



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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

Before: **Pre-Trial Judge**
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

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Public Redacted Version of Second Decision on Review of Detention of Haxhi Shala

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 41 of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 56 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 11 December 2023, Haxhi Shala ("Mr Shala" or "Accused") was arrested,² pursuant to a decision ("Decision on Arrest")³ and an arrest warrant issued by the Pre-Trial Judge,⁴ upon request of the Specialist Prosecutor's Office ("SPO"),⁵ and further to the confirmation of an indictment against him ("Confirmation Decision").⁶
2. On 12 December 2023, Mr Shala was transferred to the Specialist Chambers ("SC") Detention Facilities in The Hague, the Netherlands.⁷

¹ KSC-BC-2023-10, F00001, President, *Decision Assigning a Pre-Trial Judge*, 11 September 2023, public; KSC-BC-2023-11, F00001, President, *Decision Assigning a Pre-Trial Judge*, 20 November 2023, public.

² KSC-BC-2023-11, F00008, Registrar, *Notification of Arrest of Haxhi Shala Pursuant to Rule 55(4)*, 11 December 2023, public, para. 4.

³ KSC-BC-2023-11, F00006, Pre-Trial Judge, *Decision on Request for Warrant of Arrest and Transfer Order*, 4 December 2023, confidential, with Annexes 1-2, strictly confidential. A public redacted version of the decision was issued on 22 December 2023, F00006/RED.

⁴ See KSC-BC-2023-11, F00006/A01, Pre-Trial Judge, *Arrest Warrant for Haxhi Shala*, 4 December 2023, strictly confidential.

⁵ KSC-BC-2023-11, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Requests* ("Submission of Indictment"), 20 November 2023, strictly confidential and *ex parte*, para. 25(ii), with Annexes 1, 3, strictly confidential and *ex parte*, and Annex 2, confidential. A confidential redacted version and a public redacted version of the main filing were submitted on 14 December 2023, F00002/CONF/RED and F00002/RED.

⁶ KSC-BC-2023-11, F00005, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 4 December 2023, confidential. A public redacted version of the decision was filed on 30 January 2024, F00005/RED.

⁷ KSC-BC-2023-11, F00011, Registrar, *Notification of Reception of Haxhi Shala in the Detention Facilities of the Specialist Chambers*, 12 December 2023, public, with Annex 1, strictly confidential and *ex parte*.

3. On 13 December 2023, the initial appearance of the Accused before the Pre-Trial Judge took place.⁸
4. On 9 February 2024, the Pre-Trial Judge reviewed the detention of Mr Shala and ordered his continued detention (“First Detention Decision”).⁹
5. On 19 February 2024, Mr Shala filed an appeal against the First Detention Decision.¹⁰ The appeal is currently pending before the Court of Appeals Panel.
6. On 12 March 2024, the Defence for Mr Shala (“Defence”) filed its submissions on the review of Mr Shala’s detention (“Defence Submissions”), requesting his release from detention.¹¹ The SPO responded on 21 March 2024 (“SPO Response”).¹² The Defence for Mr Shala replied on 26 March 2024 (“Defence Reply”).¹³
7. On 27 March 2024, the Defence for Mr Shala filed an urgent supplement to the Defence Reply (“Supplemental Defence Reply”).¹⁴

II. SUBMISSIONS

8. The Defence submits that, in light of the uncertainty concerning the funding for Mr Shala’s representation, he should be unconditionally released in order to ensure

⁸ KSC-BC-2023-11, Transcript of Hearing, 13 December 2023, public, pp. 1-15; F00014, Pre-Trial Judge, *Decision Setting the Date for the Initial Appearance of Haxhi Shala and Related Matters*, 12 December 2023, public.

⁹ KSC-BC-2023-10, F00165, Pre-Trial Judge, *Decision on Review of Detention of Haxhi Shala*, 9 February 2024, confidential. A public redacted version was filed on the same day, F00165/RED.

¹⁰ KSC-BC-2023-10/IA002, F00001, *Interlocutory Appeal Against the Decision on Review of Detention of Haxhi Shala*, 19 February 2024, confidential.

¹¹ KSC-BC-2023-10, F00210, Defence for Haxhi Shala, *Haxhi Shala Submissions for Review of Detention*, 12 March 2024, confidential.

¹² KSC-BC-2023-10, F00227, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Haxhi Shala*, 21 March 2024, confidential. A public redacted version was filed on 3 April 2024, F00227/RED.

¹³ KSC-BC-2023-10, F00232, Defence for Haxhi Shala, *Reply to the Prosecution Submission Pertaining to Periodic Detention Review of Haxhi Shala*, 26 March 2024, confidential.

¹⁴ KSC-BC-2023-10, F00237, Defence for Haxhi Shala, *Urgent Supplement to Reply to the Prosecution Submission Pertaining to Periodic Detention Review of Haxhi Shala*, 27 March 2024, confidential.

that he is not detained for an unreasonable period of time, in accordance with Rule 56(2) of the Rules.¹⁵ In support, the Defence asserts that resolution of the issues involving defence team funding and the procedural requirements for obtaining a change to legal aid funding will likely require a prolongation of pre-trial detention.¹⁶ In particular, the Defence submits that, while the anticipated date for the completion of the pre-trial phase is set for 3 May 2024, compliance is unlikely due to these unresolved issues.¹⁷ In the alternative, the Defence requests that the Pre-Trial Judge order Mr Shala's release subject to one or more conditions.¹⁸

9. The SPO responds that Mr Shala's detention remains necessary, as there has been no relevant change in circumstances detracting from the reasons established in the First Detention Decision.¹⁹ To the contrary, the SPO asserts that continued disclosures providing Mr Shala with further access to sensitive information and further incriminating evidence reinforce the necessity and reasonableness of his detention.²⁰ Additionally, the SPO submits that no modalities of conditional release could sufficiently mitigate the existing risks of flight, obstruction of proceedings and the commission of further crimes,²¹ and that Mr Shala's detention is both reasonable and proportional at this stage of the proceedings.²² On this basis, the SPO submits that Mr Shala should remain in detention.²³

10. The SPO further submits that Mr Shala's assertion that the uncertainty regarding the funding of defence teams requires his release pursuant to Rule 56(2) of the Rules, is both premature and speculative, particularly considering that (i) the Defence for

¹⁵ Defence Submissions, paras 1, 10-11.

¹⁶ Defence Submissions, para. 11.

¹⁷ Defence Submissions, para. 11; Defence Reply, paras 4-5.

¹⁸ Defence Submissions, para. 12(ii).

¹⁹ SPO Response, paras 1, 7, 10-11, 17.

²⁰ SPO Response, paras 1, 7, 10-11, 17.

²¹ SPO Response, paras 18-22.

²² SPO Response, paras 23-28.

²³ SPO Response, para. 30.

Mr Shala is in the process of applying for legal aid; (ii) the timing of applications for funding is a matter which was within the control of the Defence; and (iii) the transfer of the case file to the Trial Panel is set to be addressed at the 22 March 2024 status conference.²⁴

11. The Defence replies that, while the timing of its application for legal aid was within its control, the process for consideration of its legal aid application by the Registry is one which may take some time.²⁵ Further, the Defence submits that, as evidenced by the submissions of the Defence teams in relation to the 22 March 2024 status conference, the transmission of the case file to the Trial Panel by 31 May 2024 is far from certain.²⁶ In this respect, the Defence adds in its Supplemental Defence Reply that the Pre-Trial Judge's decision of 27 March 2024,²⁷ setting the date for transmittal of the case file to the Trial Panel to 21 June 2024, reinforces the necessity of Mr Shala's release.²⁸

III. APPLICABLE LAW

12. Pursuant to Article 41(6) of the Law, the 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

²⁴ SPO Response, paras 26-27.

²⁵ Defence Reply, para. 3.

²⁶ Defence Reply, paras 4-5.

²⁷ KSC-BC-2023-10, F00233, Pre-Trial Judge, *Decision Setting Out the Calendar for the Remaining Procedural Steps of the Pre-Trial Phase* ("Decision Setting Pre-Trial Calendar"), 27 March 2024, public.

²⁸ Supplemental Defence Reply, para. 3.

offence, complete an attempted crime, or commit a crime which he or she has threatened to commit.

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

14. 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. Pursuant to Rule 56(5) of the Rules, the Panel may impose such conditions upon the release as deemed appropriate to ensure the presence of the detained person.

15. 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. PRELIMINARY MATTERS

16. At the outset, the Pre-Trial Judge observes that the Supplemental Defence Reply was filed after the expiration of the 5-day timeframe, as set out in Rule 76 of the Rules. Nevertheless, considering that the Decision Setting Pre-Trial Calendar was issued on 27 March 2024 and that it includes new procedural deadlines that may be relevant to

the assessment of proportionality of detention, the Pre-Trial Judge decides to exceptionally consider the Supplemental Defence Reply, despite its untimeliness.

B. APPLICABLE STANDARD

17. 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 continue to exist,²⁹ 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 have been fulfilled.³⁰ 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.³¹ 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.³²

18. The Pre-Trial Judge likewise underscores that any analysis of Mr Shala's detention must duly consider his presumption of innocence.³³ This means, as a

²⁹ See, for example, KSC-BC-2020-07, IA002/F00005, Court of Appeals Panel, *Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention* ("First Haradinaj Detention Appeal Decision"), 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 Decision"), 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 P.Shala Detention Decision"), 22 June 2022, public, para. 19.

³⁰ See for example, First Haradinaj Detention Appeal Decision, para. 55; KSC-BC-2020-04, F00075/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Review of Detention of Pjetër Shala*, 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.

³¹ First Haradinaj Detention Appeal Decision, para. 55; Second Krasniqi Detention Appeal Decision, para. 17; Sixth P.Shala Detention Decision, para. 19.

³² First Haradinaj Detention Appeal Decision, para. 55.

³³ SCCC 26 April 2017 Judgment, 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*

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.³⁴

C. GROUNDED SUSPICION

19. 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.³⁵

20. The SPO submits that the Pre-Trial Judge's finding of grounded suspicion in the Confirmation Decision still stands, and that no developments since that decision detract from the Pre-Trial Judge's determination.³⁶ The Defence does not make any submissions in this regard.

21. 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 Shala is criminally liable, under various forms of criminal responsibility, 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 and Articles 15(2) and 16(3) of the Law.³⁷ These findings were made on the basis of a standard exceeding the grounded suspicion threshold required for

("Thaçi Interim Release Appeal Decision"), 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.

³⁴ *See, similarly*, First Detention Decision, para. 17.

³⁵ KSC-BC-2020-04, F00045/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Pjetër Shala's Request for Provisional Release* ("First P.Shala Detention Decision"), 23 June 2021, public, para. 14. *See also* ECtHR, *Merabishvili v. Georgia*, no. 72508/13, Judgment, 28 November 2017, para. 222.

³⁶ SPO Submissions, para. 8.

³⁷ Confirmation Decision, paras 101, 117, 129, 132, 136, 140, 144, 149. *See also* Decision on Arrest, para. 17.

the purposes of Article 41(6)(a) of the Law.³⁸ The Pre-Trial Judge notes that there have been no developments in the case negating these findings.³⁹

22. 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 Shala has committed offences within the subject-matter jurisdiction of the SC within the meaning of Article 41(6)(a) of the Law.

D. NECESSITY OF DETENTION

23. 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.⁴⁰ In this regard, Article 41(6)(b) of the Law echoes the 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.⁴¹ Therefore, the Pre-Trial Judge must rely on case-specific reasoning and concrete grounds in deciding whether to continue detention.⁴²

24. The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"⁴³ that any of the risks specified under the three limbs of Article 41(6)(b) of the Law exist, denoting an

³⁸ First Detention Decision, para. 21.

³⁹ See, similarly, First Detention Decision, para. 23.

⁴⁰ 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 *P. Shala* Detention Decision, para. 16; KSC-BC-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.

⁴¹ SCCC 26 April 2017 Judgment, para. 113.

⁴² See, similarly, Second Detention Decision, para. 15; First Detention Decision, para. 22, with further references.

⁴³ See chapeau of Article 41(6)(b) of the Law.

acceptance of the possibility, not the inevitability, of a future occurrence.⁴⁴ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.⁴⁵ The Pre-Trial Judge further observes that these grounds are in the alternative, and that the existence of one ground suffices to establish the necessity of detention.⁴⁶

25. 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,⁴⁷ 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.⁴⁸ When assessing the relevant factors, the Pre-Trial Judge may not conduct a piecemeal assessment, but must weigh all relevant factors taken together.⁴⁹

26. 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.⁵⁰

⁴⁴ KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, public, para. 17, with further references.

⁴⁵ *Thaçi Interim Release Appeal Decision*, para. 22.

⁴⁶ *See, similarly*, Second Detention Decision, para. 16; First Detention Decision, para. 22. *See also* First *P.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.

⁴⁷ First *Thaçi* Detention Decision, para. 21, with further references.

⁴⁸ *See also* First *P.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.

⁴⁹ *See, similarly*, Second Detention Decision, para. 17; First Detention Decision, para. 23. *See also* First *Thaçi* Detention Decision, para. 21, with further references.

⁵⁰ *See, similarly*, Second Detention Decision, para. 18; First Detention Decision, para. 27. *See also* First *P.Shala* Detention Decision, para. 19; First *Thaçi* Detention Decision, para. 24.

1. Risk of Flight

27. The SPO recalls the Pre-Trial Judge's findings in the First Detention Decision that Mr Shala presents a moderate risk of flight.⁵¹ The SPO asserts that the continuing disclosure of incriminating evidence and progression of the case elevate Mr Shala's risk of flight.⁵² The Defence does not make submissions on this matter.

28. As regards the risk of flight under Article 41(6)(b)(i) of the Law, the Pre-Trial Judge finds that the considerations set out in the First Detention Decision are still relevant, namely Mr Shala's (i) awareness of the seriousness of the charges against him and potential sentence in the event of a conviction; (ii) increased insight into the evidence underpinning these charges through the ongoing disclosure process; and (iii) his means to flee and opportunity to evade justice.⁵³

29. The Pre-Trial Judge further observes that Mr Shala is aware of the forthcoming transmission of the case file to the Trial Panel, which was addressed at the last status conference.⁵⁴

30. 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 Shala continues to exist, even though it is moderate.

2. Risk of Obstructing the Progress of the SC Proceedings

31. The SPO submits that Mr Shala continues to present a risk of obstructing SC proceedings.⁵⁵ In particular, the SPO asserts that (i) Mr Shala has both the motive and means to obtain and misuse witness-related information to obstruct and interfere with

⁵¹ SPO Response, para. 9.

⁵² SPO Response, para. 10.

⁵³ First Detention Decision, paras 30-33.

⁵⁴ KSC-BC-2023-10, Transcript of Hearing ("22 March 2024 Transcript"), 22 March 2024, confidential, p. 252, line 10, to p. 255, line 11.

⁵⁵ SPO Response, para. 11.

SC proceedings;⁵⁶ (ii) the close coordination between Mr Shala and his co-Accused in relation to Witness 1 is indicative of his persistence to intimidate witnesses and obstruct SC proceedings;⁵⁷ and (iii) in light of Mr Shala's receipt of sensitive witness-related information, the risk of collusion for the purpose of obstructing the proceedings is particularly high.⁵⁸ The SPO further submits that the pervasive climate of fear and intimidation of witnesses in Kosovo is a critical issue in the consideration of conditional release, as also recognised in the context of other cases.⁵⁹ The Defence does not make submissions on this matter.

32. As regards the risk of obstructing proceedings under Article 41(6)(b)(ii) of the Law, the Pre-Trial Judge considers that: (i) the circumstances set out in the First Detention Decision continue to apply,⁶⁰ particularly considering that Mr Shala has received increasing access to sensitive witness-related information as a result of the ongoing disclosure process; and (ii) no information has been brought to the Pre-Trial Judge's attention that would detract from the findings contained in that decision.

33. 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 Shala will obstruct the progress of SC proceedings.

3. Risk of Committing Further Crimes

34. The SPO submits that, in light of the continuing disclosure of sensitive witness information, the risk that Mr Shala may commit further crimes mandates his continued detention.⁶¹ The Defence does not make submissions on this matter.

⁵⁶ SPO Response, para. 12.

⁵⁷ SPO Response, para. 12.

⁵⁸ SPO Response, para. 13.

⁵⁹ SPO Response, para. 14.

⁶⁰ See First Detention Decision, paras 38-41.

⁶¹ SPO Response, para. 17.

35. 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.⁶² In particular, the Pre-Trial Judge finds that the Accused has the means and incentive to repeat the offences alleged to have been committed by him.⁶³

36. 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 Shala will commit further crimes continues to exist.

4. Conclusion

37. In view of the foregoing, the Pre-Trial Judge finds that there are articulable grounds to believe that Mr Shala 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.

E. CONDITIONAL RELEASE

38. The SPO submits that no change in circumstances since the First Detention Decision detracts from the Pre-Trial Judge's findings concerning conditions of release, and that, to the contrary, the underlying risks are heightened by the progression of the case and increasing disclosures, such that no modalities of conditional release can

⁶² Decision on Arrest, para. 22. *See also* First *P. Shala* Detention Decision, para. 39.

⁶³ *See, similarly*, First Detention Decision, para. 45.

sufficiently mitigate them.⁶⁴ The Defence does not make submissions on this matter, beyond its general assertion that the uncertainty concerning the funding for Mr Shala's representation mandates his release,⁶⁵ and refers to its prior submissions in relation to the First Detention Decision, outlining proposed conditions for release.⁶⁶

39. 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 identified in Article 41(6)(b) of the Law.⁶⁷

40. As regards the question of conditional release, the Pre-Trial Judge observes that the Defence merely requests conditional release as an alternative to unconditional release, without explaining how it might address the risks foreseen under Article 41(6)(b) of the Law.⁶⁸

41. As regards the flight risk, the Pre-Trial Judge recalls his previous finding that some of the conditions proposed by the Defence in relation to the First Detention Decision could sufficiently mitigate this risk, namely Mr Shala's commitment to (i) remain in house arrest at his residence; (ii) abide to an electronically-tagged curfew (albeit temporarily limited); (iii) report periodically to the Kosovo Police; (iv) surrender his travel documents; and (v) not approach any international transfer hub or any international border.⁶⁹

42. However, as found in the First Detention Decision, the Pre-Trial Judge considers that none of the conditions put forth by the Defence could limit the risk or restrict the

⁶⁴ SPO Response, para. 22.

⁶⁵ See Defence Submissions, paras 1, 10.

⁶⁶ Defence Submissions, para. 12(ii), referring to KSC-BC-2023-11, F00039, Defence for Haxhi Shala, *Response to Prosecution Submission Pertaining to Periodic Detention of Haxhi Shala*, 4 February 2024, confidential, para. 70. A public redacted version was filed on 7 February 2024, F00039/RED.

⁶⁷ 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; *Idalov v. Russia*, no. 5826/03, Judgment, 22 May 2012, para. 140.

⁶⁸ See Defence Submissions, para. 12(ii).

⁶⁹ See First Detention Decision, para. 52.

ability of the Accused to obstruct the progress of SC proceedings and commit further offences.⁷⁰ Notably, the Pre-Trial Judge is of the view that the conditions proposed by the Defence (i) do not address the possibility of Mr Shala employing communication devices belonging to other persons or requesting others to use their devices for these purposes; and (ii) cannot ensure the effective monitoring of Mr Shala's communications.⁷¹ In this regard, the Pre-Trial Judge is particularly mindful of the fact that the Accused likely has access to the associated networks and resources of senior Kosovo Liberation Army leadership. Accordingly, should he be released, Mr Shala 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. 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 pre-approved visitors with a view to minimising the risks of obstruction and commission of further crimes.⁷²

43. For the same reasons, the Pre-Trial Judge considers that no *additional* reasonable conditions imposed by the Pre-Trial Judge⁷³ are available to adequately mitigate the existing risks.

⁷⁰ See First Detention Decision, para. 53.

⁷¹ First Detention Decision, para. 53.

⁷² First Detention Decision, para. 53. See, similarly, KSC-BC-2020-06, IA010/F00008/RED, Court of Appeals, *Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention* ("Thaçi Detention Appeal Decision"), 27 October 2021, public, para. 68.

⁷³ 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.

44. Accordingly, the Pre-Trial Judge finds that the conditions proposed by the Defence for Mr Shala's release are insufficient to mitigate the risk of obstructing SC proceedings or committing further crimes.

F. PROPORTIONALITY OF DETENTION

45. The SPO submits that Mr Shala's detention remains proportional, in light of the expeditious progression of the case, including the harmonized disclosure between the three co-accused, the filing of its Pre-Trial Brief and its submission of an amended indictment.⁷⁴ The Defence does not make submissions on this matter, beyond its general assertion that likely delays engendered by issues surrounding the funding for Mr Shala's representation are "expected to prolong" his pre-trial detention, hence rendering it unreasonable.⁷⁵

46. 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.⁷⁶ 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, continued detention "stops being reasonable" and the individual needs to be released.⁷⁷ However, the Pre-Trial Judge notes that the question whether the length of time spent in pre-trial detention is reasonable cannot be assessed in the abstract, and must be assessed based on the facts of each case and according to its specific features.⁷⁸ Furthermore, in the view of the Pre-Trial Judge, such an assessment can only be based

⁷⁴ SPO Response, paras 23-25.

⁷⁵ See Defence Submissions, paras 10-11.

⁷⁶ 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.

⁷⁷ *Thaçi Detention Appeal Decision*, para. 49.

⁷⁸ ECtHR, *Buzadji v. Moldova*, para. 90. *See, similarly*, Second Detention Decision, para. 39.

on the circumstances at the time of review, and not on what may or may not occur in the foreseeable future.

47. The Pre-Trial Judge further recalls his previous findings that: (i) Mr Shala has been detained since his arrest on 11 December 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.⁷⁹ Notably, since the First Detention Decision, the Pre-Trial Judge has issued the Joinder Decision,⁸⁰ the SPO has submitted its Pre-Trial Brief,⁸¹ and five status conferences have been held to date. Furthermore, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, Mr Shala's detention shall be reviewed every two months or as soon as a change in circumstances arises.

48. In addition, the Pre-Trial Judge recalls that a concrete timeline has been set for the remainder of the pre-trial phase, notably: (i) any outstanding requests by the SPO and the Defence pertaining to the disclosure process are to be submitted by no later than 5 April 2024 and 19 April 2024, respectively; (ii) the SPO shall provide a detailed description of the target date for completing its investigation by no later than 12 April 2024; (iii) the SPO shall complete all its pre-trial disclosure obligations, with the exception of any material requiring judicial authorisation by 19 April 2024; (iv) the

⁷⁹ First Detention Decision, para. 59.

⁸⁰ See *supra*, para. **Error! Reference source not found.**

⁸¹ KSC-BC-2023-10, F00177, Specialist Prosecutor, *Submission of Prosecution Pre-Trial Brief, Witness and Exhibit Lists, and Rule 109(c) Chart*, 16 February 2024, public, with Annexes 1-4, confidential.

SPO and the Defence shall finalise their *inter partes* discussions and submit their points of agreement on matters of law and fact in a joint filing on the record of the case by 17 May 2024; (v) the Defence shall submit its Pre-Trial Brief, if any, by 7 June 2024; and (vi) the date for the transmission of the case to the Trial Panel is set for 21 June 2024.⁸² In this regard, the Pre-Trial Judge recalls that, despite his proposal to transmit the case at an earlier date, the Defence indicated that it would be premature, in light of the complexity of the case and unresolved issues.⁸³

49. Lastly, the Single Judge considers that the Defence's argument in support of its request for Mr Shala's release, and in particular its assertion that the uncertainty regarding the funding of defence teams is "expected to prolong" Mr Shala's pre-trial detention, is speculative at this stage and as such, cannot support a finding that Mr Shala's continued detention, at the time of the present review, has become unreasonable.

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

V. DISPOSITION

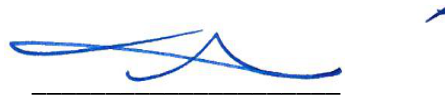
51. For the above reasons, the Pre-Trial Judge hereby:

- a. **ORDERS** Mr Shala's continued detention;
- b. **ORDERS** Mr Shala, if he wishes to do so, to file submissions on the next review of detention by **Monday, 13 May 2024**, with responses and replies following the timeline set out in Rule 76 of the Rules;

⁸² Decision Setting Pre-Trial Calendar, para. 30(a)-(k).

⁸³ 22 March 2024 Transcript, p. 254, line 25, to p. 255, line 11; KSC-BC-2023-10, F00224, Defence for Mr Shala, *Haxhi Shala Submissions for Status Conference on 22 March 2024*, 19 March 2024, public, para. 2(6)(a). See also KSC-BC-2023-10, F00168, Defence for Mr Shala, *Submissions on Behalf of Haxhi Shala for Status Conference*, 12 February 2024, public, para. 2(6)(a).

- c. **ORDERS** the SPO, should Mr Shala decide not to file any submissions by the aforementioned time limit, to file submissions on the next review of Mr Shala's detention by **Tuesday, 21 May 2024**, and Mr Shala, if he wishes to do so, to file his submissions by no later than **Tuesday, 28 May 2024**; and
- d. **ORDERS** the Defence to file public redacted versions of the Defence Submissions, Defence Reply and Supplemental Defence Reply, or to indicate whether these filings may be reclassified as public, by **Tuesday, 16 April 2024**.



Judge Nicolas Guillou

Pre-Trial Judge

Dated this Monday, 8 April 2024

At The Hague, the Netherlands.