



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-BC-2020-04**
The Specialist Prosecutor v. Pjetër Shala

Before: **Trial Panel I**
Judge Mappie Veldt-Foglia, Presiding Judge
Judge Roland Dekkers
Judge Gilbert Bitti
Judge Vladimir Mikula, Reserve Judge

Registrar: Fidelma Donlon

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Language: English

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Public redacted version of

Decision on the Seventeenth Review of Detention of Pjetër Shala

To be notified to:

Specialist Prosecutor

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Victims' Counsel

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TRIAL PANEL I (Panel) hereby renders this decision on the seventeenth review of detention of Pjetër Shala.

I. PROCEDURAL BACKGROUND

1. On 19 June 2020, further to a decision by the Pre-Trial Judge (Confirmation Decision),¹ the Specialist Prosecutor's Office (SPO) submitted a confirmed indictment against Pjetër Shala (Accused or Mr Shala).²
2. On 16 March 2021, further to an arrest warrant and transfer order issued by the Pre-Trial Judge,³ the Accused was arrested in the Kingdom of Belgium (Belgium),⁴ and was subsequently transferred on 15 April 2021 to the Detention Facilities of the Kosovo Specialist Chambers (KSC) in The Hague, the Netherlands.⁵

¹ KSC-BC-2020-04, F00007, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Pjetër Shala*, 12 June 2020, strictly confidential and *ex parte*. A confidential redacted version and a public redacted version were issued on 6 May 2021, F00007/CONF/RED and [F00007/RED](#).

² KSC-BC-2020-04, F00010, Specialist Prosecutor, *Submission of Confirmed Indictment*, 19 June 2020, public, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential. A confidential lesser redacted version and a public further redacted version of the confirmed indictment were submitted on 31 March 2021, F00016/A01, confidential, and F00016/A02, public. A further lesser redacted confidential version of the confirmed indictment was submitted on 25 May 2021, F00038/A01. Following the Pre-Trial Judge's "Decision on Motion Challenging the Form of the Indictment" (F00089/RED, 18 October 2021), a corrected indictment was submitted on 1 November 2021, F00098/A01, confidential, and on 16 November 2021, [F00107/A01](#), public.

³ KSC-BC-2020-04, F00008, Pre-Trial Judge, *Decision on Request for Arrest Warrant and Transfer Order*, 12 June 2020, confidential. A public redacted version was issued on 6 May 2021, [F00008/RED](#). F00008/A01, Pre-Trial Judge, *Arrest Warrant for Mr Pjetër Shala*, 12 June 2020, strictly confidential and *ex parte*. A public redacted version was issued on 15 April 2021, [F00008/A01/RED](#).

⁴ KSC-BC-2020-04, F00013, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 16 March 2021, public.

⁵ KSC-BC-2020-04, F00019, Registrar, *Notification of Reception of Pjetër Shala in the Detention Facilities of the Specialist Chambers and Conditional Assignment of Counsel*, 15 April 2021, confidential, para. 2, with Annexes 1-2, confidential. A public redacted version was submitted on 26 April 2021, [F00019/RED](#).

3. On 15 June 2021, the Pre-Trial Judge rejected a request for provisional release submitted by the Defence for Mr Shala (Defence).⁶ On 10 September 2021,⁷ 10 November 2021,⁸ 28 January 2022,⁹ 22 April 2022,¹⁰ 22 June 2022,¹¹ 21 September 2022,¹² 6 December 2022,¹³ 6 February 2023,¹⁴ 6 April 2023,¹⁵

⁶ KSC-BC-2020-04, F00045, Pre-Trial Judge, *Decision on Pjetër Shala's Request for Provisional Release* (First Detention Decision), 15 June 2021, confidential. A public redacted version was issued on 23 June 2021, [F00045/RED](#). The Court of Appeals upheld the First Detention Decision, see IA001/F00005, Court of Appeals, *Decision on Pjetër Shala's Appeal Against Decision on Provisional Release* (First Court of Appeals Decision), 20 August 2021, confidential. A public redacted version was issued on the same day, [IA001/F00005/RED](#).

⁷ KSC-BC-2020-04, F00075, Pre-Trial Judge, *Decision on Review of Detention of Pjetër Shala* (Second Detention Decision), 10 September 2021, confidential. A public redacted version was issued on the same day, [F00075/RED](#).

⁸ KSC-BC-2020-04, F00105, Pre-Trial Judge, *Decision on Review of Detention of Pjetër Shala* (Third Detention Decision), 10 November 2021, confidential. A public redacted version was issued on the same day, [F00105/RED](#). The Court of Appeals upheld the Third Detention Decision, see IA003/F00005, Court of Appeals, *Decision on Pjetër Shala's Appeal Against Decision on Review of Detention* (Second Court of Appeals Decision), 11 February 2022, confidential. A public redacted version was issued on the same day, [IA003/F00005/RED](#).

⁹ KSC-BC-2020-04, F00133, Pre-Trial Judge, *Decision on Review of Detention of Pjetër Shala* (Fourth Detention Decision), 28 January 2022, confidential. A public redacted version was issued on the same day, [F00133/RED](#).

¹⁰ KSC-BC-2020-04, F00188, Pre-Trial Judge, *Decision on Remanded Detention Review Decision and Periodic Review of Detention of Pjetër Shala* (Fifth Detention Decision), 22 April 2022, confidential. A public redacted version was issued on 28 April 2022, [F00188/RED](#). The Court of Appeals upheld the Fifth Detention Decision, see IA005/F00005, Court of Appeals, *Decision on Pjetër Shala's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention* (Third Court of Appeals Decision), 19 July 2022, confidential. A public redacted version was issued on the same day, [IA005/F00005/RED](#).

¹¹ KSC-BC-2020-04, F00224, Pre-Trial Judge, *Decision on Review of Detention of Pjetër Shala* (Sixth Detention Decision), 22 June 2022, confidential. A public redacted version was issued on the same day, [F00224/RED](#).

¹² KSC-BC-2020-04, F00282, Pre-Trial Judge, *Decision on Review of Detention of Pjetër Shala* (Seventh Detention Decision), 21 September 2022, confidential. A public redacted version was issued on the same day, [F00282/RED](#).

¹³ KSC-BC-2020-04, F00365, Trial Panel I, *Decision on the Eighth Review of Detention of Pjetër Shala* (Eighth Detention Decision), 6 December 2022, confidential. A public redacted version was issued on 21 December 2022, [F00365/RED](#).

¹⁴ KSC-BC-2020-04, F00418, Trial Panel I, *Decision on the Ninth Review of Detention of Pjetër Shala* (Ninth Detention Decision), 6 February 2023, confidential. A public redacted version was issued on the same day, [F00418/RED](#).

¹⁵ KSC-BC-2020-04, F00480, Trial Panel I, *Decision on the Tenth Review of Detention of Pjetër Shala* (Tenth Detention Decision), 6 April 2023, confidential. A public redacted version was issued on the same say, [F00480/RED](#).

6 June 2023,¹⁶ 20 July 2023,¹⁷ 20 September 2023,¹⁸ 20 November 2023,¹⁹ 19 January 2024,²⁰ and 18 March 2024 (Sixteenth Detention Decision),²¹ the Pre-Trial Judge and, subsequently, the Panel reviewed the detention of the Accused and ordered his continued detention.

4. On 17 April 2024, after the Parties and Victims' Counsel made their closing statements and the Accused exercised his right to speak last, the Panel declared the case closed.²²

5. On 3 May 2024, the SPO filed its submissions on the seventeenth review of detention of Mr Shala, requesting the continued detention of the Accused (SPO Submissions).²³

6. On 10 May 2024, the Defence filed its response to the SPO Submissions and requested the Panel to order the conditional release of the Accused, subject to any conditions deemed appropriate (Defence Response).²⁴

¹⁶ KSC-BC-2020-04, F00534, Trial Panel I, *Decision on the Eleventh Review of Detention of Pjetër Shala* (Eleventh Detention Decision), 6 June 2023, confidential. A public redacted version was issued on the same day, [F00534/RED](#).

¹⁷ KSC-BC-2020-04, F00596, Trial Panel I, *Decision on the Twelfth Review of Detention of Pjetër Shala*, (Twelfth Detention Decision), 20 July 2023, confidential. A public redacted version was issued on the same day, [F00596/RED](#).

¹⁸ KSC-BC-2020-04, F00663, Trial Panel I, *Decision on the Thirteenth Review of Detention of Pjetër Shala* (Thirteenth Detention Decision), 20 September 2023, confidential. A public redacted version was issued on the same day, [F00663/RED](#).

¹⁹ KSC-BC-2020-04, F00721, Trial Panel I, *Decision on the Fourteenth Review of Detention of Pjetër Shala* (Fourteenth Detention Decision), 20 November 2023, confidential. A public redacted version was issued on the same day, [F00721/RED](#).

²⁰ KSC-BC-2020-04, F00776, Trial Panel I, *Decision on the Fifteenth Review of Detention of Pjetër Shala* (Fifteenth Detention Decision), 19 January 2024, confidential. A public redacted version was issued on the same day, [F00776/RED](#).

²¹ KSC-BC-2020-04, F00812, Trial Panel I, *Decision on the Sixteenth Review of Detention of Pjetër Shala* (Sixteenth Detention Decision), 18 March 2024, confidential. A public redacted version was issued on the same day, [F00812/RED](#).

²² KSC-BC-2020-04, Transcript of Hearing, 17 April 2024, public, p. 4374, lines 9-14.

²³ KSC-BC-2020-04, F00835, Specialist Prosecutor, *Prosecution submissions for the seventeenth review of detention*, 3 May 2024, confidential, para. 13. A public redacted version was filed on the same day, F00835/RED.

²⁴ KSC-BC-2020-04, F00837, Defence, *Defence Submissions for the Seventeenth Review of Detention of the Accused*, 10 May 2024, confidential, para. 21. A public redacted version was filed on 16 May 2024, F00835/RED.

7. The SPO did not reply and Victims' Counsel did not file any submissions.

II. SUBMISSIONS

A. SPO SUBMISSIONS

8. The SPO submits that the continued detention of the Accused remains necessary and proportionate.²⁵ Specifically, the SPO submits that no circumstances have intervened capable of changing the Panel's determination, in its Sixteenth Detention Decision, that there is still a (well-)grounded suspicion that the Accused has committed multiple crimes within the jurisdiction of the KSC.²⁶

9. With regard to the risks under Article 41(6)(b) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law), the SPO submits that no circumstances have intervened capable of changing the Panel's findings that there is a risk of obstruction and commission of further crimes either.²⁷ In this regard, the SPO argues that the closure of the case does not undermine the existence of these risks, as the Accused may still obstruct the progress of the proceedings, including possible appeals proceedings, or commit further crimes by interfering with victims, witnesses and/or their relatives, or approaching them in retaliation.²⁸ The SPO adds that, having received the SPO's Final Trial Brief and having heard the closing submissions, the Accused may be more incentivised now than ever to obstruct, retaliate or evade justice.²⁹ As to the risk of flight, the SPO maintains its position that there is a concrete risk that the Accused will abscond if released.³⁰

²⁵ SPO Submissions, para. 2.

²⁶ SPO Submissions, paras 3-5.

²⁷ SPO Submissions, para. 6.

²⁸ SPO Submissions, para. 7.

²⁹ SPO Submissions, para. 7.

³⁰ SPO Submissions, para. 8.

10. The SPO further reiterates its argument that all three risks can only be mitigated by the Accused's continued detention at the KSC Detention Facilities, where his communications and movement can be effectively monitored and restricted.³¹

11. Lastly, the SPO avers that the Accused's detention remains reasonable and proportionate, considering the gravity of the charges, the existence of the above risks, the impossibility to mitigate such risks with conditions alternative to detention on remand, the reasonable pace of the proceedings, and the forthcoming judgment.³² For these reasons, the SPO requests the Panel to order that the Accused remains in detention.³³

B. DEFENCE RESPONSE

12. The Defence maintains its previous submissions that the Accused's continued detention is unlawful and his conditional release is warranted.³⁴

13. With regard to the risks under Article 41(6)(b) of the Law, the Defence submits that the SPO has failed to engage with the current circumstances of the Accused and has failed to show why his detention remains necessary even after the closure of the case.³⁵ Specifically, the Defence reiterates its previous arguments that: (i) the statements made by the Accused in 2016 and 2019 [REDACTED] have been taken out of context; (ii) [REDACTED]; (iii) the Accused has demonstrated good behaviour in detention and has not been subject to any restrictions or sanctions; and (iv) the general climate of witness intimidation in Kosovo is unrelated to the Accused and cannot be relied upon to justify his continued detention.³⁶ It adds that the SPO's argument that the Accused may be more motivated now than ever to obstruct, retaliate or evade

³¹ SPO Submissions, para. 9.

³² SPO Submissions, paras 10-11.

³³ SPO Submissions, para. 13.

³⁴ Defence Response, paras 2, 7.

³⁵ Defence Response, para. 8.

³⁶ Defence Response, paras 11-13.

justice is merely speculative, as the Accused has not shown any sign that he is fearful or aggressive following the end of the trial proceedings.³⁷ As to the risk of flight, the Defence submits that the SPO's submissions must be dismissed for the same reasons as before.³⁸

14. With regard to alternative measures to detention, the Defence reiterates its previous submissions that suitable measures exist and must be considered, including: house arrest in Belgium, no contact with witnesses and victims, no access to phone and internet except in the presence of his bail supervisor, daily reporting to the relevant authorities, surrendering all travel documents, and appearing in court whenever ordered to do so.³⁹

15. Lastly, the Defence argues that the continued detention of the Accused is disproportionate and the fact that he has been charged with serious crimes and could face a lengthy sentence is insufficient to justify his detention.⁴⁰ For these reasons, the Defence requests the Panel to grant the Accused provisional release, subject to any conditions deemed appropriate.⁴¹

III. APPLICABLE LAW

16. The Panel notes Article 6(2) of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Articles 29, 31(5) and 53 of the Constitution of the Republic of Kosovo (Constitution), Articles 3(2), 21(3), and 41(6) and (10)-(12) of the Law, and Rules 56(2) and 57(2) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules).

³⁷ Defence Response, para. 14.

³⁸ Defence Response, para. 15.

³⁹ Defence Response, paras 16-17.

⁴⁰ Defence Response, paras 18-19.

⁴¹ Defence Response, para. 21.

IV. ANALYSIS

17. At the outset, the Panel recalls that the presumption of innocence, as provided for in Article 31(5) of the Constitution, Article 21(3) of the Law, and Article 6(2) of the ECHR, is the starting point for the assessment of the continued detention on remand.⁴² Accordingly, continued detention cannot be maintained lightly and the Accused should be released once his continued detention ceases to be reasonable.⁴³ The SPO bears the burden of establishing that the detention of the Accused is necessary.⁴⁴

18. The Panel further recalls that it is not required to entertain submissions that merely repeat arguments that have already been addressed or to make findings on the factors already decided upon in its previous decisions.⁴⁵ Accordingly, the Panel will only address arguments that were not previously raised and considered.

A. GROUNDED SUSPICION

19. The Panel recalls that, in the Confirmation Decision, the Pre-Trial Judge determined that a “well-grounded suspicion” exists, within the meaning of Article 39(2) of the Law, that the Accused committed offences within the KSC’s jurisdiction.⁴⁶ Recalling that the “well-grounded suspicion” threshold is necessarily higher than the “grounded suspicion” required for continued detention,⁴⁷ the Panel

⁴² KSC-BC-2020-06, IA004/F00005/RED, Court of Appeals, [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.

⁴³ ECtHR, *Buzadji v. The Republic of Moldova* [GC], no. 23755/07, [Judgment](#) (*Buzadji v. The Republic of Moldova*), 5 July 2016, paras 89-90.

⁴⁴ KSC-BC-2020-06, F00177/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Hashim Thaçi’s Application for Interim Release](#) (Thaçi Interim Release Decision), 22 January 2021, public, para. 19 and references therein.

⁴⁵ [Third Court of Appeals Decision](#), para. 20; [Second Court of Appeals Decision](#), para. 18; KSC-BC-2020-07, IA002/F00005, Court of Appeals, [Decision on Nasim Haradinaj’s Appeal Against Decision Reviewing Detention](#), 9 February 2021, public, para. 55.

⁴⁶ [Confirmation Decision](#), para. 140(a).

⁴⁷ [Confirmation Decision](#), para. 35. See also KSC-BC-2020-06, IA008/F00004/RED, Court of Appeals, [Public Redacted Version of Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention](#), 1 October 2021, public, para. 21.

reiterates that, by virtue of the Confirmation Decision, the requirement of Article 41(6)(a) of the Law has been met. Further, in its “Decision on the Defence Rule 130 Motion to Dismiss the Charge of Murder in the Indictment” (Rule 130 Decision), the Panel has found that the evidence presented during the SPO case, if accepted, is capable of supporting a conviction of the Accused for murder, under Count 4 of the Confirmed Indictment, under one or more of the modes of liability charged.⁴⁸ Accordingly, the Panel finds that the requirement under Article 41(6)(a) of the Law has not ceased to exist and therefore continues to be met.

B. NECESSITY OF DETENTION

20. The Panel recalls that, once the threshold in Article 41(6)(a) of the Law is met, the grounds that would justify a person’s deprivation of liberty must be “articulable” in the sense that they must be specified in detail.⁴⁹ On the basis of the available evidence, the specific articulable grounds must support the “belief” that any of the risks under the three limbs of Article 41(6)(b) of the Law exist.⁵⁰ The standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.⁵¹ The Panel further recalls that it may refer to findings in prior decisions if it is satisfied that the evidence or information underpinning those decisions still supports the findings made at the time of the review.⁵² Finally, since the three grounds under Article 41(6) of the Law are listed in the alternative, the existence of one ground suffices to determine the necessity of detention of the Accused.⁵³

⁴⁸ KSC-BC-2020-04, F00652/RED, Trial Panel I, [Public redacted version of Decision on the Defence Rule 130 Motion to Dismiss the Charge of Murder in the Indictment](#), 15 September 2023, public, para. 34.

⁴⁹ Article 19.1.31 of the Kosovo Criminal Procedure Code 2022, Law No. 08/L-032 defines “articulable” as: “the party offering the information or evidence must specify in detail the information or evidence being relied upon”. See also KSC-BC-2020-06, IA001/F00005, Court of Appeals, [Decision on Kadri Veseli’s Appeal Against Decision on Interim Release](#), 30 April 2021, public, paras 18-19.

⁵⁰ [Thaçi Interim Release Decision](#), para. 20 and references therein.

⁵¹ [Third Court of Appeals Decision](#), para. 27.

⁵² [Second Court of Appeals Decision](#), para. 18.

⁵³ [Thaçi Interim Release Appeal Decision](#), para. 78.

1. Risk of Flight

21. The Panel recalls that it has previously found that the Accused is not at flight risk.⁵⁴ To the extent that the SPO repeats arguments regarding the existence of such a risk,⁵⁵ the Panel will not address them further. In light of the above, the Panel remains satisfied that the Accused is not at flight risk and that such a risk, even if it existed, could be adequately mitigated by conditions to be imposed upon him pursuant to Article 41(12) of the Law and Rule 56(5) of the Rules.⁵⁶

2. Risk of Obstructing the Progress of the KSC's Proceedings

22. The Panel has previously established that there is a risk that the Accused will obstruct the criminal proceedings, under Article 41(6)(b)(ii) of the Law, based on the following factors and circumstances: (i) the Accused has made threatening statements in 2016 and 2019 [REDACTED]; (ii) the identities of (all) SPO witnesses are known to the Accused; (iii) SPO witnesses have testified and additional evidence has been introduced during the SPO case, including potentially incriminating evidence; (iv) there is a risk – which is more than a “mere possibility” – that the Accused may act on threats previously made [REDACTED], as he can be [REDACTED] violent, [REDACTED]; and (v) there is a general, well-established, and ongoing climate of witness intimidation in Kosovo.⁵⁷

⁵⁴ [Sixteenth Detention Decision](#), para. 23.

⁵⁵ SPO Submissions, para. 8.

⁵⁶ [Eighth Detention Decision](#), paras 20, 31 and references therein.

⁵⁷ [Sixteenth Detention Decision](#), paras 24-25; [Fifteenth Detention Decision](#), paras 24-26; [Fourteenth Detention Decision](#), paras 16-18; [Thirteenth Detention Decision](#), paras 17-19; [Twelfth Detention Decision](#), paras 21-23; [Eleventh Detention Decision](#), paras 15-16, 20; [Tenth Detention Decision](#), paras 21-22.

23. The Panel observes that these factors and circumstances continue to exist and no information or developments have arisen which undermine them and the conclusion they underpin.

24. Turning to the Defence's argument that the Accused's continued detention is no longer necessary after the closure of the case,⁵⁸ the Panel recalls that the proceedings remain ongoing and the Panel can hear evidence – under exceptional circumstances – even after the closing of the case under Rule 136 of the Rules.⁵⁹

25. The Panel does not find it necessary to engage with the Parties' arguments as to whether the Accused may be more incentivised now, after the closure of the case, to obstruct, retaliate or evade justice.⁶⁰ The Panel has found, based on the facts and circumstances outlined above, that there is a risk that the Accused will obstruct the criminal proceedings, which continues to exist, notwithstanding the closure of the case. The fact that the Accused has not shown during the closing statements signs of being fearful or aggressive following the end of the trial proceedings, does not change the Panel's finding in this respect.

26. The Panel will not address further the Defence's arguments regarding the Accused's threatening statements against [REDACTED], the Accused's good behaviour while in detention and the climate of witness intimidation in Kosovo,⁶¹ as these arguments have been considered and addressed before.⁶²

27. In light of the above, the Panel finds that there continues to be a risk that the Accused might obstruct the progress of the KSC's proceedings.

⁵⁸ Defence Response, para. 8.

⁵⁹ [Sixteenth Detention Decision](#), para. 26.

⁶⁰ SPO Submissions, para. 7; Defence Response, para. 14.

⁶¹ Defence Response, paras 11-13.

⁶² [Sixteenth Detention Decision](#), paras 27-29; [Fifteenth Detention Decision](#), paras 26, 29, 30.

3. Risk of Committing Further Crimes

28. The Panel recalls that, while the existence of a risk of obstruction does not automatically translate into a risk of commission of further crimes, the factors underpinning the former are of relevance to the assessment of the latter in the present case.⁶³ It is further recalled that: (i) the Accused has now full knowledge of the case against him, including the identities of all SPO witnesses; (ii) following the presentation of the SPO case, the Accused has obtained specific insight into the evidence provided by the witnesses against him; (iii) in 2016 and 2019, the Accused made repeated threatening statements [REDACTED]; and (iv) [REDACTED].⁶⁴

29. Having examined the factors and circumstances previously relied upon and having assessed them anew,⁶⁵ the Panel is satisfied that they continue to exist and that no intervening information or developments have arisen which undermine them and the conclusion they underpin. Accordingly, the Panel finds that there continues to be a risk that the Accused might commit further crimes, including against witnesses who have provided evidence in the case and/or appeared before this Panel.

30. Regarding the Defence's arguments, the findings articulated when assessing the risk of obstruction also apply when examining the risk under question here.

4. Conclusion

31. In light of the foregoing, the Panel finds that there are articulable grounds to believe that the risk of obstructing the progress of the KSC's proceedings and the risk of committing further crimes continue to exist.

⁶³ [Sixteenth Detention Decision](#), para. 31.

⁶⁴ [Sixteenth Detention Decision](#), para. 31.

⁶⁵ [Sixteenth Detention Decision](#), para. 32.

C. CONDITIONAL RELEASE

32. The Panel notes that detention on remand should only be continued if there are no more lenient measures that could sufficiently mitigate the risks set out in Article 41(6)(b)(i)-(iii) of the Law. The Panel has the obligation to inquire and evaluate, *proprio motu*, all reasonable conditions that could be imposed on an accused.⁶⁶

33. In this regard, the Panel recalls its previous considerations with regard to conditional release, including its assessment of the alternative conditions proposed by the Defence.⁶⁷ Specifically, bearing in mind the risk factors identified above, the Panel considers that the conditions proposed by the Defence,⁶⁸ including placing the Accused in house arrest at his residence in Belgium: (i) do not address the possibility of the Accused employing communication devices belonging to others or requesting others to use their devices for these purposes; and (ii) cannot ensure the effective monitoring of the Accused's communications. Rather, such assurances and measures are possible only at the KSC Detention Facilities.⁶⁹

34. As regards any additional conditions to be imposed, having re-assessed the relevant findings previously made,⁷⁰ the Panel continues to be of the view that no additional conditions are currently available to adequately mitigate the existing risks. Therefore, the Panel remains satisfied that it is only through the communication monitoring framework applicable at the KSC Detention Facilities that the Accused's

⁶⁶ See KSC-BC-2020-05, F00489/RED, Trial Panel I, [Public redacted version of Thirteenth decision on review of detention](#), 18 November 2022, public, para. 23. See also 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, paras 26, 51.

⁶⁷ [Sixteenth Detention Decision](#), paras 36-37; [Fifteenth Detention Decision](#), para. 37; [Fourteenth Detention Decision](#), para. 23; [Thirteenth Detention Decision](#), para. 25; [Twelfth Detention Decision](#), para. 28; [Eleventh Detention Decision](#), para. 26; [Tenth Detention Decision](#), para. 37; [Ninth Detention Decision](#), para. 38; [Eighth Detention Decision](#), paras 31-34.

⁶⁸ Defence Response, para. 17.

⁶⁹ [Sixteenth Detention Decision](#), para. 36; [Fifteenth Detention Decision](#), para. 37; [Fourteenth Detention Decision](#), para. 23; [Thirteenth Detention Decision](#), para. 25; [Twelfth Detention Decision](#), para. 28; [Eleventh Detention Decision](#), para. 26; [Tenth Detention Decision](#), para. 37; [Ninth Detention Decision](#), para. 38; [Eighth Detention Decision](#), para. 32.

⁷⁰ [Sixteenth Detention Decision](#), para. 37.

communications can be restricted in a manner that will sufficiently mitigate the risk of obstructing the progress of the KSC's proceedings and the risk of committing further crimes.

D. PROPORTIONALITY OF DETENTION

35. The Panel highlights the importance of the proportionality principle in the determination of the reasonableness of pre-trial detention and recalls that the longer a person remains in pre-trial detention, the higher the burden on the SPO to justify continued detention.⁷¹ 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, the continued detention "stops being reasonable" and the individual needs to be released.⁷² However, the question whether it is reasonable for an accused to remain in detention must be assessed based on the facts and circumstances of each case and according to its specific features.⁷³

36. In this respect, the Panel recalls that: (i) the Accused has been detained in Belgium since 16 March 2021 and subsequently at the KSC Detention Facilities since 15 April 2021; (ii) he is charged with four counts of war crimes that allegedly took place in Albania over the course of several weeks; (iii) he could be sentenced to a lengthy sentence, if convicted; and (iv) the risks under Article 41(6)(b)(ii) and (iii) of the Law cannot be mitigated by the proposed conditions and/or any additional conditions.

37. The Panel also notes that proceedings have progressed at a reasonable pace: (i) the trial commenced on 21 February 2023; (ii) between 27 March 2023 and 6 July

⁷¹ [Third Court of Appeals Decision](#), para. 37 with references therein.

⁷² [Third Court of Appeals Decision](#), para. 37.

⁷³ ECtHR, [Buzadji v. the Republic of Moldova](#), para. 90.

2023,⁷⁴ the SPO presented its case, during which the Panel heard the testimonies of 10 witnesses; (iii) on 21 August 2023, the Panel heard the testimonies of two (expert) witnesses called by Victims' Counsel;⁷⁵ (iv) on 15 September 2023, the Panel rendered the Rule 130 Decision;⁷⁶ (v) between 20 September 2023 and 15 January 2024,⁷⁷ the Defence presented its case, during which the Panel heard the testimonies of 10 witnesses; (vi) on 9 February 2024, the Panel closed the evidentiary proceedings;⁷⁸ (v) on 25 and 26 March 2024 the Parties and Victims' Counsel filed their Final Trial Briefs and Impact Statement;⁷⁹ (vi) between 15 and 17 April 2024, the Panel heard the Parties' and Victims' Counsel's closing statements, as well as the Accused who exercised his right to speak last;⁸⁰ and (vii) on 17 April 2024, the Panel declared the case closed.⁸¹ Furthermore, the Panel recalls that, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, the Accused's detention shall be reviewed every two months or as soon as a change in circumstances arises.

38. The Panel has duly appraised the additional time spent in detention by the Accused since the Panel's Sixteenth Detention Decision, including the resulting increased burden on the SPO to justify the Accused's continued detention.⁸² However, weighed against the remaining factors, in particular: (i) the serious nature of the charges against the Accused; (ii) the Panel's finding that the risks of obstructing the

⁷⁴ KSC-BC-2020-04, F00570, Specialist Prosecutor, *Prosecution notice of the closing of its case pursuant to Rule 129*, 6 July 2023, public.

⁷⁵ KSC-BC-2020-04, Transcript of Hearing, 21 August 2023, public, pp. 2248-2342.

⁷⁶ See footnote 48 above.

⁷⁷ KSC-BC-2020-04, F00772, Defence, *Defence Notice of Closing its Case Pursuant to Rule 131 of the Rules*, 15 January 2024, public.

⁷⁸ See para. 4 above.

⁷⁹ KSC-BC-2020-04, F00815, Victims' Counsel, *Victims' Counsel's Statement on the impact of the alleged crimes on victims participating in the proceedings in Case 04*, 25 March 2024, confidential; F00818, Specialist Prosecutor, *Prosecution Final Trial Brief*, 25 March 2024, confidential, with Annexes 1 and 3, confidential, and Annex 2, public; F00821, Defence, *Defence Final Trial Brief*, 26 March 2024, confidential, with Annex 1 confidential.

⁸⁰ KSC-BC-2020-04, Transcript of Hearing, 15 April 2024, confidential, pp. 4077-4169; Transcript of Hearing, 16 April 2024, confidential, pp. 4170-4281; Transcript of Hearing, 17 April 2024, confidential, pp. 4282-4374.

⁸¹ KSC-BC-2020-04, Transcript of Hearing, 17 April 2024, public, p. 4374, lines 9-14.

⁸² Defence Response, paras 21-23.

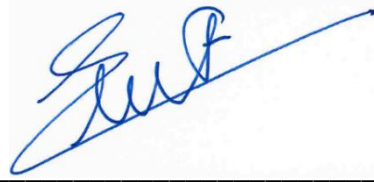
proceedings and of committing further crimes continue to exist; (iii) the impossibility to mitigate the aforementioned risks under Article 41(6)(b)(ii) and (iii) of the Law; and (iv) the fact that the trial is proceeding without undue delay, the Panel finds that the detention of the Accused has not become unreasonable under Rule 56(2) of the Rules.

39. For the foregoing reasons, the Panel concludes that, for the purposes of the periodic review of the Accused's detention pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, the time the Accused has spent in detention is not disproportionate.

V. DISPOSITION

40. For the above-mentioned reasons, the Panel hereby:

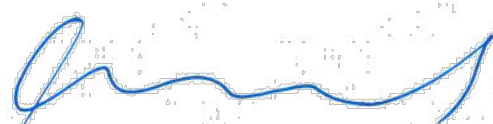
- a. **ORDERS** the Accused's continued detention;
- b. **ORDERS** the SPO and Victims' Counsel, if he so wishes, to file submissions on the next review of detention of the Accused by no later than **Monday, 1 July 2024**;
- c. **ORDERS** the Defence to file submissions on the next review of detention of the Accused, if it so wishes, by no later than **Monday, 8 July 2024**; and
- d. **DETERMINES** that any reply, if the SPO and Victims' Counsel so wish, shall be filed by no later than **Wednesday, 10 July 2024**.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Friday, 17 May 2024

At The Hague, the Netherlands.