

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: Counsel for Kadri Veseli

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**Public Redacted Version of
Veseli Defence Response to Prosecution Submissions and
Supplemental Submissions on Detention Review
(F01160, dated 13 December 2022)**

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I. INTRODUCTION

1. The Defence for Mr Kadri Veseli (“Defence”) hereby responds to the SPO submissions on detention review and the supplemental submissions to filings F01069 and F01086.¹

II. PROCEDURAL BACKGROUND

2. In October 2020, [REDACTED].²
3. On 5 November 2020, following confirmation of the Indictment, the Accused were arrested pursuant to warrants issued by the Pre-Trial Judge.³ On 22 January 2021, the Pre-Trial Judge rejected the request for interim release of Mr Veseli.⁴
4. On 12 July 2022, the Defence teams jointly filed a request for disclosure of material emanating from Serbia on the grounds that Serbia is a biased source with a long and documented history of fabricating evidence.⁵
5. On 26 September 2022, the Pre-Trial Judge ordered the continued detention of Mr Veseli.⁶ On 31 October 2022, the SPO filed its submissions on Mr Veseli’s detention.⁷
6. On 4 November 2022, the Defence addressed disclosure of a [REDACTED] Serbian intelligence. On the basis of these submissions, the Defence was

¹ F01069, Prosecution submissions on detention review of Kadri VESELI, 31 October 2022; F01147, Prosecution supplement to detention filings F01069 and F01086, 9 December 2022.

² 082095-TR-ET Part 1, p. 15.

³ F00027, Decision on Request for Arrest Warrants and Transfer Orders, 26 October 2020. *See*, Annexes1, 3, 5 and 7.

⁴ F00178, Decision on Kadri Veseli’s Application for Interim Release, 22 January 2021.

⁵ F00877/COR, Corrected Version of Joint Defence Motion for Disclosure Pursuant to Rule 103, With Public Annexes 1-3 and Confidential Annex 4 (F00877, dated 12 July 2022), 21 July 2022.

⁶ F00987, Decision on Periodic Review of Detention of Kadri Veseli, 26 September 2022.

⁷ *See* generally, F01069.

authorised to file supplemental submissions to those filed in July and August 2022.⁸

7. On 5 November 2022, Mr Veseli had been imprisoned for 2 years.⁹
8. On 7 November 2022, Mr Veseli waived his right to have his detention reviewed until the request for disclosure of material emanating from Serbia had been resolved;¹⁰ to ensure the Defence had all the information required to file its response. On 9 November 2022, the Pre-Trial Judge modified the scheduled for the next detention.¹¹
9. On 9 December 2022, the Pre-Trial Judge granted in part the Joint Defence motion on Disclosure of exculpatory material, rejecting the central part related to evidence emanating from Serbia.

III. APPLICABLE LAW

10. Article 41(6) of the Law specifies:

The Specialist Chambers or the Specialist Prosecutor shall only order the arrest and detention of a person when:

- a. there is a grounded suspicion that he or she has committed a crime within the jurisdiction of the Specialist Chambers; and
- b. there are articulable grounds to believe that:
 - i. there is a risk of flight;
 - ii. he or she will destroy, hide, change or forge evidence of a crime or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses, victims or accomplices; or
 - iii. the seriousness of the crime, or the manner or circumstances in which it was committed and his or her personal characteristics, past conduct, the environment and conditions in which he or she lives or other personal circumstances indicate a risk that he or she will repeat the criminal offence, complete an attempted crime or commit a crime which he or she has threatened to commit.

⁸ Transcript, 4 November 2022, p. 1692.

⁹ At the time of this filing, Mr Veseli has been imprisoned for over 25 months.

¹⁰ F01091, Veseli Defence Notice of Waiver of Detention Review, 7 November 2022, para. 2.

¹¹ F01094, Decision Amending the Briefing Schedule for the Seventh Detention Review of Mr Veseli, 9 November 2022, para. 13.

11. Detention is reviewed every 2 months, as set out by Article 41(10) of the Law, except under waiver of the accused.

12. According 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. 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. SUBMISSIONS

A. **The Outstanding Issues Have not Been Entirely Resolved**

13. The SPO stated that it has “[REDACTED]”.¹² This careful refutation leaves open the following two possibilities.

14. First, this language leaves open the possibility that the SPO relied on [REDACTED]’s allegations in [REDACTED]. If that were the case, it would be reasonable to infer, that due to their highly incriminating nature, [REDACTED]’s allegations may have nonetheless influenced the analysis of the risk of obstruction when assessing Mr Veseli’s applications for interim release.

15. Second, it remains possible that the Pre-Trial Judge relied on witnesses or evidence put forward by [REDACTED], who is the apparent author of [REDACTED]’s fabrications and a source of contamination in this case. Despite the Defence having raised this specific concern on numerous occasions,¹³ the SPO has failed to address this point. Recent SPO disclosures shed light on this

¹² F01147, para. 2.

¹³ Transcript, 4 November 2022, p. 1614; F01100, Veseli Defence Supplemental Submissions to Joint Defence Motion for Disclosure Pursuant to Rule 103 (F00877/COR), with Confidential Annexes 1-2, 14 November 2022, paras 8, 42; F01128, Veseli Defence Reply to Prosecution Consolidated Response to F01100 and F01101, with Confidential Annexes 1-4, 29 November 2022, para. 15.

silence, as it transpires that evidence emanating from [REDACTED] was, in fact, used to support the SPO's submissions in the context of detention review.¹⁴

16. The new material that the SPO has disclosed also indicates that [REDACTED] routinely represented himself as connected to [REDACTED], and has a long-established relationship with [REDACTED]—both of which the SPO has known all along.¹⁵ Given [REDACTED]'s willingness to misrepresent himself to potential witnesses, as well as his close association with [REDACTED], the Defence submits that evidence from this source cannot safely be relied upon.
17. At the time of writing, the Defence's analysis of the new disclosures remains ongoing, and the true extent of the SPO's reliance on evidence emanating from [REDACTED] is unknown. The Defence, therefore, renews its request¹⁶ for the Pre-Trial Judge to order the SPO to identify all evidence relied upon in support of detention review that emanates from this tainted source so that its reliability can be properly evaluated in light of this new information.
18. Most significantly, the recent disclosures concerning [REDACTED] and [REDACTED] indicate that (a) Mr Veseli had nothing to do with the [REDACTED]; and (b) as the Pre-Trial Judge acknowledges, [REDACTED]¹⁷ – the purpose of which, ironically, is to implicate Mr Veseli [REDACTED]. In connection with this point, the Defence draws attention to newly disclosed documents in which [REDACTED] reports that [REDACTED] – an allegation which raises serious doubts about the reliability of his evidence.¹⁸ The Defence

¹⁴ 065029-065155 RED, p. 065043 which is relied upon in Prosecution response to Kosovo Police submissions on detention on F00562/A01, Annex 1 to Prosecution response to Kosovo Police submissions on detention, 8 November 2021, Annex 1.1 p. 2.

¹⁵ 107092-107094, p. 2 (holding himself out as having ties to internationals and foreign intelligence); 065184-065196 RED, pp. 065186–065187; 064980-065009 RED, p. 064999; 064923-064936 RED, p. 064927; 065011-065022 RED, p. 065017, 065020 [REDACTED].

¹⁶ F01100, para. 42.

¹⁷ F01149, Decision on Joint Defence Motion for Disclosure Pursuant to Rule 103, 9 December 2022, para. 53.

¹⁸ 065011-065022, 065018.

recalls that the evidence of [REDACTED] was central to the SPO's previous submissions on the likelihood that Mr Veseli might obstruct justice.¹⁹

19. Due to this particular context, the Defence submits that from this point forward, any evidence relied upon by the SPO to suggest Mr Veseli's involvement in such activities must be subjected to heightened scrutiny. The Defence therefore requests the Pre-Trial Judge to consider the recent disclosures as a change of circumstances which militate in favour of granting provisional release pending trial.

B. The SPO Fails to Point any new Risks of Obstruction

20. The SPO fails, in both its original and supplemental submissions, to adduce any new evidence in support of its claim of the existence of risk of obstruction in the proceedings. Instead, it merely repeats the same arguments that were used to justify Mr Veseli's detention more than two years ago.²⁰ The Defence recalls that with the passage of time further reasons are required to justify detention and that the absence of any further developments indicates that the risk initially identified has become more speculative and of less weight.²¹ In order for the *status quo* to be maintained, the risk must increase over time in order to balance out the greater weight that the liberty interest acquires over time.
21. Considering the above, it follows that after two years of pre-trial detention, the SPO's arguments concerning the risk of obstruction are no longer sufficient to maintain the continued detention of Mr Veseli.

¹⁹ See, e.g., F00540, Prosecution Consolidated Response to October 2021 Defence Submissions on Detention Review, 22 October 2021, para. 15.

²⁰ See, F00178.

²¹ IA014/F00004, Veseli Defence Appeal Against Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli, 3 December 2021, para. 48. See also, ECtHR, *Idalov v. Russia*, App. No. 5826/03, [GC], Judgment, 22 May 2012, para. 144; ECtHR, *Merabishvili v. Georgia*, App. No. 72508/13, [GC], Judgment, 28 November 2017, para. 234.

22. As regards the claim that the new disclosures – which consist mainly of Rule 102(3) or Rule 103 information – heighten the risk of witness interference,²² suffice to note that such disclosures are routine ‘obligations’ of the SPO and necessary steps towards the transfer of the case to trial. While certain courts have indeed considered new insight into evidence as a factor (amongst others) for assessing requests for interim release, such a factor is not, *per se*, decisive and cannot substitute the SPO’s failure to adduce new evidence which would suggest an increased risk of obstruction from the Accused.

C. Detention has Become Unreasonable

23. First, as regards the claim that Mr Veseli is charged with ten counts,²³ the Defence recalls the ECtHR jurisprudence according to which, with the passage of time, the gravity of the alleged offence and the potential length of the sentence are not sufficient basis to continue detention.²⁴
24. Second, the complexity of the case²⁵ is decided by the charging authority. Mr Veseli cannot be held responsible for the SPO’s intention to rely on than three hundred witnesses and eighteen thousand exhibits.²⁶
25. Third, the passage of two years 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”. In the present case, the risks identified at the initial detention decision were already low and continue to decrease over time. Coupled with the recent disclosures concerning

²² F01069, para. 12.

²³ F01069, para. 18.

²⁴ See, ECtHR, *Idalov v. Russia*, App. No. 5826/03, [GC], Judgment, 22 May 2012, para. 147.

²⁵ F01069, para. 18.

²⁶ See, F01078/A04, Annex 4 to Submission of amended witness and exhibit lists, 2 November 2022; F01154/A02, Annex 2 to Prosecution submission of amended exhibit list and related submissions with strictly confidential and *ex parte* Annex 1 and confidential Annexes 2–3’ 13 December 2022.

[REDACTED] and [REDACTED], it is submitted that the risk of obstruction amounts to less than a mere possibility.

26. Fourth, simply listing certain procedural steps, including the filing of pre-trial briefs or the transfer of the case to the Trial Panel does not render detention proportionate. The question therefore, is not whether the case is being transferred to a Trial Panel, but whether it is *reasonable* that such transfer is only happening at this late stage, after Mr Veseli has been held in detention for more than two years, when the SPO declared that there was no reason for the trial to start later than mid-2021. It is irrelevant that the Pre-Trial Judge found good cause for the resulting delay: considering the circumstances of the case, the Trial could have reasonably started one year ago. However, it did not, therefore, rendering Mr Veseli's detention unreasonable.

V. CONCLUSION

27. The Defence requests the Pre-Trial Judge to order the provisional release of Mr Veseli.

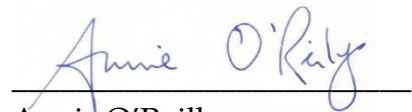
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