



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

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

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

Registrar: Fidelma Donlon

Date: 6 February 2023

Language: English

Classification: Public

Public redacted version of
Decision on the Ninth Review of Detention of Pjetër Shala

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

I. PROCEDURAL BACKGROUND

1. On 19 June 2020, further to a decision by the Pre-Trial Judge (Confirmation Decision),¹ the Specialist Prosecutor (SPO) submitted a confirmed indictment against Pjetër Shala (Accused or Mr Shala).²
2. On 16 March 2021, further to an arrest warrant and transfer order issued by the Pre-Trial Judge,³ the Accused was arrested in the Kingdom of Belgium (Belgium),⁴ and was subsequently transferred on 15 April 2021 to the Detention Facilities of the Specialist Chambers (SC) in The Hague, the Netherlands.⁵
3. On 15 June 2021, the Pre-Trial Judge rejected a request for provisional release submitted by the Defence for Pjetër Shala (Defence) (First Detention Decision).⁶ On

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

² KSC-BC-2020-04, F00010, Specialist Prosecutor, *Submission of Confirmed Indictment*, 19 June 2020, public, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential. A confidential, lesser redacted version and a public, further redacted version of the confirmed indictment were submitted on 31 March 2021, F00016/A01, confidential, 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.

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

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

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

⁶ 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*

10 September 2021, 10 November 2021, 28 January 2022, 22 April 2022, 22 June 2022 and 21 September 2022 the Pre-Trial Judge reviewed the detention of the Accused and ordered his continued detention (Second Detention Decision,⁷ Third Detention Decision,⁸ Fourth Detention Decision,⁹ Fifth Detention Decision,¹⁰ Sixth Detention Decision¹¹ and Seventh Detention Decision,¹² respectively).

4. On 6 December 2022, having been assigned with the present case,¹³ the Panel issued the Decision on the Eighth Review of Detention of Pjetër Shala (Eighth Detention Decision).¹⁴

5. On 18 January 2023, the SPO filed its submissions for the Ninth Review of Detention (SPO Submissions).¹⁵ Victims' Counsel did not file any submissions.

on Pjetër Shala's Appeal Against Decision on Provisional Release, 20 August 2021, confidential. A public redacted version was issued on the same day, [IA001/F00005/RED](#).

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

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

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

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

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

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

¹³ KSC-BC-2020-04, F00276, President, *Decision Assigning Trial Panel I*, 15 September 2022, public; F00284, Pre-Trial Judge, *Decision Transmitting the Case File to Trial Panel I*, 21 September 2022, public, para. 6, with Annexes 1-4 (Handover Document) strictly confidential and *ex parte*.

¹⁴ KSC-BC-2020-04, F00365, Trial Panel I, *Decision on the Eighth Review of Detention of Pjetër Shala*, 6 December 2023, confidential. A public redacted version was issued on 21 December 2022, [F00365/RED](#).

¹⁵ KSC-BC-2020-04, F00390, Specialist Prosecutor, *Prosecution submissions for ninth review of detention*, 18 January 2023, public.

6. On 26 January 2023, the Defence filed its submissions (Response).¹⁶

7. On 31 January 2023, the SPO filed its reply (Reply).¹⁷

II. SUBMISSIONS

8. The SPO submits that the continued detention of the Accused remains necessary and proportional, and that no new fact or circumstance has intervened capable of changing this finding since the Panel reached it in the Eighth Detention Decision.¹⁸ In addition, the SPO invites the Panel to reconsider its previous decision not to confirm a flight risk.¹⁹

9. The Defence responds that it fully maintains its previous submissions on the unlawfulness of the Accused's continued detention. According to the Defence, the SPO has failed to produce any concrete grounds capable of showing that the Accused's continued detention is necessary and proportional. The Defence, thus, requests the Panel to order the Accused's interim release or placement in house arrest at his residence in Belgium or any other conditions deemed appropriate.²⁰

III. APPLICABLE LAW

10. The Panel notes Article 6(2) of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Articles 29, 31(5) and 53 of the Constitution of the Republic of Kosovo (Constitution), Articles 3(2), 21(3), and 41(6) and (10)-(12) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's

¹⁶ KSC-BC-2020-04, F00403, Defence, *Defence Submissions for Ninth Review of Detention*, 26 January 2023, public.

¹⁷ KSC-BC-2020-04, F00407, Specialist Prosecutor, *Prosecution reply to "Defence Submissions for Ninth Review of Detention"*, 31 January 2023, confidential. A public redacted version was issued on 1 February 2023, F00407/RED.

¹⁸ SPO Submissions, para. 1.

¹⁹ SPO Submissions, para. 7.

²⁰ Response, paras 3, 6, 23.

Office (Law), and Rules 56(2) and 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules).

IV. DISCUSSION

11. At the outset, the Panel recalls that the presumption of innocence, as provided for in Article 31(5) of the Constitution, Article 21(3) of the Law, and Article 6(2) of the ECHR, is the starting point for the assessment of the continued detention on remand.²¹ Accordingly, continued detention cannot be maintained lightly and the Accused should be released once his continued detention ceases to be reasonable.²² The SPO bears the burden of establishing that the detention of the Accused is necessary.²³

A. GROUNDED SUSPICION

12. The SPO submits that a well-grounded suspicion that the Accused committed multiple crimes within the SC jurisdiction continues to exist and that there has been no development capable of changing this finding or warranting its re-examination since the Eighth Detention Decision.²⁴ The Defence did not make any specific submissions regarding the existence of a well-grounded suspicion.

13. The Panel recalls that the Pre-Trial Judge confirmed the indictment against the Accused, having found that a “well-grounded suspicion” existed, within the meaning of Article 39(2) of the Law, that he had committed offences under the SC jurisdiction.²⁵ Recalling that the “well-grounded suspicion” threshold is necessarily higher than the

²¹ KSC-BC-2020-06, [IA004/F00005/RED](#), Court of Appeals, *Public Redacted Version of Decision on Hashim Thaçi’s Appeal Against Decision on Interim Release (Thaçi Interim Release Appeal Decision)*, 30 April 2021, public, para. 17.

²² ECtHR, *Buzadji v. The Republic of Moldova* [GC], no. 23755/07, [Judgment](#) (*Buzadji v. The Republic of Moldova*), 5 July 2016, paras 89-90.

²³ KSC-BC-2020-06, [F00177/RED](#), Pre-Trial Judge, *Public Redacted Version of Decision on Hashim Thaçi’s Application for Interim Release (Thaçi Interim Release Decision)*, 26 January 2021 (notified), public, para. 19 and references therein.

²⁴ SPO Submissions, para. 4.

²⁵ [Confirmation Decision](#), para. 140(a).

“grounded suspicion” required for continued detention,²⁶ the Panel finds that, by virtue of the decision taken by the Pre-Trial Judge on the confirmation of the indictment against the Accused, the requirement of Article 41(6)(a) of the Law has been met. Given that there has been no change in circumstances in this regard since the Eight Detention Decision, the Panel is satisfied that there continues to be a grounded suspicion against the Accused, as required by Article 41(6)(a) of the Law.

B. NECESSITY OF DETENTION

14. The SPO submits that the Accused’s detention remains necessary as the risks that, if released, he will obstruct the proceedings or commit further crimes, [REDACTED], continue to exist. These risks are heightened, according to the SPO, due to the imminent start of the trial and the SPO’s recent request to amend its Exhibit List to include four new interviews,²⁷ one of which contains incriminatory information that corroborates evidence already known to the Defence. In addition, the SPO avers that there is a flight risk in light of, *inter alia*, the recently disclosed evidence constituting of four new interviews with associated exhibits, coupled with the Panel’s ruling on the Accused’s statements, and the judgment in the *Mustafa* case sentencing him to 26 years of imprisonment.²⁸

15. The Defence responds that the new transcripts that the SPO seeks to include in its Exhibit List contain false information, since review of the relevant material shows that witness TW4-10 has recently changed his evidence, which contradicts his previous statements. According to the Defence, the assessment of any risks for the review of detention should not be based on such unreliable information. Moreover, the Defence argues that, as shown by the records of the Accused’s communications

²⁶ [Confirmation Decision](#), para. 35. See also KSC-BC-2020-06, [IA008/F00004/RED](#), Court of Appeals, *Public Redacted Version of Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention*, 1 October 2021, public, para. 21.

²⁷ KSC-BC-2020-04, F00367, Specialist Prosecutor, *Prosecution request to amend the Exhibit list with confidential Annexes 1-4 and strictly confidential and ex parte Annexes 5-8*, 09 December 2022, confidential.

²⁸ SPO Submissions, paras 5-8.

and visits during his time in detention, he has never attempted to interfere with witnesses, victims, or the progress of the proceedings. The Defence further avers that the SPO did not provide any concrete factual circumstances to support that a risk of obstruction exists or has increased, nor has it shown convincingly, as to the risk of committing further crimes, that the Accused would likely commit any “concrete and specific offence” or pose a danger to TW4-10, if the Accused is granted interim release.²⁹

16. In reply, the SPO reiterates the incriminatory nature of the recently disclosed evidence and submits that the Defence erroneously downplays its relevance. The SPO further submits that the existing monitoring measures of the Accused’s communications at the SC Detention Facilities constitute a deterrence to interference attempts and that the absence of any such attempts so far is no indication that the Accused will not try to interfere with witnesses, if released.³⁰

17. At the outset, the Panel recalls that, once the threshold in Article 41(6)(a) of the Law is met, the grounds that would justify a person’s deprivation of liberty must be “articulable” in the sense that they must be specified in detail.³¹ On the basis of the available evidence, the specific articulable grounds must support the “belief” that any of the risks under the three limbs of Article 41(6)(b) of the Law exist.³² The standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.³³ The Panel further recalls that a Panel may refer to findings in prior decisions if it is satisfied that the evidence or information underpinning those

²⁹ Response, paras 13-16.

³⁰ Reply, paras 3-4.

³¹ Article 19.1.30 of the Kosovo Criminal Procedure Code 2012, Law No. 04/L-123 defines “articulable” as: “the party offering the information or evidence must specify in detail the information or evidence being relied upon”. See also KSC-BC-2020-06, IA001/F00005, Court of Appeals, [Decision on Kadri Veseli’s Appeal Against Decision on Interim Release](#) (Veseli First Detention Appeal), 30 April 2021, public, paras 18-19.

³² [Thaçi Interim Release Decision](#), para. 20 and references therein.

³³ [Third Court of Appeals Decision](#), para. 27.

decisions still supports the findings made at the time of the review.³⁴ Finally, the Panel notes that, since the three grounds under Article 41(6) of the Law are listed in the alternative, the existence of one ground suffices to determine the necessity of detention of the Accused.³⁵

1. Risk of Flight

18. The SPO invites the Panel to reconsider the flight risk and submits that the (i) advancement of the proceedings towards the start of the trial, (ii) recently disclosed evidence, and (iii) issuance of the Decision concerning prior statements, increase the Accused's flight risk. The SPO submits in particular that the conviction of the accused in the *Mustafa* case to 26 years' imprisonment³⁶ increases, in the eyes of the Accused, the possibility of a lengthy conviction, incentivising him to abscond.³⁷

19. The Defence responds that the conviction of the accused in the *Mustafa* case is not a relevant factor justifying the Accused's continued detention, as the cases are distinct with different facts and background. Moreover, the Defence submits that, as held by the European Court of Human Rights (ECtHR), the danger of flight necessarily decreases with the passage of time spent in detention; likewise, as also held by the ECtHR, the expectation of a heavy sentence and the weight of evidence may be relevant but is not as such decisive. The Defence further argues that, by relying on insufficient justifications and failing to take into consideration the Accused's individual circumstances, the SPO fails to establish that the Accused is a flight risk.³⁸

20. In reply, the SPO submits that the ECtHR's determination in the *Neumeister v. Austria* case that "the risk of flight necessarily decreases with the passage of time spent

³⁴ [Second Court of Appeals Decision](#), para. 18.

³⁵ [Thaçi Interim Release Appeal Decision](#), para. 78.

³⁶ KSC-BC-2020-05, F00494/RED, Trial Panel I, *Public redacted version of Trial Judgment*, 16 December 2022, public, para. 829. A corrected version was filed on 24 January 2023, [F00494/RED/COR](#).

³⁷ SPO Submissions, paras 6-7, 10; Reply, para. 2.

³⁸ Response, paras 9-11.

in detention”³⁹ is not applicable in the present proceedings and should not be considered by the Panel. Specifically, the SPO argues that, contrary to the specific circumstances in that case, the time that the Accused in the present case has spent in detention to date is only a small fraction of the sentence he could potentially face, if convicted.⁴⁰

21. Before all else, the Panel clarifies that it may reconsider, in the context of Rule 57 review of detention, the grounds it has previously confirmed or discarded, if new facts and circumstances support such a finding.

22. The Panel notes that the SPO lays particular weight on the lengthy sentence imposed on the accused in the *Mustafa* case, arguing that, in the eyes of Mr Shala, this increases the possibility that he could similarly face a lengthy conviction. The Panel is mindful of the fact that the risk of absconding cannot be gauged solely on the basis of the severity of the sentence faced by the Accused.⁴¹ On the contrary, as repeatedly held by the ECtHR, the risk of absconding has to be assessed in light of the factors relating to the person’s character, his morals, home, occupation, assets, family ties, links with the jurisdiction and international contacts.⁴² Therefore, the Panel will assess whether there are other factors, raised by the SPO, justifying the Accused’s continued detention under Article 41(6)(b)(i) of the Law.

23. In this regard, the Panel recalls its finding in the Eighth Detention Decision that the Accused is not at flight risk on the basis of the following factors: (i) the Accused has repeatedly complied with summonses before the International Criminal Tribunal for the Former Yugoslavia (ICTY); (ii) he has shown cooperation with the SPO and the authorities in Belgium before the confirmation of the indictment; (iii) he is a holder of

³⁹ ECtHR, *Neumeister v. Austria*, no. 1936/63, [Judgment](#) (*Neumeister v. Austria*), 27 June 1968, para. 10.

⁴⁰ Reply, para. 2.

⁴¹ [First Detention Decision](#), para. 24. See also ECtHR, *G. v. Russia*, no. 42526/07, [Judgment](#), 21 June 2016, para. 116; *Zherebin v. Russia*, no. 51445/09, [Judgment](#), 24 March 2016, para. 58.

⁴² ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 223; *Becciev v. Moldova*, no. 9190/03, [Judgment](#) (*Becciev v. Moldova*), 4 October 2005, para. 58.

Belgian nationality, has a permanent place of residence in Belgium, a family relationship with his children, two of which live in the same apartment building, and (iv) he has had economic and social ties to Belgium for a considerable period of time before he was arrested.⁴³ The Panel is unpersuaded that the lengthy sentence in the *Mustafa* case has any bearing on the Panel's assessment of these factors.

24. As regards the SPO argument relating to the advancement of the proceedings, the Panel notes that the SPO's general argument that the risk of flight increases due to the imminent start of the trial is unpersuasive. The Panel considers that the SPO fails to present specific reasoning based on evidence supporting the belief of a "sufficiently real possibility" that the Accused will abscond as a result of the advancement of the proceedings.⁴⁴

25. Lastly, as regards the SPO argument of recently disclosed evidence (transcripts), and the related Parties' dispute over their reliability, the Panel notes that the reliability and weight of evidence, similar to the expectation of a heavy sentence, may be relevant to the evaluation of the danger of flight, but is not as such decisive. Bearing in mind the Accused's previous cooperation with the SPO and the authorities in Belgium before the confirmation of the indictment, as well as his personal, social and economic links with his country of residence,⁴⁵ the Panel finds that the disclosure of the new transcripts, in light of the other factors rehearsed above, is not sufficient to establish a risk of flight.

26. In light of the above, the Panel remains satisfied that the Accused is not at flight risk and that such a risk, even if it existed, could be adequately mitigated by conditions to be imposed upon him pursuant to Article 41(12) of the Law and Rule 56(5) of the Rules, as also repeatedly considered by the Pre-Trial Judge.⁴⁶

⁴³ [Eighth Detention Decision](#), para. 20.

⁴⁴ [Thaçi Interim Release Appeal Decision](#), para. 24 and references therein.

⁴⁵ [Eighth Detention Decision](#), para. 20.

⁴⁶ [Eighth Detention Decision](#), paras 20, 31 and references therein.

2. Risk of Obstructing the Progress of SC Proceedings

27. The Panel recalls its previous finding that there is a risk under Article 41(6)(b)(ii) of the Law noting: (i) the imminent start of the trial, (ii) the disclosure of witness identities and accompanying evidence, (iii) the Accused's threatening statements [REDACTED], and (iv) the general, well-established, and ongoing climate of witness intimidation in Kosovo.⁴⁷

28. In this regard, the Panel also notes the SPO's recent request to amend its Exhibit List with four new interviews and associated exhibits.⁴⁸ In the view of the Panel, the disclosure of the new transcripts, one of which contains potentially incriminatory information, constitutes a concrete relevant factor in assessing the possibility that the Accused might obstruct the proceedings. Lastly, the Panel is also mindful of the fact that the trial is set to start in less than thirty (30) days and the first four witnesses are scheduled to testify before the Panel.⁴⁹ These circumstances further strengthen the aforementioned factual basis on which the Panel entered a finding that there is a risk under Article 41(6)(b)(ii) of the Law.

29. With regard to the Defence's argument that at no point during his detention has the Accused attempted to interfere with witnesses, victims, or the progress of the proceedings, the Panel emphasizes that the absence of any such attempt is not determinative to the risk assessment the Panel is required to conduct under Article 41(6)(b)(ii) of the Law. In particular, the Panel recalls that the assessment as to

⁴⁷ [Eighth Detention Decision](#), paras 24-25.

⁴⁸ KSC-BC-2020-04, F00367, Specialist Prosecutor, *Prosecution request to amend the Exhibit list with confidential Annexes 1-4 and strictly confidential and ex parte Annexes 5-8*, 09 December 2022, confidential.

⁴⁹ KSC-BC-2020-04, F00405, Trial Panel I, [Decision on the date for the commencement of the trial, evidence presentation and related matters](#) (Decision on the Commencement of Trial), 26 January 2023, public, paras 6, 15-16. See also F00410, Specialist Prosecutor, *Prosecution submission on order of appearance of witnesses with confidential Annex 1*, 2 February 2023, confidential, paras 2, 5.

whether there is a risk of obstruction in the future does not require proof that obstruction has occurred in the past.⁵⁰

30. Moreover, with regard to the Defence's argument that the SPO fails to provide concrete factual circumstances that a risk of obstruction exists or has increased, the Panel recalls that it is not required to make findings on the factors already decided upon by the Panel, but it must examine these factors and determine whether they still exist. What is crucial is that the Panel is satisfied that, at the time of the review of detention, grounds for continued detention still exist.⁵¹ Having examined the factors and circumstances invoked in the Eighth Detention Decision,⁵² the Panel is satisfied that they continue to exist and that no intervening information or development has arisen which undermines them and the conclusion that they underpin.

31. In light of the above, the Panel remains satisfied that there continues to be a risk that the Accused might obstruct the progress of SC proceedings.

3. Risk of Committing Further Crimes

32. The Panel remains mindful of the fact that the existence of a 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. In this regard, the Panel recalls that the Accused has now full knowledge of the case against him and protective measures with regard to the Accused in respect to witnesses have been lifted. Moreover, the Panel recalls that, as recently as 2019, the Accused made threatening statements [REDACTED].⁵³ In the view of the Panel, this is indicative of the Accused's readiness to resort to or threaten

⁵⁰ KSC-BC-2020-05, [F00482/RED](#), Trial Panel I, *Public redacted version of Twelfth decision on review of detention*, 20 September 2022, public, para. 17. See also [Veseli First Detention Appeal](#), para. 38.

⁵¹ KSC-BC-2020-07, IA002/F00005, [Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention](#), 9 February 2021, public, para. 55. Similarly [Fourth Detention Decision](#), para. 27.

⁵² [Eighth Detention Decision](#), paras 24-25.

⁵³ [First Detention Decision](#), para. 33.

violence, [REDACTED]. The Panel is also mindful of the fact that the trial is set to start in less than thirty (30) days and the first four witnesses are scheduled to testify before the Panel.⁵⁴

33. Furthermore, the Panel notes that the case law put forward by the Defence⁵⁵ in support of its argumentation is not applicable in the context of the present proceedings as it refers to the second limb of Article 5(1)(c) of the ECHR which applies to preventive detention outside criminal proceedings (“when it is reasonably considered necessary to prevent [a person from] committing an offence”). As the ECtHR has held, the second limb of Article 5(1)(c) of the ECHR provides for a distinct ground for deprivation of liberty, independently of the first limb which is applicable in the present proceedings and contemplates the lawful arrest or detention of a person following a “reasonable suspicion of having committed an offence”.⁵⁶

34. Having examined the factors and circumstances invoked in the Eighth Detention Decision,⁵⁷ as well as the arguments raised by the Parties in their submissions, the Panel is satisfied that a risk continues to exist that the Accused will commit further crimes, [REDACTED].

4. Conclusion

35. The Panel concludes that there are articulable grounds that the risk of obstructing the progress of SC proceedings and the risk of committing further crimes continue to exist.

⁵⁴ [Decision on the Commencement of Trial](#). See also F00412, Specialist Prosecutor, *Prosecution submission of corrected order of appearance of witnesses with confidential Annex 1*, 3 February 2023, confidential, paras 2, 5.

⁵⁵ Response, para. 16.

⁵⁶ ECtHR, *Kurt v. Austria* [GC], no. 62903/15, [Judgment](#), 15 June 2021, para. 186-187; *S., V. and A. v. Denmark* [GC], no. 35553/12, 36678/12 and 36711/12, [Judgment](#), 22 October 2018, paras 98, 114-116.

⁵⁷ [Eighth Detention Decision](#), para. 26.

C. CONDITIONAL RELEASE

36. The SPO submits that the risks under Article 41(6)(b) of the Law can only be mitigated and effectively managed through the Accused's continued detention at the SC Detention Facilities.⁵⁸ The Defence maintains its position that alternative measures can be implemented which can sufficiently mitigate any potential risk factors posed by the Accused's interim release and repeats the Accused's willingness to offer extensive undertakings and be subject to such conditions as the Panel deems appropriate.⁵⁹

37. The Panel recalls that detention on remand should only be continued if there are no more lenient measures that could sufficiently mitigate the risks set out in Article 41(6)(b)(i)-(iii) of the Law. In this regard, the Panel has the obligation to inquire and evaluate, *proprio motu*, all reasonable conditions that could be imposed on an accused.⁶⁰

38. The Panel recalls its considerations from the Eighth Detention Decision with regard to conditional release, including its assessment regarding the alternative conditions proposed by the Defence.⁶¹ Specifically, bearing in mind the risk factors identified above, the Panel considers that the conditions proposed previously by the Defence (i) do not address the possibility of the Accused employing communication devices belonging to others or requesting others to use their devices for these purposes; and (ii) cannot ensure the effective monitoring of the Accused's

⁵⁸ SPO Submissions, para. 9.

⁵⁹ Response, para. 21.

⁶⁰ See KSC-BC-2020-05, [F00489/RED](#), Trial Panel I, *Public redacted version of Thirteenth decision on review of detention*, 18 November 2022, public, para. 23. See also KSC-BC-2020-06, [IA017/F00011/RED](#), Court of Appeals, *Public redacted version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 5 April 2022, public, paras 26, 51.

⁶¹ [Eighth Detention Decision](#), paras 31-34.

communications. The Panel recalls that, rather, such assurances and measures are possible only at the SC Detention Facilities.⁶²

39. Having re-assessed the relevant findings made in the Eighth Detention Decision,⁶³ the Panel continues to be of the view that no additional conditions are currently available to adequately mitigate the existing risks. Therefore, the Panel remains satisfied that it is only through the communication monitoring framework applicable at the SC Detention Facilities that the Accused's communications can be restricted in a manner to sufficiently mitigate the risks of obstructing the progress of SC proceedings and committing further crimes.

D. PROPORTIONALITY OF DETENTION

40. The SPO argues that the continued detention of the Accused remains justified and proportional given that (i) the Accused is charged with four counts of war crimes and, if convicted, could face a lengthy sentence of imprisonment; (ii) the advancement of the proceedings and the Accused's insight into the case against him increase the risks of obstruction, commission of crimes, and flight; (iii) these risks cannot be mitigated outside the SC Detention Facilities; and (iv) the start of the trial is imminent.⁶⁴

41. The Defence responds that the SPO's arguments are general and stereotyped and do not sufficiently justify the Accused's detention for such a protracted period of time. The Defence argues that ordering continued detention on account of "no change in circumstances" is profoundly unjust and results in a quasi-automatic prolongation of detention that contravenes the guarantees set forth in Article 5(3) of the ECHR.⁶⁵

⁶² [Eighth Detention Decision](#), para. 32.

⁶³ [Eighth Detention Decision](#), para. 35.

⁶⁴ SPO Submissions, paras 10-11.

⁶⁵ Response, paras 17-20.

42. The Panel 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.⁶⁶ 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.⁶⁷ However, the question 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.⁶⁸

43. The Panel recalls that: (i) the Accused 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 convicted; and (iv) the risks under Article 41(6)(b) (ii) and (iii) of the Law cannot be mitigated by the proposed conditions and/or any additional conditions. The Panel also notes that: (i) the trial will commence on Tuesday, 21 February 2023, with the procedures prescribed under Rules 124 and 125 of the Rules, followed by the opening statements of the SPO, Victims’ Counsel and Defence; and (ii) the evidence presentation will commence on Monday, 27 March 2023.⁶⁹ Furthermore, the Panel notes that, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, the Accused’s detention shall be reviewed every two months or as soon as a change in circumstances arises.

44. The Panel has duly appraised the additional time spent in detention by the Accused following the Eighth Detention Decision, including the resulting increase of

⁶⁶ [Third Court of Appeals Decision](#), para. 37 with references therein.

⁶⁷ [Third Court of Appeals Decision](#), para. 37.

⁶⁸ [Seventh Detention Decision](#), para. 37. Similarly, see ECtHR, [Buzadji v. the Republic of Moldova](#), para. 90.

⁶⁹ [Decision on the Commencement of Trial](#), paras 6-8, 15.

the SPO's burden to justify the Accused's continued detention. However, weighed against the remaining factors and, in particular, the serious nature of the charges against the Accused, the impossibility to mitigate the risks under Article 41(6)(b)(ii) and (iii) of the Law, and the imminent start of the trial, the Panel finds that the detention of the Accused has not become unreasonable under Rule 56(2) of the Rules.

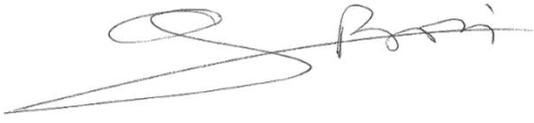
V. DISPOSITION

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

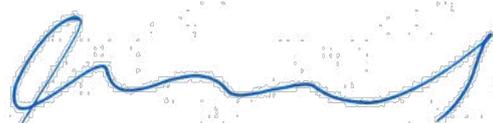
- (a) **ORDERS** the Accused's continued detention;
- (b) **ORDERS** the SPO and Victims' Counsel, if he so wishes, to file submissions on the next review of detention of the Accused by no later than **Thursday, 16 March 2023**;
- (c) **ORDERS** the Defence to file submissions on the next review of detention of the Accused, if it so wishes, by no later than **Friday, 24 March 2023**; and
- (d) **DETERMINES** that any reply, if the SPO and Victims' Counsel so wish, shall be filed by no later than **Wednesday, 29 March 2023**.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Monday, 6 February 2023

At The Hague, the Netherlands.