

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

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Further Public Redacted Version of Veseli Defence Response to ‘Prosecution Urgent Request for Modification of Detention Conditions with Confidential Annexes 1-5’ with Confidential Annex 1

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I. INTRODUCTION

1. The Defence for Mr Kadri Veseli (herein “the Defence”) hereby files its response to the Prosecution’s Urgent Request to modify detention conditions¹ and the Trial Panel’s decision, which ordered responsive submissions to be filed by 22 November 2023.²
2. The SPO has put forward no evidence whatsoever of Mr Veseli attempting to interfere with justice or obstruct the proceedings.
3. The evidence served by the SPO, and the vastly greater volume of material disclosed as exculpatory evidence under Rule 103, shows Mr Veseli engaging in a pattern of entirely innocent conversations, in which he stresses the importance of the fundamental principle that no one should approach any witness in the case since this would harm him, rather than assist him. It is entirely consistent with the public statement he issued when he was arrested, and that was read into the court record at his first appearance in an effort to ensure its wide dissemination:

“I have every confidence in the objectivity and fairness of the Judges, and I would ask that everyone in Kosovo should show due respect to their judicial authority at all times. The process is there to get at the truth. We have nothing to fear from the truth. There must be no attempts whatsoever to undermine the work of the Tribunal or to obstruct or interfere in any way with due process. It must be allowed to get on with the important task we have entrusted to it. The integrity of the process must be respected at all times and by everyone. Justice does not just serve the interests of one side or the other; it serves the interests of the people. So if you are asked to assist the Specialist Chambers, please do so without hesitating. That way we will all get at the truth. I would therefore ask that all sections of our society respond to this situation calmly and with dignity, confident in the knowledge that the Judges will deliver a just result at the end of the process. Please remember at all times that this Tribunal was set up by the Kosovo Parliament, acting on behalf of the people. It is the embodiment of the principle that there is no peace without justice and no justice without peace. Although it sits in The Hague, it is part of our own law. There should be no resentment directed towards the internationals who work at the Tribunal. They are

¹ F01933, *Prosecution Urgent Request for Modification of Detention Conditions with Confidential Annexes 1-5*, KSC-BC-2020-06/F01933, 17 November 2023, Confidential.

² F01936, *Decision on Prosecution Urgent Request for Modification of Detention Conditions*, KSC-BC-2020-06/F01936, 17 November 2023, Confidential.

only doing what we, the people of Kosovo, have asked them to do. This Tribunal is part of Kosovo's journey to statehood and we must see it through to the end.”³

4. In its Request, the SPO has made five allegations against Mr Veseli personally. None of them stand up to scrutiny. The plain language of Mr Veseli remains at all times true to the letter and spirit of the statement above.
5. Instead of focusing on the conduct of the three Accused separately, the SPO has presented a distorted picture without identifying clearly what it alleges, that Mr Veseli has been shown on the evidence to have done wrong. In fact, a full consideration of the material disclosed proves the opposite conclusion to the case presented by the SPO against Mr Veseli. The case of each of the three Accused must obviously be considered separately. As regards Mr Veseli, there is no evidence of any attempted interference with the administration of justice and there is abundant evidence of him taking the opposite stance.
6. It is instructive to quote what Mr Veseli says in his unguarded conversations clandestinely recorded by the SPO.
 - With respect to sending messages from the Detention Centre Mr Veseli simply says “[e]veryone has his own group of lawyers and I swear, there is no reason to send a message from this place... No, because I am talking but there is nothing to ... what are you going to say?”⁴
 - He specifically warned one of his visitors: “Keep Distance! Even if you ever hear about someone that will come to testify here; even if someone comes and tells you ‘I am [a witness]’, you can just say ‘tell the truth’, ‘just do not lie’, just do not lie. There is no need to speak; we do not need anything, just

³ Transcript, 10 November 2020, pp. 73-74.

⁴ F01933/A04, p. 245 (061023-130747.wav). Please note that the correct ERN is 061023-130647.wav.

not to lie. If they do not lie, we will be fine, because the reality of the KLA is like that. That's it. There is nothing to do.”⁵

- With respect to a visit from individuals allegedly connected to an attempt to interfere with the evidence of [REDACTED], there is no evidence that Mr Veseli met with this group.

7. On any fair view of the evidence against Kadri Veseli, there is no basis to grant any part of the SPO's request for the modification of Mr Veseli's detention conditions. It should be rejected in full.

II. WORD COUNT

8. As a preliminary matter, pursuant to Article 36 of the Practice Direction on Files and Filings,⁶ the Defence requested a limited extension of the word count to 7,200. The necessity of this limited extension only became apparent in the final stage of preparation of the filing, the deadline for which was extremely tight, and good cause arises in this instance given the need to provide a full response to the Prosecution's allegations.

III. PROCEDURAL BACKGROUND

9. In the afternoon of 17 November 2023, the SPO requested urgent modification of detention conditions including cancellation of all non-privileged visits, active monitoring of all telephone, video, and written communications, and segregation of the Three Accused.⁷ A short while later, and pursuant to Rule 103, it disclosed to the Defence via USB the audio files of all recorded meetings from 5 May to 28 October 2023.

⁵ 114485 (31/07/2023) KV Meeting [REDACTED], 310723-084155 at min (03:04).

⁶ KSC-BD-15, 17 May 2019.

⁷ F01933, para. 2.

10. In the evening of 17 November 2023, the Trial Panel granted in part the SPO's request, prohibiting visits with non-privileged individuals and subjecting other such communications to prior authorisation and active monitoring, on a temporary basis until the Trial Panel has rendered a decision on the merits of the Request.⁸ The Trial Panel concluded that, "the Panel is not in a position to consider the immediate segregation and suspension of all communications of the Three Accused without submissions from the Registry and the Defence."⁹
11. On 21 November 2023, the Defence filed a Request for the reclassification of the SPO Request for covert audio-recording non-privileged visits to Mr Selimi, Mr Thaci and Mr Veseli ("SPO Covert Request") and the Judicial authorisation for such covert recording issued by the Single Judge ("Authorisation Decision").¹⁰
12. On 21 November 2023, the Registry filed its submissions on the feasibility of the SPO's requested modified conditions.¹¹
13. On 22 November 2023, the Pre-Trial Judge issued an Order to the SPO for the reclassification, or to state its reasons to oppose the reclassification, of the filings underlying the decision to permit recording at the Detention Centre by 22 November in respect of four identified filings; and 28 November 2023 in respect of another potential series of filings.¹² None of these filings have yet been received by the Defence.¹³

⁸ F01936, *Decision on Prosecution Urgent Request for Modification of Detention Conditions*, KSC-BC-2020-06/F01936, 17 November 2023, Confidential, para. 5.

⁹ F01936, para. 9.

¹⁰ KSC-BC-2018-01/RAC001/F00001, *Urgent Selimi, Thaci and Veseli Request for Reclassification of Filings*, dated 21 November 2023.

¹¹ F01943/COR, *Registry's Submissions on the Prosecution's Urgent Request for Modification of Detention Conditions*, KSC-BC-2020/F01943, 21 November 2023, Confidential.

¹² KSC-BC-2018-01/RAC001, *Order Regarding Reclassification of Filings, Confidential and Ex Parte*, 21 November 2023.

¹³ The Defence reserves the right to file further submissions once in receipt of these filings.

IV. APPLICABLE LAW

Burden of Proof

14. The Prosecution has made these serious allegations of criminal conduct against Mr Veseli, and it is for the Prosecution to prove them. Whilst these allegations have been made in the context of a security review, they are criminal in nature and indeed, may form the basis of a new indictment. It necessarily follows that the Prosecution must prove, with evidence, the truth of the allegations they have made.¹⁴

15. The Defence does not suggest that an evaluation of appropriate security measures necessitates a formalistic application of the burden and standard of proof. But this is because a judicial judgement must be exercised on the basis of the whole of the material provided by the Prosecution. However, in the present context, any judicial discretion can only be exercised after the Trial Panel has first made findings on the relevant facts. It is in the context of that factual allegation that the Prosecution bears the burden of (a) outlining precisely what it is alleging against Mr Veseli (and not an amalgamated case against all three Accused), and (b) establishing by evidence the truth of the allegations that it makes. It is only once the Trial Panel has determined a solid factual matrix that it can then proceed to exercise an evaluative judgment on the implications of the facts it has found. If that exercise is conducted in the present case, there cannot be any conceivable basis for changing Mr Veseli's conditions of detention in any way. In the absence of clearly particularised allegations that are adequately substantiated on the evidence, the proposed restrictions would constitute an arbitrary judicial decision.

Right to Family Life

¹⁴ See generally, ECHR Article 6(2); The Law, Article 21(3); The Constitution of the Republic of Kosovo, Article 31(5).

16. Conditions of detention must be in conformity with Article 8 ECHR. It is well-established that, pursuant to Article 8, any interference with the right to private and family life must be necessary for the protection of a legitimate aim¹⁵, and proportionate in nature.¹⁶ In *Vintman v. Ukraine*, the ECHR held that the continued detention of an individual far from his sick mother was disproportionate where it had effectively denied the prisoner personal contact with his close family.¹⁷
17. Article 41(2) of the KSC Law, provides that “[a]ny person deprived of his or her liberty by arrest or detention shall be entitled under the procedures provided by this Law and under the Rules of Procedure and Evidence to challenge the lawfulness of his or her arrest and the conditions of detention.”
18. Rule 56(6) of the KSC Rules further requires that any restrictions on the communications of a detained person must be necessary and proportionate.
19. The Practice Direction on visits provides that a Detainee shall have “reasonable means of maintaining personal relationships with family members and other persons through visits, telephone calls, and correspondence. Detainees shall have fair and reasonable access to facilities and equipment provided for this purpose.” Moreover, “Restrictions on visits and communications between Detainees and other persons, including those imposed generally or in a specific case, shall be necessary to achieve a legitimate aim, such as ensuring safety, security, or good order in the Detention Facilities, preventing disorder or crime, protecting health, or protecting the safety, security, rights, or freedoms of others. **Restrictions shall be proportionate to the aim pursued and shall never result in the total deprivation of family contact.**”¹⁸

¹⁵ *Aliyev v Azerbaijan*, 68762/14 and 71200/14, Judgment of 20 September 2018, paras. 179-189.

¹⁶ *Vintman v. Ukraine*, 28403/05, Judgment of 23 October 2014, para. 78. See also, *Rodzevillo v. Ukraine*, 38771/05, Judgment of 14 January 2016, paras. 83-86.

¹⁷ *Vintman v. Ukraine*, 28403/05, Judgment of 23 October 2014, para. 78.

¹⁸ Article 4(2).

V. SUBMISSIONS

20. At the time that the KSC Law was passed, Mr Veseli, as the Speaker of Parliament, was one of 120 Members of Parliament that signed it into law, paving the way for the establishment of the Specialist Chambers. He has always – both privately and publicly – maintained that the Court should be allowed to carry out its mandate unhindered and in full, within the framework of the 2015 Law and the Constitution of the Republic of Kosovo. His determination to ensure that the trial proceeds without interference or obstruction is reflected in the statement cited at paragraph 3 above, and all of the passages cited in this Response.
21. Extraordinarily, the SPO's submission, read together with the evidence served and disclosed under Rule 103, demonstrates the very opposite of what the SPO is attempting to prove. It is clear from a review of these intercepted conversations that Mr Veseli has made no attempt to obstruct justice in any way, and certainly not to influence the testimony of witnesses. On the contrary, when eavesdropped upon, the intercepts document Mr Veseli actively discouraging any such approaches to witnesses in these proceedings. The SPO has made no attempt to bring this evidence to the attention of the Trial Panel and has, at times, deliberately omitted crucial information that casts its allegations in a completely different light. This is not fair, and it does not help the Trial Panel to ascertain the truth.

A. [REDACTED]

22. The SPO's allegation that Mr Veseli "disseminating the content of confidential testimony" is based on one brief passage of one private conversation with visitors. In it, Mr Veseli paraphrased a part of [REDACTED]'s testimony. He does not identify the witness or the victims by name, nor does he identify their village.

[REDACTED].

23. It is self-evident from the manner in which Mr Veseli recounted these events that he had no malintent towards the witness. It did not, and was not intended, to

obstruct court proceedings or endanger the witness. As Mr Veseli points out, the witness had nothing to do with him. It was for that reason that the Veseli Defence declined to ask him any questions at all in cross-examination.¹⁹

24. That this passage is the only section of transcript that the SPO consider “incriminating” across all of the clandestine recordings of Mr Veseli’s conversations with visitors is itself telling. What is absolutely clear is that Mr Veseli did not reveal either the identity of the witness or the witness’s village. What’s more, the Defence notes with concern that the SPO has failed to provide the Defence with a complete transcript of this recording and so the full context remains hidden from view.
25. With respect to the passage above, the Defence notes that this section of transcript has been cut in a misleading fashion. The reference at the very beginning of this section to discussing an issue at a previous visit clearly refers to an entirely separate matter which is not confidential. By starting the transcript with this line, a misleading impression is created that confidential information was discussed at a previous meeting. It was not and, in fact, it could not have been because the previous meeting between Mr Veseli and [REDACTED] occurred before the testimony of [REDACTED] and before his identity was disclosed.²⁰
26. Moreover, importantly, Mr Veseli did not identify [REDACTED], “[REDACTED].”²¹ [REDACTED].²²

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ F01933/A04, 061023-130747 page 2 line 21 - The SPO have translated this section as “[REDACTED].” [REDACTED] “[REDACTED].”

²² [REDACTED].

27. Finally, the Defence draws the Trial Panel's attention another intercepted conversation that the SPO has disclosed, which demonstrates Mr Veseli's lack of awareness of the extent to which confidentiality applied to this witness's evidence:

"[REDACTED]."²³

28. Taken together, the evidence does not sustain the serious allegation that Mr Veseli intentionally used his visits to convey confidential information. It is shocking that the SPO would rely on the excerpt of his meeting with [REDACTED] to justify a request to ban Mr Veseli from any visits from his family. Mr Veseli did not identify [REDACTED] and he reminded his visitors not to identify the witness.

29. The Defence acknowledges that the publicly available transcript of [REDACTED]'s evidence is currently devoid of any evidentiary content as the entirety of his evidence was heard in private session. However, the SPO is presently under obligation to review the transcript by 8 December 2023, to determine which portion of his evidence can be made public.²⁴ The Trial Panel ordered the SPO to do this due to concerns about the excessive use of private session in these proceedings. [REDACTED], this matter was first discussed on the very same day that [REDACTED].²⁵

30. The SPO allege that Mr Veseli is "using" his visits to unlawfully disseminate protected witness information, as if it were somehow intentional and malicious. Any fair-minded review of the evidence demonstrates that it was neither.

B. Alleged Abuse of Privileged Meetings

31. The SPO claims that a passage of Mr Veseli's conversation with [REDACTED] "links the existence of Defence teams to the possibility of conveying messages."²⁶

²³ 114485 (31/07/2023) KV Meeting with [REDACTED] 310723-084655 at min (01:05-01:24)

²⁴ Transcript, 7 November 2023, page 9445, lines 10-14.

²⁵ [REDACTED].

²⁶ F01933, para. 48.

This outrageous allegation against Defence counsel and their colleagues is utterly unfounded and should be withdrawn immediately. It is plain from the passages of transcripts identified by the SPO that Mr Veseli was indicating to his visitor that any matters that needed to be investigated, and any potential witness that needed to be approached, was a matter solely for his legal team. In its context, it was a clearly expressed injunction against any attempts by anyone outside the legal process to approach a witness under any circumstances.

32. This SPO's allegation is highly misleading. The plain language used by Mr Veseli makes it clear that he is expressing precisely the opposite position to that which is alleged by the Prosecution.
33. In this passage, Mr Veseli observes that recently introduced restrictions were ineffectual because anyone intent on unlawfully passing a message to a visitor could still easily do so, if they were minded to. He maintains that it is not the restrictions that prevent this, but rather a matter of responsibility not to send messages and importantly– consistent with remarks made in other contexts²⁷ – he has no reason to send such message. He has a legal team to defend him, and carry out investigations:

[REDACTED]: Has there been any changes in other procedures, I mean, in the internal ones regarding the time when you stay together, or when –

KADRI VESELI: No, no.

[REDACTED]: You have not been deprived of it?

KADRI VESELI: No, no, nothing. Nothing. The only thing is that there was no need, because we were really behaving well. They were behaving well ... there was no need. What they did is not even logical, because if one wants to send a message, one can send a message. Nobody will be able to prevent you from doing that. It is a matter of responsibility. Nobody is able to prevent you.²⁸ Everyone has his –

[REDACTED]: I meant whether they had introduced some new restrictions here inside.

KADRI VESELI: Everyone has his own group of lawyers and I swear, there is no reason to send a message from this place.

²⁷ See section D below.

²⁸ The original Albanian has been reviewed by a Defence team member who confirms that, here “you” is meant in the sense of “one.”

[REDACTED]: No, it is just a fact, there is no need to come here. They all know how it is --

KADRI VESELI: No, because I am talking but there is nothing to ... what are you going to say?

[REDACTED]: True, true.

KADRI VESELI: Everyone has already made up his mind. However, we make our own investigations. We make our own investigations, which are ninety percent, if not 99 percent, successful.

[REDACTED]: Do all this --²⁹

34. From the outset up to the present day, Mr Veseli has acted in good faith. The SPO has failed to produce a shred of actual evidence that Mr Veseli intends to abuse his legally privileged meetings to obstruct justice. Mr Veseli's plain language is absolutely clear "Everyone has his own group of lawyers and **I swear there is no reason to send a message from this place.**" He then states, "No, because I am talking but there is nothing to... what are you going to say?"
35. For the SPO's attempt to twist and fashion his words into a tool to smear him in these proceedings and to chip away at his right to legally privileged communications with his legal team is frankly outrageous. The Defence calls on the Trial Panel to reject any attempt to interfere with or limit Mr Veseli's privileged communications, particularly at this time when they are needed more than ever.

C. Participation in the visits of co-Accused

36. Until the imposition of the recent restrictions it was common practice for the DMU staff to schedule meetings between the various Accused and their lawyers, and other visitors simultaneously in the same part of the building. It was also common practice for lawyers, visitors and the Accused to exchange pleasantries, usually as consultations were about to begin or after they had concluded. The fact that it was DMU practice cannot be held against Mr Veseli, anymore than it can be held against Defence counsel. It was clearly part of the permitted regime, over which the Accused had no influence. No official had ever suggested to any of them, their

²⁹ F01933/A04, 061023-130747.wav, page 5, line 18 to page 6, line 18.

lawyers, or their visitors, that this practice was improper or some kind of unauthorised privilege.

37. If the SPO, or indeed the Trial Panel, considers that practice to have been outside the scope of the DMU's authorised discretion then the appropriate course is to hold the authorities at the Detention Centre responsible for allowing this perfectly ordinary practice to continue.³⁰ What the SPO cannot do is visit the consequences of this official practice on Mr Veseli in the absence of any evidence whatsoever that he abused the opportunity to encourage interference in the proceedings. That would be nonsensical and entirely unfair. The only factual basis for holding this practice against any one of the three Accused would be if there was evidence from the transcripts that they had abused the opportunity to pass unauthorised messages or otherwise interfere with the proceedings.
38. The SPO includes, in Annex 4 to its Request, the transcript of a conversation in which Mr Veseli is listed as a participant alongside Hashim Thaci, [REDACTED], [REDACTED], [REDACTED], [REDACTED] and other unidentified males.³¹ To describe Mr Veseli as a participant in this meeting is utterly misleading. The transcript of this conversation runs for 158 pages. Mr Veseli's 'participation' is included here in full:

[KADRI VESELI is heard in the distance: How are you, How is your family?]

KADRI VESELI: [In the distance]: My friend! Ah my friend!

[Enters the room] Ooh! Hello, hello, hello! [Laughter]

[People meeting and greeting] [Overlapping speakers] Look,

Look he came. [REDACTED]! You go on, this is good! Because one could hear you from over there [Indiscernible].

HASHIM THACI: [Calls in the corridor] Kadri!

[Hashim THACI leaves the room]

KADRI VESELI: Ahhh!

[REDACTED]: Ohhh! How are you?

³⁰ Indeed, the Defence understands that disciplinary action has been taken against at least one DMU official in respect of this matter.

³¹ F01933/A04, 4.1: 114037-TR-AT-ET.

KADRI VESELI: How are you?
 [REDACTED]: How are you getting on?
 KADRI VESELI: Don't tell me you are well. Why are you not eating this?
 [REDACTED]: I can't, I ate a bit earlier, and I can't eat it.
 KADRI VESELI: Come on, you are a Muslim, you are from [REDACTED].
 [REDACTED]: I swear, it is not a problem for me.
 KADRI VESELI: [In English] *Come on.*
 [REDACTED]: [Indiscernible] [Laughs]
 KADRI VESELI: [In English] Really?
 GUARD: [In English] Ja, ja, ja.
 KADRI VESELI: [In English] *He occupied my place.*
 GUARD: [In English] *Ja, come on.*
 KADRI VESELI: [In English] *He occupied my place.*
 GUARD: [In English] *Ja, come on.*
 KADRI VESELI: [In English] *Tell him I am coming.*
 [REDACTED]: How are you in general?
 KADRI VESELI: I am fine.
 [REDACTED]: Fine [Indiscernible] look, your country misses you, and your family misses you but these proceedings have to finish. [Indiscernible] it is going well, with out [Indiscernible].
 KADRI VESELI: Look [Indiscernible] brothers, and I want to continue my life.
 [REDACTED]: Yes, yes.
 KADRI VESELI: [Indiscernible] for the country have to help a bit, but hopefully we are not harmed. That's right, that's right.
 [REDACTED]: You got that [Indiscernible].
 [Kadri VESELI leaves the room and is heard speaking in the corridor. [REDACTED] remains alone in the room for a moment]

39. In another meeting that took place between Hashim Thaci, [REDACTED], on 6 October 2023 Mr Veseli makes the following appearance:

[Hashim THACI] Speaks to /?Kadri VESELI/ in the hallway] Here, here he is! Come here [indiscernible], come because we are here now.
 KADRI VESELI: [Enters the room and greets the visitors] Come on he is joking. How are you? How are you getting on? Where have you been? How are things going for you? Are you well? Are you getting tired? How are things going for you? How is it going? [indiscernible]
 [REDACTED]: [Indiscernible]
 [REDACTED], how are you? How is your health? If I can, I will come back to you.
 [REDACTED]: They are fine.
 [REDACTED]: Thank you.
 [Kadri VESELI leaves the room]³²

40. The SPO alleges that these interactions must somehow be a nefarious attempt to further witness interference activities. The Defence submits that there is no evidence whatsoever to support the inference that the Prosecution is seeking to

³² F01933/A04, 116083-TR-AT Part 1-ET, page 18.

draw. The SPO has entirely failed in its submission to identify any such evidence or to otherwise particularise the allegation that these interactions are to be held against Mr Veseli in any way.

41. The only claim that it makes is that Mr Veseli was involved in an attempt to interfere with the evidence of [REDACTED], and that he used a legal visit to participate in one of Mr Thaci's private visits, on [REDACTED] 2023 to pass a message, indirectly to [REDACTED].³³ The SPO's evidence for this boils down to a daisy-chain of hearsay that ultimately runs through an anonymous source. In short, [REDACTED] told the SPO that [REDACTED] told [REDACTED] that someone whose identity is unknown told him that he had been at the Detention Centre in The Hague on an unspecified date, and had received instructions from Hashim Thaci and Kadri Veseli to reach out to [REDACTED].³⁴
42. The SPO attempts to link Mr Veseli to this event by alleging that although: (a) [REDACTED] was unable to access the Detention Centre, and (b) Mr Veseli denied a request for a visit from his associates, Mr Veseli *may* nonetheless have used a legal visit on [REDACTED] 2023 to meet with the unidentified perpetrator and instruct [REDACTED]'s associates to approach [REDACTED] with a view to interfering with [REDACTED] evidence.³⁵ Bearing in mind that the SPO bears the burden of persuasion on these serious allegations, the implication that Mr Veseli may have abused a legal visit for this purpose, without any evidence whatsoever that he did in fact do so, cannot begin to justify the factual allegation that the Prosecution is seeking to advance.
43. Mr Veseli refused the request for this group to visit him. If he had wanted to pass a message, or to use the visit of this group, he could have met with them. He did not. That the SPO would attempt to use Mr Veseli's denial of a visit as evidence

³³ F01933, para. 8.

³⁴ 112446-112451, p. 112447.

³⁵ F01933, paras. 11-12.

that he may have met with an unidentified individual is a prime example of the SPO relying on ungrounded speculation in order to make untrue and exaggerated allegations against Mr Veseli. As in all other respects, the SPO's submission amount to a desperate attempt to make something out of nothing.

44. In response to the allegation that Mr Veseli might have denied a personal visit with this group but secretly used a legal visit to drop in on the group's visit and pass a message, the Defence notes that there was no legal visit on [REDACTED] 2023.³⁶ Legal visits are logged at the DU and the absence of any legal visit on the day in question is information that the SPO either had in its possession, or could have obtained, prior to filing its Request. The SPO's failure to take simple steps to factcheck its hypothesis against readily available records is in keeping with the casual disregard it has displayed to the evidence in its Request.
45. The Defence underscores that these small opportunities to greet each other's visitors in the Detention Centre – many of whom are old friends and colleagues - is an aspect of the Accused's detention that allows them to maintain a sense of normalcy and has served to make the overall experience slightly less demoralising. Moreover, the confines of the visitor centre are such that it is not possible to avoid others entirely, with people frequently walking past rooms within 2 metres of a visiting group in order to enter and exist the area, to use the toilet (located at one end of the small hallway) or to make coffee (located at the other end). The guards are at all times located in the centre of visitor centre from where all of this can be observed.
46. In this regard, the Defence recalls that, to date, this Court has expressed the utmost confidence in the competence and professionalism guards at the Detention Centre.

³⁶ Confidential Annex 1.

In the context of Mr Veseli's interim release litigation for instance, the Pre-Trial Judge found – and the Appeals Panel confirmed - that:

[T]he SC Detention Facilities are a high-security environment. Most significantly, the SC Detention Officers are highly qualified, subject to enhanced security screening, and receive training on applying the visits and communications regime at the SC Detention Facilities.³⁷

47. The SPO vastly overstates the risk that these interactions pose, attempting to transform them into something that they simply are not. Most significantly, however, the SPO has yet to produce any evidence that such interactions have in fact being used by Mr Veseli in a manner which would cause damage to the integrity of these proceedings. No such evidence exists. Mr Veseli's greetings are exactly of the sort one would expect upon seeing an individual one recognises in a confined space. To claim otherwise was misleading, and illustrates the exaggerated nature of the SPO's submissions. There is no excuse for this, or for the other respects in which the SPO has knowingly misled the Trial Panel.

D. [REDACTED]

48. The SPO alleges that [REDACTED] was involved in attempts to interfere with the testimony of [REDACTED].³⁸ In order to link this to Mr Veseli, the SPO points out that [REDACTED] visited Mr Veseli on [REDACTED] 2022 and [REDACTED] 2023. It fails to mention that when Mr Veseli met with [REDACTED] on [REDACTED] 2023 where he explicitly told [REDACTED] **not** to talk to any person associated with these proceedings or to attempt to influence **any** witness's evidence in this case. This is a further and egregious example of the SPO's careless attempt to present a misleading picture to the Trial Panel. This passage should have been included within the SPO's Request in order to present the evidence to

³⁷ F00576, *Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli*, KSC-BC-2020/F00576, 23 November 2021, confidential, para. 85. IA014/F00008, *Decision on Kadri Veseli's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention*, KSC-BC-2020-06/IA014/F00008, 31 March 2022, confidential, para. 38.

³⁸ F01933, para. 15.

the Trial Panel. Instead, there is no mention in the Request, nor did the SPO actively draw attention to it when disclosing under Rule 103 hours of un-transcribed audio. Accordingly, if the Defence had not devoted many hours to listening to this vast morass of audio recordings, the Trial Panel would have been left to assess the SPO's submissions relating to Mr Veseli's visits with [REDACTED] – despite their being compelling evidence that contradicts the primary submission of the SPO. That the SPO has buried this evidence amongst hours of un-transcribed audio should be gravely concerning to the Trial Panel:

[REDACTED]: We met [REDACTED]; had a coffee with him, [*unintelligible*]

K.V: Look, it's good that we have [REDACTED] here as well. You are an extraordinary person and you are not afraid, but just listen to me, keep as much distance.

Talking over each other

KV: Do not worry at all. [...] Stay far away from this because you can hurt us; you can do more harm than good to us. [REDACTED], they cannot hurt us, we do not have problems. In 300 people that are left, none of them can cause harm. They can lie, God will deal with them, they can lie whatever they want, but do not worry at all, because they can then use this, to make us look bad. Whereas those people are sly, they may be doing this, just to win some sort of status out there, to make something, they make it seem like it was horror. Just let it be as it is! It is not a good thing to do. Keep Distance! Even if your ever hear about someone that will come to testify here; even if someone comes and tells you "I am [a witness]", you can just say "tell the truth", "just do not lie", just do not lie. There is no need to speak; we do not need anything, just not to lie. If they do not lie, we will be fine, because the reality of the KLA is like that. That's it. There is nothing to do.³⁹

49. The clear message from Mr Veseli is that witnesses should not be contacted, and if inadvertent contact occurs, one may tell them to tell the truth and nothing more. This message is exemplary. It is extremely significant that this was a private conversation which Mr Veseli did not know was being recorded. It is highly concerning that the SPO could have heard this passage, failed to put it before the Trial Panel, and still alleged that Mr Veseli somehow conspired with [REDACTED] to intimidate witnesses on purely circumstantial evidence and innuendo. Mr Veseli's conversations with [REDACTED] amount to a clearly expressed injunction

³⁹ 114485 (31/07/2023) KV Meeting with [REDACTED] and [REDACTED], 310723-084155 at min (03:04).

against any attempts by anyone outside the legal process to approach a witness under any circumstances, which is in all important respects the same as the statement that was read into the record on the occasion of his initial appearance.⁴⁰

50. The facts are clear. There is not one scintilla of evidence on which the Trial Panel could conclude that Mr Veseli has attempted to obstruct or interfere with these proceedings. On the contrary, Mr Veseli's unguarded private conversations reveal his consistent efforts to prevent witness contact and to encourage witnesses to come forward and tell the truth. Mr Veseli has no intent to obstruct these proceedings, moreover, he has always advocated for a respectful approach to the KSC and those involved in its work. The Defence urges the Trial Panel to remain cognisant of this.

E. [REDACTED]

51. As noted above, the SPO alleges, based on anonymous compound hearsay, that Mr Veseli was involved in an attempt to interfere with the evidence of [REDACTED].⁴¹
52. The Defence draws the Trial Panel's attention to the fact that the SPO failed to make any record of the allegation of attempted interference made by [REDACTED] in the preparation notes disclosed prior to [REDACTED] testimony. If it had been disclosed at the appropriate time, *i.e.*, prior to [REDACTED] testimony, this issue could have been explored in cross-examination. The SPO has failed to explain why these allegations were not disclosed at a time when they could be tested in court. Given the flimsy, tangential nature of the evidence; the hypothetical nature of the Prosecution; and its failure to verify basic evidence from the DMU which would have disclosed the falsity of its position. The allegation that Mr Veseli was involved in an attempt to interfere with [REDACTED]'s evidence is simply unsubstantiated

⁴⁰ See para. 3 above.

⁴¹ F01933, para. 8; See paras. 41-44 above.

and cannot be relied upon to justify any modification to the conditions of Mr Veseli's detention.

F. Conclusion

53. None of the SPO's five claims against Mr Veseli withstand scrutiny. Many of the statements made in the Request are misleading, tendentious, and involve impermissible speculation. They are neither adequately particularised nor in any way substantiated by the evidence served and disclosed by the SPO.
54. The allegations against each Accused must be disentangled and considered separately before any administrative measure is confirmed against any one of them. The Trial Panel must then determine which, if any, of the factual allegations against each of the three Accused is made out on the evidence. If no allegation is sufficiently sustained then there is no judicial discretion to exercise. The SPO's Request should be denied.
55. Mr Veseli has consistently maintained that he is committed to this process, for better or worse. As he remarked in his meeting with [REDACTED]:
- "We have now been dealing with this for three years. Even if they open the doors, it would not be appropriate for us to get out. If there is a stain, it is not about us individually, [...] it is about the country. This has been heavy. These were some of the most monstrous accusations possible."⁴²
56. To grant the SPO's Request - in particular, to prohibit him from any in-person visits with his immediate family until the end of these proceedings would inflict unnecessary psychological damage and prejudice his capacity to prepare his defence to the best of his ability. To impose a highly restrictive regime amounting to virtual solitary confinement on the basis of the material supplied by the Prosecution would be irrational, unjust, and arbitrary.

⁴² 061023-131647 (Defence translation).

57. Mr Veseli has never attempted to evade justice by interference or obstruction. The evidence bears this out. The Prosecution bears the burden of proof in relation to the facts it alleges. It also bears the burden of persuasion in relation to the draconian measures it is asking the Trial Panel to enforce. The Defence urges the Panel to examine the evidence carefully with this in mind, and having done so, to unequivocally reject the SPO's Request.

VI. CONCLUSION

58. For the foregoing reasons, the Defence respectfully requests the Trial Panel to REJECT the SPO's Request in its entirety.

Word Count: 7194



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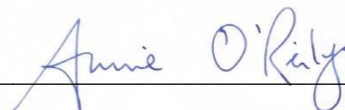
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