



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:** Trial Panel II

Judge Charles L. Smith III  
Judge Christoph Barthe  
Judge Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Date:** 19 December 2022

**Language:** English

**Classification:** Public

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

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**TRIAL PANEL II** (Panel), 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. The procedural background concerning the periodic reviews of the detention of Kadri Veseli ("Mr Veseli" or "Accused") has been set out extensively in previous decisions concerning the same. Relevant events since the sixth review of Mr Veseli's detention on 26 September 2022 include the below.<sup>1</sup>

2. On 31 October 2022, the SPO filed its submissions on the seventh review of Mr Veseli's detention ("SPO Submissions").<sup>2</sup>

3. On 4 November 2022, the Defence for Mr Veseli ("Veseli Defence") raised new issues relating to the evidence relied upon for his detention.<sup>3</sup> In this regard, the Veseli Defence asked that the next review of detention be suspended until the Parties make new submissions on the issues raised.<sup>4</sup> The Defence for all accused were ordered to file waivers of the statutory two-month period if they sought suspension of the period for review of detention.<sup>5</sup>

4. On 7 November 2022, the Veseli Defence filed a notice of Mr Veseli's waiver of his right to the forthcoming review of his detention and request to delay such review until the resolution of a particular disclosure issue ("Disclosure Issue").<sup>6</sup>

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<sup>1</sup> KSC-BC-2020-06, F00987, Pre-Trial Judge, *Decision on Periodic Review of Detention of Mr Kadri Veseli* ("Sixth Detention Decision"), 26 September 2022, public.

<sup>2</sup> KSC-BC-2020-06, F01094, Specialist Prosecutor, *Prosecution Submission on Detention Review of Kadri Veseli*, 31 October 2022, public.

<sup>3</sup> KSC-BC-2020-06, Transcript of Hearing, 4 November 2022, confidential, p. 1604, lines 8-22.

<sup>4</sup> KSC-BC-2020-06, Transcript of Hearing, 4 November 2022, confidential, p. 1605, lines 14-19.

<sup>5</sup> KSC-BC-2020-06, Transcript of Hearing, 4 November 2022, public, p. 1617, line 24 to p. 1618, line 16.

<sup>6</sup> KSC-BC-2020-06, F01091, Specialist Counsel, *Veseli Defence Notice of Waiver of Detention*, 7 November 2022, public, with Annex 1, public.

5. On 9 November 2022, the Pre-Trial Judge issued a decision amending the briefing schedule for the seventh review of Mr Veseli's detention until the resolution of the Disclosure Issue. Therein, the Pre-Trial Judge: (i) postponed the next review of Mr Veseli's detention until 19 December 2022; (ii) ordered the SPO to file any supplemental submissions on the seventh review of Mr Veseli's detention by 9 December 2022; and (iii) ordered the Veseli Defence to file any response thereto by 14 December 2022.<sup>7</sup>
6. On 30 November 2022, the President assigned KSC-BC-2020-06 to the Panel.<sup>8</sup>
7. On 9 December 2022, the Pre-Trial Judge issued a decision on the Disclosure Issue ("Decision on Disclosure Issue").<sup>9</sup>
8. On 9 December 2022, the SPO filed a supplement to the SPO Submissions ("SPO Supplement").<sup>10</sup>
9. On 14 December 2022, the Veseli Defence filed a joint response to the SPO Submissions and the SPO Supplement ("Veseli Response").<sup>11</sup>
10. On 16 December 2022, the Panel held a status conference in KSC-BC-2020-06, during which it indicated the tentative start date for the trial of 1 March 2023.<sup>12</sup>

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<sup>7</sup> KSC-BC-2020-06, F01094, Pre-Trial Judge, *Decision Amending the Briefing Schedule for the Seventh Detention Review of Mr Veseli*, 9 November 2022.

<sup>8</sup> KSC-BC-2020-06, F01132, President, *Decision Assigning Trial Panel II*, 30 November 2022, public. Pursuant to this decision of the President and the subsequent decision of the Pre-Trial Judge transmitting the case file to the Panel (KSC-BC-2020-06, Pre-Trial Judge, *Decision Transmitting the Case File to Trial Panel II*, 15 December 2022, public), the Panel issues the present decision notwithstanding that the submissions were filed before the Pre-Trial Judge.

<sup>9</sup> KSC-BC-2020-06, F01149, Pre-Trial Judge, *Decision on Joint Defence Motion for Disclosure Pursuant to Rule 103*, 9 December 2022, confidential.

<sup>10</sup> KSC-BC-2020-06, F011471, Specialist Prosecutor, *Prosecution Supplement to Detention Filings F01069 and F01086*, 9 December 2022, public.

<sup>11</sup> KSC-BC-2020-06, F01160, Specialist Counsel, *Veseli Defence Response to Prosecution Submissions and Supplemental Submissions on Detention Review*, 14 December 2022, confidential.

<sup>12</sup> KSC-BC-2020-06, Transcript of Hearing, 16 December 2022, public, p. 1773, lines 5-6.

## II. SUBMISSIONS

11. The SPO maintains that Mr Veseli should remain detained as the Veseli Defence has not identified any relevant change in circumstances since the Sixth Detention Decision.<sup>13</sup> In the SPO Supplement, it submits that the Disclosure Issue has had no bearing on Mr Veseli's detention.<sup>14</sup>

12. In response, the Veseli Defence requests that the Panel order the provisional release of Mr Veseli on three grounds. First, the Veseli Defence submits that the recent disclosures in the context of the Disclosure Issue amount to a change of circumstances, which mitigate in favour of granting provisional release.<sup>15</sup> The Veseli Defence requests that the SPO be ordered to identify all evidence relied upon in support of detention reviews that emanate from an allegedly tainted source.<sup>16</sup> Second, the Veseli Defence submits that provisional release is warranted in that the SPO fails to point to any new risk of obstruction.<sup>17</sup> Finally, the Veseli Defence submits that Mr Veseli's detention has become unreasonable.<sup>18</sup>

## III. APPLICABLE LAW

13. The law applicable to deciding the present matter is set out in Article 41 of the Law, and Rules 56 and 57 of the Rules, and has been laid out extensively in earlier decisions. The Panel will apply these standards to the present decision.<sup>19</sup>

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<sup>13</sup> SPO Submissions, paras 1, 4.

<sup>14</sup> SPO Supplement, paras 2-3.

<sup>15</sup> Veseli Response, paras 13-19.

<sup>16</sup> Veseli Response, para. 17.

<sup>17</sup> Veseli Response, paras 20-22.

<sup>18</sup> Veseli Response, paras 23-26.

<sup>19</sup> *See, among many others*, 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, para. 41, with further references. A public redacted version was issued on 8 December 2021, F00576/RED.

#### IV. DISCUSSION

##### A. PRELIMINARY ISSUE

14. As a preliminary matter, the Panel will address the Veseli Defence argument that the recent disclosures in the context of the Disclosure Issue amount to a change of circumstances, which mitigate in favour of granting provisional release. The Panel has considered the Veseli Defence's specific argument to this end that the evidence of one witness at the centre of the Disclosure Issue litigation was relied upon by the SPO in its submissions in the context of detention review. The Panel finds that the Pre-Trial Judge's decision to continue Mr Veseli's detention was not based in any material way on information that is unreliable, or that no reasonable judge could take it into consideration for the limited purpose of deciding this matter. The Panel also finds that the impugned information has no direct bearing on any of the factors set out in Article 41 of the Law or would materially affect the Panel's findings in respect of any of these factors. The Panel therefore dismisses this aspect of the Veseli Response.

##### B. ARTICLE 41 CRITERIA

15. The Court of Appeals Panel has held that a panel has an obligation to review the reasons or circumstances underpinning detention and determine whether these reasons continue to exist under Article 41(6) of the Law. The Panel is not required to make findings on the factors already decided upon in the initial ruling on detention but must examine these reasons or circumstances and determine whether they still exist. What is crucial is that the Panel is satisfied that, at the time of the review decision, grounds for continued detention still exist.<sup>20</sup> Moreover, a review of detention under Rule 57(2) of the Rules is not strictly limited to whether

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<sup>20</sup> KSC-BC-2020-07, F00005, Court of Appeals, *Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention*, 9 February 2021, para. 55.

or not a change of circumstances occurred in the case. However, such a change can nonetheless be determinative and shall be taken into consideration if raised before the relevant panel or *proprio motu*.<sup>21</sup>

### 1. Grounded Suspicion

16. 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 Specialist Chambers (“SC”). This is a condition *sine qua non* for the validity of the detained person’s continued detention.<sup>22</sup>

17. 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 grounded suspicion that Mr Veseli is criminally liable for crimes contained in the indictment confirmed by the Pre-Trial Judge.<sup>23</sup>

18. The Veseli Defence did not respond to the SPO Submission on Article 41(6)(a).

19. The Panel notes that, pursuant to Article 39(2) of the Law, the Pre-Trial Judge determined that there was 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>24</sup> Moreover, the Pre-Trial Judge found that a well-

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<sup>21</sup> KSC-BC-2020-06, IA010/F00008, Court of Appeals, *Decision on Hashim Thaçi’s Appeal Against Decision on Review of Detention*, 27 October 2021, para. 19.

<sup>22</sup> Similarly ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222.

<sup>23</sup> SPO Submissions, paras 5, 8; SPO Supplement, para. 3.

<sup>24</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*, para. 521(a)(i)-(ii). 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

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>25</sup> The Panel further recalls that 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>26</sup>

20. Absent any new material circumstances affecting the above findings, the Panel finds that there continues to be a grounded suspicion that Mr Veseli has committed crimes within the subject-matter jurisdiction of the SC for the purposes of Article 41(6)(a) and (10) of the Law.

## 2. Necessity of Detention

21. With respect to the grounds for continued detention, Article 41(6)(b) of the Law sets out three alternative bases (risks) on which detention may be found to be necessary: (i) risk of flight; (ii) risk of obstruction of the proceedings; or (iii) risk of the further commission of crimes.<sup>27</sup> These grounds must be “articulable” in the

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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. KSC-BC-2020-06, IA008/F00004, Court of Appeals, *Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention* (“Second Court of Appeals Decision”), 1 October 2021, confidential, para. 24. A public redacted version was filed on the same day, IA008/F00004/RED.

<sup>25</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>26</sup> Second Court of Appeals Decision, para. 21.

<sup>27</sup> Cf. ECtHR, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, [Judgment](#), 5 July 2016 (“*Buzadji v. the Republic of Moldova* [GC]”), para. 88; ECtHR, *Zohlandt v. the Netherlands*, no. 69491/16, 9

sense that they must be specified in detail by reference to the relevant information or evidence.<sup>28</sup> The SPO must accordingly demonstrate the existence of either of these risks against the threshold of articulable grounds to believe.<sup>29</sup> Furthermore, a Panel must provide specific reasoning and rely on concrete grounds when authorising continued detention.<sup>30</sup> That being said, in determining whether any of the grounds under Article 41(6)(b) of the Law allowing for a person's detention exist, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.<sup>31</sup>

(a) Risk of Flight

22. The SPO submits that Mr Veseli continues to satisfy the applicable risk of flight standard. Specifically, it submits that Mr Veseli is aware of the charges against him, the vast majority of the evidence against him and the potential for a serious sentence. Moreover, the SPO submits that, since the Sixth Detention Decision, Mr Veseli has further insight into the case against him through the SPO's: (i) addition of new witnesses; (ii) disclosure of large tranches of additional documents; (iii) filing of an additional Rule 102(3) list. Finally, the SPO submits that Veseli's position of influence remains undiminished.<sup>32</sup>

23. The Veseli Defence did not respond to these SPO submissions.

24. The Panel has examined the factors and circumstances invoked in the previous decisions of the Pre-Trial Judge ordering and reviewing Mr Veseli's

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February 2021, [Judgment](#), para. 50; ECtHR, *Grubnyk v. Ukraine*, no. 58444/15, 17 September 2020, [Judgment](#), para. 115; ECtHR, *Korban v. Ukraine*, no. 26744/16, 4 July 2019, [Judgment](#), para. 155.

<sup>28</sup> Article 19.1.30 of the Kosovo Criminal Procedure Code 2012, Law No. 04/L-123 defines "articulable" as: "the party offering the information or evidence must specify in detail the information or evidence being relied upon". See also First Thaçi Appeal Decision, para. 23.

<sup>29</sup> KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention* ("Trial Panel I Fourth Detention Decision"), 25 May 2021, para. 24.

<sup>30</sup> First Thaçi Appeal Decision, para. 22.

<sup>31</sup> First Court of Appeals Decision, para. 17.

<sup>32</sup> SPO Submissions, para. 9.



detention and is not satisfied, to the relevant standard, that he is a flight risk. Notwithstanding the Pre-Trial Judge's previous finding that Mr Veseli's position of influence may proffer him the means to travel,<sup>33</sup> the Panel observes that there is no indication that Mr Veseli considered or made preparations to evade arrest. Instead, there are indications that he was cooperative with the relevant authorities at all points during his detention and transfer.<sup>34</sup> Therefore, the Panel considers that, while the risk of flight can never be completely eliminated, the required concrete grounds have not been shown at this time to exist that would support a finding that Mr Veseli is a flight risk.

25. The Panel therefore finds that Mr Veseli's continued detention may not be justified at this time on the ground of the risk of flight.

(b) Risk of Obstructing the Progress of SC Proceedings

26. 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: (i) his previous intervention in a matter involving the SC; (ii) his previous roles and continuing influence which enable him to access and mobilise supporters; and (iii) the persistent climate of witness interference and intimidation. The SPO adds that the possibility of witness interference is heightened in view of the additional disclosure to Mr Veseli as well as other milestones reached with the approach of the starting trial.<sup>35</sup>

27. The Veseli Defence responds that the SPO if required to but has failed to adduce any new evidence in support of its claim of the existence of obstruction in the proceedings. It adds that Veseli's increased knowledge of the case against him

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<sup>33</sup> Sixth Detention Decision, para. 21.

<sup>34</sup> See for example, KSC-BC-2020-06, F00024/A01, Specialist Prosecutor, *Letter to Jack Smith*, 21 October 2020, public.

<sup>35</sup> SPO Submissions, paras 11-12.

is not decisive and is not a substitute for the SPO's failure to adduce new evidence.<sup>36</sup>

28. The Panel recalls the Pre-Trial Judge's finding that the risk that Mr Veseli will obstruct the progress of SC proceedings continues to exist.<sup>37</sup> The Pre-Trial Judge considered that relevant considerations were that: (i) Mr Veseli had 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>38</sup> (ii) Mr Veseli continued to play a significant role in Kosovo on the basis of the previous positions he occupied,<sup>39</sup> which would continue to allow him to, for instance, access information or elicit the support of others;<sup>40</sup> (iii) while Mr Veseli was at the head of the Kosovo Intelligence Service ("SHIK"), members of the SHIK were involved in witness interference;<sup>41</sup> (iv) the persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members in Kosovo which protective measures alone cannot overcome;<sup>42</sup> and (v) the advancement of

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<sup>36</sup> Veseli Response, paras 20-22.

<sup>37</sup> Sixth Detention Decision, para. 28.

<sup>38</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; Sixth Detention Decision para. 24.

<sup>39</sup> First Detention Decision paras 39 and 43; Second Detention Decision; 35; Third Detention Decision, para. 52; Fourth Detention Decision, para. 32; Fifth Detention Decision, para. 24; Sixth Detention Decision, para. 24.

<sup>40</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; Sixth Detention Decision, para. 24.

<sup>41</sup> First Detention Decision, para. 43; Third Detention Decision, para. 52; Third Court of Appeals Decision, paras 22-24; Fourth Detention Decision, para. 32; Fifth Detention Decision, para. 24; Sixth Detention Decision, para. 24.

<sup>42</sup> Sixth 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.

the pre-trial proceedings through which Mr Veseli continues to gain insight into the evidence underpinning the serious charges against him.<sup>43</sup>

29. The Panel agrees with the Pre-Trial Judges' consideration of these factors and no new circumstances have arisen since the last detention review that would justify different findings. Instead, the proximity of trial reinforces the validity of these findings. With the commencement of trial, the names and personal details of certain highly sensitive witnesses will be disclosed to the Defence, and will therefore become known to a broader range of people, including the Accused. This, in turn, increases the risk that sensitive information pertaining to witnesses becoming known to members of the public before the witnesses in question give evidence. In this context, the release of an Accused with sensitive information in his possession would not be conducive to the effective protection of witnesses who are yet to testify.

30. The Panel is not persuaded by the Veseli Defence submission that the SPO is required to proffer additional evidence supporting continued detention. With the passage of time, additional grounds beyond those initially justifying detention may be required, in particular where the evidence initially relied upon to justify detention has weakened over time.<sup>44</sup> This is not the case at this stage with respect to Mr Veseli. In response to the Veseli Defence submission that Mr Veseli's increased knowledge of the case against him "is not decisive", the Panel notes that this constitutes only one of several factors taken in to account in its assessment of whether there continues a risk that Mr Veseli will obstruct proceedings.

31. Accordingly, the Panel concludes that the risk that Mr Veseli will obstruct the progress of SC proceedings continues to exist.

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<sup>43</sup> First Detention Decision, para. 39; Second Detention Decision, para. 35; Third Detention Decision, para. 55; Fourth Detention Decision, para. 34; Fifth Detention Decision, para. 27; Sixth Detention Decision, para. 39.

<sup>44</sup> ECtHR, *Labita v. Italy* [GC], no. 26772/95, [Judgment](#), 6 April 2000, paras 159, 163.

(c) Risk of Committing Further Crimes

32. 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 recalls the Pre-trial Judge's earlier findings and submits that there continues to be a risk that Mr Thaçi may commit additional crimes.<sup>45</sup>

33. The Veseli Defence did not respond to these SPO Submission.

34. The Panel recalls the Pre-Trial Judge's finding that the risk that Mr Veseli will commit further crimes continues to exist.<sup>46</sup> To this end, the Pre-Trial Judge found that the same factors that were taken into account in relation to the risk of obstruction were relevant to the analysis of the risk of Mr Veseli committing further crimes. The Panel concurs and notes that no new circumstances have arisen since the last detention review that would justify different findings. The Panel further emphasises the fact that trial in this case is soon to begin, the identities of sensitive witnesses will soon be disclosed to the Defence, and that any risk of interference with witnesses prior to their testimony must be imperatively avoided.

35. Accordingly, the Panel concludes that the risk that Mr Veseli will commit further crimes as set out in Article 41(6)(b)(iii) of the Law continues to exist.

### 3. Conclusion

36. The Panel concludes that at this time there is insufficient information before it justifying a finding that the risk continues that Mr Veseli may abscond from

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<sup>45</sup> SPO Submissions, para. 13.

<sup>46</sup> Sixth Detention Decision, para. 28.

justice. However, the Panel is satisfied, based on the relevant standard, that there is a risk that Mr Veseli will 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. The Panel will assess below whether these risks can be adequately addressed by any conditions for his release.

### C. MEASURES ALTERNATIVE TO DETENTION

37. The SPO submits that no alternative measures sufficiently mitigate all of the Article 41(6)(b) risks posed by the Accused. It adds that there has been no change of circumstances since the Pre-Trial Judge's rejection of all reasonable realistic detention alternatives that would favour such alternatives.<sup>47</sup>

38. The Veseli Defence did not respond these SPO submissions.

39. When deciding on whether a person should be released or detained, the Panel must consider alternative measures to prevent the risks in Article 41(6)(b) of the Law.<sup>48</sup> Article 41(12) of the Law sets out a number of options to be considered in order to ensure the accused's presence at trial, to prevent reoffending or to ensure successful conduct of proceedings. In this respect, the Panel recalls that detention should only be continued if there are no alternative, more lenient measures reasonably available that could sufficiently mitigate the risks set out in Article 41(6)(b) of the Law.<sup>49</sup> The Panel must therefore consider all reasonable alternative

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<sup>47</sup> SPO Submissions, para. 15.

<sup>48</sup> As regards the obligation to consider "alternative measures", see 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], para. 87 *in fine*; ECtHR, *Idalov v. Russia* [GC], no. 5826/03, [Judgment](#), 22 May 2012 ("*Idalov v. Russia* [GC]"), para. 140 *in fine*.

<sup>49</sup> SCCC 26 April 2017 Judgment, para. 114; KSC-CC-PR-2020-09, F00006, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of Amendments to the Rules of Procedure and Evidence Adopted*

measures that could be imposed and not only those raised by the Veseli Defence or the SPO.<sup>50</sup>

40. As regards flight risk, the Panel recalls its finding above that Mr Veseli's continued detention may not be justified on the ground of the risk of flight.<sup>51</sup> The question of alternative measures that could address such a risk is therefore moot.

41. Turning to the risks of obstructing the progress of SC proceedings and committing further crimes, the Panel concurs with the Pre-Trial Judge's finding that none of the proposed conditions nor any additional measures foreseen in Article 41(12) ordered, *proprio motu*, could sufficiently mitigate the existing risks.<sup>52</sup> The Panel agrees with the Pre-Trial Judge's finding 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 that would sufficiently mitigate the risks of obstruction and commission of further crimes.<sup>53</sup> In the absence of any intervening developments regarding this matter, this conclusion continues to hold true.

42. In light of the foregoing, the Panel finds that the risks of obstructing the proceedings and committing offences can only be effectively managed at the SC's detention facilities. In these circumstances, the Panel finds that Mr Veseli's continued detention is necessary in order to avert the risks in Article 41(6)(b)(ii) and (iii) of the Law.

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by the Plenary on 29 and 30 April 2020 ("SCCC 22 May 2020 Judgment") 22 May 2020, para. 70. See also ECtHR, *Buzadji v. the Republic of Moldova* [GC], para. 87 *in fine*; ECtHR, *Idalov v. Russia* [GC], para. 140 *in fine*.

<sup>50</sup> KSC-BC-2020-06, IA003/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Interim Release*, 30 April 2021, para. 86; Trial Panel I Fourth Detention Decision, para. 24.

<sup>51</sup> See para. 25 above.

<sup>52</sup> Third Detention Decision, para. 99; Fourth Detention Decision, para. 45; Fifth Detention Decision, para. 37; Sixth Detention Decision, para. 39.

<sup>53</sup> Sixth Detention Decision, para. 39. See Third Court of Appeals Decision, para. 38.

## D. REASONABLENESS OF DETENTION

43. The SPO submits that Mr Veseli's detention continues to be reasonable. To this end, the SPO refers to: (i) the risk of occurrence of all Article 41(6) factors and ensuing serious harm should events associated with those risks materialise; (ii) the ten counts of war crimes and crimes against humanity with which Mr Veseli is charged; (iii) the scope and complexity of the case; (iv) the lengthy sentence if convicted; (v) proceedings moving steadily towards trial; and (vi) that Mr Veseli's detention will continue to be subject to at least bi-monthly review, allowing for reconsideration should circumstances change.<sup>54</sup>

44. The Veseli Defence responds that Mr Veseli's detention can no longer be considered reasonable on the basis of the gravity of the offences and possible length of sentence.<sup>55</sup> The Panel understands the Veseli Defence to further respond that it is improper to rely on the complexity of the case or procedural steps in the case having been completed.<sup>56</sup>

45. The Panel 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>57</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>58</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

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<sup>54</sup> SPO Submissions, paras 17-19.

<sup>55</sup> SPO Submissions, para. 23.

<sup>56</sup> Veseli Response, paras 24, 26.

<sup>57</sup> KSC-BC-2020-07, IA001/F00005, Court of Appeals Panel, *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention*, 9 December 2020, public, paras 72-73.

<sup>58</sup> 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.

to remain in detention must be assessed on the facts of each case and according to its specific features.<sup>59</sup>

46. The Panel notes that Mr Veseli was arrested on 5 November 2020 and, as a result, has now been in detention for more than two years. The Panel recalls that: (i) Mr Veseli is charged with ten counts of serious international crimes in which he is alleged to play a significant role;<sup>60</sup> (ii) if convicted, Mr Veseli could face a lengthy sentence;<sup>61</sup> (iii) the risks under Article 46(b)(ii) and (iii) of the Law cannot be mitigated by any proposed conditions and any/or all additional conditions;<sup>62</sup> (iv) the case against Mr Veseli is complex;<sup>63</sup> (v) significant steps were taken for the preparation of the case for trial;<sup>64</sup> and (vi) following the 15 December 2022 transmission of the case file from the Pre-Trial Judge to the Panel, the Panel promptly scheduled preparatory conferences to be held on 18 January 2023 and February 2023 and ordered submissions from the Parties to be filed prior to those hearings, with a view to starting the trial on 1 March 2022.<sup>65</sup> Finally, as the Panel noted above, commencement of trial is now imminent, information of increasing sensitivity will be disclosed to the Veseli Defence, including unredacted personal details and statements of protected witnesses.<sup>66</sup>

47. The Panel dismisses the Veseli Defence submission that the gravity of the crimes charged or the possible length of sentence in the event of conviction are not sufficient bases to continue detention. These are only some of the factors taken into account by the Panel as justifying continued detention as considered in light of other

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<sup>59</sup> ECtHR, *Buzadji v. the Republic of Moldova* [GC], para. 90.

<sup>60</sup> Sixth Detention Decision, para. 43 with further references.

<sup>61</sup> Sixth Detention Decision, para. 43 with further references.

<sup>62</sup> See para. 41 above.

<sup>63</sup> Third Detention Decision, para. 107 with further references.

<sup>64</sup> Sixth Detention Decision, para. 44.

<sup>65</sup> KSC-BC-2020-06, Transcript of Hearing, 16 December 2022, public., p. 1699, line 24 – p. 1700, line 6 and p. 1773, lines 5-6.

<sup>66</sup> See, *inter alia*, the Pre-Trial Judges' first through twelfth decisions on protective measures in KSC-BC-2020-06 (F00133/COR, F00190, F00211, F00239, F00338, F00373, F00407, F00438, F00466, F00467, F00559 and F00571).



circumstances.<sup>67</sup> And while the weight that can be attributed to those might diminish with the passing of time, they remain relevant at this stage of the proceedings insofar as they are sufficiently linked to the facts outlined above. Regarding the complexity of the case, the Panel rejects the Veseli Defence suggestion that he is being “held responsible for [this]”.<sup>68</sup> The complexity of the case is a factor that may be taken into account when assessing whether continued detention is proportionate.<sup>69</sup> There is no issue of attributability of those circumstances, let alone to the Accused. Regarding the Panel’s reliance on milestones in the progress of the case towards Trial, the Panel is not “simply listing procedural steps”.<sup>70</sup> This too is a factor that may be taken into account when assessing whether the continued detention is proportionate.<sup>71</sup> In this particular instance, the case has now been transferred to the Trial Panel, a tentative date for trial has been set, and clear indications have been given in respect of the un-redaction of certain categories of information. These are all circumstances relevant to the Panel’s evaluation of the necessity and proportionality of continued detention. These also testify to the Panel’s special diligence in ensuring that the matter is brought to trial as soon as possible in order to guarantee and preserve the right of the Accused to a trial without undue delay.

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<sup>67</sup> See ECtHR, *Dolgova v. Russia*, no. 11886/05, [Judgment](#), 2 March 2006, para. 41.

<sup>68</sup> Veseli Response, para. 24.

<sup>69</sup> See ECtHR, *Shabani v. Switzerland*, no. 29044/06, [Judgment](#), 5 November 2009, paras 65, 69; ICTY, *Prosecutor v. Ademi*, IT-01-46-PT, [Order on Motion for Provisional Release](#), 20 February 2002, para. 26; ICTR, *Prosecutor v. Ndayambaje*, ICTR-98-42-T, [Decision on the Defence Motion for the Provisional Release of the Accused](#), 21 October 2002, para. 23; *Prosecutor v. Ngirumpatse et al.*, ICTR-98-44-T, [Decision on the Motion by Ngirumpatse’s Defence to Find the Accused’s Detention Unlawful or, in the Alternative, to Order his Provisional Release](#), 18 August 2003, para. 25.

<sup>70</sup> Veseli Response, para. 26.

<sup>71</sup> See ECtHR, *König v. Germany*, no 6232/73, [Judgment](#), 28 June 1978, para. 99. See also ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-AR65.7, [Decision on “Prosecution’s Appeal from \*Décision relative à la demande de mise en liberté provisoire de l’accusé Petković Dated 31 March 2008\*”](#), 21 April 2008, para. 17; *Prosecutor v. Prlić et al.*, IT-04-74-AR65.26, [Decision on Prosecution Appeal of Decision on Provisional Release of Jadranko Prlić](#), 15 December 2011, para. 10; *Prosecutor v. Haradinaj*, IT-04-84-PT, [Decision on Ramush Haradinaj’s Motion for Provisional Release](#), 6 June 2005, para. 29; *Prosecutor v. Popović et al.*, IT-05-88-AR65.2, [Decision on Defence’s Interlocutory Appeal of Trial Chamber’s Decision Denying Ljubomir Borovčanin Provisional Release](#), 30 June 2006, para. 46.

48. In light of the above developments, as well as the fact that there are continuing risks of obstructing the proceedings and of committing further crimes, neither of which can be sufficiently mitigated by the application of reasonable alternative measures, the Panel finds that Mr Veseli's detention for a further two months is necessary and reasonable in the specific circumstances of the case.

49. The Panel notes, however, that the Accused has already been in detention for a significant period of time, and the trial in this case is likely to be lengthy. This will require the Panel as well as all Parties to be particularly mindful of the need to ensure that the trial proceeds as expeditiously as possible. The Panel will continue to monitor at every stage in these proceedings whether continued detention is necessary and reasonable.

#### E. CLASSIFICATION

50. Noting that the SPO Submissions and SPO Supplement were classified as public, the Panel orders the Veseli Defence to submit a public redacted version of the Veseli Response or request reclassification by no later than **5 January 2023**.

#### 51. VI. DISPOSITION

52. For the above-mentioned reasons, the Panel hereby:

- a) **DISMISSES** the Veseli Defence requests related to the Disclosure Issue as set out above in paragraphs 12 and 14;
- b) **ORDERS** Mr Veseli's continued detention;
- c) **ORDERS** the SPO to file submissions on the next review of Mr Veseli's detention by no later than **Monday, 30 January 2023** with the response

- and reply following the timeline set out in Rule 76 of the Rules; and
- d) **ORDERS** the Veseli Defence to submit a public redacted version of the Veseli Response or request reclassification by no later than **Thursday, 5 January 2023**.



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**Judge Charles L. Smith, III**  
**Presiding Judge**

Dated this Monday, 19 December 2022

At The Hague, The Netherlands.