



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2023-10
The Specialist Prosecutor v. Sabit Januzi and Ismet Bahtijari

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 29 January 2024

Language: English

Classification: Public

Public Redacted Version of Decision on Review of Detention of Ismet Bahtijari

Specialist Prosecutor

Kimberly P. West

Counsel for Sabit Januzi

Jonathan Elystan Rees

Registry

Fidelma Donlon

Counsel for Ismet Bahtijari

Felicity Gerry

THE PRE-TRIAL JUDGE,¹ pursuant to Article 41(6), (10) and (12) of the 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. On 5 October 2023, Ismet Bahtijari ("Mr Bahtijari" or "Accused") was arrested pursuant to a decision ("Decision on Arrest")² and an arrest warrant issued by the Pre-Trial Judge,³ upon request of the Specialist Prosecutor's Office ("SPO"),⁴ and further to the confirmation of an indictment against him and Sabit Januzi ("Mr Januzi" and "Confirmation Decision").⁵

2. On 29 November 2023, the Pre-Trial Judge rejected an application for interim release submitted by the Defence for Mr Bahtijari ("Defence") and ordered Mr Bahtijari's continued detention ("First Detention Decision").⁶

¹ KSC-BC-2023-10, F00001, President, *Decision Assigning a Pre-Trial Judge*, 11 September 2023, public.

² KSC-BC-2023-10, F00009, Pre-Trial Judge, *Decision on Request for Arrest Warrants and Transfer Orders*, 2 October 2023, confidential, with Annexes 1-4, confidential. A public redacted version of the decision was issued on 12 October 2023, F00009/RED.

³ See KSC-BC-2023-10, F00009/A03, Pre-Trial Judge, *Arrest Warrant for Ismet Bahtijari*, 2 October 2023, confidential; F00011, Registrar, *Notification of Arrest of Ismet Bahtijari Pursuant to Rule 55(4)*, 5 October 2023, public.

⁴ KSC-BC-2023-10, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Requests*, 11 September 2023, strictly confidential and *ex parte*, para. 32(ii), with Annexes 1-3, strictly confidential and *ex parte*. A confidential redacted version and a public redacted version of the main filing were submitted on 12 October 2023, F00002/CONF/RED and F00002/RED.

⁵ KSC-BC-2023-10, F00008, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 2 October 2023, strictly confidential and *ex parte*. A confidential redacted version and a public redacted version of the decision were filed on 12 October 2023, F00008/CONF/RED and F00008/RED. A corrected version of the public redacted version of the decision was filed on 12 October 2023, F00008/RED/COR.

⁶ KSC-BC-2023-10, F00116, Pre-Trial Judge, *Decision on Ismet Bahtijari's Request for Interim Release ("First Detention Decision")*, 29 November 2023, confidential. A public redacted version was filed on the same day, F00116/RED.

3. On 15 January 2024, the SPO filed its submissions on the review of Mr Bahtijari's detention.⁷ Mr Bahtijari did not make submissions on the review of his detention.

II. SUBMISSIONS

4. The SPO submits that the continued detention of Mr Bahtijari remains necessary, as there has been no relevant change in circumstances detracting from the reasons established in the First Detention Decision.⁸ The SPO further submits that continued disclosures providing Mr Bahtijari with access to sensitive information and further incriminating evidence reinforce the necessity of his detention.⁹

III. APPLICABLE LAW

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

6. Pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, until a judgment is final or until release, upon expiry of the two (2) months from the last ruling on detention on remand, the Pre-Trial Judge or Panel seized with the case shall

⁷ KSC-BC-2023-10, F00147, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Ismet Bahtijari* ("SPO Submissions"), 15 January 2024, confidential. A public redacted version was filed on 16 January 2024, F00147/RED.

⁸ SPO Submissions, paras 1, 7.

⁹ SPO Submissions, paras 1, 7-9.

examine whether reasons for detention on remand still exist, and render a ruling by which detention on remand is extended or terminated.

7. Pursuant to Article 41(12) of the Law, in addition to detention on remand, the following measures may be ordered by the SC to ensure the presence of the Accused, including by video-teleconference, to prevent reoffending or to ensure successful conduct of criminal proceedings: summons, arrest, bail, house detention, promise not to leave residence, prohibition on approaching specific places or persons, attendance at police station or other venue, and diversion.

8. Pursuant to Rule 56(2) of the Rules, the Pre-Trial Judge shall ensure that a person is not detained for an unreasonable period prior to the opening of the case, and, in case of an undue delay caused by the Specialist Prosecutor, the Panel, having heard the Parties, may release the person under conditions as deemed appropriate.

IV. DISCUSSION

A. APPLICABLE STANDARD

9. The Pre-Trial Judge recalls that he has an obligation, under Article 41(10) of the Law, to examine whether the reasons for detention on remand still exist,¹⁰ including the grounds set out in Article 41(6) of the Law, namely whether (i) there is a grounded suspicion that the person has committed the crime(s), and (ii) there are articulable grounds to believe that any of the risks set out in Article 41(6)(b) of the Law has been

¹⁰ See, for example, KSC-BC-2020-07, IA002/F00005, Court of Appeals Panel, *Decision on Nasim Haradinaj's Appeal on Decision Reviewing Detention ("First Haradinaj Detention Appeal")*, 9 February 2021, public, para. 55; KSC-BC-2020-06, IA006/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention ("Second Krasniqi Detention Appeal")*, 1 October 2021, public, para. 15. See also KSC-BC-2020-04, F00224/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Review of Detention of Pjetër Shala ("Sixth Shala Detention Decision")*, 22 June 2022, public, para. 19.

fulfilled.¹¹ The Pre-Trial Judge is neither required to make findings on the factors already decided upon in the initial ruling on detention, nor to entertain submissions that merely repeat arguments that have already been addressed in earlier decisions.¹² What is crucial is that the Pre-Trial Judge is satisfied that, at the time of the review decision, grounds for continued detention still exist.¹³

10. The Single Judge likewise underscores that any analysis of Mr Bahtijari's detention must duly consider his presumption of innocence.¹⁴ This means, as a consequence, that pre-trial detention cannot be maintained lightly, and that the SPO bears the burden of establishing that the detention of the Accused is necessary.¹⁵

B. GROUNDED SUSPICION

11. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires at the outset a grounded suspicion that the detained person has committed a crime within the jurisdiction of the SC. This is a condition *sine qua non* for the validity of the detained person's continued detention.¹⁶

¹¹ See for example, First Haradinaj Detention Appeal, para. 55; KSC-BC-2020-04, F00075/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Review of Detention of Pjetër Shala* ("Second Shala Detention Decision"), 10 September 2021, public, para. 19; KSC-BC-2020-07, F00143, Pre-Trial Judge, *Decision on Review of Detention of Hysni Gucati*, 24 February 2021, public, para. 17.

¹² First Haradinaj Detention Appeal, para. 55; Second Krasniqi Detention Appeal, para. 17; Second Shala Detention Appeal, para. 18; Sixth Shala Detention Decision, para. 19.

¹³ KSC-BC-2020-07, IA002/F00005, Court of Appeals Panel, *Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention*, 9 February 2021, para. 55.

¹⁴ 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 the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office* ("SCCC 26 April 2017 Judgment"), 26 April 2017, public, para. 113; KSC-BC-2020-06, IA004/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Interim Release*, 30 April 2021, public, para. 17, with further references. See, similarly, ECtHR, *McKay v. the United Kingdom*, no. 543/03, Judgment, 3 October 2006, para. 43.

¹⁵ First Detention Decision, para. 16, with further references.

¹⁶ KSC-BC-2020-04, F00045, Pre-Trial Judge, *Decision on Pjetër Shala's Request for Provisional Release* ("First Shala Detention Decision"), 23 June 2021, public, para. 14. See also ECtHR, *Merabishvili v. Georgia*, no. 72508/13, Judgment, 28 November 2017, para. 222.

12. The SPO submits that the Pre-Trial Judge's finding of grounded suspicion still stands, and that no developments since the Confirmation Decision detract from the Pre-Trial Judge's determination.¹⁷

13. The Pre-Trial Judge recalls that, in the Confirmation Decision, it was determined that, pursuant to Article 39(2) of the Law, there is a well-grounded suspicion that Mr Bahtijari is criminally liable for offences within the jurisdiction of the SC, namely intimidation during criminal proceedings and obstructing official persons in performing official duties within the meaning of Articles 387 and 401(1), (2) and (5) of the 2019 Kosovo Criminal Code, Code No. 06/L-074 ("KCC") and Articles 15(2) and 16(3) of the Law.¹⁸ These findings were made on the basis of a standard exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a) of the Law.¹⁹ The Pre-Trial Judge notes that there have been no developments in the case negating these findings.

14. Therefore, in the absence of any contrary intervening information or developments, the Pre-Trial Judge finds that there continues to be a grounded suspicion that Mr Bahtijari has committed offences within the subject-matter jurisdiction of the SC for the purposes of Article 41(6)(a) and (10) of the Law.

C. NECESSITY OF DETENTION

15. Once the threshold in Article 41(6)(a) of the Law is met, the grounds that would justify the deprivation of a person's liberty must be articulable in the sense that they must be specified in detail.²⁰ In this regard, Article 41(6)(b) of the Law echoes the

¹⁷ SPO Submissions, para. 10.

¹⁸ Confirmation Decision, paras 95, 111, 123, 126, 131, 135, 139, 144. *See also* Decision on Arrest, para. 17.

¹⁹ Confirmation Decision, para. 24. First Detention Decision, para. 18.

²⁰ *See* Article 19(1.31) of the 2022 Kosovo Criminal Procedure Code, Code No. 08/L-032, which defines "articulable" as: "the party offering the information or evidence must specify in detail the information or evidence being relied upon". *See also*, for example, First *Shala* Detention Decision, para. 16; KSC-BC-

principle that the continued detention of a person can only be justified if there are specific indications of a genuine requirement of public interest, which outweigh the person's right to liberty.²¹ Therefore, the Pre-Trial Judge must rely on case-specific reasoning and concrete grounds in deciding whether to continue detention.²²

16. The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"²³ that any of the risks specified under the three limbs of Article 41(6)(b) of the Law exist, denoting an acceptance of the possibility, not the inevitability, of a future occurrence.²⁴ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.²⁵ The Pre-Trial Judge further observes that these grounds are in the alternative, and that the existence of one ground suffices to determine the necessity of detention.²⁶

17. As regards the nature of the assessment under Article 41(6)(b) of the Law, the Pre-Trial Judge recalls that, while the evaluation involves an element of discretion,²⁷ it must be based on the facts of the case and must be undertaken on an individual basis in light of the personal circumstances of the detained person.²⁸ When assessing the

2020-06, IA001/F00005, Court of Appeals Panel, *Decision on Kadri Veseli's Appeal Against Decision on Interim Release*, 30 April 2021, public, para. 15.

²¹ SCCC 26 April 2017 Judgment, para. 113.

²² First Detention Decision, para. 22, with further references.

²³ See chapeau of Article 41(6)(b) of the Law.

²⁴ First Detention Decision, para. 22, with further references. See also KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, public, para. 17, with further references.

²⁵ First Detention Decision, para. 22; *Thaçi* Interim Release Appeal Decision, para. 22.

²⁶ First *Shala* Detention Decision, para. 20; KSC-BC-2020-06, F00177/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Hashim Thaçi's Application for Interim Release* ("First *Thaçi* Detention Decision"), 22 January 2021, public, para. 25, with further references.

²⁷ First *Thaçi* Detention Decision, para. 21, with further references.

²⁸ See also First *Shala* Detention Decision, para. 17; First *Thaçi* Detention Decision, para. 21, with further references; similarly, ECtHR, *Aleksanyan v. Russia*, no. 46468/06, Judgment, 22 December 2008, para. 179.

relevant factors, the Pre-Trial Judge may not conduct a piecemeal assessment, but must weigh all relevant factors taken together.²⁹

18. Lastly, in relation to the grounds set forth in Article 41(6)(b)(ii)-(iii) of the Law, the Pre-Trial Judge emphasises that it suffices that the risks may materialise as a result of the detained person's acts or omissions, but they do not require physical execution on his or her part.³⁰

1. Risk of Flight

19. The SPO argues that the possibility of a serious sentence in the event of conviction and the increasing disclosure of incriminating evidence since the First Detention Decision elevates Mr Bahtijari's risk of flight.³¹

20. As regards the risk of flight under Article 41(6)(b)(i) of the Law, the Pre-Trial Judge considers that, in addition to Mr Bahtijari's awareness of the seriousness of the charges against him and potential sentence in the event of a conviction,³² Mr Bahtijari has also gained increased insight into the evidence underpinning these charges through the ongoing disclosure process, in particular [REDACTED], as well as the audio recording and transcript of Mr Januzi's [REDACTED], implicating Mr Bahtijari in the offences charged.³³ In addition, the Pre-Trial Judge recalls his previous findings that Mr Bahtijari would have both the means to flee, through his strong ties with influential individuals from within the former senior Kosovo Liberation Army

²⁹ First Detention Decision, para. 23; First *Shala* Detention Decision, para. 17; First *Thaçi* Detention Decision, para. 21, with further references.

³⁰ First Detention Decision, para. 24; First *Shala* Detention Decision, para. 19; First *Thaçi* Detention Decision, para. 24.

³¹ SPO Submissions, para. 11.

³² First Detention Decision, para. 28.

³³ See Disclosure Package No. 6, 15 December 2023. See also SPO Submissions, paras 4, 8-9, 11.

("KLA") leadership,³⁴ and, in principle, the opportunity to evade justice, including by traveling freely to jurisdictions beyond the reach of SC.³⁵

21. In this respect, the Pre-Trial Judge also recalls his previous finding that, notwithstanding Mr Bahtijari being rooted in his residential area and his cooperation with the SPO following his arrest, these favourable factors only diminish but do not eliminate the risk of flight.³⁶

22. Therefore, in light of the above, and in the absence of any contrary intervening information, the Pre-Trial Judge concludes that the risk of flight in relation to Mr Bahtijari continues to exist, even though it is moderate.

2. Risk of Obstructing the Progress of the SC Proceedings

23. The SPO submits that Mr Bahtijari continues to present a risk of obstructing SC proceedings.³⁷ In particular, the SPO asserts that Mr Bahtijari's receipt of highly sensitive witness-related information only increases the risk of obstruction.³⁸

24. As regards the risk of obstructing proceedings under Article 41(6)(b)(ii) of the Law, the Pre-Trial Judge recalls his considerations in the First Detention Decision, in particular, that (i) Mr Bahtijari has both the motive and the means to obtain and misuse witness-related information to obstruct and interfere with SC proceedings, including by exerting pressure on Witness 1 [REDACTED] to dissuade him from participating as an SPO witness in SC proceedings;³⁹ (ii) Mr Bahtijari's increased opportunity to directly interfere with Witness 1 [REDACTED], due to his [REDACTED];⁴⁰ (iii) Mr Bahtijari's unity of interests with influential individuals from

³⁴ First Detention Decision, paras 29-30.

³⁵ First Detention Decision, para. 31; Decision on Arrest, para. 20.

³⁶ First Detention Decision, para. 32.

³⁷ SPO Submissions, paras 12, 16.

³⁸ SPO Submissions, para. 15.

³⁹ First Detention Decision, para. 37.

⁴⁰ First Detention Decision, para. 37.

within the former KLA leadership, such as Haxhi Shala (“Mr Shala”) and [REDACTED], and his likely access to their associated networks and resources;⁴¹ and (iv) Mr Bahtijari’s proneness to following directions from more senior individuals in the KLA hierarchy, and his persistence in intimidation and obstruction efforts in the context of SC proceedings, as evidenced by the close coordination between Mr Shala, Mr Januzi and Mr Bahtijari in their approaches to Witness 1.⁴²

25. Further to the above, the Pre-Trial Judge also notes that, as a result of the ongoing disclosure process, Mr Bahtijari has received increasing access to sensitive witness-related information,⁴³ which, in the view of the Pre-Trial Judge, is an important factor in assessing the risk of obstruction of proceedings. With the knowledge acquired so far, in the present circumstances, the risk of collusion for the purpose of obstructing the proceedings is particularly high.

26. The Pre-Trial Judge further recalls and assesses the above factors against the pervasive climate of fear and intimidation in Kosovo against witnesses and potential witnesses of the SC.⁴⁴

27. Therefore, in light of the above, and in the absence of any contrary intervening information, the Pre-Trial Judge concludes that there continues to exist a risk that Mr Bahtijari will obstruct the progress of SC proceedings.

3. Risk of Committing Further Crimes

28. The SPO submits that, in light of the continuing disclosure of sensitive witness information, the risk that Mr Bahtijari may commit further crimes mandates his continued detention.⁴⁵

⁴¹ First Detention Decision, para. 37.

⁴² First Detention Decision, para. 38.

⁴³ See SPO Submissions, para. 15.

⁴⁴ First Detention Decision, para. 39.

⁴⁵ SPO Submissions, para. 20.

29. As regards the further commission of crimes under Article 41(6)(b)(iii) of the Law, the Pre-Trial Judge recalls that, even though the existence of a risk of obstruction does not automatically translate into a risk of committing further offences, the factors underpinning the former are of relevance to the assessment of the latter in the circumstances of the present case.⁴⁶

30. Therefore, in light of the above, and in the absence of any contrary intervening information, the Pre-Trial Judge concludes that the risk that Mr Bahtijari will commit further crimes continues to exist.

4. Conclusion

31. As a result, the Pre-Trial Judge finds that there are articulable grounds to believe that Mr Bahtijari may flee (although this risk is moderate), obstruct the progress of SC proceedings, or commit further offences, therefore necessitating his continued detention in accordance with Article 41(6)(b) of the Law. The Pre-Trial Judge will assess below whether these risks can be adequately mitigated by any conditions for his release.

D. CONDITIONAL RELEASE

32. The SPO submits that no modalities of conditional release can sufficiently mitigate the existing risks, which he argues are heightened by the further disclosures in the case.⁴⁷ The SPO also argues that there has been no change in circumstances since the First Detention Decision warranting a different assessment of conditions, and that the relevant risks can only be effectively managed at the SC's detention facilities.⁴⁸

⁴⁶ First Detention Decision, para. 45; Decision on Arrest, para. 22; First *Shala* Detention Decision, para. 39.

⁴⁷ SPO Submissions, para. 25.

⁴⁸ SPO Submissions, paras 21, 25.

33. The Pre-Trial Judge recalls that, when deciding on whether a person should be released or detained, the Pre-Trial Judge must consider alternative measures to prevent the risks in Article 41(6)(b) of the Law.⁴⁹

34. As regards the risk of flight, the Pre-Trial Judge recalls his previous finding that the conditions proposed in relation to the First Detention Decision could sufficiently mitigate this risk, namely Mr Bahtijari's commitment to: (i) remain in house arrest at his residence; (ii) surrender his passport and other travel documents; (iii) report daily to or be subject to close monitoring by the police or other relevant authorities; and (iv) appear in court when ordered to do so.⁵⁰

35. However, as found in the First Detention Decision, the Pre-Trial Judge considers that neither these proposed conditions nor any additional conditions imposed by the Pre-Trial Judge could restrict the Accused's ability to obstruct the progress of SC proceedings and commit further offences.⁵¹ In this regard, the Pre-Trial Judge is particularly mindful of the fact that the Accused is [REDACTED] with likely access to the associated networks of Mr Shala and [REDACTED]. Accordingly, should he be released, Mr Bahtijari would have the motive, means and opportunity to exert pressure on Witness 1 [REDACTED] to dissuade him from participating in the proceedings, or to otherwise tamper with evidence.⁵² In the view of the Pre-Trial Judge, while the risk of illicit messages and instructions cannot be entirely eliminated, 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

⁴⁹ As regards the obligation to consider "alternative measures", see SCCC 26 April 2017 Judgment, para. 114. See also ECtHR, *Buzadji v. the Republic of Moldova*, no. 23755/07, Judgment ("*Buzadji v. Moldova*"), 5 July 2016, para. 87; ECtHR, *Idalov v. Russia*, no. 5826/03, Judgment, 22 May 2012, para. 140.

⁵⁰ See First Detention Decision, para. 51.

⁵¹ See First Detention Decision, paras 52-53.

⁵² See First Detention Decision, para. 52.

pre-approved visitors with a view to minimising the risks of obstruction and commission of further crimes.⁵³

36. For the same reasons, the Pre-Trial Judge considers that no *additional* reasonable conditions imposed by the Pre-Trial Judge⁵⁴ are available to adequately mitigate the existing risks.

37. Accordingly, the Pre-Trial Judge concludes that the conditions proposed in relation to the First Detention Decision remain insufficient to adequately mitigate the risks under Article 41(6)(b)(ii)-(iii) of the Law in relation to Mr Bahtijari.

E. PROPORTIONALITY OF DETENTION

38. The SPO submits that Mr Bahtijari's detention remains reasonable and proportional.⁵⁵ In support, the SPO argues that the proceedings continue to move forward expeditiously and that, since the last review, a third status conference was held and that it has now discharged its disclosure obligations under Rule 102(1)(b) of the Rules.⁵⁶

39. At the outset, the Pre-Trial Judge recalls the importance of the proportionality principle in the determination of the reasonableness of pre-trial detention, as reflected in Rule 56(2) of the Rules.⁵⁷ The duration of time in detention pending trial is a factor that needs to be considered along with the degree of the risks that are described in Article 41(6)(b) of the Law, in order to determine whether, all factors being considered,

⁵³ Similarly KSC-BC-2020-06, IA010/F00008, Court of Appeals, *Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 27 October 2021, confidential, para. 68. A public redacted version was filed on the same day, IA010/F00008/RED.

⁵⁴ KSC-BC-2020-06, IA017/F00011/RED, Court of Appeals, *Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 5 April 2022, public, para. 51.

⁵⁵ SPO Submissions, paras 26, 29.

⁵⁶ SPO Submissions, para. 28.

⁵⁷ KSC-BC-2020-07, IA001/F00005, Court of Appeals, *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention*, 9 December 2020, public, paras 72-73.

the continued detention “stops being reasonable” and the individual needs to be released.⁵⁸ However, the Pre-Trial Judge notes that the question whether a length of time spent in pre-trial detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed based on the facts of each case and according to its specific features.⁵⁹

40. The Pre-Trial Judge further recalls that: (i) that Mr Bahtijari has been detained since his arrest on 5 October 2023; (ii) he is charged with two counts of obstructing official persons in performing official duties and one count of intimidation during criminal proceedings, which carry a possible sentence of up to five years and ten years of imprisonment, respectively; (iii) the risks under Article 41(6)(b)(ii) and (iii) of the Law cannot be mitigated by the proposed conditions for release, house arrest or any additional conditions; and (iv) all required procedural steps relating to the pre-trial phase of the present case have been, are being or will be completed with a view to transmitting the case for trial at a point in the foreseeable future. Notably, the SPO has completed its disclosure under Rule 102(1)(a), and (b) of the Rules and has provided notice under Rule 102(3) of the Rules,⁶⁰ the submission of the SPO Pre-Trial Brief is due by 2 February 2024,⁶¹ three status conferences have been held to date, and a fourth will be held in February with a view to finalising the preparation of the case for trial. Consequently, in the view of the Pre-Trial Judge, any discussion at the present stage as to the expected total length of Mr Bahtijari’s pre-trial detention remains premature and speculative. Furthermore, pursuant to Article 41(10) of the Law and Rule 57(2) of

⁵⁸ *Similarly, Thaçi Interim Release Appeal Decision*, para. 69.

⁵⁹ ECtHR, *Buzadji v. Moldova*, para. 90.

⁶⁰ See KSC-BC-2023-10, F00154, Specialist Prosecutor, *Prosecution’s Rule 102(3) Notice*, 26 January 2024, public, with Annex 1, confidential; KSC-BC-2023-11, F00036, Specialist Prosecutor, *Prosecution’s Rule 102(3) Notice*, 26 January 2024, public, with Annex 1, confidential.

⁶¹ See KSC-BC-2023-10, Transcript of Second Status Conference, 3 November 2023, public, p. 82, lines 10-15; KSC-BC-2023-11, Transcript of First Status Conference, 15 December 2023, public, p. 24, lines 9-10.

the Rules, Mr Bahtijari's detention shall be reviewed every two months or as soon as a change in circumstances arises.

41. On this basis, the Pre-Trial Judge finds that the time Mr Bahtijari has spent in pre-trial detention is not unreasonable within the meaning of Rule 56(2) of the Rules.

V. DISPOSITION

42. For the above reasons, the Pre-Trial Judge hereby:

- a. **ORDERS** Mr Bahtijari's continued detention;
- b. **ORDERS** Mr Bahtijari, if he wishes to do so, to file submissions on the next review of detention by **Friday, 8 March 2024 at 16h00**, with responses and replies following the timeline set out in Rule 76 of the Rules;
- c. **ORDERS** the SPO, should Mr Bahtijari decide not to file any submissions by the aforementioned time limit, to file submissions on the next review of Mr Bahtijari's detention by **Friday, 15 March 2024**, and Mr Bahtijari, if he wishes to do so, to file his submissions by no later than **Friday, 22 March 2024**.



Judge Nicolas Guillou

Pre-Trial Judge

Dated this Monday, 29 January 2024

At The Hague, the Netherlands.