



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

Date: 8 April 2024

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Public Redacted Version of Decision on Review of Detention of Sabit Januzi

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 41(6) and (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, Sabit Januzi ("Mr Januzi" 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 Ismet Bahtijari ("Mr Bahtijari" and "Confirmation Decision").⁵
2. On 8 December 2023, the Pre-Trial Judge rejected an application for interim release submitted by the Defence for Mr Januzi ("Defence") and ordered Mr Januzi's continued detention ("First Detention Decision").⁶

¹ KSC-BC-2023-10, F00001, President, *Decision Assigning a Pre-Trial Judge*, 11 September 2023, public. 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 was filed on 12 October 2023, F00009/RED.

³ See KSC-BC-2023-10, F00009/A01, Pre-Trial Judge, *Arrest Warrant for Sabit Januzi*, 2 October 2023, confidential; a public redacted version was issued on 28 February 2024, F00009/RED/A01/RED; F00012, Registrar, *Notification of Arrest of Sabit Januzi 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 and 3, strictly confidential and *ex parte*, and Annex 2, confidential. A confidential redacted version and a public redacted version of the main filing were filed 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 were filed on 12 October 2023, F00008/CONF/RED and F00008/RED. A corrected version of the public redacted version was filed on 12 October 2023, F00008/RED/COR.

⁶ KSC-BC-2023-10, F00123, Pre-Trial Judge, *Decision on Sabit Januzi's Request for Interim Release*, 8 December 2023, confidential. A public redacted version was filed on 5 January 2024, F00123/RED.

3. On 20 December 2023, Mr Januzi filed an appeal against the First Detention Decision.⁷
4. On 5 February 2024, the Court of Appeals Panel rejected Mr Januzi's appeal.⁸ On the same day, the Pre-Trial Judge reviewed Mr Januzi's detention and ordered his continued detention ("Second Detention Decision").⁹
5. On 8 February 2024, after hearing the Parties and seized with a request by the SPO, the Pre-Trial Judge joined the case against Mr Januzi and Mr Bahtijari, with the case against Haxhi Shala ("Mr Shala" and "Joinder Decision").¹⁰
6. On 18 March 2024, pursuant to the Pre-Trial Judge's order,¹¹ the SPO filed its submissions on the review of Mr Januzi's detention.¹² The Defence did not respond.

II. SUBMISSIONS

7. The SPO submits that Mr Januzi's continued detention remains justified, necessary, reasonable and proportional, as there has been no relevant change in circumstances that warrants deviating from the determinations made by the Pre-

⁷ KSC-BC-2023-10, IA001/F00001/RED, Defence for Mr Januzi, *Public Redacted Version of Appeal Against the Decision on Interim Release on Behalf of Sabit Januzi*, 20 December 2023, public.

⁸ KSC-BC-2023-10, IA001/F00007/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Sabit Januzi's Appeal Against Decision on Interim Release*, 5 February 2024, public.

⁹ KSC-BC-2023-10, F00162, Pre-Trial Judge, *Decision on Review of Detention of Sabit Januzi*, 8 February 2024, strictly confidential and *ex parte*. A public redacted version was filed on the same day, F00162/RED.

¹⁰ KSC-BC-2023-10, F00161, Pre-Trial Judge, *Decision on Request for Joinder and Amendment of the Indictment*, 8 February 2024, confidential; a public redacted version was issued on the same day, F00161/RED; KSC-BC-2023-11, F00041, Pre-Trial Judge, *Decision on Request for Joinder and Amendment of the Indictment*, 8 February 2024, confidential; a public redacted version was issued on the same day, F00041/RED.

¹¹ Second Detention Decision, para. 44(c).

¹² KSC-BC-2023-10, F00220, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Sabit Januzi ("SPO Submissions")*, 18 March 2024, confidential. A public redacted version was filed on the same day, F00220/RED.

Trial Judge in the Second Detention Decision.¹³ According to the SPO, there remains a grounded suspicion that Mr Januzi has committed a crime within the jurisdiction of the SC¹⁴ and the grounds for his detention under Article 41(6)(b) of the Law continue to apply.¹⁵ In particular, the SPO avers that continued disclosures and the steady progression of the case providing Mr Januzi with access to sensitive information and further incriminating evidence reinforce the necessity and reasonableness of his detention.¹⁶ The SPO further submits that (i) no modalities of conditional release could sufficiently mitigate the existing risks;¹⁷ and (ii) as proceedings continue to move forward expeditiously, his detention remains proportional.¹⁸ Based on the above, the SPO submits that Mr Januzi should remain in detention.¹⁹

III. APPLICABLE LAW

8. 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.

9. 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

¹³ SPO Submissions, paras. 1, 7, 22-23, 26.

¹⁴ SPO Submissions, paras 1, 8.

¹⁵ SPO Submissions, paras 1, 9-17.

¹⁶ SPO Submissions, paras 1, 7.

¹⁷ SPO Submissions, paras 18-22.

¹⁸ SPO Submissions, paras 23-26.

¹⁹ SPO Submissions, paras 1, 28.

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.

10. 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.

11. 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

12. 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,²⁰ 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

²⁰ 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 Shala Detention Decision"), 22 June 2022, public, para. 19.

Article 41(6)(b) of the Law have been fulfilled.²¹ 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.²² 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.²³

13. The Pre-Trial Judge likewise underscores that any analysis of Mr Januzi's detention must duly consider his presumption of innocence.²⁴ 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.²⁵

B. GROUNDED SUSPICION

14. 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

²¹ 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.

²² First *Haradinaj* Detention Appeal Decision, para. 55; Second *Krasniqi* Detention Appeal Decision, para. 17; Sixth *Shala* Detention Decision, para. 19.

²³ First *Haradinaj* Detention Appeal Decision, para. 55.

²⁴ 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* ("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.

²⁵ See, similarly, First Detention Decision, para. 20, with further references.

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.²⁶

15. 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.²⁷ According to the SPO, said findings have only been reinforced.²⁸

16. The Pre-Trial Judge recalls that, in the Confirmation Decision, it was determined that, pursuant to Article 39(2) of the Law, of the Law, there is a well-grounded suspicion that Mr Januzi 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, and Articles 15(2) and 16(3) of the Law.²⁹ 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.³⁰ The Pre-Trial Judge notes that there have been no developments in the case negating these findings.³¹

17. 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 Januzi has committed offences within the subject-matter jurisdiction of the SC for the purposes of Article 41(6)(a) and (10) of the Law.

²⁶ KSC-BC-2020-04, F00045/RED, Pre-Trial Judge, *Public Redacted Version of 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.

²⁷ SPO Submissions, para. 8.

²⁸ SPO Submissions, para. 8.

²⁹ Confirmation Decision, paras 95, 111, 123, 126, 131, 135, 139, 144. *See also* Decision on Arrest, para. 17.

³⁰ Confirmation Decision, para. 24. First Detention Decision, para. 25.

³¹ *See, similarly*, Second Detention Decision, para. 15.

C. NECESSITY OF DETENTION

18. 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.³² 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.³³ Therefore, the Panel must rely on case-specific reasoning and concrete grounds in deciding to continue detention.³⁴

19. The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"³⁵ that any of the risks specified under the three limbs of Article 41(6)(b) of the Law exists, denoting an acceptance of the possibility, not the inevitability, of a future occurrence.³⁶ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.³⁷ 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.³⁸

³² 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-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.

³³ SCCC 26 April 2017 Judgment, para. 113.

³⁴ See, similarly, Second Detention Decision, para. 17; First Detention Decision, para. 32, with further references.

³⁵ See chapeau of Article 41(6)(b) of the Law.

³⁶ KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, public, para. 17, with further references.

³⁷ *Thaçi* Interim Release Appeal Decision, para. 22.

³⁸ See, similarly, Second Detention Decision, para. 18; First Detention Decision, para. 32. See also 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.

20. 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,³⁹ 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.⁴⁰ When assessing the relevant factors, the Pre-Trial Judge may not conduct a piecemeal assessment, but must weigh all relevant factors taken together.⁴¹

21. 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.⁴²

1. Risk of Flight

22. The SPO recalls the Pre-Trial Judge's previous finding in the Second Detention Decision that Mr Januzi presents a moderate risk of flight.⁴³ According to the SPO the continuing disclosure of incriminating evidence and progression of the case since the Second Detention Decision, combined with Mr Januzi's awareness of the forthcoming transmission of the case file to the Trial Panel, elevate Mr Januzi's risk of flight.⁴⁴

23. As regards the risk of flight under Article 41(6)(b)(i) of the Law, the Pre-Trial Judge finds that the considerations set in the First Detention Decision and the Second Detention Decision are still relevant, namely: (i) Mr Januzi's

³⁹ First *Thaçi* Detention Decision, para. 21, with further references.

⁴⁰ 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.

⁴¹ See, similarly, Second Detention Decision, para. 19; First Detention Decision, para. 33. See also First *Thaçi* Detention Decision, para. 21, with further references.

⁴² See, similarly, Second Detention Decision, para. 20; First Detention Decision, para. 38. See also First *Shala* Detention Decision, para. 19; First *Thaçi* Detention Decision, para. 24.

⁴³ Second Detention Decision, para. 9.

⁴⁴ SPO Submissions, para. 10.

awareness of the seriousness of the charges against him and potential sentence in the event of a conviction;⁴⁵ (ii) his increased insight into the evidence underpinning the charges through the ongoing disclosure process;⁴⁶ and (iii) his means to flee and opportunity to evade justice.⁴⁷ The Pre-Trial Judge further observes that Mr Januzi is aware of the forthcoming transmission of the case file to the Trial Panel, which was addressed at the last status conference.⁴⁸ In the Pre-Trial Judge's view, the prospect of a trial where Mr Januzi's innocence or guilt will be determined, combined with his increased knowledge of the charges against him, is an important factor when assessing Mr Januzi's risk of flight.

24. In addition, the Pre-Trial Judge maintains his previous findings that, notwithstanding the fact that Mr Januzi is 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.⁴⁹

25. 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 Januzi continues to exist, even though it is moderate.

2. Risk of Obstructing the Progress of the SC Proceedings

26. The SPO submits that Mr Januzi continues to present a risk of obstructing SC proceedings,⁵⁰ and recalls the Pre-Trial Judge's findings in the Second Detention Decision.⁵¹ The SPO further submits that the pervasive climate of fear

⁴⁵ First Detention Decision, paras 42-43. Second Detention Decision, para. 22.

⁴⁶ See SPO Submissions, paras 3, 10. The Pre-Trial Judge takes note that since the Second Detention Decision, additional disclosure packages have been released to the Defence.

⁴⁷ Second Detention Decision, para 22, with further reference to Disclosure Package No. 6, 15 December 2023. See also SPO Submissions, paras 1, 7, 10.

⁴⁸ KSC-BC-2023-10, Transcript of Hearing ("22 March 2024 Transcript"), 22 March 2024, confidential, p. 252, line 10, to p. 255, line 11.

⁴⁹ First Detention Decision, paras. 48; Second Detention Decision, para. 23.

⁵⁰ SPO Submissions, para. 11.

⁵¹ SPO Submissions paras 12-14, with further references.

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.⁵²

27. As regards the risk of obstructing proceedings under Article 41(6)(b)(ii) of the Law, the Pre-Trial Judge finds that: (i) the circumstances set out in the First Detention Decision and the Second Detention Decision continue to apply,⁵³ particularly considering that Mr Januzi 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 those decisions.

28. 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 Januzi will obstruct the progress of SC proceedings.

3. Risk of Committing Further Crimes

29. The SPO submits that, in light of the continuing disclosure of sensitive witness information, the risk that Mr Januzi may commit further crimes mandates his continued detention.⁵⁴

30. 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.⁵⁵

⁵² SPO Submissions, para. 14.

⁵³ See First Detention Decision, paras 53-58; Second Detention Decision, paras 26-29.

⁵⁴ SPO Submissions, para. 17.

⁵⁵ First Detention Decision, para. 61; Second Detention Decision, para. 31; Decision on Arrest, para. 22. See also First *Shala* Detention Decision, para. 39.

31. 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 Januzi will commit further crimes continues to exist.

4. Conclusion

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

33. The SPO submits that no modalities of conditional release can sufficiently mitigate the existing risks, which it argues are heightened by the progression of the case and increasing disclosures.⁵⁶ Regarding the risk of flight, the SPO submits that the Pre-Trial Judge's previous finding that the conditions proposed by Mr Januzi could mitigate this risk should be reconsidered, given the recent relevant development allowing Kosovo citizens to now travel to the EU without a visa.⁵⁷ Regarding the risks of obstruction and of committing further crimes, the SPO argues that: (i) there has been no change in circumstances since the Second Detention Decision warranting a different assessment of conditions⁵⁸ and (ii) the previous findings of the Pre-Trial Judge that the relevant risks can only be effectively managed at the SC Detention Facilities continue to apply.⁵⁹

⁵⁶ SPO Submissions, para. 22.

⁵⁷ SPO Submissions, para. 18.

⁵⁸ SPO Submissions, para. 22.

⁵⁹ SPO Submissions, paras 18–21.

34. 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.⁶⁰

35. 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 and the Second Detention Decision could sufficiently mitigate this risk, namely Mr Januzi's commitment to: (i) remain in house arrest in Kosovo; (ii) live and sleep each night at his home address; (iii) surrender his passport and any other travel documents; (iv) report daily to or be subject to close monitoring by the police or other relevant authorities; (v) appear in court when ordered to do so; (vi) attend proceedings by VCT; and/or (vi) comply with any other condition deemed by the Pre-Trial Judge as appropriate.⁶¹ The Pre-Trial Judge further observes that it was already possible for Kosovo citizens to travel to the EU without a visa at the time of the Second Detention Decision, and that such factor was not addressed therein.⁶² Therefore, the Pre-Trial Judge finds that the conditions proposed by the Defence are still adequate to mitigate the risk of flight.

36. However, as found in the First Detention Decision and the Second Detention Decision, the Pre-Trial Judge considers that none of these proposed conditions could limit the risk or restrict the Accused's ability to obstruct the progress of SC proceedings and commit further offences.⁶³ In this regard, the Pre-Trial Judge is particularly mindful of the fact that the Accused is a [REDACTED] with likely access to the associated networks and resources of senior Kosovo Liberation Army leadership. Accordingly, should he be released,

⁶⁰ 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.

⁶¹ See First Detention Decision, para. 69; Second Detention Decision, para. 36.

⁶² Kosovo citizens can travel to the EU without a visa as of 1 January 2024.

⁶³ See First Detention Decision, paras 70-71; Second Detention Decision, para. 37.

Mr Januzi 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.⁶⁴ 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.⁶⁵

37. For the same reasons, the Pre-Trial Judge considers that no *additional* reasonable conditions imposed by the Pre-Trial Judge⁶⁶ are available to adequately mitigate the existing risks.

38. 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 Januzi.

E. PROPORTIONALITY OF DETENTION

39. The SPO submits that Mr Januzi's detention remains reasonable and proportional.⁶⁷ In support, the SPO argues that the proceedings continue to move forward expeditiously, considering that, since the last review: (i) the Pre-Trial Judge has issued the Joinder Decision; (ii) the SPO has harmonised disclosure between the three co-accused and has submitted, *inter alia*, an amended indictment and its Pre-Trial Brief; and (iii) additional status conferences were held or

⁶⁴ See First Detention Decision, para. 70; Second Detention Decision, para. 37.

⁶⁵ See, similarly, KSC-BC-2020-06, IA010/F00008/RED, Court of Appeals Panel, *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.

⁶⁶ KSC-BC-2020-06, IA017/F00011/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 5 April 2022, public, para. 51.

⁶⁷ SPO Submissions, paras 26, 29.

scheduled to be held, in order to address the transfer of the case file to the Trial Panel.⁶⁸

40. 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.⁶⁹ 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.⁷⁰ 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.⁷¹

41. The Pre-Trial Judge further recalls his previous findings that: (i) Mr Januzi 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.⁷² Notably, since the Second Detention Decision,

⁶⁸ SPO Submissions, para. 25.

⁶⁹ KSC-BC-2020-07, IA001/F00005, Court of Appeals Panel, *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention*, 9 December 2020, public, paras 72-73.

⁷⁰ *Thaçi Detention Appeal Decision*, para. 49. *See, similarly*, *Second Detention Decision*, para. 41.

⁷¹ ECtHR, *Buzadji v. Moldova*, para. 90.

⁷² *Second Detention Decision*, para. 42.

the Pre-Trial Judge has issued the Joinder Decision,⁷³ the SPO has submitted its Pre-Trial Brief,⁷⁴ 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 Januzi's detention shall be reviewed every two months or as soon as a change in circumstances arises.

42. In addition, the Pre-Trial Judge recalls that, according to the calendar for the remainder of the pre-trial phase, a concrete time line for the remaining pre-trial proceedings has been set, notably: (i) the SPO shall submit any outstanding requests pertaining to the disclosure process by no later than 5 April 2024 and the Defence shall submit any related requests by 19 April 2024; (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, and submit a notice in the record of the present case providing a detailed overview of the entire disclosure process by 19 April 2024; (iv) the 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, should it not be able to respect the abovementioned timeline, it shall file written requests justifying an amendment thereof; and (vi) the date for the transmission of the case to the Trial Panel is set for 21 June 2024.⁷⁵ In this regard,

⁷³ See *supra*, para. 5.

⁷⁴ 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.

⁷⁵ KSC-BC-2023-10, F00233, Pre-Trial Judge, *Decision Setting out the Calendar for the Remaining Procedural Steps of the Pre-Trial Phase*, 27 March 2024, public, para. 30(a)-(k).

the Pre-Trial Judge recalls that, despite his proposals to transmit the case earlier than this date, the Defence indicated that they needed more time.⁷⁶

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

⁷⁶ In this respect, the Pre-Trial Judge recalls that, (i) in its scheduling order setting the date for the Fourth Status Conference, he inquired the Defence on the possibility of anticipating the date of transmission of the case file to the Trial Panel by 3 May 2024 and (ii) in their Submissions in relation to the Fourth Status Conference in this case, the Defence maintains that it cannot envisage transmission of the case file to the Trial Panel before July 2024 and trial before September 2024. The Pre-Trial Judge also recalls that (i) in order setting the date for the Fifth Status Conference, he inquired the Defence on the possibility of anticipating the date of transmission of the case file to the Trial Panel by 17 May 2024 and (ii) in their Submissions in relation to the Fifth Status Conference in this case, the Defence repeats its submissions that it cannot envisage transmission of the case file to the Trial Panel before July 2024 and trial before September 2024. Additionally, the Pre-Trial Judge takes note that said position was maintained by the Defence in the Fifth Status Conference. *See*, KSC-BC-2023-10, F00163, Pre-Trial Judge, *Order Setting the Date for Status Conference and for Submissions*, 8 February 2024, public, para. 14(6)(a); F00169, Defence for Mr Januzi, *Written Submissions in Relation to the Fourth Status Conference on behalf of Januzi*, 11 February 2024, public, para. 16; F00213, Pre-Trial Judge, *Order Setting the Date for Status Conference and for Submissions*, 14 March 2024, public, para. 14(6)(a); F00225, Defence for Mr Januzi, *Submissions for Fifth Status Conference*, 20 March 2024, public, paras 15,18; 22 March 2024 Transcript, p. 253, lines 3-13.

V. DISPOSITION

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

- a. **ORDERS** Mr Januzi's continued detention;
- b. **ORDERS** Mr Januzi, if he wishes to do so, to file submissions on the next review of detention by **Wednesday, 8 May 2024 at 16h00** with responses and replies following the timeline set out in Rule 76 of the Rules; and
- c. **ORDERS** the SPO, should Mr Januzi decide not to file any submissions by the aforementioned time limit, to file submissions on the next review of Mr Januzi's detention by **Wednesday, 15 May 2024** and Mr Januzi, if he wishes to do so, to file his submissions by **Wednesday, 22 May 2024**.



Judge Nicolas Guillou

Pre-Trial Judge

Dated this Monday, 8 April 2024

At The Hague, the Netherlands.