



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06
**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi,
and Jakup Krasniqi**

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 29 September 2022

Language: English

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**Public Redacted Version of
Decision on Periodic Review of Detention of Hashim Thaçi**

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THE PRE-TRIAL JUDGE,¹ 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 5 November 2020, further to the confirmation of an indictment ("Confirmation Decision"),² Hashim Thaçi ("Mr Thaçi" or "Accused") was arrested pursuant to a decision and an arrest warrant issued by the Pre-Trial Judge.³

2. On 22 January 2021, the Pre-Trial Judge rejected Mr Thaçi's application for interim release ("First Detention Decision").⁴

¹ KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

² KSC-BC-2020-06, F00026, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, strictly confidential and *ex parte*. A confidential redacted version was filed on 19 November 2020, F00026/CONF/RED. A public redacted version was filed on 30 November 2020, F00026/RED. The Specialist Prosecutor submitted the confirmed indictment in F00034, Specialist Prosecutor, *Submission of Confirmed Indictment and Related Requests*, 30 October 2020, confidential, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential; F00045/A03, Specialist Prosecutor, *Further Redacted Indictment*, 4 November 2020, public; F00134, Specialist Prosecutor, *Lesser Redacted Version of Redacted Indictment*, KSC-BC-2020-06/F00045/A02, 4 November 2020, 11 December 2020, confidential. A further corrected confirmed indictment was submitted on 3 September 2021, strictly confidential and *ex parte* (F00455/A01), with confidential redacted (F00455/CONF/RED/A01) and public redacted (F00455/RED/A01) versions. On 17 January 2022, the SPO submitted a confidential, corrected, and lesser redacted version of the Confirmed Indictment, F00647/A01. A confirmed amended indictment was filed on 29 April 2022 ("Confirmed Indictment"), strictly confidential and *ex parte* (F00789/A01), with confidential redacted (F00789/A02) and public redacted (F00789/A05) versions.

³ KSC-BC-2020-06, F00051, Registrar, *Notification of Arrest of Hashim Thaçi Pursuant to Rule 55(4)*, 5 November 2020, public; F00027/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders*, 26 October 2020, public; F00027/A01/RED, Pre-Trial Judge, *Public Redacted Version of Arrest Warrant for Hashim Thaçi*, 26 October 2020, public.

⁴ KSC-BC-2020-06, F00177, Pre-Trial Judge, *Decision on Hashim Thaçi's Application for Interim Release*, 22 January 2021, confidential. A public redacted version was filed on 26 January 2021, F00177/RED.

3. On 30 April 2021, the Court of Appeals denied Mr Thaçi's appeal against the First Detention Decision ("First Court of Appeals Decision").⁵
4. On 23 July 2021, the Pre-Trial Judge ordered Mr Thaçi's continued detention ("Second Detention Decision").⁶
5. On 27 October 2021, the Court of Appeals denied Mr Thaçi's appeal against the Second Detention Decision ("Second Court of Appeals Decision").⁷
6. On 14 December 2021, the Pre-Trial Judge ordered Mr Thaçi's continued detention ("Third Detention Decision").⁸
7. On 16 December 2021, further to a request by Mr Thaçi,⁹ who waived the right to have his detention reviewed before the expiry of the two-month time limit set out in Article 41(10) of the Law and Rule 57(2) of the Rules, the Pre-Trial Judge varied the time-limit for Mr Thaçi to provide submissions on his continued detention by no later than ten days after the notification of the decision of the Court of Appeals on his appeal against the Third Detention Decision, with the response and reply to be submitted in accordance with Rule 76 of the Rules.¹⁰
8. On 10 January 2022, the Defence for Mr Thaçi ("Defence") appealed against the Third Detention Decision.¹¹

⁵ KSC-BC-2020-06, IA004/F00005, Court of Appeals Panel, *Decision on Hashim Thaçi's Appeal Against Decision on Interim Release*, 30 April 2021, confidential. A public redacted version was filed on the same day, IA004/F00005/RED.

⁶ KSC-BC-2020-06, F00417, Pre-Trial Judge, *Decision on Review of Detention of Hashim Thaçi*, 23 July 2021, confidential. A public redacted version was filed on the same day, F00417/RED.

⁷ KSC-BC-2020-06, IA010/F00008, Court of Appeals Panel, *Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 27 October 2021, confidential. A public redacted version was issued on the same day, IA010/F00008/RED.

⁸ KSC-BC-2020-06, F00624, Pre-Trial Judge, *Decision on Review of Detention of Hashim Thaçi*, 14 December 2021, confidential. A public redacted version was filed on 25 January 2022, F00624/RED.

⁹ KSC-BC-2020-06, Transcript of Hearing, 15 December 2021, public, p. 764, lines 7-11.

¹⁰ KSC-BC-2020-06, F00629, Pre-Trial Judge, *Decision on Thaçi Request for Extension of Time Limit*, 16 December 2021, public, paras 8, 9(b).

¹¹ KSC-BC-2020-06, IA017/F00004, Specialist Counsel, *Appeal Against the Decision on Review of Detention of Hashim Thaçi*, 10 January 2022, confidential. A public redacted version was filed on 12 April 2022, IA017/F00004/RED.

9. On 5 April 2022, the Court of Appeals denied Mr Thaçi's appeal against the Third Detention Decision ("Third Court of Appeals Decision").¹²
10. On 26 May 2022, the Pre-Trial Judge ordered Mr Thaçi's continued detention ("Fourth Detention Decision").¹³
11. On 8 June 2022, the Defence appealed against the Fourth Detention Decision.¹⁴
12. On 21 June 2022, further to a request by Mr Thaçi,¹⁵ who waived the right to have his detention reviewed before the expiry of the two-month time limit set out in Article 41(10) of the Law and Rule 57(2) of the Rules, the Pre-Trial Judge varied the time-limit for Mr Thaçi to provide submissions on his continued detention by no later than ten days after the notification of the decision of the Court of Appeals on his appeal against the Fourth Detention Decision, with the response and reply to be submitted in accordance with Rule 76 of the Rules.¹⁶
13. On 22 August 2022, the Court of Appeals denied Mr Thaçi's appeal against the Fourth Detention Decision ("Fourth Court of Appeals Decision").¹⁷
14. On 1 September 2022, the Defence filed its submissions on the review of Mr Thaçi's detention ("Request").¹⁸ On 12 September 2022, the Specialist

¹² KSC-BC-2020-06, IA017/F00011, Court of Appeals Panel, *Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 5 April 2022, confidential. A public redacted version was issued on the same day, IA017/F00011/RED.

¹³ KSC-BC-2020-06, F00818, Pre-Trial Judge, *Decision on Periodic Review of Detention of Hashim Thaçi*, 26 May 2022, confidential. A public redacted version was filed on 8 June 2022, F00818/RED.

¹⁴ KSC-BC-2020-06, IA022/F00001, Specialist Counsel, *Thaçi Appeal Against the Decision on Periodic Review of Detention of Hashim Thaçi*, 8 June 2022, confidential. A public redacted version was filed on 1 September 2022, IA022/F00001/RED.

¹⁵ KSC-BC-2020-06, F00848, Specialist Counsel, *Thaçi Defence Request for an Extension of Time for Submissions on Review of Detention*, 17 June 2022, public, paras 4, 7-8, with one Annex, confidential.

¹⁶ KSC-BC-2020-06, F00851, Pre-Trial Judge, *Decision on Defence Requests for Extension of Time for Submissions on Fourth Detention Review*, 21 June 2022, public, para. 10(b).

¹⁷ KSC-BC-2020-06, IA022/F00005, Court of Appeals Panel, *Decision on Hashim Thaçi's Appeal Against Decision on Periodic Review of Detention*, 22 August 2022, confidential. A public redacted version was issued on the same day, IA022/F00005/RED.

¹⁸ KSC-BC-2020-06, F00945, Specialist Counsel, *Thaçi Defence Submissions on Fourth Detention Review*, 1 September 2022, confidential.

Prosecutor's Office ("SPO") responded to the Request ("Response").¹⁹ On 19 September 2022, the Defence replied to the Response ("Reply").²⁰

II. SUBMISSIONS

15. The Defence submits that pre-trial incarceration is an exception to the presumption in favour of pre-trial release.²¹ According to the Defence, the pre-trial proceedings have been drawn out beyond any reasonable expectations, with no trial date in sight, and in circumstances in which the Accused can no longer continue to be indefinitely detained.²² The Defence argues that Mr Thaçi's detention is no longer proportionate as he has been in detention for twenty-one months at the time of filing the present request.²³ The Defence avers that, while its submissions are limited to addressing the question of proportionality, it neither concedes nor accepts that the conditions for ongoing detention have been met.²⁴ Accordingly, it requests the Pre-Trial Judge to order Mr Thaçi's immediate interim release on the conditions deemed necessary and appropriate.²⁵

16. The SPO responds that the requirements under Article 41(6) of the Law remain satisfied and no alternative, reasonable measures to detention exist that sufficiently mitigate the risks identified.²⁶ The SPO submits that Mr Thaçi's continued detention remains reasonable in light of the progress of this case towards trial, its scope and complexity, the lengthy custodial sentence in the event

¹⁹ KSC-BC-2020-06, F00965, Specialist Prosecutor, *Prosecution Submissions on Detention Review of Mr Thaçi*, 12 September 2022, confidential. A public redacted version was filed on 14 September 2022, F00965/RED.

²⁰ KSC-BC-2020-06, F00981, Specialist Counsel, *Thaçi Defence Reply to 'Prosecution Submissions on Detention Review of Mr Thaçi' (F00965)*, 19 September 2022, public.

²¹ Request, para. 4.

²² Request, para. 5.

²³ Request, paras 7-13.

²⁴ Request, para. 6.

²⁵ Request, para. 14.

²⁶ Response, para. 2.

of a conviction, and the established risks.²⁷ The SPO therefore requests that the relief sought by Mr Thaçi be denied.²⁸

17. The Defence replies that the SPO has incorrectly cited the standard for the assessment of Article 41(6) risks.²⁹ It reiterates that Mr Thaçi's pre-trial detention is no longer proportionate and it requests that the Pre-Trial Judge order Mr Thaçi's immediate interim release on the conditions deemed necessary and appropriate.³⁰

III. APPLICABLE LAW

18. Article 41(6) of the Law provides that the Specialist Chambers ("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.

19. Article 41(10) of the Law and Rule 57(2) of the Rules provide that, until a judgement 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.

20. 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:

²⁷ Response, para. 2.

²⁸ Response, para. 28.

²⁹ Reply, para. 2.

³⁰ Reply, paras 4, 10.

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.

21. 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

22. 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.³¹

B. GROUNDED SUSPICION

23. 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.³²

24. The SPO submits that there has been no development capable of changing, or warranting re-examination of, the Pre-Trial Judge's determination that the Article 41(6)(a) criteria are met.³³

³¹ See, among many others, Third Detention Decision, para. 27, with further references; Fourth Detention Decision, para. 28.

³² Similarly ECtHR, Merabishvili v. Georgia [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 222.

³³ Response, para. 6.

25. 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 Thaçi is criminally liable for a number of crimes against humanity (persecution, imprisonment, other inhumane acts, torture, murder and enforced disappearance) and war crimes (arbitrary detention, cruel treatment, torture and murder) under Articles 13, 14(1)(c) and 16(1)(a) of the Law.³⁴ Moreover, the Pre-Trial Judge recalls that a well-grounded suspicion has also been established with regard to the new charges brought by the SPO against Mr Thaçi with the requested amendments to the indictment.³⁵ 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.³⁶

26. Accordingly, the Pre-Trial Judge finds that there continues to be a grounded suspicion that Mr Thaçi has committed crimes 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

27. The SPO submits that, in assessing the Article 41(6)(b) criteria, the panel must consider whether it is possible – rather than inevitable – for the person to abscond, destroy, hide, change or forge evidence of a crime, obstruct the progress of

³⁴ Confirmation Decision, para. 521(a); Second Detention Decision, para. 20; Third Detention Decision, para. 30; Fourth Detention Decision, para. 31.

³⁵ KSC-BC-2020-06, F00777, Pre-Trial Judge, *Decision on the Confirmation of Amendments to the Indictment*, 22 April 2022, strictly confidential and *ex parte*, para. 183. A confidential redacted version (F00777/CONF/RED), a public redacted version (F00777/RED) and a confidential lesser redacted version (F00777/CONF/RED2) were filed, respectively, on 22 April 2022, 6 May 2022 and 16 May 2022. The requested amendments are detailed at para. 11.

³⁶ See for instance KSC-BC-2020-06, IA008/F00004, Court of Appeals Panel, *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.

criminal proceedings, or repeat the criminal offence, complete an attempted crime, or commit a crime that the person threatened to commit.³⁷

28. The Defence replies that the SPO has incorrectly cited the standard for the assessment of risk and that the correct standard for the assessment of Article 41(6) risks is that articulated by the Court of Appeals in April 2021, requiring the Pre-Trial Judge to determine whether there is a “sufficiently real possibility” that one or more of the risks under Article 41(6)(b)(i)-(iii) of the Law exist, rather than whether a risk is merely “possible” as submitted by the SPO.³⁸

29. The Pre-Trial Judge recalls that, 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.³⁹ The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the “belief”⁴⁰ 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.⁴¹ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.⁴² The question posed by Article 41(6)(b) of the Law is whether the SPO presented specific reasoning based on evidence supporting the belief of a sufficiently real possibility that (one or more of) the risks exists.⁴³ When deciding

³⁷ Response, para. 7.

³⁸ Reply, para. 2, *citing* First Court of Appeals Decision, paras 21-24.

³⁹ First Detention Decision, para. 20; First Court of Appeals Decision, paras 23-24; Second Detention Decision, para. 22; Third Detention Decision, para. 32; Fourth Detention Decision, para. 33.

⁴⁰ *See chapeau* of Article 41(6)(b) of the Law.

⁴¹ First Detention Decision, para. 20, with further references; *see also* KSC-BC-2020-05, F00127, Trial Panel I, *Fourth Decision on Review of Detention*, 25 May 2021, public, para. 17, with further references.

⁴² First Court of Appeals Decision, para. 22; Second Detention Decision, para. 22; Third Detention Decision, para. 32; Fourth Detention Decision, para. 33.

⁴³ First Court of Appeals Decision, para. 24.

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.⁴⁴

1. Risk of Flight

30. The SPO submits that, absent any change in circumstance, Mr Thaçi continues to present the applicable risks.⁴⁵ According to the SPO, Mr Thaçi continues to wield influence and authority that could aid him in absconding.⁴⁶ Moreover, the SPO further submits that “Mr Thaçi’s knowledge of the charges against him and the possibility of a serious sentence in the event of conviction increases his risk of flight” and that, by receiving additional evidence during the disclosure process, “[Mr] Thaçi has gained increased insight into the evidence underpinning these very charges.”⁴⁷

31. The Pre-Trial Judge recalls that it has been previously determined that there is a risk that Mr Thaçi will abscond on the basis of his influence and authority stemming from past and recent positions he held, which he might use to call upon the support of former subordinates and persons affiliated with the Kosovo Liberation Army (“KLA”) War Veteran Association and/or persons sympathetic to the KLA, who may be willing to give him access to resources and/or help him abscond, securing access to relevant information, and obtaining funds and means

⁴⁴ As regards the obligation to consider “alternative measures”, see 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 Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office*, 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*.

⁴⁵ Response, para. 8.

⁴⁶ Response, para. 9.

⁴⁷ Response, para. 9.

to travel to several countries beyond the reach of the SC.⁴⁸ In the absence of any intervening developments, these findings continue to hold true at present.

32. It is also recalled that it has been established that Mr Thaçi's knowledge of the charges against him and the possibility of a serious sentence in the event of a conviction increases his risk of flight.⁴⁹ Furthermore, the Pre-Trial Judge observes that Mr Thaçi has also gained increased insight into the evidence underpinning the charges, in particular following the SPO's filing of its pre-trial brief and related material as well as its Rule 109(c) Chart,⁵⁰ the completion of the disclosure of Rule 102(1)(b) material,⁵¹ and further disclosure of Rule 103 material.⁵² Since the Fourth Detention Decision, Mr Thaçi has also been provided with further details of the case against him through, *inter alia*, the SPO's submission of a revised witness list including mode of questioning and presentation times⁵³ and an amended exhibit list.⁵⁴ Therefore, while disclosure does not in and of itself justify denying

⁴⁸ First Detention Decision, paras 31, 33; First Court of Appeals Decision, para. 50; Second Detention Decision, paras 27-30; Second Court of Appeals Decision, para. 35; Third Detention Decision, paras 35-36; Fourth Detention Decision, para. 37.

⁴⁹ First Detention Decision, para. 31; Second Detention Decision, para. 31; Third Detention Decision, para. 37; Fourth Detention Decision, para. 38.

⁵⁰ KSC-BC-2020-06, F00631, Specialist Prosecutor, *Submission of Pre-Trial Brief with Witness and Exhibit Lists*, 17 December 2021, confidential, with Annexes 1-3, strictly confidential and *ex parte*. A public redacted version with confidential redacted Annexes 1-3 was filed on 21 December 2021, F00631/RED. A corrigendum with two strictly confidential and *ex parte* Annexes, and one confidential Annex was filed on 24 February 2022, F00709; F00663, Specialist Prosecutor, *Prosecution Submission of Rule 109(c) Chart* ("Rule 109(c) Chart"), 28 January 2022, public, with Annex 1, strictly confidential and *ex parte* and Annex 2, confidential.

⁵¹ KSC-BC-2020-06, F00670, Specialist Prosecutor, *Prosecution Notice of Rule 102(1)(b) Disclosure and Related Requests*, 31 January 2022, strictly confidential and *ex parte*, para. 1, with Annexes 1-9, strictly confidential and *ex parte*. A confidential redacted version was filed on the same day, F00670/CONF/RED; Transcript of Hearing, 24 March 2022, public, p. 1067, line 24 to p. 1068, line 13.

⁵² See for instance Disclosure Packages 395, 418, 456.

⁵³ KSC-BC-2020-06, F00948, Specialist Prosecutor, *Prosecution Submission of Revised Witness List* ("Revised Witness List"), 2 September 2022, public, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential.

⁵⁴ KSC-BC-2020-06, F00967, *Prosecution Submission of Amended Exhibit List* ("Amended Exhibit List"), 13 September 2022, confidential, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential. The SPO previously amended its exhibit list on 25 July 2022 (F00896), 29 April 2022 (F00788) and 18 March 2022 (F00738).

provisional release,⁵⁵ the Pre-Trial Judge remains satisfied that Mr Thaçi's progressively evolving insight into the case against him, viewed together with his influence and authority, his knowledge of the charges against him and the possibility of a serious sentence, had increased the risk of flight.

33. On this basis, and notwithstanding the counter-balancing factors identified in the First Detention Decision,⁵⁶ the Pre-Trial Judge finds that the risk of flight in relation to Mr Thaçi continues to exist.

2. Risk of Obstructing the Progress of SC Proceedings

34. The SPO submits that Mr Thaçi continues to present a risk of obstructing proceedings.⁵⁷ It avers that there has been no change in any of the factors previously established by the Pre-Trial Judge.⁵⁸

35. The Pre-Trial Judge recalls that it has been previously found that Mr Thaçi: (i) attempted to undermine the SC and offered benefits to persons summoned by the SPO; (ii) [REDACTED]; and (iii) continues to have authority and influence in Kosovo.⁵⁹ It has also been determined that the inherently high risk of intimidation or interference for witnesses and/or their family members cannot be effectively mitigated by relying only on protective measures.⁶⁰ In addition, the Pre-Trial Judge remains satisfied that with the submission of the SPO's pre-trial brief, the lifting of protective measures, the ongoing disclosure of materials,⁶¹ and more

⁵⁵ Second Court of Appeals Decision, para. 38.

⁵⁶ First Detention Decision, para. 32.

⁵⁷ Response, para. 10.

⁵⁸ Response, para. 10.

⁵⁹ First Detention Decision, paras 38-42; First Court of Appeals Decision, paras 45-77; Second Detention Decision, paras 36-38; Second Court of Appeals Decision, paras 34-36; Third Detention Decision, paras 42-43; Fourth Detention Decision, para. 45.

⁶⁰ Second Detention Decision, para. 38; Third Detention Decision, para. 44; Fourth Detention Decision, para. 45.

⁶¹ See also Second Detention Decision, para. 39; Second Court of Appeals Decision, para. 40; Third Detention Decision, para. 45; Fourth Detention Decision, para. 45.

recently, the SPO's submission of a Revised Witness List and the Amended Exhibit List,⁶² Mr Thaçi continues to gain insight into the evidence underpinning the serious charges against him. Lastly, it is recalled that there is a persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members in Kosovo,⁶³ which, even though not determinative in and of itself, provides the context against which the findings pertaining specifically to Mr Thaçi must be considered.⁶⁴

36. Accordingly, the Pre-Trial Judge concludes that, within the overall context of a persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members in Kosovo, the risk that Mr Thaçi will obstruct the progress of SC proceedings continues to exist.

3. Risk of Committing Further Crimes

37. The SPO submits that the factors assessed as to whether there is a risk of obstructing proceedings under Article 41(6)(b)(ii) are also relevant when considering whether there is a risk of further crimes were Mr Thaçi to be released.⁶⁵ The SPO adds that these factors must also be considered in the persisting climate of intimidation of witnesses and interference in criminal proceedings involving KLA members.⁶⁶

38. 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 crimes, the factors underpinning the former are of relevance to the assessment of

⁶² See footnotes 53-54 above.

⁶³ See also KSC-BC-2020-07, F00611/RED, Trial Panel II, *Public Redacted Version of the Trial Judgment*, 18 May 2022, public, paras 576-579.

⁶⁴ First Detention Decision, para. 43; Second Detention Decision, para. 40; Third Detention Decision, para. 46; Fourth Detention Decision, para. 45.

⁶⁵ Response, para. 11.

⁶⁶ Response, para. 11.

the latter in the circumstances of the present case.⁶⁷ It is further recalled that it suffices that an accused instigates or assists others to commit such crimes, or contributes in any other way to their commission.⁶⁸

39. Turning to the facts under consideration, the Pre-Trial Judge recalls that, besides the prevailing climate of witness intimidation, Mr Thaçi has: (i) [REDACTED]; (ii) attempted to undermine the SC and offered benefits to persons summoned by the SPO; (iii) a position of influence in Kosovo which could allow him to elicit the support of sympathisers; and (iv) an increased account of the SPO's case against him as a result of the submission of the SPO's Revised Witness List and the ongoing disclosure of materials.⁶⁹

40. On this basis, the Pre-Trial Judge considers that, taking all factors together, there is a risk that Mr Thaçi will, under any form of responsibility, commit crimes similar to the underlying acts charged against those perceived as being opposed to the KLA, including witnesses who have provided or could provide evidence in the case and/or are due to appear before the SC.

41. Accordingly, the Pre-Trial Judge concludes that the risk that Mr Thaçi will commit further crimes continues to exist.

4. Conclusion

42. The Pre-Trial Judge concludes that the risks that Mr Thaçi will abscond, obstruct the progress of SC proceedings, or commit further crimes against those perceived as being opposed to the KLA, including witnesses who have provided or could provide evidence in the case and/or are due to appear before the SC,

⁶⁷ First Detention Decision, para. 48; Second Detention Decision, para. 43; Third Detention Decision, para. 50; Fourth Detention Decision, para. 48.

⁶⁸ First Detention Decision, paras 24, 48; Second Detention Decision, para. 43; Third Detention Decision, para. 50 ; Fourth Detention Decision, para. 48.

⁶⁹ See para. 32 above.

continue to exist. The Pre-Trial Judge will assess below whether these risks can be adequately addressed by any conditions for his release.

D. CONDITIONAL RELEASE

43. The SPO submits that no alternative measures sufficiently mitigate the Article 41(6)(b) risks posed by Mr Thaçi.⁷⁰ The SPO avers that past proposals for conditional release, such as house detention, pre-approved visits to the home, monitored and recorded visits, have been found to not sufficiently mitigate the risks of obstructing the progress of proceedings at the SC and committing further crimes.⁷¹ According to the SPO, all reasonable, realistic alternatives to detention in the controlled environment of the SC Detention Facilities in The Hague have been duly considered and rightfully rejected.⁷²

44. As regards the risk of flight, the Pre-Trial Judge considers that, as previously established, this risk can be sufficiently mitigated on the basis of Mr Thaçi's commitment to remain in house arrest, either in Kosovo or in a Third State with a cooperation agreement with the SC, and to abide by any condition imposed by the Pre-Trial Judge, including any of the following conditions: (i) surrender of international travel documents; (ii) prohibition of approaching certain places or persons; (iii) attendance of proceedings by video-link; and (iv) prohibition of the use of media or political activity.⁷³

45. Turning to the risks of obstructing the progress of SC proceedings and committing further crimes, in the Fourth Detention Decision the Pre-Trial Judge assessed whether the conditions for release proposed by the Defence sufficiently mitigated the identified risks in connection with the Defence's request to order

⁷⁰ Response, para. 13.

⁷¹ Response, para. 13.

⁷² Response, para. 14.

⁷³ First Detention Decision, paras 52, 56; Second Detention Decision, para. 50; Third Detention Decision, para. 70; Fourth Detention Decision, para. 60.

house arrest in Kosovo or in a Third State. In particular, the Pre-Trial Judge found that: (i) the dispatch of SC Detention Facilities staff to oversee Mr Thaçi's house arrest in Kosovo is an unreasonable measure and, in any event, would not adequately mitigate the identified risks nor address the fact that [REDACTED];⁷⁴ (ii) the involvement of the European Gendarmerie Force would not sufficiently minimise the risks that [REDACTED];⁷⁵ (iii) [REDACTED];⁷⁶ (iv) restricting the list of family members permitted to live with Mr Thaçi would not adequately mitigate the identified risks;⁷⁷ (v) any alleged interference with Mr Thaçi's right to family life was proportionate to the legitimate aims pursued;⁷⁸ (vi) the inherently high risk of intimidation or interference for witnesses and/or their family members cannot be effectively mitigated by relying only on protective measures and on Mr Thaçi's agreement to be re-incarcerated 30 days prior to the commencement of trial following the expiry of the protective measures authorised in the present case;⁷⁹ (vii) virtual monitoring of visits between Mr Thaçi and pre-approved visitors by the Registry does not offer a degree of protection sufficiently approaching the safeguards provided by live monitoring at the SC Detention Facilities;⁸⁰ and (viii) no additional conditions, which could be reasonably considered, including those proposed by [REDACTED] or any other conditions that might be implemented either in [REDACTED], could sufficiently address the risks posed by Mr Thaçi.⁸¹

46. Insofar as the Defence requests that Mr Thaçi be released on the conditions deemed necessary and appropriate without raising any new arguments in this

⁷⁴ Fourth Detention Decision, paras 62-63, 66, 70; Fourth Court of Appeals Decision, paras 25-29.

⁷⁵ Fourth Detention Decision, paras 64, 66, 70; Fourth Court of Appeals Decision, para. 30.

⁷⁶ Fourth Detention Decision, para. 65.

⁷⁷ Fourth Detention Decision, para. 66; Fourth Court of Appeals Decision, para. 23.

⁷⁸ Fourth Detention Decision, para. 67.

⁷⁹ Fourth Detention Decision, para. 68; Fourth Court of Appeals Decision, para. 24.

⁸⁰ Fourth Detention Decision, paras 69-70; Fourth Court of Appeals Decision, paras 31-32.

⁸¹ Second Detention Decision, para. 55; Second Court of Appeals Decision, para. 65; Third Detention Decision, para. 91; Fourth Detention Decision, paras 71, 73; Fourth Court of Appeals Decision, para. 38.

regard, the Pre-Trial Judge, recalling that there is no obligation to revisit arguments already adjudicated in the context of previous detention decisions and noting the absence of any intervening developments regarding this question, finds that the aforementioned findings continue to hold true for the purposes of the present decision.⁸²

47. The Pre-Trial Judge recalls 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.⁸³ Moreover, they offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented.⁸⁴ Recalling that it is within the Pre-Trial Judge's discretion to compare the conditions proposed by the Defence with the conditions in the SC Detention Facilities,⁸⁵ the Pre-Trial Judge remains persuaded that it is only through the communication monitoring framework applicable at the SC Detention Facilities that Mr Thaçi's communications can be restricted in a manner to sufficiently mitigate the aforementioned risks.

48. Accordingly, the Pre-Trial Judge finds that neither the conditions previously proposed by the Defence nor any other conditions imposed, *proprio motu*, could sufficiently mitigate the risk of Mr Thaçi obstructing the progress of SC proceedings or committing further crimes.

⁸² Fourth Detention Decision, para. 73.

⁸³ Third Detention Decision, para. 81; Fourth Detention Decision, para. 72.

⁸⁴ Third Court of Appeals Decision, para. 31.

⁸⁵ Third Court of Appeals Decision, para. 27.

E. PROPORTIONALITY OF DETENTION

1. Submissions

49. According to the Defence, the time taken by the SPO to meet its disclosure obligations has delayed the proceedings, and extended the length of Mr Thaçi's pre-trial incarceration.⁸⁶ The Defence submits that the length of this process is abnormal, and the pre-trial phase has been too long. This is reflected in the fact that, at the time of filing the Request, twenty-one months have passed, with deadlines and estimates being repeatedly abandoned.⁸⁷ The Defence avers that pre-trial incarceration is an exception to the presumption in favour of pre-trial release.⁸⁸ The Defence reiterates that the length of pre-trial detention has reached a tipping point that triggers Rule 56(2) of the Rules and can no longer be considered reasonable particularly as the Parties are still not in a position where a trial date is being discussed.⁸⁹ The Defence also submits that factors such as the existence of serious charges, potentially long sentences, and long lists of protected SPO witnesses, are reflective of the very nature of international criminal proceedings and the proportionality of detention must take into account more than the characteristics of international criminal trials.⁹⁰ The Defence further submits that there is no burden on it to establish undue delay on the part of the SPO as Rule 56(2) of the Rules only requires that the Pre-Trial Judge ensure that a person is not detained for an unreasonable period prior to the opening of the case.⁹¹ The Defence concludes that prolonged pre-trial incarceration clashes with the right to liberty as a fundamental human right, protected by Article 5 of the (European) Convention for the Protection of Human Rights and Fundamental

⁸⁶ Request, para. 7.

⁸⁷ Request, para. 8.

⁸⁸ Request, para. 4.

⁸⁹ Request, paras 5, 9-10, 12.

⁹⁰ Request, para. 11.

⁹¹ Request, paras 5, 12.

Freedoms, and Article 29 of the Kosovo Constitution, and cannot be reconciled with the safeguard established by Rule 56(2) of the Rules.⁹²

50. The SPO responds that the Defence offers no authority in support of its submission that – at twenty-one months – Mr Thaçi’s pre-trial detention stops being reasonable.⁹³ According to the SPO, the Defence only advances unsubstantiated claims that accused in comparable international criminal cases have been granted provisional release.⁹⁴ The SPO avers that the Defence’s submissions find no support in the applicable human rights law jurisprudence, as the European Court of Human Rights (“ECtHR”) has made it clear that the reasonableness of the length of detention depends on the circumstances of each case and the SPO avers that pre-trial detention must be considered alongside the risks associated with the accused’s provisional release.⁹⁵ The SPO argues that the ECtHR, as well as other courts and tribunals, have found that in certain cases periods of detention of multiple years were not disproportionate.⁹⁶ The SPO also submits that the Defence distorts the legal test for proportionality of detention by focusing on future events, while the reasonableness of detention is to be assessed against the length of pre-trial detention at the time of each review rather than any expected total length of detention.⁹⁷ The SPO submits that the particular risk posed by Mr Thaçi must be placed in the context of the persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members in Kosovo.⁹⁸ It therefore concludes that considering the progress of this case towards trial, its scope and complexity, the lengthy custodial sentence in the

⁹² Request, para. 13.

⁹³ Response, para. 15.

⁹⁴ Response, paras 15, 24.

⁹⁵ Response, paras 16-17.

⁹⁶ Response, paras 18-19.

⁹⁷ Response, paras 20-23.

⁹⁸ Response, paras 24-25.

event of a conviction, and the risks posed, the continued detention of Mr Thaçi remains reasonable.⁹⁹

51. The Defence replies that if the period of pre-trial detention becomes unreasonable, the accused must be released.¹⁰⁰ The Defence submits that the SPO essentially seeks to seal off the proceedings from the operation of Rule 56(2) of the Rules, by attempting to justify Mr Thaçi's length of pre-trial incarceration by pointing to the factors that were relied on to justify his incarceration in the first place.¹⁰¹ According to the Defence, any suggestion that this case involves organised crime, or that parallels can be drawn to cases involving criminal gangs in justifying the reasonableness of twenty-two months of uninterrupted pre-trial detention, is incorrect and should be disregarded.¹⁰² The Defence further submits that the "substantial procedural steps [that] have been completed with a view to transmitting the case to trial in the future" can no longer be relied upon in assessing the reasonableness of the length of pre-trial detention, considering the outstanding procedural steps the SPO is still required to take before the case can finally move to trial.¹⁰³ The Defence argues that a pre-trial detention period of twenty-two months is an unreasonable period and therefore maintains its request that the Pre-Trial Judge order Mr Thaçi's immediate interim release on the conditions deemed necessary and appropriate.¹⁰⁴

2. Discussion

52. 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

⁹⁹ Response, para. 26.

¹⁰⁰ Reply, para. 4.

¹⁰¹ Reply, para. 5.

¹⁰² Reply, para. 6.

¹⁰³ Reply, paras 7-8.

¹⁰⁴ Reply, para. 10.

reflected in Rule 56(2) of the Rules.¹⁰⁵ 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.¹⁰⁶ 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.¹⁰⁷

53. Mr Thaçi was arrested on 5 November 2020 and, as a result, he has been detained for slightly less than twenty-three months at the time of the present review of his detention. Accordingly, the Pre-Trial Judge will assess whether this period of time is reasonable in the specific circumstances relating to Mr Thaçi.

54. The Pre-Trial Judge recalls that the charges levelled against Mr Thaçi are of the utmost gravity and a serious sentence could be imposed in the event of a conviction.¹⁰⁸ Mr Thaçi’s right to be presumed innocent does not detract from the relevance of these considerations for the purposes of the present decision. It is further recalled that the proceedings against Mr Thaçi are complex in view of the fact that: (i) the purported crimes extended over a lengthy period of time (from at least March 1998 through September 1999), covered a significant geographical area (numerous locations throughout Kosovo and different districts in northern Albania) and involved scores of victims; (ii) the SPO preliminarily indicated that it intends to rely upon a significant number of witnesses; and (iii) the protective measures required to be implemented in relation to witnesses, victims and others

¹⁰⁵ 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.

¹⁰⁶ Similarly KSC-BC-2020-06, IA002/F00005/RED, Court of Appeals, *Public Redacted Version of Decision on Jakup Krasniqi’s Appeal Against Decision on Interim Release*, 30 April 2021, public, para. 69.

¹⁰⁷ ECtHR, *Buzadji v. the Republic of Moldova* [GC], para. 90.

¹⁰⁸ Third Detention Decision, para. 97; Third Court of Appeals Decision, paras 66, 69-70; Fourth Detention Decision, para. 79.

at risk on account of the testimony to be provided by witnesses are extensive.¹⁰⁹ Lastly, as determined above, the risks that Mr Thaçi, if released, will obstruct the progress of SC proceedings or commit further crimes continue to exist, and these risks cannot be sufficiently mitigated by means of less restrictive measures.¹¹⁰

55. The Pre-Trial Judge further observes that, following the Fourth Detention Decision, substantial procedural steps have been completed or scheduled with a view to transmitting the case to trial towards the end of the year. In this regard, the Pre-Trial Judge recalls that the parties have engaged in *inter partes* discussions and made proposals on ways to streamline the case.¹¹¹ With respect to the SPO's discharging of its disclosure obligations, the Pre-Trial Judge notes that: (i) the SPO provided notification of its completion of its review of Rule 103 material registered between 31 January 2022 and 16 June 2022¹¹² and filed protective measure

¹⁰⁹ Third Detention Decision, para. 98; Third Court of Appeals Decision, paras 66, 69-70; Fourth Detention Decision, para. 79.

¹¹⁰ See paras 35-36, 39-41, 45 above.

¹¹¹ KSC-BC-2020-06, F00804, Specialist Counsel, *Thaçi Defence Submissions for the Twelfth Status Conference*, 18 May 2022, public, paras 22-27; F00805, Specialist Prosecutor, *Prosecution Submissions for Twelfth Status Conference*, 18 May 2022, public, paras 13-17; F00806, Specialist Counsel, *Veseli Defence Submissions for Twelfth Status Conference*, 18 May 2022, public, paras 32-34, with Annexes 1-2, confidential; F00807, Specialist Counsel, *Krasniqi Defence Submissions for Twelfth Status Conference*, 18 May 2022, public, paras 12-14; F00810, Specialist Counsel, *Krasniqi Defence Proposals for Streamlining the Case*, 20 May 2022, confidential; Transcript of Hearing ("20 May 2022 Transcript"), 20 May 2022, public, p. 1301, lines 19-22; p. 1302, lines 13-15; p. 1303, lines 7-9, lines 18-25; p. 1306, lines 5-7, lines 14-17; p. 1307, lines 4-12; p. 1312, lines 12-23.

¹¹² KSC-BC-2020-06, F00861, Specialist Prosecutor, *Third Prosecution Request for Protective Measures for Items Containing Rule 103 Information*, 30 June 2022, para. 1, strictly confidential and *ex parte*, with Annexes 1-9, strictly confidential and *ex parte*. A confidential redacted version was filed on 1 July 2022, F00861/CONF/RED. On 26 August 2022, the Pre-Trial Judge found that: (i) while disclosure for some exculpatory items could have taken place earlier, the disclosure effectuated in Disclosure Packages 160, 170, 174, 175 and 176 did not amount to a non-compliance of the SPO disclosure obligations under Rule 103 of the Rules warranting the adoption of measures; and (ii) thus, the threshold of non-compliance, within the meaning of Rule 110 of the Rules, had not been met, see KSC-BC-2020-06, F00936, Pre-Trial Judge, *Decision on Thaçi and Krasniqi Defence Motions Seeking Remedies for Non-Compliance with Disclosure Obligations*, 26 August 2022, confidential, para. 36. A public redacted version was issued on 13 September 2022, F00936/RED.

requests¹¹³ or disclosed such material;¹¹⁴ (ii) the SPO updated its witness list;¹¹⁵ (iii) the SPO, in relation to currently pending Defence requests for the disclosure of Rule 102(3) material, has been ordered to finalise its processing of these requests, request protective measures or submit materiality challenges, and disclose all material not subject to protective measures requests or materiality challenges by 30 September 2022;¹¹⁶ and (iv) according to the SPO, significant progress on securing clearance for Rule 107 material has been made and will be made by the end of September 2022.¹¹⁷ The Pre-Trial Judge also notes that the SPO

¹¹³ KSC-BC-2020-06, F00821, Specialist Prosecutor, *Prosecution Request for Protective Measures for Items Containing Rule 103 Information*, 27 May 2022, strictly confidential and *ex parte*, with Annexes 1-71, strictly confidential and *ex parte*. A confidential redacted version was filed on 2 June 2022, F00821/CONF/RED; F00825, Specialist Prosecutor, *Second Prosecution Request for Protective Measures for Items Containing Rule 103 Information*, 31 May 2022, strictly confidential and *ex parte*, with Annexes 1-13, strictly confidential and *ex parte*. A confidential version was filed on 2 June 2022, F00825/CONF/RED; F00861, Specialist Prosecutor, *Third Prosecution Request for Protective Measures for Items Containing Rule 103 Information*, 30 June 2022, strictly confidential and *ex parte*, with Annexes 1-9, strictly confidential and *ex parte*. A confidential redacted version was filed on 1 July 2022, F00861/CONF/RED; F00941, Specialist Prosecutor, *Fourth Prosecution Request for Protective Measures for Items Containing Rule 103 Information*, 31 August 2022, strictly confidential and *ex parte*, with Annexes 1-44, strictly confidential and *ex parte*. A corrected version was filed on 1 September 2022, F00941/COR. A confidential redacted version of the corrected version was filed on 1 September 2022, F00941/COR/CONF/RED. *See also* KSC-BC-2020-06, F00918, Pre-Trial Judge, *Decision on the Second Prosecution Request for Protective Measures for Items Containing Rule 103 Information*, 8 August 2022, strictly confidential and *ex parte*. A further redacted confidential redacted version was filed on 19 August 2022, F00918/CONF/RED1; F00962, Pre-Trial Judge, *Decision on the Third Prosecution Request for Protective Measures for Items Containing Rule 103 Information*, 9 September 2022, strictly confidential and *ex parte*. A confidential redacted version was filed on the same day, F00962/CONF/RED; F00984, Pre-Trial Judge, *Decision on the Prosecution Request for Protective Measures for Items Containing Rule 103 Information*, 23 September 2022, strictly confidential and *ex parte*. A confidential redacted version was filed on 26 September 2022, F00984/CONF/RED.

¹¹⁴ Disclosure Packages 284, 297, 306, 323, 395, 418, 456.

¹¹⁵ KSC-BC-2020-06, F00948, Specialist Prosecutor, *Prosecution Submission of Revised Witness List*, 2 September 2022, public, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential.

¹¹⁶ 20 May 2022 Transcript, p. 1323, lines 16-25. According to the SPO, up until 5 September 2022, 80% of the total number of selected Rule 102(3) items have been resolved, *see* KSC-BC-2020-06, F00952, Specialist Prosecutor, *Prosecution Submissions for Fourteenth Status Conference*, 5 September 2022, public, para. 3.

¹¹⁷ According to the SPO, clearance has been secured for half the pages provided with Rule 107 restrictions, while the other half is scheduled to be processed by the provider by the end of September 2022. Once this occurs, there will be less than 50 Rule 107 items whose clearance remains outstanding. *See* KSC-BC-2020-06, F00952, Specialist Prosecutor, *Prosecution Submissions for Fourteenth Status Conference*, 5 September 2022, public, para. 7; KSC-BC-2020-06, Transcript of Hearing ("8 September 2022 Transcript"), 8 September 2022, public, p. 1507, lines 5-13.

has been ordered to: (i) supplement its Rule 109(c) Chart by 30 September 2022;¹¹⁸ (ii) supplement its Rule 102(3) notice by 7 October 2022;¹¹⁹ (iii) file by 28 October 2022 a notice on the record of when each redaction in the indictment is scheduled to be lifted according to the current protective measures regime;¹²⁰ and (iv) file a provisional list of the first 40 witnesses it intends to call at trial by 18 November 2022.¹²¹ Turning to the Defence deadlines, the Pre-Trial Judge notes that the Defence has been ordered to: (i) file their respective pre-trial brief by 21 October 2021;¹²² (ii) file a notice of any investigative opportunities by 7 October 2022 and requests justifying the need for such measures by 28 October 2022;¹²³ (iii) file notices of alibi or grounds for excluding responsibility pursuant to Rule 95(5) of the Rules by 28 October 2022;¹²⁴ and (iv) provide by 18 November 2022 any objections regarding the admissibility of evidentiary material disclosed.¹²⁵ Lastly, the Parties have been ordered to file notices indicating where points of agreement on issues of law and/or facts have been reached in relation to their respective proposals by 18 November 2022.¹²⁶ In view of these developments, the Pre-Trial Judge is not persuaded that the continued detention of Mr Thaçi has become unreasonable on account of the pace of the disclosure process. Furthermore, the Pre-Trial Judge observes that, while no start date of the trial has been established at this point in time, the timeframe for transmission of the case to a trial panel is approaching, and in this context Mr Thaçi's detention shall continue to be reviewed every two months or as soon as a change in

¹¹⁸ KSC-BC-2020-06, Transcript of Hearing ("13 July 2022 Transcript"), 13 July 2022, public, p. 1328, lines 18-24.

¹¹⁹ 13 July 2022 Transcript, p. 1474, lines 24-25, p. 1475, lines 1-2.

¹²⁰ 8 September 2022 Transcript, p. 1584, lines 3-8.

¹²¹ 8 September 2022 Transcript, p. 1584, lines 9-12.

¹²² 20 May 2022 Transcript, p. 1324, lines 1-6.

¹²³ 8 September 2022 Transcript, p. 1582, lines 21-25, p. 1583, lines 1-6.

¹²⁴ 8 September 2022 Transcript, p. 1583, lines 7-13.

¹²⁵ 8 September 2022 Transcript, p. 1583, lines 21-25, p. 1584, lines 1-2.

¹²⁶ 8 September 2022 Transcript, p. 1583, lines 14-20.

circumstances arises pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules.¹²⁷

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

V. CLASSIFICATION


57. Noting that the SPO has filed a public redacted version of the Response, the Pre-Trial Judge orders the Defence to submit a public redacted version of the Request or request reclassification by no later than **Friday, 7 October 2022**.

¹²⁷ Third Detention Decision, para. 101; Third Court of Appeals Decision, paras 67-68; Fourth Detention Decision, para. 81.

VI. DISPOSITION

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

- a) **ORDERS** Mr Thaçi's continued detention;
- b) **ORDERS** the Defence, if it wishes to do so, to file submissions on the next review of Mr Thaçi's detention by no later than **Friday, 28 October 2022**, with responses and replies following the timeline set out in Rule 76 of the Rules;
- c) **ORDERS** the SPO, should the Defence decide not to file any submissions by the aforementioned time limit, to file submissions on the next review of Mr Thaçi's detention by no later than **Friday, 4 November 2022**, and the Defence, if it wishes to do so, to file their submissions by no later than **Tuesday, 15 November 2022**; and
- d) **ORDERS** the Defence to submit a public redacted version of the Request or request reclassification by no later than **Friday, 7 October 2022**.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Thursday, 29 September 2022

At The Hague, the Netherlands.