



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

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

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

**Registrar:** Dr Fidelma Donlon

**Date:** 21 September 2022

**Language:** English

**Classification:** Public

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**Public Redacted Version of Decision on Review of Detention of Pjetër Shala**

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**Specialist Prosecutor**

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**Counsel for the Accused**

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**Counsel for Victims**

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THE PRE-TRIAL JUDGE,<sup>1</sup> pursuant to Article 41(6), (10) and (12) of 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 19 June 2020, further to a decision by the Pre-Trial Judge ("Confirmation Decision"),<sup>2</sup> the Specialist Prosecutor submitted the Confirmed Indictment.<sup>3</sup>
2. On 16 March 2021, further to a decision and an arrest warrant issued by the Pre-Trial Judge,<sup>4</sup> Pjetër Shala ("Mr Shala" or "Accused") was arrested in the Kingdom of Belgium ("Belgium").<sup>5</sup>
3. On 15 April 2021, upon conclusion of the judicial proceedings in Belgium, Mr Shala was transferred to the Detention Facilities of the Specialist Chambers ("SC") in The Hague, the Netherlands.<sup>6</sup>

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<sup>1</sup> KSC-BC-2020-04, F00001, President, *Decision Assigning a Pre-Trial Judge*, 14 February 2020, public.

<sup>2</sup> 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.

<sup>3</sup> 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, 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 the Defence's motion challenging the form of the Confirmed Indictment, a corrected indictment was submitted on 1 November 2021, F00098/A01, confidential, and 16 November 2021, F00107/A01, public.

<sup>4</sup> 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.

<sup>5</sup> KSC-BC-2020-04, F00013, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 16 March 2021, public.

<sup>6</sup> 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.

4. On 15 June 2021, the Pre-Trial Judge rejected a request for provisional release submitted by the Defence for Mr Shala (“Defence”) (“First Detention Decision”).<sup>7</sup>
5. On 10 September 2021, 10 November 2021, 28 January 2022, 22 April 2022 and 22 June 2022, the Pre-Trial Judge reviewed the detention of Mr Shala and ordered his continued detention (“Second Detention Decision”,<sup>8</sup> “Third Detention Decision”,<sup>9</sup> “Fourth Detention Decision”,<sup>10</sup> “Fifth Detention Decision”<sup>11</sup> and “Sixth Detention Decision”,<sup>12</sup> respectively).
6. On 30 July 2022, Mr Shala waived his right to have the lawfulness of his detention reviewed before the 22 August 2022, for a period of five weeks.<sup>13</sup>
7. On 2 August 2022, the Pre-Trial Judge granted the Defence’s request for an extension of time to file submissions on the next review of detention by 26 August 2022; should Mr Shala decide not to file any submissions by that time, the Pre-Trial

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<sup>7</sup> KSC-BC-2020-04, F00045, Pre-Trial Judge, *Decision on Pjetër Shala’s Request for Provisional Release*, 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.

<sup>8</sup> KSC-BC-2020-04, F00075, Pre-Trial Judge, *Decision on Review of Detention of Pjetër Shala*, 10 September 2021, confidential. A public redacted version was issued on the same day, F00075/RED.

<sup>9</sup> KSC-BC-2020-04, F00105, *Decision on Review of Detention of Pjetër Shala*, 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.

<sup>10</sup> KSC-BC-2020-04, F00133, *Decision on Review of Detention of Pjetër Shala*, 28 January 2022, confidential. A public redacted version was issued on the same day, F00133/RED.

<sup>11</sup> KSC-BC-2020-04, F00188, Pre-Trial Judge, *Decision on Remanded Detention Review Decision and Periodic Review of Detention of Pjetër Shala*, 22 April 2022. A public redacted version was issued on the same day, 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.

<sup>12</sup> KSC-BC-2020-04, F00224, Pre-Trial Judge, *Decision on Review of Detention of Pjetër Shala*, 22 June 2022. A public redacted version was issued on the same day, F00224/RED.

<sup>13</sup> KSC-BC-2020-04, F00244, Specialist Counsel, *Submission in Support of the Request for an Extension of Time to Submit the Defence Observations on Next Review of Detention*, 30 July 2022, public, paras 3-4, with one Annex, strictly confidential.

Judge ordered the SPO to file submissions on the next review of detention by 5 September 2022 and Mr Shala to respond by 12 September 2022.<sup>14</sup>

8. On 5 September 2022, the SPO filed its submissions on the review of Mr Shala's detention ("SPO Submissions").<sup>15</sup>

9. On 12 September 2022, the Defence filed its response ("Defence Response").<sup>16</sup>

## II. SUBMISSIONS

10. The SPO submits that no new fact or circumstance has intervened capable of changing the findings set out in the Sixth Detention Decision.<sup>17</sup> Specifically, the SPO avers that: (i) grounded suspicion that the Accused committed crimes within the jurisdiction of the SC continues to exist;<sup>18</sup> (ii) the risks that the Accused, if released, will abscond, obstruct the proceedings, or commit further crimes, remain high;<sup>19</sup> such risks can only be mitigated and effectively managed through the continued detention of the Accused at the SC's Detention Facilities;<sup>20</sup> and (iii) the continued detention of the Accused remains proportionate.<sup>21</sup>

11. The Defence responds that the SPO fails to: (i) link specific evidence to Mr Shala's personal conduct to substantiate the existence of the Article 41(6) risks;<sup>22</sup> and (ii) show that Mr Shala's continued detention is proportionate, in particular by failing to address factors such as the passage of time and the effects of continued detention on

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<sup>14</sup> KSC-BC-2020-04, F00245, Pre-Trial Judge, *Decision on Defence Request for Extension of Time for Submissions on Review of Detention*, 2 August 2022, public.

<sup>15</sup> KSC-BC-2020-04, F00264, Specialist Prosecutor, *Prosecution Submissions for Seventh Review of Detention*, 5 September 2022, confidential. A public redacted version was filed on 9 September 2022, F00264/RED.

<sup>16</sup> KSC-BC-2020-04, F00273, Specialist Counsel, *Defence Response to "Prosecution Submissions for Seventh Review of Detention"*, 12 September 2022, confidential.

<sup>17</sup> SPO Submissions, para. 1.

<sup>18</sup> SPO Submissions, paras 2 and 4.

<sup>19</sup> SPO Submissions, paras 2, 5-7.

<sup>20</sup> SPO Submissions, para. 8.

<sup>21</sup> SPO Submissions, para. 10.

<sup>22</sup> Defence Response, paras 12-18.

Mr Shala's rights to liberty and private and family life.<sup>23</sup> The Defence further maintains its position that suitable measures can be implemented to mitigate any potential risk factors posed by Mr Shala's interim release and repeats Mr Shala's willingness to be subject to such conditions.<sup>24</sup> The Defence therefore requests the Pre-Trial Judge to bring to an end Mr Shala's continued detention and order his interim release or placement in house arrest at his residence in Belgium, subject to any conditions that are deemed appropriate.<sup>25</sup>

### III. APPLICABLE LAW

12. Article 41(6) of the Law provides that the SC shall only order the detention of a person when there is a grounded suspicion that the person has committed a crime within the jurisdiction of the SC, and there are articulable grounds to believe that the person: (i) is a flight risk; (ii) will destroy, hide, change or forge evidence of a crime, or specific circumstances indicate that the person will obstruct the progress of criminal proceedings; or (iii) will repeat the criminal offence, complete an attempted crime, or commit a crime which he or she has threatened to commit.

13. Article 41(10) of the Law provides that, until a judgment is final or until release, upon the expiry of 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. This also follows from Rule 57(2) of the Rules.

14. Article 41(12) of the Law provides that, in addition to detention on remand, the following measures may be ordered to ensure the presence of the accused, to prevent reoffending or ensure successful conduct of criminal proceedings: summons, arrest,

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<sup>23</sup> Defence Response, paras 20-22.

<sup>24</sup> Defence Response, para. 23.

<sup>25</sup> Defence Response, para. 25.

bail, house detention, promise not to leave residence, prohibition on approaching specific places or persons, attendance at police station or other venue, and diversion.

15. Pursuant to Rule 56(2) of the Rules, the Panel 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

16. In examining whether the reasons for detention on remand still exist, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, the Pre-Trial Judge adopts the standard established in previous decisions.<sup>26</sup>

##### B. GROUNDED SUSPICION

17. The SPO submits that a well-grounded suspicion that the Accused committed multiple crimes within the jurisdiction of the SC continues to exist and that there has been no development capable of changing this finding or warranting its re-examination by the Pre-Trial Judge since the Sixth Detention Decision.<sup>27</sup> While maintaining its previous submissions on the unlawfulness of Mr Shala's continued detention, the Defence makes no specific submissions regarding this criterion.

18. The Pre-Trial Judge recalls that, as per the Confirmation Decision, pursuant to Article 39(2) of the Law, there is a well-grounded suspicion that Mr Shala is criminally liable for a number of war crimes (arbitrary detention, cruel treatment, torture and

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<sup>26</sup> See, among many others, Sixth Detention Decision, para. 19, with further references; Fifth Detention Decision, para. 25, with further references.

<sup>27</sup> SPO Submissions, para. 4.

murder) under Articles 14(1)(c) and 16(1)(a) of the Law.<sup>28</sup> 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.<sup>29</sup> Absent any change in circumstances in this regard since the Confirmation Decision, the Pre-Trial Judge finds that the requirement set forth in Article 41(6)(a) and (10) of the Law continues to be met.

### 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>30</sup> The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the "belief"<sup>31</sup> that any of the risks under the three limbs of Article 41(6)(b) of the Law exists, denoting an acceptance of the possibility, not the inevitability, of a future occurrence.<sup>32</sup> In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.<sup>33</sup> When deciding whether a person should be released or detained, the Pre-Trial Judge must consider alternative measures to prevent the risks set forth in Article 41(6)(b) of the Law.<sup>34</sup>

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<sup>28</sup> Confirmation Decision, para. 140(a). *See also* First Detention Decision, para. 15; Second Detention Decision, para. 22; Third Detention Decision, para. 19; Fourth Detention Decision, para. 21; Fifth Detention Decision, para. 30; Sixth Detention Decision, para. 24.

<sup>29</sup> Confirmation Decision, para. 35. *See also* KSC-BC-2020-06, IA008/F00004, Court of Appeals, *Decision on Kadri Veseli's Appeal Against Decision on Review of Detention*, 1 October 2021, confidential, para. 21. A public redacted version was issued on the same day, IA008/F00004/RED.

<sup>30</sup> First Detention Decision, para. 16, with further references.

<sup>31</sup> *See chapeau* of Article 41(6)(b) of the Law.

<sup>32</sup> First Detention Decision, para. 16, with further references.

<sup>33</sup> First Detention Decision, para. 16, with further references.

<sup>34</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*, 26 April 2017, public, para. 114. *See also* ECtHR, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, [Judgment](#), 5 July 2016 ("*Buzadji v. the Republic of Moldova* [GC]"), para. 87 *in fine*; ECtHR, *Idalov v. Russia* [GC], no. 5826/03, [Judgment](#), 22 May 2012, para. 140 *in fine*.

20. It is further recalled that 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 previous decisions.<sup>35</sup> Accordingly, the Pre-Trial Judge will not entertain these submissions any further and the ensuing sections will exclusively address arguments not previously raised and considered.

### 1. Risk of Flight

21. The SPO argues that, in addition to the factors previously identified by the Pre-Trial Judge, further relevant factors include: (i) the SPO's addition to its witness list of W04305; (ii) the imminent transfer of the case file to the Trial Panel on 21 September 2022; (iii) [REDACTED]; and (iv) Mr Shala's increased insight into the case against him.<sup>36</sup>

22. With regard to the advancement of the proceedings, the Defence avers that they do not generate or increase the required risk.<sup>37</sup> Further, the Defence asserts that regarding the SPO's addition of W04305 to its witness list, the SPO should have indicated [REDACTED] Mr Shala. The Defence further considers that [REDACTED].<sup>38</sup>

23. With respect to the risk of flight, the Pre-Trial Judge recalls that Mr Shala: (i) is aware of the serious charges against him, the possibility of a serious sentence in the event of a conviction, and the final conviction of two of the members of the Joint Criminal Enterprise ("JCE") to which he also allegedly belonged; and (ii) rejects the

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<sup>35</sup> Third Detention Decision, paras 24, 28, 32; Fourth Detention Decision, para. 24; Fifth Detention Decision, para. 33; Sixth Detention Decision, para. 27; Second Court of Appeals Decision, para. 18.

<sup>36</sup> SPO Submissions, para. 5.

<sup>37</sup> Defence Response, para. 13.

<sup>38</sup> Defence Response, para. 14.



legitimacy of the SC.<sup>39</sup> In addition: (i) the relatively small size of the group making up the alleged JCE and the fact that the events underlying the charges are easily distinguishable increase the possibility of mutual assistance among its alleged members, including by helping each other to abscond; and (ii) there is a context of a general, well-established, and ongoing climate of interference with criminal proceedings related to the Kosovo Liberation Army (“KLA”) and of witness intimidation.<sup>40</sup> However, the Pre-Trial Judge considers that, contrary to the SPO’s submission, the risk of flight has not increased as a result of the advancement of the proceedings, considering that the aforementioned factors and circumstances are not dependent on such developments.<sup>41</sup> In light of the above, the Pre-Trial Judge remains satisfied that a moderate risk of flight in relation to Mr Shala continues to exist at present.

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

24. In addition to its submissions pertaining to the risk of flight,<sup>42</sup> the SPO specifically argues that [REDACTED]. According to the SPO, [REDACTED] must be considered in the context of the broader climate of witness intimidation and interference in Kosovo, as recently confirmed in the *Gucati and Haradinaj* case, and show that there remains a high risk of Mr Shala obstructing the progress of SC proceedings if he is released.<sup>43</sup>

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<sup>39</sup> First Detention Decision, paras 24-25; Second Detention Decision, para. 28; Third Detention Decision, para. 25; Fourth Detention Decision, para. 27; Fifth Detention Decision, para. 35; Sixth Decision, para. 30.

<sup>40</sup> First Detention Decision, para. 26; Second Detention Decision, para. 28; Third Detention Decision, para. 25; Fourth Detention Decision, para. 27; Fifth Detention Decision, para. 35; Sixth Decision, para. 30. *See also* KSC-BC-2020-07, F00611, Trial Panel II, *Trial Judgment*, 18 May 2022, confidential, with Annexes 1-3, public, paras 576-578. A public redacted version was issued on the same day, F00611/RED.

<sup>41</sup> *Similarly*, Sixth Detention Decision, para. 30.

<sup>42</sup> *See* para. 21 above.

<sup>43</sup> SPO Submissions, para. 6.

25. The Defence argues that the SPO fails to substantiate the personal participation of Mr Shala in the said “climate” of witness intimidation and that such imputed conduct is a mere speculation.<sup>44</sup> Additionally, according to the Defence, generic assertions on the basis of findings relevant to the facts of other proceedings should not suffice to meet the standard imposed by Article 41(6)(b) of the Law.<sup>45</sup> The Defence also reiterates its argument that the extensively cited [REDACTED] must not be equated to any direct or indirect attempt to influence any protected witness in this case.<sup>46</sup>

26. The Pre-Trial Judge recalls that [REDACTED].<sup>47</sup> This is indicative of Mr Shala’s [REDACTED]. The Pre-Trial Judge further recalls that [REDACTED] in the broader context of a general, well-established, and ongoing climate of witness intimidation.<sup>48</sup> The relevant question is not whether Mr Shala personally contributed to such a climate. Rather, the climate of interference highlights the [REDACTED] and rejected the legitimacy of the SC.<sup>49</sup> Furthermore, it is undisputable that the near conclusion by the SPO of all its pre-trial disclosure obligations,<sup>50</sup> the imminent transfer of the case to a Trial Panel,<sup>51</sup> and the [REDACTED] will provide Mr Shala with specific insight as to the case against him and [REDACTED]. In this context, the Defence’s repeated argument that the advancement of the proceedings does not generate or increase the required risk to the requisite evidentiary standard<sup>52</sup> disregards that the risk of obstructing the progress of SC proceedings continues to exist based on a number of

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<sup>44</sup> Defence Response, para. 16.

<sup>45</sup> Defence Response, para. 16.

<sup>46</sup> Defence Response, para. 17.

<sup>47</sup> See, among others, Sixth Detention Decision, para. 33.

<sup>48</sup> First Detention Decision, paras 32-35; Second Detention Decision, para. 32; Third Detention Decision, para. 29; Fourth Detention Decision, para. 30; Fifth Detention Decision, para. 37; Sixth Detention Decision, para. 33; First Court of Appeals Decision, paras 35-42.

<sup>49</sup> See para. 23 above.

<sup>50</sup> KSC-BC-2020-04, Transcript, 14 April 2022, public, p. 299, lines 1-6; F00204, Specialist Prosecutor, *Prosecution detailed notice of disclosure process*, 27 May 2022, public. See recently Legal Workflow Disclosure Packages Nos 78 (31 August 2022) and 79 (6 September 2022).

<sup>51</sup> KSC-BC-2020-04, F00276, President, *Decision Assigning Trial Panel I*, 15 September 2022, public; F00234, Pre-Trial Judge, *Decision on Specialist Prosecutor’s Rule 102(2) and Related Requests*, 20 July 2022, confidential, para. 46(f). A public redacted version was issued on 8 August 2022, F00234/RED.

<sup>52</sup> Defence Response, para. 13.

factors, including the advancement of the proceedings. Rather, in view of [REDACTED], the advancement of the pre-trial proceedings following the Sixth Detention Decision increases the risk of obstructing the SC proceedings. Accordingly, the Pre-Trial Judge finds that the risk of Mr Shala obstructing the progress of SC proceedings continues to exist.

### 3. Risk of Committing Further Crimes

27. The Pre-Trial Judge notes that, besides their submissions pertaining to the Article 41(6)(b)(i)-(ii) risks, neither the SPO nor the Defence advance any arguments specific to the risk of committing further crimes.

28. The Pre-Trial Judge remains mindful of the fact that the existence of the risk of obstruction does not automatically translate into a risk of committing further crimes, but reiterates that the factors underpinning the former risk are of relevance to the assessment of the latter risk in the present case.<sup>53</sup> In this regard, the Pre-Trial Judge takes into consideration the fact that [REDACTED].<sup>54</sup> In addition, as with the risk of obstruction, the Pre-Trial Judge considers that in light of (i) the near conclusion by the SPO of all its pre-trial disclosure obligations, (ii) the imminent transfer of the case to a Trial Panel, and (iii) [REDACTED], the risk of committing further crimes remains high, as Mr Shala continues to gain specific insight into the case against him and [REDACTED]. On this basis, the Pre-Trial Judge considers that there continues to be a risk that Mr Shala will commit further crimes similar to the underlying acts, including against witnesses who have provided or could provide evidence in the case and/or are due to appear before the SC.

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<sup>53</sup> First Detention Decision, para. 39; Second Detention Decision, para. 36; Third Detention Decision, para. 33; Fourth Detention Decision, para. 35; Fifth Detention Decision, para. 42; Sixth Detention Decision, para. 39.

<sup>54</sup> First Detention Decision, para. 39; Second Detention Decision, para. 36; Third Detention Decision, para. 33; Fourth Detention Decision, para. 35; Fifth Detention Decision, para. 42; Sixth Detention Decision, para. 39.

#### 4. Conclusion

29. The Pre-Trial Judge concludes, for the purposes of the periodic review of the detention of Mr Shala pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, that the risks that Mr Shala will abscond, obstruct the progress of SC proceedings, or commit further crimes against those perceived as being opposed to the KLA, including witnesses who provided evidence to the SPO and/or are due to appear before the SC, continue to exist. The Pre-Trial Judge will assess below whether these risks can be adequately addressed by imposing conditions in connection with the interim release of Mr Shala.

#### D. CONDITIONAL RELEASE

30. The SPO refers to the Pre-Trial Judge's finding in the Sixth Detention Decision, endorsed by the Court of Appeals Panel, that the conditions proposed by the Defence and any additional conditions for release imposed by the Pre-Trial Judge are insufficient to mitigate the risks of obstruction or of commission of further crimes, and that only through the communication monitoring framework applicable at the SC's Detention Facilities the Accused's communications can be restricted in a manner to sufficiently mitigate the risks.<sup>55</sup>

31. The Defence maintains its position that suitable measures can be implemented which can sufficiently mitigate any potential risk posed by Mr Shala's interim release and repeats Mr Shala's willingness to offer extensive undertakings and be subject to such conditions, as the Pre-Trial Judge deems appropriate.<sup>56</sup>

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<sup>55</sup> SPO Submissions, para. 8, *referring to Sixth Detention Decision*, para. 48.

<sup>56</sup> Defence Response, paras 23.

32. As regards the risk of flight, the Pre-Trial Judge recalls that it has been previously found that the conditions proposed in relation to the First Detention Decision sufficiently mitigate this risk, namely Mr Shala's undertakings to submit himself to daily checks by authorised Belgian officials, surrender any travel documents, and subject himself to close monitoring by the Belgian authorities.<sup>57</sup> The Pre-Trial Judge therefore finds that, in the absence of any intervening information or development in relation to the present decision, the aforementioned conditions remain adequate to mitigate the risk of flight in relation to Mr Shala.

33. Turning to the risks of obstructing the progress of SC proceedings and committing further crimes, the Pre-Trial Judge recalls that the conditions previously proposed by the Defence (i) do not address the possibility of Mr Shala employing communication devices belonging to others or requesting others to use their devices for these purposes; and (ii) cannot ensure the effective monitoring of Mr Shala's communications.<sup>58</sup> There is no intervening information or development warranting an adjustment of these findings. The Pre-Trial Judge also recalls his finding that 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 as much as possible.<sup>59</sup> Such measures, as well as additional measures, may be ordered *proprio motu* by the Pre-Trial Judge pursuant to Rule 56(6) of the Rules. In this regard, the Pre-Trial Judge emphasises again that the

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<sup>57</sup> First Detention Decision, para. 45; Second Detention Decision, para. 40; Third Detention Decision, para. 37; Fourth Detention Decision, para. 39; Fifth Detention Decision, para. 46; Sixth Detention Decision, para. 43.

<sup>58</sup> First Detention Decision, paras 46-48; First Court of Appeals Decision, paras 53-58, 61; Second Detention Decision, paras 41-42; Third Detention Decision, para. 38; Fourth Detention Decision, para. 40; Fifth Detention Decision, para. 47; Sixth Detention Decision, para. 44.

<sup>59</sup> Fifth Detention Decision, para. 49; Sixth Detention Decision, para. 46. *See also* Second Court of Appeals Decision, para. 53; KSC-BC-2020-06, IA014-F00008, Court of Appeals, *Decision on Kadri Veseli's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention ("Veseli Detention Appeal")*, 31 March 2022, confidential, paras 38, 41, 44. A public redacted version was issued on the same day, IA014/F00008/RED.

Registrar and the Panel, who have unrestricted access to confidential information concerning witnesses and victims, may take action more promptly than other authorities acting under a distinct framework.<sup>60</sup>

34. As to any additional conditions to be imposed, the Pre-Trial Judge recalls that the Court of Appeals has specified that all *reasonable* conditions that could be imposed on an accused must be evaluated.<sup>61</sup> In this regard, the Pre-Trial Judge, having reassessed the findings made in the Sixth Detention Review,<sup>62</sup> continues to be of the view that no additional conditions are available to adequately mitigate the existing risks. Therefore, the Pre-Trial Judge remains persuaded that it is only through the communication monitoring framework applicable at the SC Detention Facilities that Mr Shala's communications can be restricted in a manner to sufficiently mitigate the aforementioned risks. Accordingly, the Pre-Trial Judge finds that the proposed conditions and any additional conditions imposed by the Pre-Trial Judge are insufficient to mitigate the risk of Mr Shala obstructing the progress of SC proceedings or committing further crimes.

#### E. PROPORTIONALITY OF DETENTION

35. The SPO submits that the continued detention of the Accused is justified and proportional since: (i) he is charged with four counts of war crimes and, if convicted, could face a lengthy sentence; (ii) the risks under Articles 41(6) of the Law cannot be mitigated outside the SC Detention Facilities; (iii) the Pre-Trial Judge has already scheduled the transmission of the case file to the Trial Panel for 21 September 2022;

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<sup>60</sup> See also *mutatis mutandis Veseli Detention Appeal*, para. 41.

<sup>61</sup> KSC-BC-2020-06, IA017-F00011, Court of Appeals, *Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 5 April 2022, confidential, para. 51 (emphasis in original). A public redacted version was issued on the same day, IA017/F00011/RED.

<sup>62</sup> Sixth Detention Decision, para. 47.

and (iv) the SPO has continued to discharge its disclosure obligations, including the remaining pre-trial disclosure obligations.<sup>63</sup>

36. The Defence asserts that assessing the proportionality of the Accused's detention requires consideration of (i) the effects of continued detention on Mr Shala, including as to the interference with his rights to liberty and protection of his private and family life; and (ii) the passage of time, including time passed since the Sixth Detention Decision.<sup>64</sup>

37. The Pre-Trial Judge recalls the importance of the proportionality principle in the determination of the reasonableness of pre-trial detention and that the longer a person remains in pre-trial detention the higher the burden on the SPO to justify continued detention.<sup>65</sup> 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.<sup>66</sup> However, the question whether a period of time spent in pre-trial detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed on the facts of each case and according to its specific features.<sup>67</sup>

38. The Pre-Trial Judge recalls that: (i) Mr Shala has been detained in Belgium since 16 March 2021 and subsequently at the SC 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

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<sup>63</sup> SPO Submissions, para. 10.

<sup>64</sup> Defence Response, para. 21.

<sup>65</sup> Sixth Detention Decision, para. 51. *Similarly*, 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.

<sup>66</sup> Sixth Detention Decision, para. 51. *Similarly* KSC-BC-2020-06, IA002/F00005, Court of Appeals Panel, *Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release*, 30 April 2021, confidential, para. 69 (a public redacted version was filed on the same day, IA002/F00005/RED).

<sup>67</sup> Sixth Detention Decision, para. 51. ECtHR, [Buzadji v. the Republic of Moldova \[GC\]](#), para. 90.

convicted; (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; (v) the SPO has, in principle, completed its disclosure under Rules 102(1)(b), 103 and 107 of the Rules,<sup>68</sup> the SPO and the Defence have filed their respective Pre-Trial Briefs,<sup>69</sup> the Parties have submitted their points of agreement on matters of fact,<sup>70</sup> and the Defence has indicated that it will not make a request for unique investigative opportunities;<sup>71</sup> (vi) a number of outstanding SPO requests for protective measures regarding Rule 102(3), 103 material and Rule 102(1)(b) material added pursuant to Rule 102(2) of the Rules have been adjudicated;<sup>72</sup> and (vii) the Pre-Trial Judge will transmit the case file to a Trial Panel today, 21 September 2022;<sup>73</sup>. 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.

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<sup>68</sup> KSC-BC-2020-04, Transcript, 14 April 2022, public, pp. 252-253, 268, 269, 287, 299, lines 1-6 and 11-15; F00204, Specialist Prosecutor, *Prosecution Detailed Notice of Disclosure Process*, 27 May 2022, public; F00215, Specialist Prosecutor, *Prosecution Notice Concerning Disclosure of Additional Evidence Pursuant to Rule 103*, 10 June 2022, confidential;

<sup>69</sup> KSC-BC-2020-04, F00135/A01, Specialist Prosecutor, *Prosecution Pre-Trial Brief*, 28 January 2022, strictly confidential and *ex parte*. A confidential redacted version was submitted on 31 January 2022, F00136/A01; a confidential, lesser redacted version was submitted on 8 February 2022, F00139/A01. F00144, Specialist Prosecutor, *Prosecution Submission of Rule 109(c) Chart*, 11 February 2022, public, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential. F00265, Specialist Counsel, *Defence Pre-Trial Brief*, 5 September 2022, confidential, with one Annex, confidential.

<sup>70</sup> KSC-BC-2020-04, F00178, Specialist Prosecutor, *Prosecution Submissions on Points of Agreement on Matters of Fact*, 8 April 2022, public, with one Annex, confidential.

<sup>71</sup> KSC-BC-2020-04, Transcript, 14 April 2022, public, pp. 279-280.

<sup>72</sup> See, for instance, KSC-BC-2020-04, F00234, Pre-Trial Judge, *Decision on Specialist Prosecutor's Rule 102(2) and Related Requests*, 20 July 2022, confidential; F00235, Pre-Trial Judge, *Decision on the Specialist Prosecutor's Third Request for Protective Measures for Rule 102(3) Materials Requested by the Defence*, 21 July 2022, strictly confidential and *ex parte*. A confidential redacted version was issued on the same day; F00241, Pre-Trial Judge, *Decision on Deferred Items regarding the Specialist Prosecutor's Request for Protective Measures for Documents Containing Exculpatory Information*, 27 July 2022, strictly confidential and *ex parte*. A confidential redacted version was issued on the same day; F00247, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request for Protective Measures for W04276, W04880, W04881, and W04882*, 8 August 2022, confidential; F00263, Pre-Trial Judge, *Decision on the Specialist Prosecutor's Request for Protective Measures for One Item Containing Rule 103 Information*, 5 September 2022, confidential.

<sup>73</sup> KSC-BC-2020-04, F00234, Pre-Trial Judge, *Decision on Specialist Prosecutor's Rule 102(2) and Related Requests*, 20 July 2022, confidential, para. 46(f). A public redacted version was issued on 8 August 2022, F00234/RED. The President assigned the case to Trial Panel I, see F00276, President, *Decision Assigning Trial Panel I*, 15 September 2022, public.



39. As to the Defence's submission regarding the length of Mr Shala's detention, the Pre-Trial Judge has duly appraised the additional time spent in detention by Mr Shala following the Sixth Detention Decision, including the resulting increase of the SPO's burden to justify Mr Shala's continued detention. However, weighed against the remaining factors and, in particular, the serious nature of the charges against Mr Shala, the impossibility to mitigate the risks under Article 41(6)(b)(ii) and (iii) of the Law and the significant advancement of the proceedings, this period of time does not render Mr Shala's detention disproportionate. As regards the Defence's arguments relating to Mr Shala's right to a private and family life, the Pre-Trial Judge acknowledges that Mr Shala's detention inevitably entails some limitations on his right to a private and family life, but recalls that a number of means, including visits, telephone calls, correspondence and video visits, continue to be available to Mr Shala at the SC Detention Facilities to maintain personal relationships with family members and other persons.<sup>74</sup> In light of this, the Pre-Trial Judge finds that the substantiation of the Defence is not capable of disturbing the findings made in the Sixth Detention Decision.<sup>75</sup>

40. On this basis, the Pre-Trial Judge concludes that, for the purposes of the periodic review of the detention of Mr Shala pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, the time Mr Shala has spent in pre-trial detention is not disproportionate. In addition, considering that the trial has not started yet, any

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<sup>74</sup> See, in particular, Article 24 of Registry Practice Direction on Detainees, Visits and Communications, KSC-BD-09-Rev1, 23 September 2020, public, according to which: "[a] Detainee shall be allowed to spend time with his or her spouse or partner and/or children in a private visit at least once every three (3) months for a period of up to three (3) hours. Private visits shall be conducted outside the sight and hearing of Detention Officer". See also Detention Management Unit Instruction on Visiting Procedures for Family Members and Other Personal Visitors, KSC-BD-33, 23 September 2020, public, Sections 11-14, and Registry Instruction on Video Visits, KSC-BD-34-Rev1, 6 September 2021, public, Section 6.

<sup>75</sup> Sixth Detention Decision, para. 53.

discussion as to the expected total length of his pre-trial detention remains premature and speculative.<sup>76</sup>

## V. CLASSIFICATION

41. The Pre-Trial Judge orders the Defence to submit a public redacted version of the Defence Response by no later than **Monday, 26 September 2022**.

## VI. DISPOSITION

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

- (a) **ORDERS** Mr Shala's continued detention;
- (b) **ORDERS** the Defence, if it wishes to do so, to file submissions on the next review of detention of Mr Shala by no later than **Tuesday, 25 October 2022**, 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 no later than **Tuesday, 1 November 2022** and Mr Shala,

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<sup>76</sup> See also *Krasniqi Detention Appeal*, para. 43; KSC-BC-2020-06, IA010-F00008, Court of Appeals, *Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 27 October 2021, confidential, para. 51 (a public redacted version was issued on the same day, IA010-F00008/RED).

if he wishes to do so, to file his submissions by no later than **Tuesday, 8 November 2022**; and

(d) **ORDERS** the Defence to file a public redacted version of the Defence Response by no later than **Monday, 26 September 2022**.



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

Dated this Wednesday, 21 September 2022

At The Hague, the Netherlands.