

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: 6 December 2023

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**Public Redacted Version of Veseli Defence Response to Prosecution
Submission Pertaining to Periodic Detention Review of Kadri Veseli
(F01955)**

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I. INTRODUCTION

1. The Defence for Mr Kadri Veseli (“Defence”) hereby responds to the Special Prosecutor’s Office (“Prosecution”) submissions on Mr Veseli’s continued detention,¹ pursuant to Article 41(6)(b) of the Law² and Rule 76 of the Rules.³
2. From 15 August 2022, when Mr Veseli’s request for protection of legality was denied,⁴ up to 5 October 2023, the Defence had refrained from filing submissions pertaining to his periodic detention review due to their largely repetitive nature.
3. On 5 October 2023, in light of the new claims that were introduced by the Prosecution in its submissions on the twelfth review of Mr Veseli’s detention,⁵ the Defence filed a response, strongly opposing the Prosecution’s misrepresentation of the evidence, as well as its reliance upon the actions and words of third parties entirely unconnected to Mr Veseli, to justify his continued detention, and requesting the Trial Panel to disregard the new claims when conducting its periodic review of Mr Veseli’s detention.⁶
4. The submissions filed by the Prosecution on 24 November 2023,⁷ likewise warrant a response by the Defence to correct misrepresentations with respect

¹ F01955, *Prosecution submission pertaining to periodic detention review of Kadri Veseli*, 24 November 2023, confidential. A public redacted version has not been released yet.

² Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (‘SC’), 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 2022, public.

⁵ 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).

⁶ F01840, *Veseli Defence Response to ‘Prosecution submission pertaining to periodic detention review of Hashim Thaçi’ (F01814)*, 05 October 2023, confidential, para. 3. A public redacted version was released on 23 October 2023 (F01840/RED).

⁷ F01955.

to “significant recent developments”⁸ claimed by the Prosecution in support of the continued detention of Mr Veseli.⁹

II. PROCEDURAL BACKGROUND

5. The relevant procedural history regarding Mr Veseli’s detention is referenced in the Trial Panel’s most recent detention decision as having been set out extensively in previous decisions.¹⁰

III. APPLICABLE LAW

6. Article 41(6) of the Law provides that the Specialist Chambers (“SC”) shall only order the detention of a person when a) there is a grounded suspicion that the person has committed a crime within the jurisdiction of the SC, and b) there are articulable grounds to believe that the person: i) is a flight risk; ii) will destroy, hide, change or forge evidence of a crime, or specific circumstances indicate that the person will obstruct the progress of criminal proceedings; or iii) will repeat the criminal offence, complete an attempted crime, or commit a crime which he or she has threatened to commit.

IV. SUBMISSIONS

A. Risk of Flight

7. The Prosecution submits that a combination of factors, including a) Mr Veseli’s increased knowledge of alleged inculpatory evidence presented against him throughout the progression of the trial; b) Mr Veseli’s awareness of alleged “powerful evidence” that he has engaged in conduct prejudicial to the integrity

⁸ F01933, *Prosecution urgent request for modification of detention conditions with confidential Annexes 1 to 5*, 17 November 2023, confidential, (“Prosecution Request”), paras. 8-12, 15-20, 24, 39-40, and 48. A public redacted version was released on 22 November 2023 (F01933/RED).

⁹ F01955, para. 1.

¹⁰ F01861, *Decision on Periodic Review of Detention of Kadri Veseli*, 16 October 2023 (“Twelfth Detention Decision”), public, paras. 1-4.

of proceedings and security of witnesses;¹¹ and c) an alleged change in circumstances with regard to Mr Veseli's previously recognised cooperation with relevant authorities associated with his detention, would "[e]levate Mr Veseli's risk of flight to a sufficiently real possibility".¹²

8. At the outset, the Defence notes that the Trial Panel has consistently assessed Mr Veseli's continued detention to be incapable of justification on this ground.¹³

a) Mr Veseli's awareness of alleged inculpatory evidence presented against him in the course of the trial proceedings

9. The Panel concluded during the last periodic detention review on 16 October 2023, that "[t]he 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."¹⁴

10. The Prosecution's submissions that "[e]vidence against [Mr Veseli] has been steadily entering the record" is not an accurate representation of the proceedings. The Defence submits that none of the witnesses that have testified until 13 November 2023 have advanced the case of the Prosecution against Mr Veseli and notes that the SPO fails to point to any specific evidence in this regard. Under these circumstances, it cannot be maintained that the evidence heard so far increases the risk of flight on the basis of its supposedly inculpatory character.

¹¹ F01955, para. 21, referencing F01933.

¹² Ibid.

¹³ F01861, paras. 15-20; 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.

¹⁴ F01861, para. 18.

b) Mr Veseli's awareness of evidence that he engaged in conduct prejudicial to the integrity of the proceedings and the security of witnesses

11. The Defence reiterates its prior submission that the Prosecution Request¹⁵ has not put forward any evidence that Mr Veseli has attempted to interfere with the integrity of the proceedings or compromise the security of witnesses.¹⁶ The Prosecution's allegations of interference are solely based on a conglomerate of anonymous hearsay and unfounded speculations.¹⁷ The "Request", when read in combination with the material disclosed by the Prosecution under Rule 103, demonstrates Mr Veseli's commitment to respect the integrity of the proceedings.¹⁸

c) Alleged change of circumstances vis-à-vis Mr Veseli's cooperation with relevant authorities associated with his detention

12. The Prosecution submits that while the Panel has previously recognised Mr Veseli's cooperation with the relevant authorities associated with his detention,¹⁹ "that is clearly not the current state of affairs".²⁰ The Prosecution has failed to provide any indication of what the "current state of affairs" entails or how it substantiates the claim that it would elevate Mr Veseli's risk of flight to a sufficiently real possibility. Its submissions that the Panel should alter the assessment of Mr Veseli's alleged risk of flight based on changed circumstances must be rejected as unsubstantiated and prejudicial.

¹⁵ F01933.

¹⁶ See F01947, paras. 2, 6, 21-35, 48-50.

¹⁷ Ibid, paras. 3, 32, 41, 43, 48, 51, 53

¹⁸ Ibid, paras. 3, 20-21.

¹⁹ F01171, *Decision on Periodic Review of Detention of Kadri Veseli*, 19 December 2022, public, para.24; See also F00024/A01, Specialist Prosecutor, Letter to Jack Smith, 21 October 2020, public.

²⁰ F01955, para. 21.

B. Risk of Obstruction and Commission of Further Criminal Offences

13. The Prosecution claims that Mr Veseli continues to present a risk of obstructing proceedings and committing further crimes, based *inter alia*, on allegations that he: **a)** has violated the Trial Panel's order by disseminating the content of confidential testimony to his visitors; and **b)** has actively engaged in unlawful witness interference activities.²¹

a) Alleged Disclosure of Confidential Witness Information

14. Since the SPO filed its latest request, the Trial Panel issued its Decision of 1 December 2023 to partly modify the Accused's conditions of detention.²² The Defence recalls that the Trial Panel emphasised therein that it was not making any findings as to whether the Accused had in fact transgressed the rules.²³

15. The Defence has already submitted that the Prosecution's claims against Mr Veseli, made in the context of the request to modify the Accused's detention conditions, are vague and misleading.²⁴ It rejects the Prosecution's claims that Mr Veseli has "disseminated" the content of confidential testimony of protected witnesses.²⁵

b) Mr Veseli's alleged interference with Prosecution witnesses

16. The Prosecution's claims that Mr Veseli has engaged in unlawful witness interference activities are based on **i)** allegations of abuse of privileged meetings;²⁶ and **ii)** Mr Veseli's alleged attempt of interfering with the testimony [REDACTED].²⁷

²¹ F01955, paras. 14, 15, 16 and fn. 33-34.

²² F01977, *Further Decision on the Prosecution's Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi*, 1 December 2023, public, paras. 35-37.

²³ *Ibid.*

²⁴ F01947, paras. 22-30.

²⁵ F01955, fn. 33; F01933, para. 24 and F01933/A04, p. 241.

²⁶ F01955, paras. 14, 15 and fn. 33; F01933, para. 48; and F01933/A04, pp. 240-242.

²⁷ F01955, fn. 33; F01933, paras. 8-12.

i) Allegations of abuse of privileged meetings

17. The Defence reasserts that the passage of Mr Veseli's exchange with visitors, quoted by the Prosecution to link the existence of Defence teams to the possibility of conveying messages should a detainee want to do so, is ungrounded and intentionally misleading.²⁸ The suggestion that it might be used as a basis to limit his right to privileged communications with his legal team is outrageous. Moreover, the Trial Panel has already rejected the SPO's submissions on this issue, in the context of its Decision on modified detention conditions.²⁹

ii) Mr Veseli's alleged attempt to interfere with the testimony [REDACTED]

18. The Defence reiterates that the SPO's claims of attempted interference are rejected, and rest solely upon unsupported inferences and multiple levels of hearsay.³⁰ In its Decision to partly modify the Accused's detention, the Panel states that it "[h]as not determined that any of these attempts at interfering with SPO witnesses can be attributed to any of the Accused [...]".³¹

19. The Defence notes that the Prosecution's submissions on the basis of new facts, hinting to the risk of Mr Veseli either obstructing the proceedings or committing further crimes, amounts to nothing more than groundless speculations.

²⁸ F01947, paras. 31-35.

²⁹ F01977, paras. 61, 81.

³⁰ F01947, paras.41-44, 51-53.

³¹ F01977, para. 34.

IV. CONCLUSION

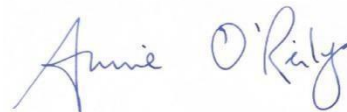
20. The Defence requests that the Trial Panel disregard the new attempt of the prosecution to erroneously depict the material that it recently disclosed under Rule 103³² as “significant recent developments” that “decisively confirm” the necessity of Mr Veseli’s detention, when in reality, they yield no evidentiary weight.

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³² *Supra* note 10.