



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA 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:** 28 May 2024

**Language:** English

**Classification:** **Public**

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**Decision on Review of Detention of Ismet Bahtijari**

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Article 41(6), (10) and (12) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 56(2) and 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 5 October 2023, Ismet Bahtijari ("Mr Bahtijari" or "Accused") was arrested pursuant to a decision<sup>2</sup> and an arrest warrant issued by the Pre-Trial Judge,<sup>3</sup> upon request of the Specialist Prosecutor's Office ("SPO"),<sup>4</sup> and further to the confirmation of an indictment against him and Sabit Januzi ("Mr Januzi" and "Confirmation Decision").<sup>5</sup>

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

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<sup>1</sup> 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

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

<sup>3</sup> See KSC-BC-2023-10, F00009/A03, Pre-Trial Judge, *Arrest Warrant for Ismet Bahtijari*, 2 October 2023, confidential; a public redacted version was issued on 28 February 2024, F00009/RED/A03/RED; F00011, Registrar, *Notification of Arrest of Ismet Bahtijari Pursuant to Rule 55(4)*, 5 October 2023, public.

<sup>4</sup> 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 submitted on 12 October 2023, F00002/CONF/RED and F00002/RED.

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

<sup>6</sup> KSC-BC-2023-10, F00116, Pre-Trial Judge, *Decision on Ismet Bahtijari's Request for Interim Release*, 29 November 2023, confidential. A public redacted version was issued on 12 December 2023, F00116/RED.

3. On 29 January 2024, the Pre-Trial Judge reviewed Mr Bahtijari's detention and ordered his continued detention ("Second Detention Decision").<sup>7</sup>
4. 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").<sup>8</sup>
5. On 27 March 2024, the Pre-Trial Judge issued a decision setting out, *inter alia*, the calendar for the remaining procedural steps, including the date of transmission of the case to the Trial Panel ("Pre-Trial Calendar Decision").<sup>9</sup>
6. On 28 March 2024, the Pre-Trial Judge reviewed Mr Bahtijari's detention and ordered his continued detention ("Third Detention Decision").<sup>10</sup>
7. On 6 May 2024, pursuant to the Pre-Trial Judge's order,<sup>11</sup> the SPO filed its submissions on the periodic review of Mr Bahtijari's detention ("SPO Submissions").<sup>12</sup> The Defence did not respond.

## II. SUBMISSIONS

8. The SPO submits that Mr Bahtijari'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-Trial

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<sup>7</sup> KSC-BC-2023-10, F00156, Pre-Trial Judge, *Decision on Review of Detention of Ismet Bahtijari*, 29 January 2024, confidential. A public redacted version was issued on 30 January 2024, F00156/RED.

<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> KSC-BC-2023-10, F00238, Pre-Trial Judge, *Decision on Review of Detention of Ismet Bahtijari*, 28 March 2024, confidential. A public redacted version was issued on 11 April 2024, F00238/RED.

<sup>11</sup> Third Detention Decision, para. 53(c).

<sup>12</sup> KSC-BC-2023-10, F00280, Specialist Prosecutor, *Prosecution Submission Pertaining to Periodic Detention Review of Ismet Bahtijari*, 6 May 2024, public.

Judge in the Third Detention Decision.<sup>13</sup> According to the SPO, there remains a grounded suspicion that Mr Bahtijari has committed a crime within the jurisdiction of the Specialist Chambers (“SC”)<sup>14</sup> and the grounds for his detention under Article 41(6)(b) of the Law continue to apply.<sup>15</sup> The SPO further submits that ongoing disclosures and the steady progression of the case continue to provide Mr Bahtijari with access to sensitive information and reinforce the necessity and reasonableness of his detention.<sup>16</sup> In addition, the SPO submits that (i) no modalities of conditional release could sufficiently mitigate the existing risks<sup>17</sup> and, (ii) as proceedings continue to move forward expeditiously, Mr Bahtijari’s detention remains proportional, particularly now that the date for transmitting the case file to the Trial Panel has been set for 21 June 2024.<sup>18</sup> On this basis, the SPO requests that Mr Bahtijari remain in detention.<sup>19</sup>

### III. APPLICABLE LAW

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

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<sup>13</sup> SPO Submissions, paras 1, 6, 9-16, 22-25.

<sup>14</sup> SPO Submissions, paras 7-8.

<sup>15</sup> SPO Submissions, paras 9-16.

<sup>16</sup> SPO Submissions, paras 1, 6.

<sup>17</sup> SPO Submissions, paras 17-21.

<sup>18</sup> SPO Submissions, paras 22-25.

<sup>19</sup> SPO Submissions, para. 26.

10. 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.

11. 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.

12. 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

13. 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,<sup>20</sup> 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

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<sup>20</sup> 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.

articulable grounds to believe that any of the risks set out in Article 41(6)(b) of the Law has been fulfilled.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup>

14. The Pre-Trial Judge likewise underscores that any analysis of Mr Bahtijari's detention must duly consider his presumption of innocence.<sup>24</sup> This means, consequently, 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.<sup>25</sup>

#### B. GROUNDED SUSPICION

15. 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.<sup>26</sup>

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<sup>21</sup> 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.

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

<sup>23</sup> First *Haradinaj* Detention Appeal Decision, para. 55.

<sup>24</sup> 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.

<sup>25</sup> See, similarly, Second Detention Decision, para. 10; First Detention Decision, para. 16, with further references.

<sup>26</sup> 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.

16. The SPO submits that the Pre-Trial Judge's finding of grounded suspicion still stands, and that no developments have occurred since the Confirmation Decision, which would detract from the Pre-Trial Judge's determination.<sup>27</sup>

17. The Pre-Trial Judge recalls that, in the Confirmation Decision, it was determined that, pursuant to Article 39(2) of the Law, there is a well-grounded suspicion that Mr Bahtijari is criminally liable for offences within the jurisdiction of the SC, namely intimidation during criminal proceedings and obstructing official persons in performing official duties within the meaning of Articles 387 and 401(1), (2) and (5) of the 2019 Kosovo Criminal Code, Code No. 06/L-074, and Articles 15(2) and 16(3) of the Law.<sup>28</sup> These findings were made on the basis of a standard exceeding the grounded suspicion threshold required for purposes of Article 41(6)(a) of the Law.<sup>29</sup> The Pre-Trial Judge notes that there have been no developments in the case negating these findings.<sup>30</sup>

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

### C. NECESSITY OF DETENTION

19. 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.<sup>31</sup> In this regard, Article 41(6)(b) of the Law echoes the

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<sup>27</sup> SPO Submissions, paras 7-8.

<sup>28</sup> Confirmation Decision, paras 95, 111, 123, 126, 131, 135, 139, 144. *See also* Decision on Arrest, para. 17.

<sup>29</sup> Confirmation Decision, para. 24; First Detention Decision, para. 18.

<sup>30</sup> *See, similarly*, Third Detention Decision, para. 21.

<sup>31</sup> *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.

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.<sup>32</sup> Therefore, the Pre-Trial Judge must rely on case-specific reasoning and concrete grounds in deciding whether to continue detention.<sup>33</sup>

20. The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"<sup>34</sup> that any of the risks specified under the three limbs of Article 41(6)(b) of the Law exist, denoting an acceptance of the possibility, not the inevitability, of a future occurrence.<sup>35</sup> In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.<sup>36</sup> 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.<sup>37</sup>

21. 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,<sup>38</sup> 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.<sup>39</sup> When assessing the relevant factors, the Pre-Trial Judge may not conduct a piecemeal assessment, but must weigh all relevant factors taken together.<sup>40</sup>

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<sup>32</sup> SCCC 26 April 2017 Judgment, para. 113.

<sup>33</sup> See, *similarly*, Third Detention Decision, para. 23; Second Detention Decision, para. 15; First Detention Decision, para. 22, with further references.

<sup>34</sup> See chapeau of Article 41(6)(b) of the Law.

<sup>35</sup> KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, public, para. 17, with further references.

<sup>36</sup> *Thaçi* Interim Release Appeal Decision, para. 22.

<sup>37</sup> See, *similarly*, Third Detention Decision, para. 24; Second Detention Decision, para. 16; First Detention Decision, para. 22. 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.

<sup>38</sup> First *Thaçi* Detention Decision, para. 21, with further references.

<sup>39</sup> 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.

<sup>40</sup> See, *similarly*, Third Detention Decision, para. 25; Second Detention Decision, para. 17; First Detention Decision, para. 23. See also First *Thaçi* Detention Decision, para. 21, with further references.



22. 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.<sup>41</sup>

### 1. Risk of Flight

23. The SPO recalls the Pre-Trial Judge's previous finding in the Third Detention Decision that Mr Bahtijari presents a moderate risk of flight.<sup>42</sup> According to the SPO (i) the continuing disclosure of incriminating evidence, and (ii) the fact that now the transmission of the case to the Trial Panel has a date certain, elevate Mr Bahtijari's risk of flight.<sup>43</sup>

24. 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 previous decisions are still relevant, namely (i) Mr Bahtijari's awareness of the seriousness of the charges and potential sentence in the event of a conviction; (ii) his increased insight into the evidence underpinning these charges; (iii) his means to flee and opportunity to evade justice, and (iv) the fact that Mr Bahtijari is aware of the forthcoming transmission of the case to the Trial Panel.<sup>44</sup> In this respect, the Pre-Trial Judge further observes that, since the Third Detention Decision, the date for the transmission of the case file to the Trial Panel has been set for 21 June 2024.<sup>45</sup>

25. In addition, the Pre-Trial Judge maintains his previous findings that, notwithstanding the fact that Mr Bahtijari is rooted in his residential community and

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<sup>41</sup> See, *similarly*, Third Detention Decision, para. 26; Second Detention Decision, para. 18; First Detention Decision, para. 24. See also First *Shala* Detention Decision, para. 19; First *Thaçi* Detention Decision, para. 24.

<sup>42</sup> Third Detention Decision, para. 30.

<sup>43</sup> SPO Submissions, para. 10.

<sup>44</sup> Third Detention Decision, para. 29; Second Detention Decision, para. 20; First Detention Decision, paras 28-32.

<sup>45</sup> Pre-Trial Calendar Decision, para. 30(k).

his cooperation with the SPO following his arrest, these favourable factors only diminish but do not eliminate the risk of flight.<sup>46</sup>

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

## **2. Risk of Obstructing the Progress of the SC Proceedings**

27. The SPO submits that Mr Bahtijari continues to present a risk of obstructing SC proceedings,<sup>47</sup> and recalls the Pre-Trial Judge's findings in the Third Detention Decision.<sup>48</sup>

28. 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 previous decisions continue to apply,<sup>49</sup> particularly considering that Mr Bahtijari has received increasing access to sensitive witness-related information as a result of the ongoing disclosure process; and (ii) no information been brought to the Pre-Trial Judge's attention that would detract from the findings contained in that decision.

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

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<sup>46</sup> Third Detention Decision, para. 29; Second Detention Decision, para. 21; First Detention Decision, para. 32.

<sup>47</sup> SPO Submissions, para. 11.

<sup>48</sup> SPO Submissions, paras 12-13, with further references.

<sup>49</sup> Third Detention Decision, para. 33. *See also*, Second Detention Decision, paras 24-27; First Detention Decision, paras 24-26.

### 3. Risk of Committing Further Crimes

30. The SPO submits that especially in light of continuing disclosure of sensitive witness information, the risk that Mr Bahtijari will commit further crimes mandates his continued detention.<sup>50</sup>

31. 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.<sup>51</sup>

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

### 4. Conclusion

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

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<sup>50</sup> SPO Submissions, paras 15-16.

<sup>51</sup> See Third Detention Decision, paras 37-38; Second Detention Decision, paras 29-30; First Detention Decision, para. 45; Decision on Arrest, para. 22. See also First *Shala* Detention Decision, para. 39.

## D. CONDITIONAL RELEASE

34. The SPO recalls the Pre-Trial Judge's findings in the Third Detention Decision and 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 further disclosures.<sup>52</sup>

35. The Pre-Trial Judge recalls that, when deciding on whether a person should be released or detained, the Pre-Trial Judge must consider alternative measures to prevent the risks in Article 41(6)(b) of the Law.<sup>53</sup>

36. As regards the risk of flight, the Pre-Trial Judge recalls his previous findings that the conditions proposed in relation to the First Detention Decision, the Second Detention Decision, and the Third Detention Decision could sufficiently mitigate this risk.<sup>54</sup>

37. However, as found in previous decisions, the Pre-Trial Judge considers that none of the conditions previously proposed by the Defence nor any additional conditions imposed by the Pre-Trial Judge could restrict the Accused's ability to obstruct the progress of SC proceedings and to commit further offences.<sup>55</sup> In this regard, the Pre-Trial Judge is particularly mindful of the fact that the Accused has the means and the possibility to approach Witness 1, and has likely access to the associated networks of his co-Accused Mr Shala and other senior Kosovo Liberation Army leadership. Accordingly, should he be released, Mr Bahtijari would have the motive, means and opportunity to exert pressure on Witness 1 to dissuade him from participating in the

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<sup>52</sup> SPO Submissions, paras 17-21.

<sup>53</sup> 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.

<sup>54</sup> Third Detention Decision, para. 43; Second Detention Decision, para. 34; First Detention Decision, para. 51.

<sup>55</sup> See Third Detention Decision, paras 40, 44-46; Second Detention Decision, paras 35-36; First Detention Decision, paras 52-53.

proceedings, or to otherwise tamper with evidence.<sup>56</sup> 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.<sup>57</sup>

38. For the same reasons, the Pre-Trial Judge considers that no *additional* reasonable conditions imposed by him<sup>58</sup> are available to adequately mitigate the existing risks.

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

#### E. PROPORTIONALITY OF DETENTION

40. The SPO submits that Mr Bahtijari's detention remains reasonable and proportional.<sup>59</sup> In support, the SPO argues that the proceedings continue to move forward expeditiously, particularly in light of the fact that the date for transmitting the case file to the Trial Panel has been set for 21 June 2024.<sup>60</sup>

41. 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.<sup>61</sup> The duration of time in detention pending trial is a factor

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<sup>56</sup> See Third Detention Decision, paras 44; Second Detention Decision, para. 35; First Detention Decision, para. 52.

<sup>57</sup> 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.

<sup>58</sup> 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.

<sup>59</sup> SPO Submissions, paras 22, 25.

<sup>60</sup> SPO Submissions, para. 24.

<sup>61</sup> 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; KSC-BC-2018-01, IA007/F00007/RED,

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.<sup>62</sup> 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.<sup>63</sup>

42. The Pre-Trial Judge further recalls his previous findings that: (i) Mr Bahtijari has been detained since his arrest on 5 October 2023; (ii) he is charged with two counts of obstructing official persons in performing official duties and one count of intimidation during criminal proceedings, which carry a possible sentence of up to five years and ten years of imprisonment, respectively; (iii) the risks under Article 41(6)(b)(ii) and (iii) of the Law cannot be mitigated by the proposed conditions for release, house arrest or any additional conditions; and (iv) all required procedural steps relating to the pre-trial phase of the present case have been, are being or will be completed with a view to transmitting the case for trial on 21 June 2024.<sup>64</sup> The Pre-Trial Judge recalls in this regard that despite his proposal to transmit the case earlier than this date, the Defence indicated that they needed more time in light of certain unresolved issues pertaining funding and disclosure.<sup>65</sup> The Pre-Trial Judge further notes that since the Third Detention Decision, (i) nine additional Disclosure Packages have been disclosed to the Accused;<sup>66</sup> (ii) the SPO has completed its investigative steps and only limited

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Court of Appeals, *Public Redacted Version of Decision on the Specialist Prosecutor’s Office’s Appeal Against Decision on Isni Kilaj’s Review of Detention* (“Kilaj Detention Appeal Decision”), 13 May 2024, public, para. 18.

<sup>62</sup> *Thaçi Detention Appeal Decision*, para. 49.

<sup>63</sup> ECtHR, *Buzadji v. Moldova*, para. 90. *See, similarly*, Third Detention Decision, para. 49; Kilaj Detention Appeal Decision, para. 19.

<sup>64</sup> Third Detention Decision, paras 50-51; Second Detention Decision, para. 40; First Detention Decision, para. 57.

<sup>65</sup> *See* Third Detention Decision, para. 51.

<sup>66</sup> *See*, Disclosure Packages 22-31.

anticipated disclosures remain pending;<sup>67</sup> and (iii) the Accused has been informed of the Registrar's determination on provisional legal aid funding before the SC.<sup>68</sup>

43. Lastly, the Pre-Trial Judge recalls that pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, Mr Bahtijari's detention shall be reviewed every two months or as soon as a change in circumstances arises.

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

## V. DISPOSITION

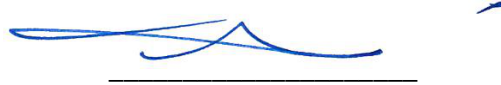
45. For the above reasons, the Pre-Trial Judge hereby:

- a. **ORDERS** Mr Bahtijari's continued detention;
- b. **ORDERS** Mr Bahtijari, if he wishes to do so, to file submissions on the next review of detention by **Friday, 28 June 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 Bahtijari decide not to file any submissions by the aforementioned time limit, to file submissions on the next review of Mr Bahtijari's detention by **Friday, 5 July 2024**, and Mr Bahtijari, if he wishes to do so, to file his submissions by no later than **Friday, 12 July 2024**.

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<sup>67</sup> KSC-BC-2023-10, F00249, Specialist Prosecutor, *Prosecution Submissions Regarding Completion of Investigations*, 12 April 2024, confidential, paras 7-8. A public redacted version was filed on 3 May 2024, F00249/RED.

<sup>68</sup> KSC-BC-2023-10, F00279, Registrar, *Registrar's Update on Defence Team Funding*, 3 May 2024, confidential, paras 12-15, with Annexes 1-12, confidential and *ex parte*.



**Judge Nicolas Guillou**  
**Pre-Trial Judge**

Dated this Thursday, 28 May 2024

At The Hague, the Netherlands.