



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA 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 April 2023

**Language:** English

**Classification:** **Public**

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**Public redacted version of**

**Decision on the Tenth Review of Detention of Pjetër Shala**

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TRIAL PANEL I (Panel) hereby renders this decision on the tenth 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),<sup>1</sup> the Specialist Prosecutor (SPO) submitted a confirmed indictment against Pjetër Shala (Accused or Mr Shala).<sup>2</sup>
2. On 16 March 2021, further to an arrest warrant and transfer order issued by the Pre-Trial Judge,<sup>3</sup> the Accused was arrested in the Kingdom of Belgium (Belgium),<sup>4</sup> and was subsequently transferred on 15 April 2021 to the Detention Facilities of the Specialist Chambers (SC) in The Hague, the Netherlands.<sup>5</sup>
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).<sup>6</sup>

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<sup>1</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>2</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>3</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>4</sup> KSC-BC-2020-04, F00013, Registrar, *Notification of Arrest Pursuant to Rule 55(4)*, 16 March 2021, public.

<sup>5</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](#).

<sup>6</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),

On 10 September 2021, 10 November 2021, 28 January 2022, 22 April 2022, 22 June 2022, 21 September 2022 and 6 December 2022, respectively, the Pre-Trial Judge and the Panel, having been assigned with the present case,<sup>7</sup> reviewed the detention of the Accused 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> Sixth Detention Decision,<sup>12</sup> Seventh Detention Decision<sup>13</sup> and Eighth Detention Decision,<sup>14</sup> respectively).

4. On 6 February 2023, the Panel issued the “Decision on the Ninth Review of Detention of Pjetër Shala” (Ninth Detention Decision).<sup>15</sup>

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20 August 2021, confidential. A public redacted version was issued on the same day, [IA001/F00005/RED](#).

<sup>7</sup> 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, strictly confidential and *ex parte*.

<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, 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](#).

<sup>10</sup> 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](#).

<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, 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](#).

<sup>12</sup> 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](#).

<sup>13</sup> 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](#).

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

<sup>15</sup> KSC-BC-2020-04, F00418, Trial Panel I, *Decision on the Ninth Review of Detention of Pjetër Shala*, 6 February 2023, confidential. A public redacted version was issued on the same day, [F00418/RED](#).

5. On 16 March 2023, the SPO filed its submissions for the Tenth Review of Detention (SPO Submissions).<sup>16</sup> Victims' Counsel did not file any submissions.

6. On 24 March 2023, the Defence filed its submissions (Response).<sup>17</sup>

## II. SUBMISSIONS

7. 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 Ninth Detention Decision. Rather, the start of the trial and the commencement of the presentation of the SPO evidence, together with the latest procedural developments, increase the risk of obstruction and commission of further crimes by the Accused. Moreover, the SPO maintains that grounded suspicion that the Accused committed crimes within the jurisdiction of the SC continues to exist and that the risks that, if released, the Accused will obstruct the proceedings or commit further crimes remain high.<sup>18</sup>

8. The Defence maintains its previous submissions on the unlawfulness of the Accused's continued detention and that the latter cannot be considered justified, necessary, or proportional. The Defence specifically argues that the SPO fails to substantiate that, if released, the Accused will abscond, obstruct the proceedings, or commit further crimes. On that basis, the Defence 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.<sup>19</sup>

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<sup>16</sup> KSC-BC-2020-04, F00458, Specialist Prosecutor, *Prosecution submissions for the tenth review of detention*, 16 March 2023, confidential. A public redacted version was filed on the same day, F00458/RED.

<sup>17</sup> KSC-BC-2020-04, F00468, Defence, *Defence Submissions for the Tenth Review of Detention*, 24 March 2023, confidential.

<sup>18</sup> SPO Submissions, paras 1-2.

<sup>19</sup> Response, paras 3, 6, 21.

### III. APPLICABLE LAW

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

### IV. ANALYSIS

10. 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.<sup>20</sup> Accordingly, continued detention cannot be maintained lightly and the Accused should be released once his continued detention ceases to be reasonable.<sup>21</sup> The SPO bears the burden of establishing that the detention of the Accused is necessary.<sup>22</sup>

#### A. GROUNDED SUSPICION

11. The SPO submits that a well-grounded suspicion that the Accused committed multiple crimes within the SC jurisdiction continues to exist since there has been no development capable of changing this finding or warranting its re-examination since the Ninth Detention Decision.<sup>23</sup>

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<sup>20</sup> 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.

<sup>21</sup> ECtHR, *Buzadji v. The Republic of Moldova* [GC], no. 23755/07, [Judgment](#) (*Buzadji v. The Republic of Moldova*), 5 July 2016, paras 89-90.

<sup>22</sup> 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), 22 January 2021, public, para. 19 and references therein.

<sup>23</sup> SPO Submissions, para. 4.

12. The Panel notes that the Defence does not make any specific submissions regarding the existence of a well-grounded suspicion.

13. The Panel recalls that, in the Confirmation Decision, the Pre-Trial Judge determined that a “well-grounded suspicion” existed, within the meaning of Article 39(2) of the Law, that the Accused committed offences within the SC jurisdiction.<sup>24</sup> Recalling that the “well-grounded suspicion” threshold is necessarily higher than the “grounded suspicion” required for continued detention,<sup>25</sup> the Panel reiterates that, by virtue of the Confirmation Decision, the requirement of Article 41(6)(a) of the Law has been met. In this regard, and further to the witnesses’ testimonies heard to date and other supporting material, the Panel finds that the requirement under Article 41(6)(a) of the Law has not ceased to exist and therefore continues to be met.

#### B. NECESSITY OF DETENTION

14. The SPO submits that the risks of obstructing the progress of the SC proceedings and committing further crimes are heightened by recent procedural developments, including the commencement of the trial and the presentation of the SPO evidence. The SPO also argues that the Accused’s detention remains necessary in light of his incentives and means, as well as the persisting climate of intimidation of witnesses and interference with criminal proceedings against former members of the Kosovo Liberation Army (KLA).<sup>26</sup>

15. The Defence responds that the SPO fails to explain which incentives and means the Accused has that increase the risks of obstructing the progress of the proceedings and committing further crimes. In this regard, the Defence submits that the Accused is indigent, has no means at his disposal which could be used to obstruct justice, has

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<sup>24</sup> [Confirmation Decision](#), para. 140(a).

<sup>25</sup> [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.

<sup>26</sup> SPO Submissions, paras 1, 5.

left Kosovo since 1999, and has no links to any network there. The Defence further argues that the SPO's allegations about a persisting climate of witness intimidation and interference with criminal proceedings against former KLA members are unsubstantiated and that there is no concrete evidence indicating that such a climate exists in the context of the present case.<sup>27</sup>

16. 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.<sup>28</sup> 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.<sup>29</sup> The standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.<sup>30</sup> 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 decisions still supports the findings made at the time of the review.<sup>31</sup> 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.<sup>32</sup>

## 1. Risk of Flight

17. The Panel recalls its finding in the Ninth Detention Decision that the Accused is not at flight risk.<sup>33</sup> In the absence of any intervening information or development in

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<sup>27</sup> Response, paras 9-10.

<sup>28</sup> 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](#), 30 April 2021, public, paras 18-19.

<sup>29</sup> [Thaçi Interim Release Decision](#), para. 20 and references therein.

<sup>30</sup> [Third Court of Appeals Decision](#), para. 27.

<sup>31</sup> [Second Court of Appeals Decision](#), para. 18.

<sup>32</sup> [Thaçi Interim Release Appeal Decision](#), para. 78.

<sup>33</sup> [Ninth Detention Decision](#), paras 23-26.

relation to the present decision, 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.<sup>34</sup>

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

18. The SPO submits that, since the Ninth Detention Decision, new procedural developments have occurred that increase the risk that the Accused might obstruct the progress of the proceedings. These developments include: (i) the start of the trial; (ii) the commencement of the presentation of evidence by the SPO; (iii) the filing by the SPO of an amended exhibit list containing an updated DNA report regarding the alleged murder victim; and (iv) the procurement of an updated expert report on the aforementioned DNA report.<sup>35</sup> In addition, the SPO maintains that the risk of obstruction is further heightened due to the recent disclosure of information concerning SPO investigations and evidence [REDACTED]. In this regard, and taking into consideration the persisting climate of intimidation of witnesses and interference in Kosovo, the SPO also stresses that the Accused [REDACTED] have the incentives and means to interfere with and intimidate witnesses.<sup>36</sup>

19. The Defence responds that the advancement of the proceedings, similar to the disclosure of evidence and the identity of witnesses, does not generate nor increase the risks under Article 41(6)(b) of the Law. Specifically, the Defence avers that the SPO fails to present any specific reasoning in support of its argument that the disclosure of the two reports relating to the alleged murder victim and the disclosure of evidence and witnesses identities [REDACTED] establish a risk of obstruction. [REDACTED], the Defence responds that each of these cases is distinct and that [REDACTED] is not

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<sup>34</sup> [Eighth Detention Decision](#), paras 20, 31 and references therein.

<sup>35</sup> SPO Submissions, para. 6.

<sup>36</sup> SPO Submissions, para. 7.



a relevant factor justifying the Accused's continued detention. Lastly, the Defence reiterates that the SPO fails to provide specific submissions as to the Accused's "incentives and means".<sup>37</sup>

20. At the outset, the Panel observes that several of the Defence's arguments have been previously raised and addressed by the Panel. In this regard, the Panel recalls that, as a general principle, it has the duty to review the reasons or circumstances underpinning detention and determine whether these reasons continue to exist under Article 41(6) of the Law.<sup>38</sup> However, as the Court of Appeals Panel has repeatedly affirmed, the Panel is not required to entertain submissions that merely repeat arguments already addressed or to make findings on the factors already decided upon in previous decisions on detention.<sup>39</sup> What is crucial is that the Panel is satisfied that, at the time of the review decision, grounds for continued detention still exist.<sup>40</sup>

21. Against this background, the Panel recalls that it has previously established that there is a risk under Article 41(6)(b)(ii) of the Law on account of: (i) the 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.<sup>41</sup>

22. While the Panel considers that the progress of the proceedings, as such, cannot be held against the Accused in the context of detention review, it notes, nonetheless, that the recent start of the trial and the testimony of the first four SPO witnesses constitute concrete relevant factors in assessing the possibility that the Accused might

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<sup>37</sup> Response, paras 11-13.

<sup>38</sup> [Second Court of Appeals Decision](#), paras 16-18.

<sup>39</sup> [Third Court of Appeals Decision](#), para. 20; [Seventh Detention Decision](#), para. 20.

<sup>40</sup> KSC-BC-2020-07, IA002/F00005, [Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention](#) (Haradinaj Appeals Decision), 9 February 2021, public, para. 55. Similarly [Fourth Detention Decision](#), para. 27.

<sup>41</sup> [Ninth Detention Decision](#), para. 27.

obstruct the proceedings.<sup>42</sup> Moreover, the Panel notes that the Defence's repeated argument that the advancement of the proceedings and the disclosure of evidence do not generate nor increase the risks under Article 41(6)(b) of the Law, disregards that these considerations are but two of the factors that the Panel has considered in assessing whether a risk of obstructing the progress of SC proceedings continues to exist *vis-à-vis* the Accused.<sup>43</sup>

23. As regards the SPO's argument that the Accused has acquired further means and incentives of obstruction due to the recent disclosure of information pertaining to witnesses [REDACTED], the Panel notes that the risk of obstructing "the progress of the criminal proceedings by influencing witnesses, victims and accomplices" under Article 41(6)(b)(ii) of the Law refers first and foremost to the proceedings in which the Accused is involved, as it is in relation to such proceedings that an incentive to interfere would arise.<sup>44</sup> Therefore, to the extent that the disclosure in question concerns persons that are not witnesses [REDACTED], the Panel finds the SPO's submissions to be immaterial to the assessment of Mr Shala's continued detention and will not consider these factors in its assessment.

24. In addition, the Panel notes that the SPO argues that both the risk of obstruction of the proceedings and commission of further crimes have increased "particularly in light of the Accused's incentives and means, and the persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members".<sup>45</sup> In this regard, the Panel notes that the Defence's submissions regarding the existence of a climate of witness intimidation and interference in the context of *the*

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<sup>42</sup> [Eighth Detention Decision](#), para. 24.

<sup>43</sup> [Seventh Detention Decision](#), para. 26; [Sixth Detention Decision](#), para. 35.

<sup>44</sup> KSC-BC-2020-05, F00158, Trial Panel I, [Fifth decision on review of detention](#), 23 July 2021, public, para. 20.

<sup>45</sup> SPO Submissions, para. 5.

*present case* have been previously raised and addressed by the Panel.<sup>46</sup> Thus, the Panel finds that it is not required to address them any further.

25. Lastly, the Panel finds the Defence's argument that the Accused does not have the means and incentives to obstruct the progress of the SC proceedings to be unpersuasive. It is recalled that, as recently as 2016 and 2019, the Accused, in the presence of public authorities, repeatedly made threatening statements [REDACTED].<sup>47</sup> The Panel considers that no development has occurred to disturb its previous finding that these statements demonstrate the Accused's readiness to resort to or threaten violence, including against witnesses who have provided or could provide evidence in the case and/or are due to appear before this Panel.<sup>48</sup> Furthermore, this finding is not outweighed by the fact that the Accused has left Kosovo several years ago. The Panel also notes that the risk of obstruction may materialise as a result of the Accused's acts or omissions, but does not require physical execution on his part.<sup>49</sup>

26. Having examined the factors and circumstances relied upon in the Ninth Detention Decision,<sup>50</sup> 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. Accordingly, the Panel finds that there continues to be a risk that the Accused might obstruct the progress of SC proceedings.

### **3. Risk of Committing Further Crimes**

27. The SPO submits that the factors underpinning the Panel's previous finding that there is a risk that the Accused might commit further crimes continue to exist. These

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<sup>46</sup> [Eighth Detention Decision](#), para. 25; [Seventh Detention Decision](#), para. 26.

<sup>47</sup> [First Detention Decision](#), paras 32-33.

<sup>48</sup> [Ninth Detention Decision](#), para. 32; [Seventh Detention Decision](#), para. 26; [Sixth Detention Decision](#), para. 35.

<sup>49</sup> [First Detention Decision](#), paras 19, 33 [Thaçi Interim Release Decision](#), para. 24.

<sup>50</sup> [Ninth Detention Decision](#), paras 27-31.

factors include: (i) the Accused's knowledge of the case; (ii) the ongoing climate of witness intimidation in Kosovo; and (iii) the Accused's threatening statements [REDACTED].<sup>51</sup>

28. The Defence responds that the SPO's vague arguments regarding the Accused's knowledge of the case and the climate of witness intimidation in Kosovo are insufficient to substantiate the risk of commission of further crimes as they contain no specific reasoning or discussion of the Accused's personal circumstances. The Defence further argues that the statements made by the Accused in 2019, to which the SPO refers, cannot and must not be equated to any direct or indirect attempt to interfere with or attempt to interfere with any protected witnesses in this case, given that these statements were made in the abstract and were taken in breach of the Accused's rights as a suspect.<sup>52</sup>

29. The Panel recalls that, while the existence of a risk of obstruction does not automatically translate into a risk of committing further crimes, the factors underpinning the former risk are of relevance to the assessment of the latter risk in the present case. It is further recalled that: (i) the Accused has now full knowledge of the case against him, including the identities of the SPO witnesses, as the protective measures have been lifted *vis-à-vis* the Accused; (ii) as recently as 2016 and 2019, the Accused made threatening statements [REDACTED]; and (iii) the presentation of evidence by the SPO is in progress.<sup>53</sup> In addition, the Panel notes that the testimony of the first four witnesses has now been completed and Mr Shala has further obtained specific insight into the case and evidence against him.

30. As further specified above, the Panel should not be expected to entertain submissions that merely repeat arguments already addressed or to make findings on

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<sup>51</sup> SPO Submissions, para. 8.

<sup>52</sup> Response, paras 14-15.

<sup>53</sup> [Ninth Detention Decision](#), para. 32.

the factors already decided upon in its previous decisions.<sup>54</sup> For this reason, the Panel dismisses the Defence's submissions regarding the Accused's threatening statements as these submissions were previously raised and addressed by the Panel.<sup>55</sup>

31. In the same vein, the Panel dismisses the Defence's argument that the SPO's submissions regarding the Accused's knowledge of the case and the climate of witness intimidation in Kosovo are vague and insufficient to substantiate the risk of commission of further crimes. The Defence fails to take into account that the factors and circumstances underpinning this risk have been established in previous decisions and that, for the purpose of the present decision, it is determinative that they continue to exist and establish such risk. The Panel, having examined the factors and circumstances relied upon in the Ninth Detention Decision,<sup>56</sup> 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.

32. In light of the above, the Panel finds that there continues to be a risk that the Accused might commit further crimes, including against witnesses who have provided or could provide evidence in the case and/or are due to appear before this Panel.

#### **4. Conclusion**

33. In light of the foregoing considerations, the Panel finds that there are articulable grounds to believe that the risk of obstructing the progress of SC proceedings and the risk of committing further crimes continue to exist.

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<sup>54</sup> See above para. 20. Similarly [Second Court of Appeals Decision](#), paras 17-18.

<sup>55</sup> [Eighth Detention Decision](#), para. 25; [Seventh Detention Decision](#), para. 26; [First Detention Decision](#), paras 32-33.

<sup>56</sup> [Ninth Detention Decision](#), para. 32.

### C. CONDITIONAL RELEASE

34. The SPO submits that the risks under Article 41(6)(b)(ii) and (iii) of the Law cannot be mitigated by the release conditions proposed by the Defence and the safety of witnesses and victims can only be properly safeguarded through the communication monitoring framework of the SC Detention Facilities.<sup>57</sup>

35. The Defence responds that the SPO fails to demonstrate the absence of any release conditions that could mitigate any potential risks identified under Article 41(6)(b) of the Law. The Defence further reiterates that the Accused is willing to offer extensive undertakings and be subject to any conditions the Panel deems appropriate.<sup>58</sup>

36. The Panel notes 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. The Panel has the obligation to inquire and evaluate, *proprio motu*, all reasonable conditions that could be imposed on an accused.<sup>59</sup>

37. In this regard, the Panel recalls its considerations from the Ninth and Eighth Detention Decisions with regard to conditional release, including its assessment regarding the alternative conditions proposed by the Defence.<sup>60</sup> 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

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<sup>57</sup> SPO Submissions, para. 9.

<sup>58</sup> Response, para. 19.

<sup>59</sup> 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.

<sup>60</sup> [Ninth Detention Decision](#), para. 38; [Eighth Detention Decision](#), paras 31-34.

Accused's communications. The Panel further recalls that, rather, such assurances and measures are possible only at the SC Detention Facilities.<sup>61</sup>

38. As regards any additional conditions to be imposed, having re-assessed the relevant findings made in the Ninth Detention Decision,<sup>62</sup> 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 that will sufficiently mitigate the risks of obstructing the progress of SC proceedings and committing further crimes.

#### D. PROPORTIONALITY OF DETENTION

39. The SPO argues that the continued detention of the Accused is both necessary and proportional, considering that: (i) the Accused is charged with four counts of war crimes and, if convicted, he could face a lengthy sentence; (ii) the proceedings have advanced and the Accused has full knowledge of the case against him; and (iii) the risks of obstruction and commission of further crimes are high and cannot be mitigated outside the SC Detention Facilities.<sup>63</sup>

40. The Defence responds that the SPO does not present specific and sufficient justifications on how continued detention for a period of over two years is proportionate in the circumstances of the present case. According to the Defence, an assessment of the proportionality of the Accused's detention requires to take into consideration the effects the continued detention has on the Accused, which the SPO fails to do. Lastly, the Defence argues that no reason exists to suggest that the Accused

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<sup>61</sup> [Ninth Detention Decision](#), para. 38; [Eighth Detention Decision](#), para. 32.

<sup>62</sup> [Ninth Detention Decision](#), para. 39.

<sup>63</sup> SPO Submissions, paras 11-12.

would not abide by any measures imposed by the Panel if he were to be granted interim release.<sup>64</sup>

41. The Panel highlights the importance of the proportionality principle in the determination of the reasonableness of pre-trial detention and recalls 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 it is reasonable for an accused to remain in detention must be assessed based on the facts and circumstances of each case and according to its specific features.<sup>67</sup>

42. In this respect, 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 commenced 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; (ii) the presentation of evidence by the SPO commenced on Monday, 27 March 2023; and (iii) between Monday, 27 March 2023 and Thursday, 30 March 2023 the Panel heard the testimony of the first

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<sup>64</sup> Response, paras 16-18.

<sup>65</sup> [Third Court of Appeals Decision](#), para. 37 with references therein.

<sup>66</sup> [Third Court of Appeals Decision](#), para. 37.

<sup>67</sup> ECtHR, [Buzadji v. the Republic of Moldova](#), para. 90.



four witnesses called by the SPO.<sup>68</sup> Furthermore, the Panel recalls 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.

43. The Panel has duly appraised the additional time spent in detention by the Accused following the Ninth Detention Decision, including the resulting increase of 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 fact that the presentation of the SPO evidence is in progress, the Panel finds that the detention of the Accused has not become unreasonable under Rule 56(2) of the Rules.

44. With respect to the Defence's argument regarding the Accused's right to a private and family life, the Panel acknowledges that Mr Shala's detention inevitably entails certain limitations on his right to a private and family life. That being said, the Panel recalls that a number of means, including visits, telephone calls, correspondence and video visits, are available to Mr Shala at the SC Detention Facilities to maintain personal relationships with family members and other persons.<sup>69</sup> Accordingly, the Defence's argument in this respect is rejected.

45. In light of the foregoing considerations, the Panel concludes that, for the purposes of the periodic review of the Accused's detention pursuant to Article 41(10) of the Law

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<sup>68</sup> KSC-BC-2020-04, F00405, Trial Panel I, [Decision on the date for the commencement of the trial, evidence presentation and related matters](#), 26 January 2023, public, para. 15.

<sup>69</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.

and Rule 57(2) of the Rules, the time the Accused has spent in detention is not disproportionate.

## V. CLASSIFICATION

46. The Panel orders the Defence to file a public redacted version of the Response in line with the redactions applied in the SPO Submissions by no later than **Monday, 17 April 2023**.


## VI. DISPOSITION

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

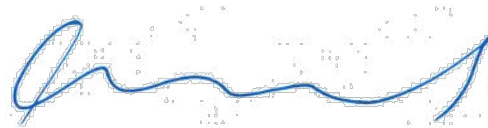
- (a) **ORDERS** the Accused's continued detention;
- (b) **ORDERS** the SPO and Victims' Counsel, if he so wishes, to file submissions on the next review of detention of the Accused by no later than **Friday, 19 May 2023**;
- (c) **ORDERS** the Defence to file submissions on the next review of detention of the Accused, if it so wishes, by no later than **Friday, 26 May 2023**;
- (d) **DETERMINES** that any reply, if the SPO and Victims' Counsel so wish, shall be filed by no later than **Thursday, 1 June 2023**; and
- (e) **ORDERS** the Defence to file a public redacted version of the Response by no later than **Monday, 17 April 2023**.



**Judge Mappie Veldt-Foglia**  
**Presiding Judge**



**Judge Gilbert Bitti**



**Judge Roland Dekkers**

Dated this Thursday, 6 April 2023

At The Hague, the Netherlands.