

In: KSC-BC-2020-06
Specialist 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: Dr Fidelma Donlon

Filing Participant: Counsel for Kadri Veseli

Date: 5 October 2023

Language: English

Classification: Public

**Public Redacted Version of Veseli Defence Response to Prosecution
Submission Pertaining to Periodic Detention Review of Kadri Veseli
(F01814)**

Specialist Prosecutor’s Office

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I. INTRODUCTION

1. The Defence for Mr Kadri Veseli (“Defence”) hereby files this response to the Prosecution submissions on Mr Veseli’s continued detention,¹ pursuant Article 41 of the Law² and Rule 76 of the Rules.³
2. After Mr Veseli’s request for protection of legality was denied on 15 August 2022,⁴ the Defence abstained from responding to the Prosecution’s bimonthly submissions on his continued detention, which presented no new issues and merely repeated allegations to which the Defence had already responded.
3. On this occasion, however, the Defence feels compelled to address new claims made by the Prosecution in support of the “necessity and reasonableness” of Mr Veseli’s detention.⁵ In particular, the Defence strongly opposes the Prosecution’s mischaracterisation of the evidence heard thus far, as well as its reliance upon the actions and words of third parties to justify Mr Veseli’s continued detention. The Defence submits that these new claims should be disregarded by the Trial Panel when conducting its periodic review of Mr Veseli’s detention.⁶

II. APPLICABLE LAW

4. Article 41(6) of the Law states that:

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

¹ F01814, *Prosecution submission pertaining to periodic detention review of Kadri Veseli with confidential Annex 1*, 25 September 2023, confidential. A public redacted version was released the same day (F01814/RED).

² 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.

³ 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.

⁴ PL001/F00008, *Decision on Kadri Veseli’s Request for Protection of Legality*, 15 August 2023, public.

⁵ F01814, para. 1.

⁶ F01825, *Thaçi Defence Response to ‘Prosecution submission pertaining to periodic detention review of Hashim Thaçi’ (F01813)*, 29 September 2023, confidential, para. 1.

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.

5. Pursuant to the Court’s jurisprudence, the term “articulable grounds,” within the context of detention review, means that the existence of any of the three risks contained in Article 41(6)(b) must be “specified in detail by reference to the relevant information or evidence.”⁷

III. SUBMISSIONS

A. Risk of Flight

6. At the outset, the Prosecution claims that:

[T]he continuation of this trial takes the risk of flight to an even higher level, as Veseli now sees the evidence against him steadily entering the record. The combination of continuing to gain a fuller knowledge of the case against him and actually seeing inculpatory evidence enter the record elevates Veseli’s risk of flight to a ‘sufficiently real possibility’.⁸

7. By asserting that the risk of flight is now at an “even higher level,” the Prosecution implies that Mr Veseli has previously been found to constitute a

⁷ F01721, *Decision on Periodic Detention Review of Kadri Veseli*, 16 August 2023, public, para. 14. See also, Article 19.1.31 of the Kosovo Criminal Procedure Code 2022, Law No. 08/L-032 defines “articulable” as: “the party offering the information or evidence must specify in detail the information or evidence being relied upon.”

⁸ F01814, para. 9.

flight risk,⁹ which is highly prejudicial and misleading. The Trial Panel has consistently found Mr Veseli's continued detention to be incapable of justification on this ground.¹⁰ During the last periodic detention review on 16 August 2023, the Court noted that "the SPO's general argument that the risk of flight increases in the context of the continuation of the trial is unpersuasive in the present circumstances."¹¹

8. To the extent that the Prosecution is now inviting the Trial Panel to alter its assessment on the basis of changed circumstances, the Defence observes that it has failed to specify – with the requisite level of detail mandated by the "articulable grounds" test – what inculpatory evidence has been put on the record against Mr Veseli to justify him being considered a flight risk. No mention is made to any particular witness' testimony, nor is a specific item of evidence singled out in support of the Prosecution's claim.
9. The SPO's failure to point to specific evidence is particularly important because the portrayal of this trial as one where inculpatory evidence has been "steadily entering the record" is utterly unrecognisable to the Defence. Since 16 August 2023, a total of 10 Prosecution witnesses have appeared before the Panel. None of them have moved the case against Mr Veseli beyond the unproven allegations contained in the Indictment.
10. Finally, although the Defence finds itself obliged to respond this assertion, it nonetheless submits that it is not appropriate for the Prosecution to call upon the Trial Panel to make pronouncements upon the evidence so far presented at

⁹ See, F01814, para. 9 where the Prosecution states "the continuation of this trial **takes the risk of flight to an even higher level** [...]."

¹⁰ F01721, paras 15-20; F01609, Decision on Periodic Detention Review of Kadri Veseli, 16 June 2023, public, para. 18; F01461, Decision on Periodic Detention Review of Kadri Veseli, 17 April 2023, public, para. 21.

¹¹ F01721, para. 17.

this relatively early stage in the Prosecution's case and in the context of detention review.

11. The Prosecution's submissions on Mr Veseli's alleged risk of flight must be rejected as unfounded and inappropriate.

B. Risk of Obstruction and Commission of Further Criminal Offences

12. The Prosecution relies primarily upon the so-called "climate of witness intimidation" to argue that Mr Veseli poses a risk of obstructing justice and committing further crimes should he be released.¹² The Defence echoes the Thaçi submissions on this issue and agrees that the Prosecution's arguments are completely without nuance – as has been the case throughout these proceedings – and entirely responsible for characterising perceived pressure on witnesses as "extreme."¹³
13. Rather than presenting relevant information or evidence hinting to the possibility that Mr Veseli himself would either obstruct the proceedings or commit further crimes, the Prosecution relies upon:
 - a. The arrest of Driton Goxhaj for, *inter alia*, offences against the administration of justice ("Reason 1");¹⁴
 - b. The publication of news articles and social media posts from various third parties [REDACTED] before the Court ("Reason 2");¹⁵ and
 - c. The disclosure of information relating to the first 40 witnesses the SPO intends to call at trial ("Reason 3").¹⁶

¹² F01814, paras 10-12 and 17.

¹³ F01825, para. 13.

¹⁴ F01814, para. 12.

¹⁵ F01814, para 12. *See also*, F01814/A01, *Annex 1 to Prosecution submission pertaining to periodic detention review of Kadri Veseli*, 25 September 2023.

¹⁶ F01814, para. 13.

14. The Defence notes that the SPO is advancing these arguments in an effort to deprive an individual of his liberty. The stakes are high, and the arguments should not be accepted in the absence of an adequate and logical basis.
15. Insofar as Reasons 1 and 2 are concerned, the Prosecution fails to specify how those two events could give rise to the belief¹⁷ that Mr Veseli may obstruct the proceedings and/or commit further crimes. No evidence is presented that Driton Goxhaj sought to obstruct or intimidate any individual on Mr Veseli's behalf, nor that Mr Veseli was in contact with Mr Goxhaj when he carried out the acts the Prosecution alleges. Similarly, the utterances contained in the news articles and social media posts [REDACTED] cannot be responsibly imputed to Mr Veseli and are entirely uninformative of his perceived ability or inclination to obstruct proceedings, intimidate witnesses and commit further crimes. These are yet further examples of the Prosecution using the actions and words of persons who are unconnected to Mr Veseli to justify his continued detention.
16. Even though the SPO has not disclosed any information suggesting any connection between the actions of Mr Goxhaj and Mr Veseli or between the media stories and Mr Veseli. They, nonetheless, invite the Trial Panel draw the inference that Mr Veseli is somehow an accomplice to these acts. Given the baselessness of these arguments on their face and the considerable stakes involved, the Defence is left to conclude that there must be some further information connecting the SPO's allegations to Mr Veseli.
17. The Defence, therefore, requests that the SPO now put forward any material in its possession connecting either Mr Goxhaj or the recent media coverage to Mr Veseli so that it can be ventilated and argued. In the absence of any such

¹⁷ See, Article 41(6)(b) of the Law. The term "articulable grounds to **believe** [...]" centres upon the "belief" test which denotes "an acceptance of the possibility, not the inevitability, of a future occurrence" – i.e., the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.

material, the Defence submits that the SPO's allegations are not only baseless but intentionally misleading. These allegations do not provide a foundation from which Mr Veseli's wrongdoing or even potential wrongdoing can be logically inferred. Rather, they appear intended to promote incriminating gossip and smear his reputation. The Defence recalls that this is not the first time the SPO has misled the Court to attack the reputation of Defence in furtherance of an untenable argument for continued detention.¹⁸

18. The SPO, like all parties, has a duty of candour towards this Panel; where the liberty of an individual is at stake it is axiomatic that their duty is heightened. The Defence submits that the SPO has fallen short of that duty by asking this Panel to use the alleged acts and conduct of unconnected third parties to justify extending Mr Veseli's detention.
19. As regards Reason 3, the Defence notes that the Prosecution fails to provide any specific reasons illustrating a mere possibility that Mr Veseli will intimidate witnesses simply because he now knows their identity.¹⁹ The Prosecution's submissions on this issue amount to nothing more than unfounded speculation.
20. The Defence submits that Reasons 1-3 should not factor into the Trial Panel's review of Mr Veseli's detention. They yield no evidentiary weight in this respect and ought to be treated as such.

¹⁸ See, F00161, *Prosecution response to Application for Interim Release on behalf of Mr Kadri Veseli with Confidential Annex 1*, 4 January 2021, confidential, paras 8-9, where the Prosecution accused the Defence of harbouring a "clear ulterior motive of making pre-trial detention in this case appear impossibly burdensome so as to support an otherwise unpersuasive application for interim release" when, in fact, the Defence was simply pointing out the now uncontroversial truth that a trial start date of summer 2021 was not remotely realistic and that a later trial date and longer pre-trial detention period would be required because of the scale of the pre-trial obligations the Prosecution had to meet (See, Transcript, 18 November 2020, pp. 108 et seq), thus making interim release, at the time, reasonable and, in fact, necessary (See, F00087, *Submissions on behalf of Kadri Veseli Status Conference - Wednesday 18 November, 9 November 2020*, public, paras 5-10, 13-15).

¹⁹ F01814, para. 13.

IV. CONCLUSION

21. In light of the foregoing, the Defence request that the Trial Panel disregard the abovementioned Prosecution claims when conducting its periodic review of Mr Veseli's detention. Whereas the Defence does not challenge Mr Veseli's continued detention at this stage, it nonetheless maintains that the Prosecution should not be given free rein to introduce factors which are of limited, if any, evidentiary weight.

Word Count: 2,009



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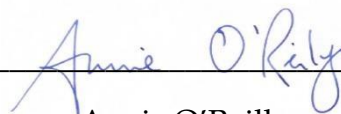
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