



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, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

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Decision on Periodic Review of Detention of Kadri Veseli

Acting Specialist Prosecutor
Alex Whiting

Counsel for Victims
Simon Laws

Counsel for Hashim Thaçi
Gregory Kehoe

Counsel for Kadri Veseli
Ben Emmerson

Counsel for Rexhep Selimi
Geoffrey Roberts

Counsel for Jakup Krasniqi
Venkateswari Alagendra

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 review 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 ninth review of Mr Veseli’s detention on 17 April 2023 (“Ninth Detention Decision”)¹ include the below.

2. On 25 May 2023, the Specialist Prosecutor’s Office (“SPO”) filed its submissions on the tenth review of Mr Veseli’s detention (“SPO Submissions”).² The Defence for Mr Veseli did not respond.

3. The trial against Mr Veseli and his co-accused continues to progress.

II. SUBMISSIONS

4. The SPO submits that the Pre-Trial Judge, the Court of Appeal and this Panel have each determined that Mr Veseli’s detention is justified on multiple occasions.³ The SPO argues that since the last decision on review of Mr Veseli’s detention, there has been no change in circumstances that would warrant a different conclusion.⁴ It submits that the progression of the trial will continue to

¹ F01461, Panel, *Decision on Periodic Review of Detention of Kadri Veseli*, 17 April 2023.

² F01554, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Kadri Veseli*, 25 May 2023.

³ SPO Submissions, para. 1.

⁴ SPO Submissions, para. 1.

give Mr Veseli further access to sensitive information regarding witnesses – enhancing the need for current protections to remain in place.⁵

III. APPLICABLE LAW

5. The law applicable to deciding the present matter is set out in Article 41 and Rules 56 and 57 and has been laid out extensively in earlier decisions. The Panel will apply these standards to the present decision.⁶

IV. DISCUSSION

6. The purpose of the bi-monthly review of detention pursuant to Article 41(10) is to determine whether the reasons for detention on remand still exist.⁷ A change in circumstances, while not determinative, shall be taken into consideration if raised before the relevant panel or *proprio motu*.⁸

7. The Panel's assessment is limited to a review of the factors previously considered pursuant to Article 41(6), and a determination of whether these circumstances continue to exist in the absence of any intervening developments.

A. ARTICLE 41 CRITERIA

i. Grounded Suspicion

8. As regards the threshold for continued detention, Article 41(6)(a) requires at the outset a grounded suspicion that the detained person has committed a crime

⁵ SPO Submissions, para. 1.

⁶ See, among many others, 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.

⁷ IA022/F00005, Court of Appeals, *Decision on Hashim Thaçi's Appeal Against Decision on Periodic Review of Detention*, 22 August 2022, confidential, para. 37. A public redacted version was issued on the same date, IA022/F00005/RED.

⁸ IA010/F00008, Court of Appeals, *Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 27 October 2021, confidential, para. 19. A public redacted version was issued on the same date, IA010/F00008/RED.

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.⁹

9. The SPO submits that the Article 41(6)(a) criterion remains met. In its view, nothing has occurred since the confirmation decisions that would detract from the determination that Mr Veseli is criminally liable for crimes contained in the amended indictment. The SPO further submits that it has been repeatedly confirmed that there remains a well-grounded suspicion that Mr Veseli has committed crimes within the SC’s jurisdiction.¹⁰

10. The Panel notes that, pursuant to Article 39(2), 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).¹¹ Moreover, the Pre-Trial Judge found that a well-grounded suspicion was also established with regard to the new charges brought by the SPO against Mr Veseli with the requested amendments to the indictment.¹² The Panel

⁹ Similarly, ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222.

¹⁰ SPO Submissions, para. 8.

¹¹ 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 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.

¹² 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. A confirmed amended indictment was then filed by the SPO on

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).¹³

11. 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).

ii. Necessity of Detention

12. With respect to the grounds for continued detention, Article 41(6)(b) 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.¹⁴ Detention shall be maintained if there are articulable grounds to believe that one or more of these risks will materialise.¹⁵ The Panel notes that “articulable” in this context means specified in detail by reference to the relevant information or evidence.¹⁶ In determining whether any of the grounds under Article 41(6)(b) 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.¹⁷

29 April 2022 (“Confirmed Indictment”), strictly confidential and *ex parte* (F00789/A01), with confidential redacted (F00789/A02) and public redacted (F00789/A05) versions. A further confidential amended Confirmed Indictment was filed on 30 September 2022, (F00999/A01) and public redacted version (F00999/A03).

¹³ IA008/F00004, Court of Appeals, *Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention*, 1 October 2021, confidential, para. 21. A public redacted version was filed on the same day, IA008/F00004/RED.

¹⁴ 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 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.

¹⁵ IA004/F00005, Court of Appeals, *Decision on Hashim Thaçi’s Appeal Against Decision on Interim Release* (“*Thaçi Interim Release Appeal Decision*”), 30 April 2021, confidential, para. 19. A public redacted version was issued on the same date, IA004/F00005/RED.

¹⁶ 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”.

¹⁷ *Thaçi Interim Release Appeal Decision*, para. 17.

(a) Risk of Flight

13. The SPO argues that Mr Veseli is now aware of the serious confirmed charges against him, the potential of a long sentence and of the evidence to be presented in relation to those crimes. The SPO is of the view that the commencement of trial takes the risk of flight to a higher level. It submits that the combination of Mr Veseli knowledge of the case against him and the real possibility of a lengthy sentence elevates Mr Veseli's risk of flight to a 'sufficiently real possibility'.¹⁸

14. The Panel has examined the arguments of the SPO, in light of the present stage of the proceedings, and reaffirms that it does not find any additional factor sufficiently persuasive to change its previous finding regarding the risk of flight.

15. As regards the SPO argument relating to the advancement of the proceedings, the Panel notes that the SPO's general argument that the risk of flight increases in the context of the commencement of trial is unpersuasive. The Panel considers that the SPO has failed to establish its claim of a "sufficiently real possibility" that the Accused will abscond if released based on the stage of the proceedings.¹⁹

16. With respect to the SPO's argument that the judgment in the *Prosecutor v. Salih Mustafa* case would increase Mr Veseli's perception of the possibility of a lengthier sentence for himself, the Panel finds this to be speculative. The SPO has not demonstrated that this factor outweighs the other factors that the Panel considered in its previous decisions. In any event, Mr Veseli is presumed to be innocent.

17. The Panel has examined the arguments of the SPO in light of the current stage of the proceedings, and while the risk of flight can never be completely ruled out, it reaffirms that it does not find any additional factor sufficiently compelling to persuade the Panel to change its previous finding regarding the risk of flight.

¹⁸ SPO Submissions, para. 10.

¹⁹ *Thaçi* Interim Release Appeal Decision, para. 24.

18. 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 pursuant to Article 41(6)(b)(i).

(b) Risk of Obstructing the Progress of SC Proceedings

19. With reference to previous findings by the Panel, the SPO submits that Mr Veseli continues to present a risk of obstructing proceedings.²⁰ It argues that there is a persistent climate of intimidation of witnesses and interference with criminal proceedings against former KLA members in Kosovo which protective measures alone cannot overcome, which the Court of Appeals has agreed is a relevant contextual consideration.²¹ Furthermore, the SPO submits that Mr Veseli has received information concerning the first 40 witnesses and the risk of obstruction increases as the remaining delayed disclosure witnesses have their identities lifted in the course of trial.²² Lastly, the SPO argues that 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.²³

20. The Panel calls attention to the standard applied in assessing the risks under Article 41(6)(b), which does not require a "concrete example" of a situation in which Mr Veseli has personally intimidated or harassed a witness.

21. The Panel has already determined and maintains the view that: (i) Mr Veseli 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; (ii) Mr Veseli continues 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

²⁰ SPO Submissions, paras 11-16.

²¹ SPO Submissions, para. 13.

²² SPO Submissions, para. 14.

²³ SPO Submissions, para. 16.

information or elicit the support of others; (iii) while Mr Veseli was at the head of the Kosovo Intelligence Service (“SHIK”), members of SHIK were involved in witness interference; and (iv) the commencement of the trial proceedings provides an opportunity for Mr Veseli to gain insight into the evidence underpinning the serious charges against him.²⁴

22. In light of the commencement of trial proceedings, the names and personal details of certain highly sensitive witnesses have now, and will continue to be disclosed to the Veseli Defence, and will therefore become known to a broader range of people, including the Accused. This, 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. 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.²⁵

23. Additionally, there is a persistent climate of intimidation of witnesses and interference with criminal proceedings against former KLA members in Kosovo which protective measures alone cannot overcome.²⁶

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

(c) Risk of Committing Further Crimes

25. The SPO recalls the Panel’s findings in the Ninth Detention Decision and submits that Mr Veseli continues to present a risk of committing further crimes.²⁷

26. The Panel recalls its finding in the Ninth Detention Decision that the risk of Mr Veseli committing further crimes continues to exist. The Panel finds that the

²⁴ Ninth Detention Decision, para. 24 with further references.

²⁵ Ninth Detention Decision, para. 25.

²⁶ Ninth Detention Decision, paras 24, 26. See also KSC-BC-2020-05, F00494/RED, Trial Panel I, *Public redacted version of Trial Judgment*, 19 January 2023, para. 57.

²⁷ SPO Submissions, para. 17-21.

same factors that were taken into account in relation to the risk of obstruction are relevant to the analysis of the risk of Mr Veseli committing further crimes. In light of those, the Panel considers that no new circumstances have arisen since the last detention review that would justify a different finding in respect of this matter.²⁸

27. The Panel highlights the fact that the trial in this case has started and that the identities of sensitive witnesses have been disclosed to the Veseli Defence, and that any risk of the further commission of crimes must be avoided.

28. The Panel considers that, taking all factors together, there continues to be a risk that Mr Veseli will commit further crimes as set out in Article 41(6)(b)(iii).

iii. Conclusion

29. The Panel concludes that at this time there continues to be insufficient information before it justifying a finding that Mr Veseli may abscond from 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 and that he will 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.

B. MEASURES ALTERNATIVE TO DETENTION

30. With reference to the Panel's previous findings, the SPO submits that the relevant risks can only be effectively managed at the SC's detention facilities and

²⁸ Ninth Detention Decision, para. 29.

nothing has occurred since the previous determination warranting a different assessment on conditions.²⁹

31. 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).³⁰ Article 41(12) 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).³¹ The Panel must therefore consider all reasonable alternative measures that could be imposed and not only those raised by the Parties.³²

32. Regarding the risk of obstructing the progress of SC proceedings and commission of further crimes, the Panel maintains its view that none of the measures foreseen in Article 41(12) could sufficiently mitigate the existing risks.³³ Further, the Panel finds 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.³⁴ Moreover,

²⁹ SPO Submissions, paras 22-26.

³⁰ 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* ("SCCC 26 April 2017 Judgment"), 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*.

³¹ 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 by the Plenary on 29 and 30 April 2020*, 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*.

³² IA003/F00005/RED, Court of Appeals, *Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Interim Release*, 30 April 2021, para. 86.

³³ Ninth Detention Decision, para. 35.

³⁴ Ninth Detention Decision, para. 35.

they offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented.³⁵

33. The Panel further maintains its view 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.³⁶

34. 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).

C. REASONABLENESS OF DETENTION

35. The SPO argues that Mr Veseli's detention remains proportional, referring to the Panel's previous findings, especially in light of the continuing reasonable progression of proceedings.³⁷

36. The Panel recalls that reasonableness of an accused's continued detention must be assessed on the facts of each case and according to its special features.³⁸ In the Panel's estimation, the special features in this case include: (i) Mr Veseli is charged with ten counts of serious international crimes in which he is alleged to play a significant role;³⁹ (ii) if convicted, Mr Veseli could face a lengthy sentence;⁴⁰ (iii) the risks under Article 46(b)(ii) and (iii) cannot be mitigated by any

³⁵ Ninth Detention Decision, para. 36.

³⁶ Ninth Detention Decision, para. 37.

³⁷ SPO Submissions, paras 28-30.

³⁸ Ninth Detention Decision, para. 39.

³⁹ Ninth Detention Decision, para. 39.

⁴⁰ Ninth Detention Decision, para. 39.

conditions;⁴¹ (iv) the case against Mr Veseli is complex;⁴² and (v) the fact that the trial is now underway, demonstrating reasonable progression of proceedings.

37. 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.

38. 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. As the Panel previously indicated, 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.

V. DISPOSITION

For the above-mentioned reasons, the Panel hereby:

- a) **ORDERS** Mr Veseli's continued detention; and
- b) **ORDERS** the SPO to file submissions on the next review of Mr Veseli's detention by no later than Friday, 28 July 2023 with the response and

⁴¹ See para. 34 above.

⁴² Ninth Detention Decision, para. 39.

reply following the timeline set out in Rule 76.

A handwritten signature in black ink, reading "Charles L. Smith III". The signature is written in a cursive style with a horizontal line at the end.

Judge Charles L. Smith, III
Presiding Judge

Dated this Friday, 16 June 2023

At The Hague, The Netherlands.