



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:** 31 October 2022

**Language:** English

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**Prosecution submissions on detention review of Kadri VESELI**

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## I. INTRODUCTION

1. Pursuant to Article 41 of the Law<sup>1</sup> and Rule 57 of the Rules,<sup>2</sup> the Specialist Prosecutor's Office ('SPO') makes these submissions concerning the detention of accused Kadri Veseli ('Veseli'). The Pre-Trial Judge ('PTJ') and the Court of Appeals have each determined on multiple occasions that Veseli's detention was merited under the circumstances. Since the most recent of these decisions, on 26 September 2022, there has been no change in circumstances that would suggest a different determination, and Veseli makes no submissions arguing that detention is no longer warranted. Veseli's detention should be maintained.

## II. PROCEDURAL HISTORY

2. Veseli was taken into custody on 5 November 2020.<sup>3</sup> The PTJ 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> 26 July 2022,<sup>8</sup> and 26 September 2022.<sup>9</sup>

3. The Court of Appeals confirmed orders for Veseli's continued detention on 30 April 2021,<sup>10</sup> and 31 March 2022.<sup>11</sup>

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<sup>1</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>2</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>3</sup> Notification of Arrest of Kadri Veseli Pursuant to Rule 55(4), KSC-BC-2020-06/F00050, 5 November 2020.

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

<sup>5</sup> Decision on Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00380, 2 July 2021.

<sup>6</sup> Decision on Remanded Detention Review and Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00576, 23 November 2021.

<sup>7</sup> Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00819, 26 May 2022.

<sup>8</sup> Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00897, 26 July 2022.

<sup>9</sup> Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00987, 26 September 2022 ('Veseli Detention Decision').

<sup>10</sup> Decision on Kadri Veseli's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-006/IA014/F00008, 31 March 2022.

<sup>11</sup> 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.

### III. SUBMISSIONS

4. In assessing whether detention remains warranted, the PTJ will consider both whether there has been any change in circumstances, and ‘assess whether it is still satisfied that, at the time of the review and under specific circumstances of the case when the review takes place, the detention of the Accused remains warranted.’<sup>12</sup> In making his determination, the PTJ is not required to make findings on the factors already decided upon in the initial ruling on detention.<sup>13</sup> Veseli has not identified any relevant change in circumstances since the last ruling on detention, and no such changes have occurred.

#### A. GROUNDED SUSPICION

5. There remains a grounded suspicion that Veseli has committed a crime within the jurisdiction of the SC.<sup>14</sup> The Confirmation Decision determined that there is a suspicion that Veseli is liable for crimes against humanity and war crimes as identified in Articles 13, 14, and 16,<sup>15</sup> to a standard that exceeds that required for detention of ‘grounded

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<sup>12</sup> Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00576, 23 November 2021, para.41

<sup>13</sup> *Prosecutor v. Gucati and Haradinaj*, Decision on Nasim Haradinaj’s Appeal Against Decision Reviewing Detention, KSC-BC-2020-07/IA002/F00005, 9 February 2021, para.55.

<sup>14</sup> See Article 41(6)(a); F00026/RED, Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, 26 October 2020, para.521(a); Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA008/F00004, 1 October 2021, para.24.

<sup>15</sup> Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00026/RED, 26 October 2020, para.521(a).

suspicion'.<sup>16</sup> Nothing has occurred since that time that would detract from this determination.

#### B. DETENTION IS JUSTIFIED UNDER ALL ARTICLE 41(6)(B) FACTORS

6. The Court of Appeals has been clear that, once a grounded suspicion under Article 41(6)(a) is identified, an articulable basis of a single ground under Article 41(6)(b) is sufficient to support detention.<sup>17</sup>

7. In general terms the three grounds under Article 41(6)(B) justifying detention are: 1) risk of flight; 2) potential obstruction; and, 3) risk of perpetration of additional crimes. The applicable standard is articulable grounds that support a 'belief' that one of the Article 41(6)(b) grounds will occur.<sup>18</sup> The 'belief' test denotes 'an acceptance of the possibility, not the inevitability, of a future occurrence. In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.'<sup>19</sup>

8. The PTJ has previously held that all three factors were satisfied.<sup>20</sup> Since the last detention review decision on 26 September 2022, nothing has transpired that would decrease the support for an affirmative finding on any of the factors. Moreover, since that date the SPO has made substantial additional disclosures,<sup>21</sup> increasing the risk of the occurrence of the events underlying the factors.

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<sup>16</sup> Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00576, 23 November 2021, para.44.

<sup>17</sup> See 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, para.27.

<sup>18</sup> Decision on Periodic Review of Kadri Veseli, KSC-BC-2020-06/F00987, 26 September 2022, para.19

<sup>19</sup> Veseli Detention Decision, KSC-BC-2020-06/F00987, para.19.

<sup>20</sup> Veseli Detention Decision, KSC-BC-2020-06/F00987, paras 20-33.

<sup>21</sup> Prosecution notification of disclosure, KSC-BC-2020-06/F01034, 13 October 2022.

*i. Risk of Flight (Article 41(6)(b)(i))*

9. Veseli continues to satisfy the applicable risk of flight standard. It remains the case that Veseli is aware of the serious charges against him, the vast majority of the evidence underpinning them, and the possibility of a significant sentence if convicted.<sup>22</sup> Since the last detention decision, the SPO's addition of new witnesses,<sup>23</sup> disclosure of large tranches of additional documents in meeting the 30 September deadline,<sup>24</sup> as well as the filing of an additional Rule 102(3) list,<sup>25</sup> give Veseli further insight into the case against him.

10. Veseli's influence likewise remains undiminished since the last detention decision, which could assist him in evading KSC proceedings.<sup>26</sup>

*ii. Risk of Obstruction of Proceedings (Article 41(6)(b)(ii))*

11. There continues to be a risk that Veseli will obstruct proceedings. The PTJ has previously found that Veseli intervened, through an intermediary, in a matter involving the KSC, and continues, by virtue of his previous position and continuing influence, to be able to, *e.g.*, access information or elicit the support of others.<sup>27</sup> The PTJ has also previously found that the Kosovo Intelligence Service engaged in witness interference while Veseli was at its head.<sup>28</sup>

12. Moreover, there continues to be a persistent climate of witness interference and intimidation, and the protective measures that have been implemented are not

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<sup>22</sup> Veseli Detention Decision, KSC-BC-2020-06/F00987, para.20.

<sup>23</sup> See Confidential Redacted Version of Decision on Prosecution Rule 102(2) Submission and Related Requests, KSC-BC-2020-06/F01057/CONF/RED, 27 October 2022; Confidential Redacted Version of Decision on Decision on Prosecution Request to Add Two Witnesses and Associated Materials, KSC-BC-2020-06/F01058/CONF/RED, 27 October 2022.

<sup>24</sup> Prosecution notification of disclosure, KSC-BC-2020-06/F01034, 13 October 2022.

<sup>25</sup> Prosecution supplemental Rule 102(3) notice, KSC-BC-2020-06/F01021, 7 October 2022.

<sup>26</sup> Veseli Detention Decision, KSC-BC-2020-06/F00987, para.21.

<sup>27</sup> Veseli Detention Decision, KSC-BC-2020-06/F00987, para.24.

<sup>28</sup> Veseli Detention Decision, KSC-BC-2020-06/F00987, para.24.

unassailable.<sup>29</sup> The possibility of witness interference is of heightened concern now that extensive additional disclosure has been provided to Veseli, and that other milestones, such as the filing of the defence pre-trial briefs, have been reached on the way to the start of trial.

*iii. Risk of Criminal Offences (Article 41(6)(b)(iii))*

13. The factors assessed as to whether there is a risk of obstructing proceedings under Article 41(6)(b)(ii) are also relevant when considering whether there is a risk of further crimes were Veseli to be released.<sup>30</sup> Under Article 41(6)(b)(iii) it is sufficient that there is a belief of a risk that Veseli will instigate or assist others to commit crimes, or contribute in any other way to their commission.<sup>31</sup>

14. There continues to be a risk that Veseli will commit, under one or more of the available modes of liability, crimes similar to those charged. It remains the case that Veseli has the ability and demonstrated willingness to interfere in KSC proceedings, has the capacity to marshal resources in that regard due to his previous positions in Kosovo, and has an increased awareness of the case against him due to additional disclosure, the addition of witnesses, and the progression towards trial.<sup>32</sup>

C. NO CONDITIONS SUFFICIENTLY MITIGATE THE ESTABLISHED RISKS

15. No alternative measures sufficiently mitigate all of the Article 41(6)(b) risks described above. The PTJ has previously considered and rightly rejected all reasonable, realistic alternatives to detention at the KSC detention facilities.<sup>33</sup> Since making these assessments, there has been no change that would merit re-consideration or favour alternative

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<sup>29</sup> Veseli Detention Decision, KSC-BC-2020-06/F00987, para.25; *Prosecutor v. Gucati and Haradinaj*, Trial Judgment, KSC-BC-2020-07/F00611/RED, 18 May 2022, para.577.

<sup>30</sup> Veseli Detention Decision, KSC-BC-2020-06/F00987, para.30.

<sup>31</sup> Veseli Detention Decision, KSC-BC-2020-06/F00987, para.30.

<sup>32</sup> Veseli Detention Decision, KSC-BC-2020-06/F00987, paras 31-32.

<sup>33</sup> Veseli Detention Decision, KSC-BC-2020-06/F00987, paras 35-39.

measures over detention at the KSC detention facilities, and Veseli has not made submissions on additional measures.

#### D. DETENTION REMAINS PROPORTIONAL

16. 'The reasonableness of an accused's continued detention must be assessed on the facts of each case and according to its special features.'<sup>34</sup> This includes considering 'the proportionality of continued detention in light of the circumstances of this case, including the [...] consideration of the passage of time.'<sup>35</sup>

17. Here, taking all factors into consideration, Veseli's detention continues to be reasonable. As described above, the risk of the occurrence of all of the factors under Article 41(6)(b) is high, and the potential harms should such events come to pass are serious.

18. Moreover, Veseli has been charged with ten counts of serious international crimes, and it is alleged that he played a significant role in perpetrating them. He could be sentenced to a lengthy sentence if convicted, and the case against him and his co-accused is complex.<sup>36</sup> At the same time, proceedings are moving steadily and deliberately towards trial, as demonstrated *inter alia* by the recent filing of the defence pre-trial briefs.

19. Veseli's detention will continue to be subject to at least bi-monthly review pursuant to Article 41(10) and Rule 57(2) of the Rules, allowing re-consideration should circumstances change.

#### IV. CLASSIFICATION

20. This filing is submitted as public.

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<sup>34</sup> 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, para.61.

<sup>35</sup> 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, para.64.

<sup>36</sup> Veseli Detention Decision, KSC-BC-2020-06/F00987, paras 42-44.

V. CONCLUSION

21. For the foregoing reasons, the SPO respectfully submits that Veseli should remain detained.

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**Jack Smith**

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Monday, 31 October 2022

At The Hague, the Netherlands.