



In: KSC-BC-2020-06
Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Trial Panel II
Judge Charles Smith III, Presiding
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve

Registrar: Dr Fidelma Donlon

Filing Participant: Acting Specialist Prosecutor

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Prosecution Submission Pertaining to Periodic Detention Review of Kadri Veseli

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I. INTRODUCTION

1. Pursuant to Article 41 of the Law¹ and Rule 57 of the Rules,² the Specialist Prosecutor's Office ('SPO') makes the following submissions in support of the need for the continued detention of the accused Kadri Veseli ('Veseli'). The Pre-Trial Judge and the Court of Appeals have repeatedly held that Veseli's detention is justified on multiple bases, that no conditions short of detention in the Kosovo Specialist Chamber's ('KSC') detention facilities would be sufficient to minimize the risks, and that the detention period—taking all relevant circumstances into account—is reasonable. Since the most recent determination of this Panel on 19 December 2022,³ there has been no change in circumstances that merits deviating from that determination. Indeed, the transfer of the case to the Panel, the setting of a trial date, and other significant developments that show steady progress and will give Veseli further access to information regarding sensitive witnesses and the case against him, buttress the necessity and reasonableness of detention.

II. PROCEDURAL HISTORY

2. The relevant procedural history regarding Veseli's detention is referenced in the Panel's most recent detention decision as having been set out extensively in previous decisions.⁴

3. On 18 January 2023, the Panel held its Trial Preparation Conference, during which it set the start date for the trial, subject to any exceptional circumstances arising, as 1 March 2023.⁵

¹ 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.

² 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.

³ Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F01171, 19 December 2023 ('Seventh Detention Decision').

⁴ Seventh Detention Decision, KSC-BC-2020-06/F01171, paras 1-10.

⁵ Transcript (Trial Preparation Conference), 18 January 2023, p.1904, lines 1-3.

III. SUBMISSIONS

4. The Panel has noted that the law applicable to deciding such matters 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.⁶

5. Since the most recent detention decision on 19 December 2022, there have been no developments that diminish the factors supporting the need and reasonableness of detention. Indeed, the setting of a trial date, and other developments in the case augment the necessity of detention.

A. GROUNDED SUSPICION

6. Article 41(6)(a) requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the KSC.⁷ There remains a grounded suspicion that Veseli' has done so.⁸ 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 16,⁹ to a standard that exceeds that required for detention of 'grounded suspicion'.¹⁰ The Pre-Trial Judge later also confirmed amendments to the Indictment that added further, similar charges against Veseli.¹¹ Nothing has occurred since the confirmation decisions that would detract from this determination. Indeed, it

⁶ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.13.

⁷ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.16.

⁸ See Article 41(6)(a); Seventh Detention Decision, KSC-BC-2020-06/F01171, paras 16-20.

⁹ Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, F00026/RED, 26 October 2020, para.521(a).

¹⁰ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.19.

¹¹ Decision on the Confirmation of Amendments to the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00777, 22 April 2022, strictly confidential and *ex parte*, para.18. 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. See also Seventh Detention Decision, KSC-BC-2020-06/F01171, para.19.

has been repeatedly confirmed that there remains a well-grounded suspicion that Veseli has committed crimes within the KSC's jurisdiction.¹²

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

7. 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.¹³ 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 additional crimes. The applicable standard is articulable grounds that support a 'belief' that there is a risk of one of the Article 41(6)(b) grounds occurring.¹⁴ The 'belief' test denotes 'an acceptance of the possibility, not the inevitability, of a future occurrence.'¹⁵ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.¹⁶ In considering whether an accused should be detained or released, the relevant chamber must consider whether measures other than detention would sufficiently reduce the risk of the Article 41(6)(b) factors occurring.¹⁷

8. The Pre-Trial Judge has previously held that all three factors were satisfied in relation to Veseli, and this determination has been upheld on appeal. Since this Panel's last detention review decision on 19 December 2022, nothing has transpired that would

¹² See, e.g., Seventh Detention Decision, KSC-BC-2020-06/F01171, paras 16-20.

¹³ See Consolidated Decision on Nasim Haradinaj's Appeals Against Decisions on Review of Detention, KSC-BC-2020-07/IA007/F00004, 6 April 2022, para.49; Seventh Detention Decision, KSC-BC-2020-06/F01171, para.21.

¹⁴ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.21; Decision on Kadri Veseli's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA001/F00005, paras 17-19 ('First Appeals Decision').

¹⁵ First Appeals Decision, KSC-BC-2020-06/IA004/F00005, para.17.

¹⁶ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.21; see also First Appeals Decision, KSC-BC-2020-06/IA004/F00005, para.17; Public Redacted Version of Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00507/RED, 21 December 2021, para.28 ('Haradinaj Decision').

¹⁷ 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 the Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, KSC-CC-PR-2017-1/F00004, 26 April 2017, para.14.

decrease the support for an affirmative finding on any of the factors. Moreover, the progression of the case since that decision, most notably with the confirmation and setting of the trial commencement date, which accelerates the disclosure of increasingly sensitive information, increases the risk of Veseli's flight, obstruction, and contribution to additional crimes.

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

9. On its last review, the Panel found that Veseli's continued detention may not be justified at that time, on the ground of the risk of flight.¹⁸

10. The Panel noted and examined the SPO submissions that Veseli is aware of the charges against him and much of the evidence, and the potential for a serious sentence.¹⁹ The Panel also recalled the finding of the Pre-Trial Judge that Veseli's position of influence may proffer him the means to travel, but also noted indications of cooperation with relevant authorities.²⁰

11. In this regard, it is worth recalling that the Pre-Trial Judge also concluded that the relevant instances of cooperation and compliance only diminished the risk of flight, but did not eliminate it, as for the most part they predated the subsequent knowledge of the full scope of the case and the evidence against Veseli.²¹ This conclusion, along with the potential of a long sentence (including life imprisonment, pursuant to Article 44(1) of the Law) take on increased significance in the context of the confirmation and setting of the trial commencement date, further accelerating the disclosure of increasingly sensitive information. Regarding the sentence, the recent conviction of the accused in the *Mustafa*

¹⁸ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.25.

¹⁹ Seventh Detention Decision, KSC-BC-2020-06/F01171, paras 22, 24.

²⁰ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.24, *citing* Decision on Periodic Review of Detention of Mr Kadri Veseli, KSC-BC-2020-06, F00987, 26 September 2022, para.21 ('Sixth Detention Decision').

²¹ Decision on Kadri Veseli's Application for Interim Release, KSC-BC-2020-06/F00178, 22 January 2021, para.33.

case to 26 years' imprisonment²² for crimes also charged in this case cannot help but increase, in the eyes of Veseli, the possibility of a lengthier sentence for himself. This significantly elevates the situation, creating for Veseli a full knowledge of the scope of the case and the evidence against him, and the full reality that he may receive a high sentence.

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

12. The SPO submits that Veseli continues to present a risk of obstructing proceedings. This Panel has previously concluded that the risk that Veseli will obstruct the progress of SC proceedings continues to exist.²³

13. The Panel recalled that the Pre-Trial Judge found that: (i) 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; (ii) Veseli continued to play a significant role in Kosovo on the basis of the previous positions he occupied, which would continue to allow him to, for instance, access information or elicit the support of others; (iii) while Veseli was at the head of the Kosovo Intelligence Service ("SHIK"), members of the SHIK were involved in witness interference; (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; and (v) the advancement of the pre-trial proceedings through which Mr Veseli continues to gain insight into the evidence underpinning the serious charges against him.²⁴

14. The Panel also concluded that no new circumstances have arisen that would justify different findings, rather that the proximity of trial reinforces the validity of these findings.²⁵ The Panel concluded that with the commencement of trial, the names and

²² Prosecutor v. Salih Mustafa, Public redacted version of Trial Judgment, KSC-BC-2020-05/F00494/RED, para.831 ('Case 5 Judgment').

²³ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.31.

²⁴ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.28.

²⁵ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.29.

personal details of certain highly sensitive witnesses will be disclosed to the Veseli Defence, and will therefore become known to a broader range of people, including the Accused, which, in turn, increases the risk of sensitive information pertaining to witnesses becoming known to members of the public before the witnesses in question give evidence.²⁶ The Panel ultimately concluded that, 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.²⁷ There has been no change regarding these considerations, except to accelerate them through the setting of the trial date, and, thus, there remains a risk that Veseli could interfere with proceedings.

15. There also continues to be a climate of witness intimidation and interference with criminal proceedings against KLA members in Kosovo,²⁸ a factor that the Court of Appeals has held is a relevant 'contextual consideration'.²⁹ In the Case 7 Trial Judgment, the Trial Panel observed that the 'evidence points at the existence of a prevalent climate of witness intimidation in Kosovo, in particular in respect of investigations/prosecutions of crimes attributed to ex-KLA members.'³⁰ It credited the testimony of Defence Expert Witness Robert Reid, who stated:

Witness intimidation in the trials for Kosovo, I've really never seen anything like it before. I was a policeman for 20 years and I've worked here for 23 years, and I have never seen the intimidation like it. It was really quite frightening. And I'm not linking that to any individuals or any organisation. But just the fear that was

²⁶ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.29.

²⁷ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.29.

²⁸ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.28.

²⁹ Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA014/F00008/RED, 31 March 2022, para.50; Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA017/F00011/RED, 5 April 2022, paras 41-48; Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA015/F00005/RED, 25 March 2022, para.43.

³⁰ Prosecutor v. Gucati and Haradinaj, Trial Judgment, KSC-BC-2020-07/F00611, para.577 ('Case 7 Judgment').

engendered in the society, I've not seen any -- even in organised crime, I've never seen anything like it.³¹

16. In addition, referring to testimony regarding the SPO's need to institute witness emergency risk management plans in the two years before September 2020, the Case 7 Trial Panel observed that 'witness protection has continued to be a live and critical issue in Kosovo.'³²

17. Even more recently, the Trial Judgment in the *Mustafa* case highlighted the pervasive climate of fear and intimidation in Kosovo:

[T]here is a pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the Specialist Chambers, their families and, more broadly, against those who provide evidence in investigations or prosecutions of crimes allegedly committed by former KLA members. Witnesses are stigmatised as "traitors" or "collaborators", are unable to speak freely about the events they underwent, are subjected to threats and intimidation and live in constant fear that something will happen to them or their family.³³

18. Moreover, Veseli has recently received information concerning, *inter alia*, the first 40 witnesses the SPO intends to call,³⁴ and as the start of trial approaches (and thereafter proceeds) protective measures in the form of delayed disclosure on the dwindling number of witnesses still subject to them will be lifted, increasing the risk of obstruction.³⁵

19. In this regard, the SPO notes that, as held by the Trial Panel in Case 7, 'the mere fact that the Accused is entitled to disclosure of relevant material does not mean that the Panel ought to ignore the risks that come with such disclosure, especially in the context of conditional release.'³⁶

³¹ Case 7 Judgment, KSC-BC-2020-07/F00611, para.577.

³² Case 7 Judgment, KSC-BC-2020-07/F00611, para.579.

³³ Case 5 Judgment, KSC-BC-2020-05/F00494/RED, para.57.

³⁴ Prosecution Submission of Provisional List of First 40 Witnesses to be Called at Trial, KSC-BC-2020-06/F01117, 18 November 2022.

³⁵ See Seventh Detention Decision, KSC-BC-2020-06/F01171, para.29.

³⁶ Haradinaj Decision, KSC-BC-2020-07/F00507/RED, para.36.

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

20. The SPO submits that Veseli continues to present a risk of committing further crimes. This Panel has previously concluded that the risk that Veseli will commit further crimes continues to exist.³⁷

21. The Panel recalled that the Pre-Trial Judge found that the risk that Veseli will commit further crimes existed, and found that no new circumstances have arisen since the last detention review that would justify different findings by this Panel.³⁸ The Panel noted, furthermore, that the factors taken into account in relation to the risk of obstruction are also relevant to the analysis of the risk that Veseli may commit further crimes.³⁹ In particular, the Panel highlighted again the fact that the trial in this case is soon to begin, the identities of sensitive witnesses will soon be disclosed to the Veseli Defence, and that any risk of interference with witnesses prior to their testimony must be imperatively avoided.⁴⁰

22. Further, as discussed above in regards to risk of obstruction of proceedings, there is a general climate of witness intimidation in regards to KLA crimes, Veseli wields significant influence, and there is increasingly more—and more sensitive—information about the current case available to him. Moreover, the crimes against humanity and war crimes that Veseli is charged with are extremely serious, they are alleged to have been committed in cooperation with others, the Confirmation Decision describes Veseli's personal participation in the commission of crimes, and there is a general climate of intimidation of witnesses.

³⁷ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.35.

³⁸ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.34.

³⁹ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.34.

⁴⁰ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.34.

C. NO MODALITIES OF CONDITIONAL RELEASE ARE ABLE TO SUFFICIENTLY MITIGATE THE RISKS

23. The relevant risks, including those regarding flight, can only be effectively managed at the SC's detention facilities. This Panel has previously concluded that the risks of obstructing the proceedings and committing further offences can only be effectively managed at the SC's detention facilities.⁴¹

24. Regarding the risks of obstructing the progress of SC proceedings and committing further crimes, the Panel concurred with the Pre-Trial Judge's finding that none of the proposed conditions, nor any additional measures foreseen in Article 41(12), could sufficiently mitigate the existing risks.⁴² The Panel further concluded that it is only through the communication monitoring framework applicable at the SC Detention Facilities that Veseli's communications can be restricted in a manner that would sufficiently mitigate the risks of obstruction and commission of further crimes, and that in the absence of any intervening developments regarding this matter, this conclusion continues to hold true.⁴³

25. Nothing has occurred since the Seventh Decision warranting a different assessment on conditions, either generally or for a discrete period of time, rather, the setting of a trial date and attendant further disclosure make the underlying risks higher than ever.

D. DETENTION REMAINS PROPORTIONAL

26. The SPO submits that detention remains proportional. At the last detention review, this Panel found that Veseli's detention for a further two months was necessary and reasonable in the specific circumstances of the case.⁴⁴

⁴¹ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.42.

⁴² Seventh Detention Decision, KSC-BC-2020-06/F01171, para.41.

⁴³ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.41.

⁴⁴ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.48.

27. The Panel noted that milestones in the progress of the case towards Trial- including transfer to the Trial Panel, a tentative date for trial being set, and clear indications having been given in respect of the disclosure of certain categories of information- demonstrate that this matter is being brought to trial as soon as possible in order to guarantee and preserve the right of the Accused to a trial without undue delay.⁴⁵ The Panel also noted that, with the commencement of trial now imminent, information of increasing sensitivity will be disclosed to the Veseli Defence, including the unredacted personal details and statements of protected witnesses.⁴⁶

28. Here, taking these same, and additional, factors into consideration, Veseli's detention continues to be reasonable. Significant and prompt steps continue to be taken, most notably with the confirmation and setting of the trial commencement date, which only accelerates the disclosure of increasingly sensitive information to the Veseli Defence.

IV. CLASSIFICATION

29. This filing is submitted confidentially. A public redacted version will be filed.

V. CONCLUSION

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

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⁴⁵ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.47.

⁴⁶ Seventh Detention Decision, KSC-BC-2020-06/F01171, para.46.

Monday, 30 January 2023

At The Hague, the Netherlands