



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

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Third Decision on Review of Detention of Haxhi Shala

Specialist Prosecutor

Kimberly P. West

Counsel for Sabit Januzi

Jonathan Elystan Rees

Registry

Fidelma Donlon

Counsel for Ismet Bahtijari

Felicity Gerry

Counsel for Haxhi Shala

Toby Cadman

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

I. PROCEDURAL BACKGROUND

1. On 11 December 2023, Haxhi Shala ("Mr Shala" or "Accused") was arrested,² pursuant to a decision ("Decision on Arrest")³ and an arrest warrant issued by the Pre-Trial Judge,⁴ upon request of the Specialist Prosecutor's Office ("SPO"),⁵ and further to the confirmation of an indictment against him ("Confirmation Decision").⁶
2. On 12 December 2023, Mr Shala was transferred to the Specialist Chambers ("SC") Detention Facilities in The Hague, the Netherlands.⁷ The next day, the Accused's initial appearance took place before the Pre-Trial Judge.⁸

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

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

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

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

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

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

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

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

3. On 8 February 2024, the Pre-Trial Judge joined the case against Mr Shala with the case against Sabit Januzi (“Mr Januzi”) and Ismet Bahtijari (“Mr Bahtijari”).⁹
4. On 9 February 2024, the Pre-Trial Judge reviewed the detention of Mr Shala and ordered his continued detention (“First Detention Decision”).¹⁰
5. On 19 February 2024, Mr Shala filed an appeal against the First Detention Decision,¹¹ which was upheld by the Court of Appeals Panel on 12 April 2024.¹²
6. On 8 April 2024, the Pre-Trial Judge reviewed the detention of Mr Shala and ordered his continued detention (“Second Detention Decision”).¹³
7. On 13 May 2024, the Defence for Mr Shala (“Defence”) filed its submissions on the review of Mr Shala’s detention (“Defence Submissions”), requesting his release from detention.¹⁴
8. On 24 May 2024, the SPO responded to the Defence Submissions (“SPO Response”).¹⁵

⁹ 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.

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

¹¹ KSC-BC-2023-10/IA002, F00001, Defence for Mr Shala, *Interlocutory Appeal Against the Decision on Review of Detention of Haxhi Shala*, 19 February 2024, confidential. A public redacted version was filed on 22 April 2024, IA002/F00001/RED.

¹² KSC-BC-2023-10, IA002/F00005, Court of Appeals Panel, *Decision on Haxhi Shala’s Appeal Against Decision on Review of Detention*, 12 April 2024, confidential. A public redacted version was issued on the same day, IA002/F00005/RED.

¹³ KSC-BC-2023-10, F00246, Pre-Trial Judge, *Second Decision on Review of Detention of Haxhi Shala*, 8 April 2024, confidential. A public redacted version was issued on the same day, F00246/RED.

¹⁴ KSC-BC-2023-10, F00286, Defence for Haxhi Shala, *Haxhi Shala Submissions for Review of Detention*, 13 May 2024, confidential.

¹⁵ KSC-BC-2023-10, F00301, Specialist Prosecutor, *Prosecution Submissions Pertaining to Periodic Detention Review of Haxhi Shala*, 24 May 2024, confidential.

9. On 31 May 2024, the Defence for Mr Shala replied to the SPO Response (“Defence Reply”).¹⁶

II. SUBMISSIONS

10. The Defence submits that the circumstances no longer justify Mr Shala’s continued deprivation of liberty and that an extension of his detention would be in violation of Article 5(3) of the European Convention on Human Rights (“ECHR”) and Article 41(6)(b) of the Law.¹⁷ In support, the Defence asserts that, with the passing of time, there are no longer articulable grounds to support the existence of risks under Article 41(6)(b) of the Law, mandating Mr Shala’s release.¹⁸ With respect to the first limb of Article 41(6)(b) of the Law, the Defence asserts that the risk of flight necessarily decreases over time, because of the probability that the time spent in detention will be deducted from the sentence in the event of conviction, and the six months Mr Shala has spent in detention tips the scales against a finding of a risk of flight.¹⁹ With respect to the second limb of Article 41(6)(b) of the Law, the Defence contends that any perceived risk of interference with the SPO’s investigation and related grounds for detention are considerably reduced in light of the advanced stage of the case.²⁰ In particular, the Defence submits that (i) most of the evidence to be presented at trial has now been disclosed to the Defence, including statements by the two witnesses that the SPO seeks to call at trial; and (ii) as the case against Mr Shala has been placed on the record, any incentive to interfere with the proceedings is substantially diminished.²¹ With respect to the third limb of Article 41(6)(b) of the Law, the Defence

¹⁶ KSC-BC-2023-10, F00311, Defence for Mr Shala, *Haxhi Shala Reply to Prosecution Submission Pertaining to Periodic Detention Review*, 31 May 2024, confidential.

¹⁷ Defence Submissions, paras 11, 25.

¹⁸ Defence Submissions, paras 17-18, 20, 22-25.

¹⁹ Defence Submissions, paras 21-24; Defence Reply, para. 5.

²⁰ Defence Submissions, paras 16-18; Defence Reply, para. 3.

²¹ Defence Submissions, paras 16-18; Defence Reply, para. 8.

submits that, as the Pre-Trial Judge's previous finding with respect to the third limb of Article 41(6)(b) of the Law rested on his finding as to the second limb, the threshold in relation to the third limb is also no longer met.²² On this basis, the Defence requests Mr Shala's unconditional release, or in the alternative, that he be released subject to conditions.²³

11. The SPO responds that Mr Shala's detention remains necessary, as there has been no relevant change in circumstances detracting from the determinations made in the Second Detention Decision.²⁴ To the contrary, the SPO asserts that continued disclosures and the steady progression of the case continue to provide Mr Shala with further access to sensitive information in the case against him, reinforcing the necessity and reasonableness of his detention.²⁵ In particular, the SPO asserts that there remains a grounded suspicion that Mr Shala has committed a crime within the jurisdiction of the SC and that there have been no developments detracting from the determinations made in the Confirmation Decision.²⁶ Additionally, the SPO submits that no modalities of conditional release could sufficiently mitigate the existing risks of flight, obstruction of proceedings and the commission of further crimes,²⁷ which are higher than ever in light of the progression of the case and related further disclosures, and that there have been no developments since the Pre-Trial Judge's previous determination warranting a different assessment on conditions.²⁸ Lastly, the SPO submits that Mr Shala's detention remains reasonable and proportional at this stage

²² Defence Submissions, paras 19-20; Defence Reply, para. 4.

²³ Defence Submissions, para. 27.

²⁴ SPO Response, paras 1, 7.

²⁵ SPO Response, paras 1, 7.

²⁶ SPO Response, para. 8.

²⁷ SPO Response, paras 17-21.

²⁸ SPO Response, para. 21.

of the proceedings.²⁹ On this basis, the SPO submits that Mr Shala should remain in detention.³⁰

12. The Defence replies that the SPO's insistence that the nature of the allegations is sufficient grounds to justify continued detention falls woefully short of the required threshold.³¹

III. APPLICABLE LAW

13. 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.

14. 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.

15. 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

²⁹ SPO Response, para. 25.

³⁰ SPO Response, para. 27.

³¹ Defence Reply, para. 10.

to leave residence, prohibition on approaching specific places or persons, attendance at police station or other venue, and diversion. Pursuant to Rule 56(5) of the Rules, the Panel may impose such conditions upon the release as deemed appropriate to ensure the presence of the detained person.

16. 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

17. The Pre-Trial Judge recalls that he has an obligation, under Article 41(10) of the Law, to examine whether the reasons for detention on remand continue to exist,³² 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 alleged crime(s); and (ii) there are articulable grounds to believe that any of the risks set out in Article 41(6)(b) of the Law are present.³³ 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

³² See, for example, KSC-BC-2020-07, IA002/F00005, Court of Appeals Panel, *Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention* ("First Haradinaj Detention Appeal Decision"), 9 February 2021, public, para. 55; KSC-BC-2020-06, IA006/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Jakup Krasniqi's Appeal Against Decision on Review of Detention* ("Second Krasniqi Detention Appeal Decision"), 1 October 2021, public, para. 15. See also KSC-BC-2020-04, F00224/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Review of Detention of Pjetër Shala* ("Sixth P. Shala Detention Decision"), 22 June 2022, public, para. 19.

³³ 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.

addressed in earlier decisions.³⁴ 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.³⁵

18. The Pre-Trial Judge likewise underscores that any analysis of Mr Shala's detention must duly consider his presumption of innocence.³⁶ 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.³⁷

B. GROUNDED SUSPICION

19. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires at the outset a grounded suspicion that the detained person has committed a crime within the jurisdiction of the SC. This is a condition *sine qua non* for the validity of the detained person's continued detention.³⁸

20. The SPO submits that the Pre-Trial Judge's finding of grounded suspicion in the Confirmation Decision still stands, and that no developments since that decision detract from the Pre-Trial Judge's determination.³⁹ The Defence submits that Mr Shala is presumed innocent and a reasonable suspicion of having committed a serious offence against the administration of justice, whilst it may be sufficient for arrest and

³⁴ First *Haradinaj* Detention Appeal Decision, para. 55; Second *Krasniqi* Detention Appeal Decision, para. 17; Sixth *P. Shala* Detention Decision, para. 19.

³⁵ First *Haradinaj* Detention Appeal Decision, para. 55.

³⁶ KSC-CC-PR-2017-01, F00004, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office* ("SCCC 26 April 2017 Judgment"), 26 April 2017, public, para. 113; KSC-BC-2020-06, IA004/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Interim Release*, 30 April 2021, public, para. 17, with further references. See, similarly, ECtHR, *McKay v. the United Kingdom*, no. 543/03, Judgment, 3 October 2006, para. 43.

³⁷ See, similarly, First Detention Decision, para. 17; Second Detention Decision, para. 18.

³⁸ KSC-BC-2020-04, F00045/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Pjetër Shala's Request for Provisional Release* ("First *P. Shala* Detention Decision"), 23 June 2021, public, para. 14. See also ECtHR, *Merabishvili v. Georgia*, no. 72508/13, Judgment, 28 November 2017, para. 222.

³⁹ SPO Response, para. 8.

initial detention, ceases to be a sufficient ground for detention with the passage of time.⁴⁰

21. At the outset, the Pre-Trial Judge underlines that the Defence's argument is based on a misstatement of the applicable standard, which requires at the outset the continued existence of a grounded suspicion that the detained person has committed the alleged offence(s) pursuant to Article 41(6)(a) of the Law, before proceeding to an assessment of the other conditions under Article 41(6)(b) of the Law.

22. The Pre-Trial Judge recalls that, in the Confirmation Decision, it was determined that, pursuant to Article 39(2) of the Law, there is a well-grounded suspicion that Mr Shala is criminally liable, under various forms of criminal responsibility, for offences within the jurisdiction of the SC, namely intimidation during criminal proceedings and obstructing official persons in performing official duties within the meaning of Articles 387 and 401(1), (2) and (5) of the 2019 Kosovo Criminal Code, Code No. 06/L-074 and Articles 15(2) and 16(3) of the Law.⁴¹ 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.⁴² The Pre-Trial Judge notes that there have been no developments in the case negating these findings.⁴³

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

⁴⁰ Defence Reply, para. 10.

⁴¹ Confirmation Decision, paras 101, 117, 129, 132, 136, 140, 144, 149. *See also* Decision on Arrest, para. 17.

⁴² First Detention Decision, para. 21; Second Detention Decision, para. 21.

⁴³ *See, similarly*, First Detention Decision, para. 23; Second Detention Decision, para. 21.

C. NECESSITY OF DETENTION

24. 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.⁴⁴ 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.⁴⁵ Therefore, the Pre-Trial Judge must rely on case-specific reasoning and concrete grounds in deciding whether to continue detention.⁴⁶

25. The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"⁴⁷ 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.⁴⁸ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.⁴⁹ 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.⁵⁰

⁴⁴ See Article 19(1.31) of the 2022 Kosovo Criminal Procedure Code, Code No. 08/L-032, which defines "articulable" as: "the party offering the information or evidence must specify in detail the information or evidence being relied upon". See also, for example, First *P. Shala* Detention Decision, para. 16; KSC-BC-2020-06, IA001/F00005, Court of Appeals Panel, *Decision on Kadri Veseli's Appeal Against Decision on Interim Release*, 30 April 2021, public, para. 18.

⁴⁵ SCCC 26 April 2017 Judgment, para. 113.

⁴⁶ See, similarly, First Detention Decision, para. 24; Second Detention Decision, para. 23.

⁴⁷ See chapeau of Article 41(6)(b) of the Law.

⁴⁸ KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, public, para. 17, with further references.

⁴⁹ *Thaçi* Interim Release Appeal Decision, para. 22.

⁵⁰ See, similarly, First Detention Decision, para. 25; Second Detention Decision, para. 24. See also First *P. Shala* Detention Decision, para. 20; KSC-BC-2020-06, F00177/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Hashim Thaçi's Application for Interim Release* ("First *Thaçi* Detention Decision"), 22 January 2021, public, para. 25, with further references.

26. 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,⁵¹ 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.⁵² When assessing the relevant factors, the Pre-Trial Judge may not conduct a piecemeal assessment, but must weigh all relevant factors taken together.⁵³

27. 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.⁵⁴

1. Risk of Flight

28. The Defence submits that the risk of flight necessarily decreases over time, and the six months Mr Shala has spent in detention diminishes any incentive to flee.⁵⁵ The SPO first recalls the Pre-Trial Judge's findings in the Second Detention Decision that Mr Shala presents a moderate risk of flight.⁵⁶ The SPO then asserts that the setting of a certain date for the transmission of the case file to the Trial Panel, combined with the disclosure of additional incriminating evidence, elevates Mr Shala's risk of flight.⁵⁷

29. As regards the risk of flight under Article 41(6)(b)(i) of the Law, the Pre-Trial Judge finds that the considerations set out in the First Detention Decision and Second

⁵¹ First *Thaçi* Detention Decision, para. 21, with further references.

⁵² See also First *P. Shala* Detention Decision, para. 17; First *Thaçi* Detention Decision, para. 21, with further references. Similarly, ECtHR, *Aleksanyan v. Russia*, no. 46468/06, Judgment, 22 December 2008, para. 179.

⁵³ See, similarly, First Detention Decision, para. 26; Second Detention Decision, para. 25. See also First *Thaçi* Detention Decision, para. 21, with further references.

⁵⁴ See, similarly, First Detention Decision, para. 27; Second Detention Decision, para. 26. See also First *P. Shala* Detention Decision, para. 19; First *Thaçi* Detention Decision, para. 24.

⁵⁵ Defence Submissions, paras 22-25.

⁵⁶ SPO Response, para. 9.

⁵⁷ SPO Response, para. 10.

Detention Decision are still relevant, namely Mr Shala's (i) awareness of the seriousness of the charges against him and potential sentence in the event of a conviction; (ii) increased insight into the evidence underpinning these charges through the ongoing disclosure process; (iii) his means to flee and opportunity to evade justice; and (iv) awareness of the forthcoming transmission of the case file to the Trial Panel.⁵⁸ In this respect, the Pre-Trial Judge further observes that the date for the transmission of the case file to the Trial Panel has been set for 21 June 2024.⁵⁹

30. The Pre-Trial Judge notes the Defence's submission that the risk of flight decreases over time. However, the Pre-Trial Judge considers that, in the present circumstances and having regard to the above factors, the time Mr Shala has spent in detention does not lessen the degree of such risk.

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

2. Risk of Obstructing the Progress of the SC Proceedings

32. The Defence submits that any perceived risk of interference is reduced in view of the advanced stage of the investigation and nearly complete disclosure of evidence.⁶⁰ The SPO submits that Mr Shala continues to present a risk of obstructing SC proceedings.⁶¹ In this regard, the SPO asserts that the pervasive climate of fear and intimidation of witnesses in Kosovo is a relevant contextual consideration, and that,

⁵⁸ First Detention Decision, paras 30-33; Second Detention Decision, paras 28-30.

⁵⁹ KSC-BC-2023-10, F00233, Pre-Trial Judge, *Decision Setting out the Calendar for the Remaining Procedural Steps of the Pre-Trial Phase* ("Decision Setting Pre-Trial Calendar"), 27 March 2024, public, para. 30(k).

⁶⁰ Defence Submissions, paras 16-18; Defence Reply, para. 3.

⁶¹ SPO Response, para. 11.

as also recognised in the context of other cases, the risks associated with the disclosure of material should not be ignored.⁶²

33. As regards the risk of obstructing proceedings under Article 41(6)(b)(ii) of the Law, the Pre-Trial Judge considers that: (i) the circumstances set out in the First Detention Decision continue to apply,⁶³ particularly considering that Mr Shala has received increasing access to sensitive witness-related information as a result of the ongoing disclosure process; and (ii) no information has been brought to the Pre-Trial Judge's attention that would detract from the findings contained therein. In this regard, the Pre-Trial Judge takes note of the Defence's submission that the advanced stage of the investigation and near-completion of disclosures diminishes any perceived risk of obstruction.⁶⁴ However, the Pre-Trial Judge recalls that his finding in the First Detention Decision is not based solely on the requirements of the investigation,⁶⁵ but upon a careful consideration of specific factors and relevant contextual circumstances, including: (i) his findings in the Confirmation Decision that Mr Shala acted in close coordination with Mr Januzi and Mr Bahtijari and appears to have purposefully targeted his co-Accused to persuade Witness 1 from further participating in SC proceedings as a witness, showing both his means and intent to obtain and misuse witness-related information to obstruct and interfere with SC proceedings, and his persistence in undertaking such efforts; (ii) Mr Shala's likely access to the associated networks and resources of former senior Kosovo Liberation Army ("KLA") leadership, including Rexhep Selimi, who still holds a position of

⁶² SPO Response, para. 14.

⁶³ See First Detention Decision, paras 38-41. See also Second Detention Decision, paras 31-33.

⁶⁴ See *supra*, para. 32.

⁶⁵ See ECtHR, *Clooth v. Belgium*, no. 49/1990/240/311, Judgment, 12 December 1991, paras 43-44, where the ECtHR noted that, in the long term, the need to undertake an investigation, without more, may be found to no longer constitute a sufficient reason to continue pre-trial detention.

influence in Kosovo;⁶⁶ and (iii) the pervasive climate of fear and intimidation in Kosovo against witnesses and potential witnesses of the SC.⁶⁷

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

3. Risk of Committing Further Crimes

35. The Defence submits that, since the Pre-Trial Judge's finding with respect to the third limb under Article 41(6)(b) of the Law rested on his findings with respect to the second limb, any risk of committing further offences is similarly reduced in light of the advanced stage of the proceedings.⁶⁸ The SPO recalls the Pre-Trial Judge's findings in the Second Detention Decision that Mr Shala has both the means and incentive to repeat the offences alleged against him and submits that, in light of the continuing disclosure of sensitive witness information, the risk that Mr Shala may commit further crimes mandates his continued detention.⁶⁹

36. 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

⁶⁶ In this respect, *see also, for example*, KSC-BC-2020-06, F00979, Pre-Trial Judge, *Decision on Periodic Review of Detention of Rexhep Selimi*, 19 September 2022, confidential, paras 23, 27; a public redacted version was issued on 30 September 2024, F00979/RED; F00802, Pre-Trial Judge, *Decision on Periodic Review of Detention of Rexhep Selimi*, 13 May 2022, para. 31; a public redacted version was issued on 24 May 2022, F00802/RED; F00580, Pre-Trial Judge, *Decision on Remanded Detention Review and Periodic Review of Detention of Rexhep Selimi*, 26 November 2021, para. 33; a public redacted version was issued on 8 December 2021, F00580/RED; F00372, Pre-Trial Judge, *Decision on Review of Detention of Rexhep Selimi*, 25 June 2021, para. 40; a public redacted version was issued on 30 June 2021, F00372/RED; Trial Panel II, *Decision on Periodic Review of Detention of Rexhep Selimi*, 15 May 2024, public, para. 18.

⁶⁷ *See* First Detention Decision, paras 38-41. *See also* Second Detention Decision, paras 31-33.

⁶⁸ SPO Submissions, paras 19-20.

⁶⁹ SPO Response, paras 15-16.

circumstances of the present case.⁷⁰ In particular, the Pre-Trial Judge finds that the Accused has the means and incentive to repeat the offences alleged to have been committed by him.⁷¹

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

4. Conclusion

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

D. CONDITIONAL RELEASE

39. The Defence does not make submissions with respect to conditional release, beyond its general assertion that the diminished existence of risks under Article 41(6)(b) of the Law mandates his release,⁷² and refers to its prior submissions in relation to the First Detention Decision, outlining proposed conditions for release.⁷³ The SPO submits that no change in circumstances since the Second Detention Decision warrants a different assessment on conditions, either generally or for a discrete period

⁷⁰ Decision on Arrest, para. 22. *See also* First *P.Shala* Detention Decision, para. 39.

⁷¹ *See, similarly*, First Detention Decision, para. 45; Second Detention Decision, para. 35.

⁷² Defence Submissions, para. 25.

⁷³ Defence Submissions, para. 27(ii), referring to KSC-BC-2023-11, F00039, Defence for Mr Shala, *Response to Prosecution Submission Pertaining to Periodic Detention of Haxhi Shala*, 4 February 2024, confidential, para. 70. A public redacted version was filed on 7 February 2024, F00039/RED.

of time.⁷⁴ To the contrary, the SPO asserts that the underlying risks are higher than ever, in light of the progression of the case and related further disclosures, such that no modalities of conditional release can sufficiently mitigate them.⁷⁵

40. 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.⁷⁶

41. As regards the question of conditional release, the Pre-Trial Judge observes that the Defence merely requests conditional release as an alternative to unconditional release, without explaining how it might address the risks foreseen under Article 41(6)(b) of the Law.⁷⁷

42. As regards the flight risk, the Pre-Trial Judge recalls his previous finding that some of the conditions previously proposed by the Defence in relation to the First Detention Decision could sufficiently mitigate this risk.⁷⁸

43. However, as found in the First Detention Decision and Second Detention Decision, the Pre-Trial Judge remains of the view that none of the conditions put forth by the Defence could limit the risk or restrict the ability of the Accused to obstruct the progress of SC proceedings and commit further offences.⁷⁹ 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 and resources of senior KLA leadership.⁸⁰ Accordingly, should he be released, Mr Shala

⁷⁴ SPO Response, paras 17-21.

⁷⁵ SPO Response, para. 21.

⁷⁶ As regards the obligation to consider “alternative measures”, see SCCC 26 April 2017 Judgment, para. 114. See also ECtHR, *Buzadji v. the Republic of Moldova*, no. 23755/07, Judgment (“*Buzadji v. Moldova*”), 5 July 2016, para. 87; *Idalov v. Russia*, no. 5826/03, Judgment, 22 May 2012, para. 140.

⁷⁷ See Defence Submissions, para. 27(ii).

⁷⁸ See First Detention Decision, para. 52; Second Detention Decision, para. 41.

⁷⁹ See First Detention Decision, para. 53; Second Detention Decision, para. 42.

⁸⁰ See *supra*, para. 33.

would have the motive, means and opportunity to exert pressure on Witness 1 to dissuade him from participating in the proceedings, or to otherwise tamper with evidence. In the view of the Pre-Trial Judge, while the risk of illicit messages and instructions cannot be entirely eliminated, the measures in place at the SC Detention Facilities, viewed as a whole, provide robust assurances against unmonitored visits and communications with family members and pre-approved visitors with a view to minimising the risks of obstruction and commission of further crimes.⁸¹

44. For the same reasons, the Pre-Trial Judge considers that no *additional* reasonable conditions imposed by the Pre-Trial Judge⁸² are available to adequately mitigate the existing risks.

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

E. PROPORTIONALITY OF DETENTION

46. The Defence asserts that, in light of the passing of time and the advanced stage of the investigation and disclosure of evidence, his continued detention is no longer reasonable, in violation of Article 5(3) of the ECHR.⁸³ The SPO submits that Mr Shala's detention remains proportional, in light of the expeditious progression of the case, including the setting of the date for the transmittal of the case file to the Trial Panel to 21 June 2024.⁸⁴

⁸¹ First Detention Decision, para. 53; Second Detention Decision, para. 42. *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.

⁸² 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.

⁸³ *See* Defence Submissions, paras 11-16, 23, 25.

⁸⁴ SPO Response, paras 22-25.

47. 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.⁸⁵ 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.⁸⁶ 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.⁸⁷ Furthermore, in the view of the Pre-Trial Judge, such an assessment can only be based on the circumstances at the time of review, and not on what may or may not occur in the foreseeable future.

48. The Pre-Trial Judge further recalls his previous findings that: (i) Mr Shala has been detained since his arrest on 11 December 2023; (ii) he is charged with two counts of obstructing official persons in performing official duties and one count of intimidation during criminal proceedings, which carry a possible sentence of up to five years and ten years of imprisonment, respectively; (iii) the risks under Article 41(6)(b)(ii) and (iii) of the Law cannot be mitigated by the proposed conditions for release, house arrest or any additional conditions; and (iv) all required procedural steps relating to the pre-trial phase of the present case have been, are being or will be completed with a view to transmitting the case for trial at a point in the foreseeable

⁸⁵ 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; KSC-BC-2018, IA007/F00007, Court of Appeals Panel, *Decision on the Specialist Prosecutor's Office's Appeal Against Decision on Isni Kilaj's Review of Detention*, 13 May 2024, confidential, para. 18. A public redacted version was issued on 15 May 2024, IA007/F00007/RED.

⁸⁶ *Thaçi Detention Appeal Decision*, para. 49.

⁸⁷ ECtHR, *Buzadji v. Moldova*, para. 90. *See, similarly*, *Second Detention Decision*, para. 46.

future.⁸⁸ Furthermore, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, Mr Shala's detention shall be reviewed every two months or as soon as a change in circumstances arises.

49. In addition, the Pre-Trial Judge recalls that a concrete timeline has been set for the remainder of the pre-trial phase, and that progress continues to be made in preparation for the transfer of the case to the Trial Panel, which has now been set for 21 June 2024.⁸⁹ Notably, (i) the SPO has completed its pre-trial obligations, with the exception of any material requiring judicial authorisation;⁹⁰ (ii) the SPO and the Defence have submitted their points of agreement on matters of law and fact in a joint filing;⁹¹ (iii) the SPO has submitted its Pre-Trial Brief;⁹² and (iv) the Defence shall submit its Pre-Trial Brief, if any, by 7 June 2024.⁹³

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

⁸⁸ First Detention Decision, para. 59; Second Detention Decision, para. 47.

⁸⁹ Decision Setting Pre-Trial Calendar, paras 29, 30(k).

⁹⁰ See KSC-BC-2023-10, F00260, Specialist Prosecutor, *Prosecution Detailed Notice of Disclosure Process*, 19 March 2024, public.

⁹¹ KSC-BC-2023-10, F00296, Specialist Prosecutor, *Notification of Agreed Facts and Points of Law*, 17 May 2024, public, with Annexes 1-2, confidential.

⁹² 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.

⁹³ Decision Setting Pre-Trial Calendar, paras 27, 30(i).

V. DISPOSITION

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

- a. **ORDERS** Mr Shala's continued detention;
- b. **ORDERS** Mr Shala, if he wishes to do so, to file submissions on the next review of detention by **Thursday, 11 July 2024**, with responses and replies following the timeline set out in Rule 76 of the Rules;
- c. **ORDERS** the SPO, should Mr Shala decide not to file any submissions by the aforementioned time limit, to file submissions on the next review of Mr Shala's detention by **Thursday, 18 July 2024**, and Mr Shala, if he wishes to do so, to file his submissions by no later than **Thursday, 25 July 2024**; and
- d. **ORDERS** the Defence and the SPO to file public redacted versions of their respective filings, namely F00286 (Defence Submissions), F00301 (SPO Response) and F00311 (Defence Reply), or to indicate whether these filings may be reclassified as public, by **Wednesday, 12 June 2024**.



Judge Nicolas Guillou

Pre-Trial Judge

Dated this Wednesday, 5 June 2024

At The Hague, the Netherlands.