



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 June 2023

Language: English

Classification: Public

Public redacted version of

Decision on the Eleventh Review of Detention of Pjetër Shala

Acting Specialist Prosecutor

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Victims' Counsel

Simon Laws

TRIAL PANEL I (Panel) hereby renders this decision on the eleventh 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's Office (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 Kosovo Specialist Chambers in The Hague, the Netherlands (KSC).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

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 on Pjetër Shala's Appeal Against Decision on Provisional Release* (First Court of Appeals Decision),

On 10 September 2021,⁷ 10 November 2021,⁸ 28 January 2022,⁹ 22 April 2022,¹⁰ 22 June 2022,¹¹ 21 September 2022,¹² 6 December 2022,¹³ 6 February 2023,¹⁴ and 6 April 2023 (Tenth Detention Decision),¹⁵ the Pre-Trial Judge and, afterwards, the Panel reviewed the detention of the Accused and ordered his continued detention.

4. On 5 May 2023, the Court of Appeals Panel rendered its “Decision on Shala’s Appeal Against Decision Concerning Prior Statements” (Appeals Decision on Prior

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* (Second Detention Decision), 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* (Third Detention Decision), 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* (Fourth Detention Decision), 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* (Fifth Detention Decision), 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* (Sixth Detention Decision), 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* (Seventh Detention Decision), 21 September 2022, confidential. A public redacted version was issued on the same day, [F00282/RED](#).

¹³ KSC-BC-2020-04, F00365, Trial Panel I, *Decision on the Eighth Review of Detention of Pjetër Shala* (Eighth Detention Decision), 6 December 2022, confidential. A public redacted version was issued on 21 December 2022, [F00365/RED](#).

¹⁴ KSC-BC-2020-04, F00418, Trial Panel I, *Decision on the Ninth Review of Detention of Pjetër Shala* (Ninth Detention Decision), 6 February 2023, confidential. A public redacted version was issued on the same day, [F00418/RED](#).

¹⁵ KSC-BC-2020-04, F00480, Trial Panel I, *Decision on the Tenth Review of Detention of Pjetër Shala* (Tenth Detention Decision), 6 April 2023, confidential. A public redacted version was issued on the same day, [F00480/RED](#).

Statements),¹⁶ upholding the Panel's finding that two statements given by the Accused in 2005 and 2007 to the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia were admissible and two other statements, provided in 2016 and 2019, to the Belgian Federal Judicial Police were "not inadmissible" (Decision on Prior Statements).¹⁷ On 18 May 2023, the Defence requested reconsideration of the Panel's Decision on Prior Statements.¹⁸ This request is pending before the Panel.

5. On 19 May 2023, the SPO filed its submissions for the eleventh review of detention, requesting the continued detention of the Accused (SPO Submissions).¹⁹

6. On 24 March 2023, the Defence responded to the SPO Submissions and requested the Panel to order the Accused's interim release or placement in house arrest at his residence in Belgium (Defence Response).²⁰

7. On 1 June 2023, the SPO replied to the Defence Response (SPO Reply).²¹ Victims' Counsel did not file any submissions.

II. SUBMISSIONS

8. The SPO submits that the continued detention of the Accused remains necessary and proportional, as no new facts or circumstances have intervened capable of

¹⁶ KSC-BC-2020-04, IA006/F00007, Court of Appeals Panel, *Decision on Shala's Appeal Against Decision Concerning Prior Statements*, 5 May 2023, public, para. 109.

¹⁷ KSC-BC-2020-04, F00364/COR, Trial Panel I, *Corrected version of Decision concerning prior statements given by Pjetër Shala*, 6 December 2022 (date of corrected version 8 December 2022), paras 52, 80, 110, 114. A public redacted version was issued on 26 January 2023, [F00364/COR/RED](#).

¹⁸ KSC-BC-2020-04, F00515, Defence, *Defence Request for Reconsideration of the "Decision Concerning Prior Statements Given by Pjetër Shala"*, 18 May 2023, public.

¹⁹ KSC-BC-2020-04, F00517, Specialist Prosecutor, *Prosecution submissions for the eleventh review of detention*, 19 May 2023, confidential. A public redacted version was filed on the same day, F00517/RED, paras 1-2, 17.

²⁰ KSC-BC-2020-04, F00524, Defence, *Defence Submissions for the Eleventh Review of Detention*, 26 May 2023, confidential, paras 1-3, 30. A public redacted version was filed on 2 June 2023, F00524/RED.

²¹ KSC-BC-2020-04, F00530, Specialist Prosecutor, *Prosecution reply to 'Defence Submissions for the Eleventh Review of Detention'*, 1 June 2023, confidential. A public redacted version was filed on 5 June 2023, F00530/RED.

changing this finding since the Panel reached it in its Tenth Detention Decision.²² More specifically, there continues to exist a (well-)grounded suspicion that the Accused has committed crimes within the jurisdiction of the KSC, as there has been no development capable of changing this finding or warranting its re-examination.²³ No factors capable of changing the Panel's finding that there is a risk of obstruction and commission of further crimes have intervened either.²⁴ To the contrary, the fact that the SPO has presented the evidence of further live witnesses, who have provided incriminating testimonies against the Accused, increases the risk of obstruction.²⁵ Further, the SPO advances that the Panel should reassess its previous finding that the Accused is not at flight risk following the Appeals Decision on Prior Statements.²⁶

9. The Defence maintains its previous submissions on the unlawfulness of the Accused's continued detention, which cannot be considered justified, necessary, or proportional.²⁷ More specifically, the Defence submits that: (i) the admissibility of the Accused's prior statements is currently subject to a request for reconsideration and any submissions based on these statements are misconceived;²⁸ (ii) so is the SPO's argument that the risk of flight has increased following the Appeals Decision on Prior Statements, as the Panel never relied on the Accused's statements in assessing this risk;²⁹ (iii) the SPO makes generic, vague and speculative claims in support of its submission that there is a risk of obstruction and commission of further crimes, which are insufficient;³⁰ (iv) the fact that the trial is advancing, together with the SPO's presentation of evidence, is insufficient to justify continued detention;³¹ (v) the SPO

²² SPO Submissions, paras 1, 14-15.

²³ SPO Submissions, paras 2, 4.

²⁴ SPO Submissions, para. 5; SPO Reply, paras 5-7.

²⁵ SPO Submissions, paras 6-9.

²⁶ SPO Submissions, paras 10-12 ; SPO Reply, paras 2-4.

²⁷ Defence Response, paras 2-3, 6, 12-13.

²⁸ Defence Response, paras 14-15, 23.

²⁹ Defence Response, para. 16.

³⁰ Defence Response, paras 13, 20-22.

³¹ Defence Response, para. 20.

ignores the passage of time in assessing the proportionality of the Accused's continued detention;³² and (vi) suitable measures alternative to detention exist and must be considered, such as house arrest at the Accused's residence in Belgium or any other conditions deemed appropriate by the Panel.³³

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

IV. ANALYSIS

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.³⁴ Accordingly, continued detention cannot be maintained lightly and the Accused

³² Defence Response, paras 2, 10, 24-27.

³³ Defence Response, paras 10, 17, 28.

³⁴ 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.

should be released once his continued detention ceases to be reasonable.³⁵ The SPO bears the burden of establishing that the detention of the Accused is necessary.³⁶

A. GROUNDED SUSPICION

12. 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 KSC’s jurisdiction.³⁷ Recalling that the “well-grounded suspicion” threshold is necessarily higher than the “grounded suspicion” required for continued detention,³⁸ 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

13. 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.³⁹ On the basis of the

³⁵ ECtHR, *Buzadji v. The Republic of Moldova* [GC], no. 23755/07, [Judgment](#) (*Buzadji v. The Republic of Moldova*), 5 July 2016, paras 89-90.

³⁶ 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.

³⁷ [Confirmation Decision](#), para. 140(a).

³⁸ [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.

³⁹ 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

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.⁴⁰ The standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.⁴¹ The Panel further recalls that it 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.⁴² Finally, 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.⁴³

1. Risk of Flight

14. The Panel recalls that it has previously found that the Accused is not at flight risk.⁴⁴ The Panel is unpersuaded by the SPO’s submissions that the Appeals Decision on Prior Statements is capable of changing that assessment.⁴⁵ The Accused’s prior statements were already available to and considered by the Panel in the context of its previous detention reviews.⁴⁶ Accordingly, 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.⁴⁷

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.

⁴⁰ [Thaçi Interim Release Decision](#), para. 20 and references therein.

⁴¹ [Third Court of Appeals Decision](#), para. 27.

⁴² [Second Court of Appeals Decision](#), para. 18.

⁴³ [Thaçi Interim Release Appeal Decision](#), para. 78.

⁴⁴ [Tenth Detention Decision](#), para. 17; [Ninth Detention Decision](#), paras 18-26; [Eighth Detention Decision](#), para. 20.

⁴⁵ See SPO Submissions, paras 10-12; SPO Reply, paras 2-4.

⁴⁶ See [Decision on Prior Statements](#), paras 80, 110.

⁴⁷ [Eighth Detention Decision](#), paras 20, 31 and references therein.

2. Risk of Obstructing the Progress of the KSC's Proceedings

15. The Panel recalls that it has previously established that there is a risk of obstruction of the criminal proceedings, under Article 41(6)(b)(ii) of the Law, on account of: (i) the start of the trial and the testimonies of SPO witnesses; (ii) the disclosure of the witnesses' identities and accompanying evidence, including potentially incriminatory information; (iii) the Accused's threatening statements [REDACTED]; and (iv) the general, well-established, and ongoing climate of witness intimidation in Kosovo.⁴⁸

16. The Panel observes that these factors and circumstances continue to exist and no information or development has arisen which undermines them and the conclusion they underpin. To the contrary, the fact that the presentation of the evidence is ongoing and that additional SPO witnesses have provided evidence, including potentially incriminatory evidence, means that the risk of obstruction of the proceedings is still very much present.

17. Noting the Defence's submissions that the SPO has failed to provide "more substantiation" to demonstrate that there is a risk or an increased risk of obstruction,⁴⁹ the Panel recalls that it is not required to make findings on the factors already decided upon, but it must examine these factors and determine whether they still exist.⁵⁰

18. As to the Defence's submissions that the progress of the proceedings and presentation of evidence are not sufficient to justify the Accused's continued detention,⁵¹ the Panel recalls that: (i) these are not the only factors relied upon by the Panel and that all factors taken together establish that there is a risk of obstruction;⁵²

⁴⁸ [Tenth Detention Decision](#), paras 21-22; [Ninth Detention Decision](#), paras 27-28.

⁴⁹ See Defence Response, paras 19-20.

⁵⁰ KSC-BC-2020-07, IA002/F00005, [Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention](#), 9 February 2021, public, para. 55. Similarly [Ninth Detention Decision](#), para. 30.

⁵¹ See Defence Response, para. 20.

⁵² [Tenth Detention Decision](#), para. 22.

and (ii) although the progress of the proceedings, as such, cannot be held against the Accused, the testimonies of additional SPO witnesses do constitute concrete relevant factors in assessing the possibility that the Accused might obstruct the proceedings.⁵³

19. Lastly, the Panel is unpersuaded by the Defence's argument that the Accused's statements should not be relied upon for the purpose of the detention review.⁵⁴ The Court of Appeals Panel upheld the Panel's Decision on Prior Statements and the statements are and remain available to the Panel until and unless otherwise decided.

20. Having examined the factors and circumstances previously relied upon,⁵⁵ the Panel is satisfied that they continue to exist and that no intervening information or development has arisen which undermines them and the conclusion they underpin. Accordingly, the Panel finds that there continues to be a risk that the Accused might obstruct the progress of the KSC's proceedings.

3. Risk of Committing Further Crimes

21. The Panel recalls that, while the existence of a risk of obstruction does not automatically translate into a risk of commission of further crimes, the factors underpinning the former are of relevance to the assessment of the latter in the present case.⁵⁶ 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.⁵⁷ In addition, the Panel notes that the testimonies of the first six witnesses have now been completed and the testimony of the seventh witness is

⁵³ [Tenth Detention Decision](#), para. 22; *see also* [Ninth Detention Decision](#), para. 28.

⁵⁴ *See* Defence Response, paras 15, 23.

⁵⁵ [Tenth Detention Decision](#), paras 18-26.

⁵⁶ [Tenth Detention Decision](#), para. 29.

⁵⁷ [Tenth Detention Decision](#), para. 29.

ongoing. Mr Shala has therefore further obtained specific insight into the case and evidence against him.

22. The Panel will not address further the arguments made by the Defence regarding the risk of commission of further crimes,⁵⁸ as these arguments have been previously made and addressed and the Panel should not be expected to entertain submissions that merely repeat previous arguments.⁵⁹

23. Having examined the factors and circumstances previously relied upon,⁶⁰ 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 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

24. In light of the foregoing, the Panel finds that there are articulable grounds to believe that the risk of obstructing the progress of the KSC's proceedings and the risk of committing further crimes continue to exist.

C. CONDITIONAL RELEASE

25. 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

⁵⁸ See Defence Response, paras 22-23.

⁵⁹ [Tenth Detention Decision](#), paras 30-31.

⁶⁰ [Tenth Detention Decision](#), paras 27-32.

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.⁶¹

26. In this regard, the Panel recalls its previous considerations with regard to conditional release, including its assessment of the alternative conditions proposed by the Defence.⁶² Specifically, bearing in mind the risk factors identified above, the Panel considers that the conditions proposed previously by the Defence, including placing the Accused in house arrest at his residence in Belgium: (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 communications. Rather, such assurances and measures are possible only at the KSC's Detention Facilities.⁶³

27. As regards any additional conditions to be imposed, having re-assessed the relevant findings previously made,⁶⁴ 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 KSC's Detention Facilities that the Accused's communications can be restricted in a manner that will sufficiently mitigate the risk of obstructing the progress of the KSC's proceedings and the risk of committing further crimes.

⁶¹ 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.

⁶² [Tenth Detention Decision](#), para. 37; [Ninth Detention Decision](#), para. 38; [Eighth Detention Decision](#), paras 31-34.

⁶³ [Tenth Detention Decision](#), para. 37; [Ninth Detention Decision](#), para. 38; [Eighth Detention Decision](#), para. 32.

⁶⁴ [Tenth Detention Decision](#), para. 38.

D. PROPORTIONALITY OF DETENTION

28. 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.⁶⁵ 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.⁶⁶ 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.⁶⁷

29. In this respect, the Panel recalls that: (i) the Accused has been detained in Belgium since 16 March 2021 and subsequently at the KSC’s 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 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 the Defence; (ii) the presentation of evidence by the SPO commenced on 27 March 2023; and (iii) between 27 March 2023 and 6 June 2023, the Panel heard the testimonies of the first six witnesses called by the SPO and the testimony of the seventh witness is ongoing.⁶⁸ Furthermore, the Panel recalls that, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, the

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

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

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

⁶⁸ 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.

Accused's detention shall be reviewed every two months or as soon as a change in circumstances arises.

30. The Panel has duly appraised the additional time spent in detention by the Accused since the Panel's Tenth Detention Decision, including the resulting increased burden on the SPO 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's evidence is in progress, the Panel finds that the detention of the Accused has not become unreasonable under Rule 56(2) of the Rules.

31. With respect to the Defence's argument regarding the Accused's right to private and family life,⁶⁹ the Panel acknowledges that Mr Shala's detention inevitably entails certain limitations on his right to 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 KSC's Detention Facilities to maintain personal relationships with family members and other persons.⁷⁰ Accordingly, the Defence's argument in this respect is rejected.

32. In light of the foregoing, the Panel concludes that, for the purposes of the periodic review of the Accused's detention pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, the time the Accused has spent in detention is not disproportionate.

⁶⁹ See Defence Submissions, para. 26.

⁷⁰ 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.

V. DISPOSITION

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

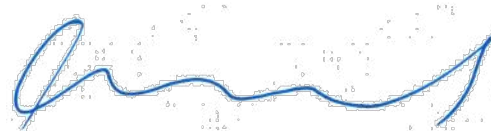
- a. **ORDERS** the Accused's continued detention;
- b. **ORDERS** the SPO and Victims' Counsel, if he so wishes, to file submissions on the next review of detention of the Accused by no later than **Thursday, 6 July 2023**;
- c. **ORDERS** the Defence to file submissions on the next review of detention of the Accused, if it so wishes, by no later than **Thursday, 13 July 2023**; and
- d. **DETERMINES** that any reply, if the SPO and Victims' Counsel so wish, shall be filed by no later than **Tuesday, 18 July 2023**.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Tuesday, 6 June 2023

At The Hague, the Netherlands.