1)(b) material,<sup>47</sup> and more recently, its Revised Witness List, Amended Exhibit List, and its further disclosure of Rule 103 material,<sup>48</sup> Mr Veseli continues to gain insight into the evidence underpinning the serious charges against him. Given that Mr Veseli has demonstrably intervened in a matter involving the SC and still plays a significant role in Kosovo, the Pre-Trial Judge considers that the risk of obstruction remains high.

28. 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**

29. The SPO submits that the same factors that establish grounds to believe that there is a risk that Mr Veseli will obstruct the progress of SC proceedings also establish grounds to believe that he will commit crimes similar to those with which he has been charged. The SPO adds to these factors that Mr Veseli has increased knowledge of the SPO's case against him.<sup>49</sup>

30. 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.<sup>50</sup> It is further recalled that it

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<sup>47</sup> Notice of Rule 102(1)(b) Disclosure; KSC-BC-2020-06, Transcript of Hearing, 24 March 2022, public, p. 1067, line 24 to p. 1068, line 13.

<sup>48</sup> Disclosure Packages: 395, 418 and 456.

<sup>49</sup> SPO Submissions, para. 10.

<sup>50</sup> First Detention Decision, para. 52; Second Detention Decision, para. 39; Third Detention Decision, para. 57; Fourth Detention Decision, para. 37; Fifth Detention Decision, para. 30.

suffices that an accused instigates or assists others to commit such crimes, or contributes in any other way to their commission.<sup>51</sup>

31. Turning to the facts under consideration, the Pre-Trial Judge considers the following findings relevant: (i) Mr Veseli's ability and demonstrated willingness to interfere in SC proceedings; (ii) his capacity to garner the means to intervene in SC proceedings due to his continued role of significance in Kosovo; and (iii) his increased awareness of the SPO's case against him in view of the advancement of the pre-trial proceedings.<sup>52</sup>

32. On this basis, and in combination with the prevailing climate of witness intimidation, 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.<sup>53</sup>

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

#### **4. Conclusion**

34. 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

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<sup>51</sup> First Detention Decision, paras 25, 52; Second Detention Decision, para. 39; Third Detention Decision, para. 57; Fourth Detention Decision, para. 37; Fifth Detention Decision, para. 30.

<sup>52</sup> See para 27 above. See also First Detention Decision, paras 52-53; First Court of Appeals Decision, paras 38-40; Second Detention Decision, para. 40; Second Court of Appeals Decision, paras 29-38; Third Detention Decision, para. 58; Third Court of Appeals Decision, paras 20-27; Fourth Detention Decision, para. 38; Fifth Detention Decision, para. 31.

<sup>53</sup> First Detention Decision, paras 52-53; Second Detention Decision, paras 40-41; Second Court of Appeals Decision, paras 29-38; Third Detention Decision, paras 58-60; Third Court of Appeals Decision, paras 20-27; Fourth Detention Decision, paras 38-40; Fifth Detention Decision, paras 31-33.

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

35. The SPO submits that no alternative measures sufficiently mitigate all of the Article 41(6)(b) risks posed by the Accused. It adds that the Pre-Trial Judge has considered and rightly rejected all reasonable, realistic alternatives to detention in the controlled environment of the SC Detention Facilities.<sup>54</sup>

36. The Pre-Trial Judge recalls, as found in previous detention decisions, that 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.<sup>55</sup> This conclusion is underscored by the guarantees provided by the Kosovo Police.<sup>56</sup>

37. 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.<sup>57</sup> In the absence of any intervening developments regarding this matter, this conclusion continues to hold true.

38. With particular regard to potential additional measures, the Pre-Trial Judge recalls that the obligation to inquire and evaluate, *proprio motu*, all reasonable conditions and not just those raised by the Defence, is not limitless.<sup>58</sup> In particular,

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<sup>54</sup> SPO Submissions, paras 12-13.

<sup>55</sup> First Detention Decision, para. 58; Second Detention Decision, para. 46; Third Detention Decision, para. 79; Fourth Detention Decision, para. 44; Fifth Detention Decision, para. 36.

<sup>56</sup> Third Detention Decision, para. 79; Fourth Detention Decision, para. 44; Kosovo Police Submissions, pp. 2-4, 6; Fifth Detention Decision, para. 36.

<sup>57</sup> Third Detention Decision, para. 99; Fourth Detention Decision, para. 45; Fifth Detention Decision, para. 37.

<sup>58</sup> Third Court of Appeals Decision, para. 56. *See also* Selimi's Appeals Decision, para. 50.

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.<sup>59</sup> The Pre-Trial Judge therefore 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.<sup>60</sup>

39. 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.<sup>61</sup> Moreover, they offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented.<sup>62</sup> 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,<sup>63</sup> 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.

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<sup>59</sup> Third Court of Appeals Decision, paras 42, 57.

<sup>60</sup> Third Detention Decision, para. 98. *See also* Selimi's Appeals Decision, para. 50; Fifth Detention Decision, para. 38.

<sup>61</sup> Third Detention Decision, para. 89; Fourth Detention Decision, para. 47; Fifth Detention Decision, para. 39.

<sup>62</sup> Third Court of Appeals Decision, para. 38.

<sup>63</sup> Selimi's Appeals Decision, para. 35.

## E. PROPORTIONALITY OF DETENTION

40. The SPO submits that Mr Veseli's continued detention is reasonable. To this end, the SPO refers to: (i) the ten counts of war crimes and crimes against humanity with which Mr Veseli is charged; (ii) key milestones in the pre-trial stage having been met or imminently to be met; (iii) the scope and complexity of the case; (iv) the length of the custodial sentence in the event of conviction; and (v) the risks posed by Mr Veseli should he be released.<sup>64</sup>

41. 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.<sup>65</sup> 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.<sup>66</sup> 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.<sup>67</sup>

42. Mr Veseli was arrested on 5 November 2020 and, as a result, he has been detained for slightly less than twenty-three 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.

43. 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

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<sup>64</sup> SPO Submissions, paras 14-15.

<sup>65</sup> 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.

<sup>66</sup> Similarly KSC-BC-2020-06, IA002/F00005, Court of Appeals, *Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release*, 30 April 2021, confidential, para. 69. A public redacted version was filed on the same day, IA002/F00005/RED.

<sup>67</sup> ECtHR, *Buzadji v. the Republic of Moldova* [GC], para. 90.

grounds, imprisonment/illegal or arbitrary arrest and detention, other inhumane acts, cruel treatment, torture, murder, and enforced disappearance of persons;<sup>68</sup> (ii) it is alleged that he played a significant role in these crimes;<sup>69</sup> (iii) he could be sentenced to a lengthy sentence, if convicted; (iv) the proceedings against Mr Veseli are complex;<sup>70</sup> and (v) the risks under Article 41(6)(b)(ii) and (iii) of the Law cannot be mitigated by the proposed conditions and/or any additional conditions.<sup>71</sup>

44. Moreover, all required procedural steps relating to the pre-trial phase of the present case have been, are being or will soon be completed with a view to transmitting the case for trial towards the end of the year. In particular, following the Fifth Detention Decision: (i) the SPO disclosed further Rule 103 material;<sup>72</sup> (ii) the SPO filed the Revised Witness List and Amended Exhibit List, respectively, on 2 September 2022 and 13 September 2022; (iii) according to the SPO, significant progress on securing clearance for Rule 107 material has been made and will be made by the end of September 2022;<sup>73</sup> (iv) the Pre-Trial Judge ordered the SPO to supplement its Rule 109(c) Chart by 30 September 2022;<sup>74</sup> (v) in relation to currently pending Defence requests for the disclosure of Rule 102(3) material, the Pre-Trial Judge ordered the SPO to finalise its processing of these requests, to request protective measures or submit materiality challenges, and to disclose all material not subject to protective measures requests or materiality challenges by

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<sup>68</sup> Confirmed Indictment, para. 179.

<sup>69</sup> Confirmed Indictment, paras 5, 32, 39, 40, 43, 44, 49, 51, 55-57, 178.

<sup>70</sup> Third Detention Decision, para. 107, with further references. In terms of the number of witnesses the SPO intends to rely on, *see* most recently Revised Witness List.

<sup>71</sup> *See* para. 39 above.

<sup>72</sup> Disclosure Packages: 395, 418 and 456.

<sup>73</sup> KSC-BC-2020-06, F00952, Specialist Prosecutor, *Prosecution Submissions for Fourteenth Status Conference* ("SPO Submissions for Fourteenth Status Conference"), 5 September 2022, public, para. 7; KSC-BC-2020-06, Transcript of Hearing, 8 September 2022, public, p. 1507, lines 5-13.

<sup>74</sup> KSC-BC-2020-06, Transcript of Hearing, 13 July 2022, public, p. 1328, lines 18-24.



30 September 2022,<sup>75</sup> and to supplement its Rule 102(3) notice by 7 October 2022;<sup>76</sup> (vi) the Defence's pre-trial briefs are due on 21 October 2022;<sup>77</sup> (vii) the Defence's notices of alibi or grounds for excluding responsibility are due on 28 October 2022;<sup>78</sup> (viii) the Pre-Trial Judge ordered the SPO to file a provisional list of the first 40 witnesses it intends to call at trial by 18 November 2022;<sup>79</sup> (ix) the Pre-Trial Judge ordered the Defence to provide, by the same date, any objections regarding the admissibility of evidentiary material disclosed (to the extent possible);<sup>80</sup> and (x) the Parties' notices on points of agreement reached on issues of law and/or fact are also due on the same date.<sup>81</sup>

45. 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.

46. 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.

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<sup>75</sup> KSC-BC-2020-06, Transcript of Hearing, 20 May 2022, public, p. 1323, lines 16-25. According to the SPO, up until 5 September 2022, 80% of the total number of selected Rule 102(3) items have been resolved, *see* SPO Submissions for Fourteenth Status Conference, para. 3.

<sup>76</sup> KSC-BC-2020-06, Transcript of Hearing, 13 July 2022, public, p. 1474, line 24 to p. 1475, line 2.

<sup>77</sup> KSC-BC-2020-06, Transcript of Hearing, 20 May 2022, public, p. 1324, lines 1-6.

<sup>78</sup> KSC-BC-2020-06, Transcript of Hearing, 8 September 2022, public, p. 1583, lines 7-13.

<sup>79</sup> KSC-BC-2020-06, Transcript of Hearing, 8 September 2022, public, p. 1584, lines 9-12.

<sup>80</sup> KSC-BC-2020-06, Transcript of Hearing, 8 September 2022, public, p. 1583, line 21 to p. 1584, line 2.

<sup>81</sup> KSC-BC-2020-06, Transcript of Hearing, 8 September 2022, public, p. 1583, lines 14-20.

## V. DISPOSITION

47. 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 **Friday, 24 October 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 **Monday, 31 October 2022**, and the Defence, if it wishes to do so, to file their submissions by no later than **Thursday, 10 November 2022**.



**Judge Nicolas Guillou**  
**Pre-Trial Judge**

Dated this Monday, 26 September 2022

At The Hague, The Netherlands.