



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:** 20 September 2023

**Language:** English

**Classification:** **Public**

---

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

---

**Acting Deputy Specialist Prosecutor**  
Ward Ferdinandusse

**Counsel for the Accused**  
Jean-Louis Gilissen

**Victims' Counsel**  
Simon Laws

**TRIAL PANEL I** (Panel) hereby renders this decision on the thirteenth 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's Office (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 Kosovo Specialist Chambers (KSC) 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 Mr Shala (Defence) (First Detention Decision).<sup>6</sup>

---

<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,<sup>7</sup> 10 November 2021,<sup>8</sup> 28 January 2022,<sup>9</sup> 22 April 2022,<sup>10</sup>  
22 June 2022,<sup>11</sup> 21 September 2022,<sup>12</sup> 6 December 2022,<sup>13</sup> 6 February 2023,<sup>14</sup>  
6 April 2023,<sup>15</sup> 6 June 2023,<sup>16</sup> and 20 July 2023 (Twelfth Detention Decision),<sup>17</sup>

---

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

<sup>7</sup> 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](#).

<sup>8</sup> 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](#).

<sup>9</sup> 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](#).

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

<sup>11</sup> 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](#).

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

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

<sup>14</sup> 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](#).

<sup>15</sup> 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](#).

<sup>16</sup> KSC-BC-2020-04, F00534, Trial Panel I, *Decision on the Eleventh Review of Detention of Pjetër Shala* (Eleventh Detention Decision), 6 June 2023, confidential. A public redacted version was issued on the same day, [F00534/RED](#).

<sup>17</sup> KSC-BC-2020-04, F00596, Trial Panel I, *Decision on the Twelfth Review of Detention of Pjetër Shala*, 20 July 2023, confidential. A public redacted version was issued on the same day, [F00596/RED](#).

the Pre-Trial Judge and, subsequently, the Panel reviewed the detention of the Accused and ordered his continued detention.

4. On 4 September 2023, the SPO filed its submissions on the thirteenth review of detention of Mr Shala, requesting the continued detention of the Accused (SPO Submissions).<sup>18</sup>

5. On 12 September 2023, the Defence filed its response 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, subject to any conditions deemed appropriate (Defence Response).<sup>19</sup>

6. The SPO did not file a reply. Victims' Counsel did not file any submissions.

7. On 15 September 2023, the Panel rendered its "Decision on the Defence Rule 130 Motion to Dismiss the Charge of Murder in the Indictment" (Rule 130 Decision), rejecting the Defence's motion.<sup>20</sup>

## II. SUBMISSIONS

### A. SPO

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 changing this finding since the Panel reached it in its Twelfth Detention Decision.<sup>21</sup> More specifically, the SPO maintains that there continues to exist a (well-)grounded

---

<sup>18</sup> KSC-BC-2020-04, F00635, Specialist Prosecutor, *Prosecution submissions for the thirteenth review of detention*, 4 September 2023, confidential, para. 16. A public redacted version was filed on 8 September 2023, F00635/RED.

<sup>19</sup> KSC-BC-2020-04, F00648, Defence, *Defence Submissions on the Thirteenth Review of Detention* (Defence Response), 12 September 2023, confidential, para. 23. A public redacted version was filed on 14 September 2023, F00648/RED.

<sup>20</sup> KSC-BC-2020-04, F00652/RED, Trial Panel I, [Public redacted version of Decision on the Defence Rule 130 Motion to Dismiss the Charge of Murder in the Indictment](#), 15 September 2023, public, para. 35(b).

<sup>21</sup> SPO Submissions, paras 1-2.

suspicion that the Accused has committed multiple crimes within the jurisdiction of the KSC. This was confirmed by the Panel in its Twelfth Detention Decision and there has been no development warranting the reconsideration of this finding.<sup>22</sup> The SPO further argues that no factors capable of changing the Panel's finding that there is a risk of obstruction and commission of further crimes have intervened either.<sup>23</sup> The SPO alleges that the risk of obstruction is, in fact, further increased by: (i) the closing of the SPO case; and (ii) the impending commencement of the Defence case, which is envisaged to include the testimonies of [REDACTED], whom the Accused could attempt to influence.<sup>24</sup> Lastly, the SPO maintains that, if released, the Accused would be at flight risk, and repeats in this regard its previous submissions.<sup>25</sup>

## B. DEFENCE

9. The Defence submits that the Accused's continued detention is unlawful and that his interim release is warranted as the SPO has failed to demonstrate that, if released, the Accused would flee, obstruct the proceedings, or commit further crimes.<sup>26</sup> More specifically, the Defence submits that: (i) the Accused is not at flight risk, and recalls the Panel's finding in the Twelfth Detention Decision in this regard;<sup>27</sup> (ii) the closing of the SPO case does not heighten the risk of obstruction, but rather undermines the existence of such a risk, as the SPO's evidence has now been submitted and its case is closed;<sup>28</sup> (iii) the SPO's submission that the Accused could attempt to contact and influence the testimonies of Defence witnesses is entirely speculative and, as such, it

---

<sup>22</sup> SPO Submissions, paras 2, 4.

<sup>23</sup> SPO Submissions, para. 6.

<sup>24</sup> SPO Submissions, paras 7-8.

<sup>25</sup> SPO Submissions, paras 10-11.

<sup>26</sup> Defence Response, paras 3, 10.

<sup>27</sup> Defence Response, paras 11-12.

<sup>28</sup> Defence Response, paras 13-14.

is insufficient to justify the Accused's detention;<sup>29</sup> (iv) the SPO's arguments in support of its submission that there is a risk of the Accused committing any crimes are general, vague and plainly insufficient;<sup>30</sup> (v) the cited "threatening statements" made by the Accused do not substantiate a risk of offending; (vi) in assessing the proportionality of the Accused's continued detention, the Panel must take into consideration the adverse effects of such detention on the Accused and his rights to liberty and private and family life;<sup>31</sup> and (vii) suitable measures alternative to detention exist and must be considered, such as house arrest at the Accused's residence in Belgium.<sup>32</sup>

### 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.<sup>33</sup>

---

<sup>29</sup> Defence Response, paras 15-16.

<sup>30</sup> Defence Response, para. 18.

<sup>31</sup> Defence Response, para. 20.

<sup>32</sup> Defence Response, paras 20-21.

<sup>33</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.

Accordingly, continued detention cannot be maintained lightly and the Accused should be released once his continued detention ceases to be reasonable.<sup>34</sup> The SPO bears the burden of establishing that the detention of the Accused is necessary.<sup>35</sup>

12. The Panel further recalls that it is not required to entertain submissions that merely repeat arguments that have already been addressed or to make findings on the factors already decided upon in its previous decisions.<sup>36</sup> Accordingly, the Panel will only address arguments that were not previously raised and considered.

#### A. 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 KSC’s jurisdiction.<sup>37</sup> Recalling that the “well-grounded suspicion” threshold is necessarily higher than the “grounded suspicion” required for continued detention,<sup>38</sup> the Panel reiterates that, by virtue of the Confirmation Decision, the requirement of Article 41(6)(a) of the Law has been met. Further, the Panel has more recently found, in its Rule 130 Decision, that the evidence presented during the SPO case, if accepted, is capable of supporting a conviction of the Accused for murder, under Count 4 of the Indictment, under one or more of the modes of liability with which the Accused is

---

<sup>34</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>35</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>36</sup> [Third Court of Appeals Decision](#), para. 20; [Second Court of Appeals Decision](#), para. 18; KSC-BC-2020-07, IA002/F00005, Court of Appeals, [Decision on Nasim Haradinaj’s Appeal Against Decision Reviewing Detention](#), 9 February 2021, public, para. 55.

<sup>37</sup> [Confirmation Decision](#), para. 140(a).

<sup>38</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.

charged.<sup>39</sup> Accordingly, 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 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>40</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>41</sup> The standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup>

### 1. Risk of Flight

15. The Panel recalls that it has previously found that the Accused is not at flight risk.<sup>45</sup> The SPO's arguments regarding the existence of such a risk<sup>46</sup> have been

---

<sup>39</sup> [Rule 130 Decision](#), para. 34.

<sup>40</sup> Article 19.1.31 of the Kosovo Criminal Procedure Code 2022, Law No. 08/L-032 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>41</sup> [Thaçi Interim Release Decision](#), para. 20 and references therein.

<sup>42</sup> [Third Court of Appeals Decision](#), para. 27.

<sup>43</sup> [Second Court of Appeals Decision](#), para. 18.

<sup>44</sup> [Thaçi Interim Release Appeal Decision](#), para. 78.

<sup>45</sup> [Twelfth Detention Decision](#), paras 17-20.

<sup>46</sup> See SPO Submissions, paras 10-11.



previously raised and dismissed by the Panel.<sup>47</sup> Accordingly, the Panel will not address them any further.

16. In the absence of any intervening information or development, 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>48</sup>

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

17. 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 closing of the SPO case and the admission into the case record of additional evidence, including potentially incriminatory evidence; (ii) the disclosure of the witnesses' 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>49</sup>

18. 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. The Panel is not persuaded by the Defence's submissions in this regard that the closing of the SPO case undermines the existence of a risk of obstruction.<sup>50</sup> The proceedings are still ongoing, witnesses will continue to be heard, evidence tendered and witnesses who have testified may be recalled.

19. Accordingly, the Panel finds that there continues to be a risk that the Accused might obstruct the progress of the KSC's proceedings.

---

<sup>47</sup> [Twelfth Detention Decision](#), paras 17-20.

<sup>48</sup> [Eighth Detention Decision](#), paras 20, 31 and references therein.

<sup>49</sup> [Twelfth Detention Decision](#), paras 21-23; [Eleventh Detention Decision](#), paras 15-16, 20; [Tenth Detention Decision](#), paras 21-22.

<sup>50</sup> See Defence Response, para. 14

### 3. Risk of Committing Further Crimes

20. 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.<sup>51</sup> 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) following the closing of the SPO case, he has further obtained specific insight into the evidence provided by the witnesses against him; and (iii) as recently as 2016 and 2019, the Accused made threatening statements [REDACTED].<sup>52</sup>

21. Having examined the factors and circumstances previously relied upon,<sup>53</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. The Panel has previously considered and addressed the Defence's submissions on this matter, which the Defence maintains,<sup>54</sup> and will not address them any further.<sup>55</sup>

22. 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 appear before this Panel at future stages of the proceedings.

---

<sup>51</sup> [Twelfth Detention Decision](#), para. 24.

<sup>52</sup> [Twelfth Detention Decision](#), para. 24.

<sup>53</sup> [Twelfth Detention Decision](#), para. 24.

<sup>54</sup> See Defence Response, para. 18.

<sup>55</sup> [Tenth Detention Decision](#), paras 27-32; [Ninth Detention Decision](#), para. 32.

#### 4. Conclusion

23. 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

24. 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>56</sup>

25. 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.<sup>57</sup> 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.<sup>58</sup>

26. As regards any additional conditions to be imposed, having re-assessed the relevant findings previously made,<sup>59</sup> the Panel continues to be of the view that no

---

<sup>56</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>57</sup> [Twelfth Detention Decision](#), para. 28; [Eleventh Detention Decision](#), para. 26; [Tenth Detention Decision](#), para. 37; [Ninth Detention Decision](#), para. 38; [Eighth Detention Decision](#), paras 31-34.

<sup>58</sup> [Twelfth Detention Decision](#), para. 28; [Eleventh Detention Decision](#), para. 26; [Tenth Detention Decision](#), para. 37; [Ninth Detention Decision](#), para. 38; [Eighth Detention Decision](#), para. 32.

<sup>59</sup> [Twelfth Detention Decision](#), para. 29.

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.

#### D. PROPORTIONALITY OF DETENTION

27. 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>60</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>61</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>62</sup>

28. 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.

---

<sup>60</sup> [Third Court of Appeals Decision](#), para. 37 with references therein.

<sup>61</sup> [Third Court of Appeals Decision](#), para. 37.

<sup>62</sup> ECtHR, [Buzadji v. the Republic of Moldova](#), para. 90.

29. 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 and the opening statements of the SPO, Victims' Counsel and the Defence; (ii) between 27 March 2023 and 6 July 2023,<sup>63</sup> the SPO presented its case, during which the Panel heard the testimonies of ten witnesses; (iii) on 21 August 2023, the Panel heard the testimonies of two (expert) witnesses called by Victims' Counsel;<sup>64</sup> (iv) on 24-25 August 2023, the Panel held the Defence Preparation Conference and issued directions organising the presentation of evidence by the Defence, with a view to ensuring the efficiency and expeditiousness of the proceedings;<sup>65</sup> (v) on 15 September 2023, the Panel rendered the Rule 130 Decision;<sup>66</sup> and (vi) the presentation of evidence by the Defence is set to start today, 20 September 2023. 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.

30. The Panel has duly appraised the additional time spent in detention by the Accused since the Panel's Twelfth Detention Decision, including the resulting increased burden on the SPO to justify the Accused's continued detention.<sup>67</sup> However, weighed against the remaining factors and, in particular, the serious nature of the charges against the Accused, and the impossibility to mitigate the risks under Article 41(6)(b)(ii) and (iii) of the Law, the Panel finds that the detention of the Accused has not become unreasonable under Rule 56(2) of the Rules. In this regard, the Panel further notes that the trial is proceeding without undue delay, as highlighted above. The SPO and Victims' Counsel have concluded the presentation of their evidence and the presentation of evidence by the Defence is now commencing.

---

<sup>63</sup> KSC-BC-2020-04, F00570, Specialist Prosecutor, *Prosecution notice of the closing of its case pursuant to Rule 129*, 6 July 2023, public.

<sup>64</sup> KSC-BC-2020-04, Transcript of Hearing, 21 August 2023, public, pp. 2248-2342.

<sup>65</sup> KSC-BC-2020-04, Transcript of Hearing, 24 August 2023, public, pp. 2343-2426; Transcript of Hearing, 25 August 2023, public, pp. 2427-2448.

<sup>66</sup> See para. 7 above.

<sup>67</sup> See Defence Response, para. 20.

31. 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.

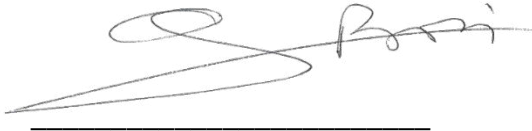
## V. DISPOSITION

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

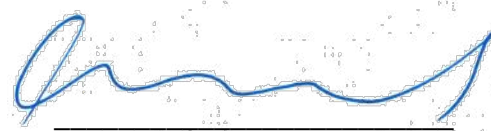
- a. **ORDERS** the Accused's continued detention;
- b. **ORDERS** the SPO and Victims' Counsel, if he so wishes, to file submissions on the next review of detention of the Accused by no later than **Monday, 6 November 2023**;
- c. **ORDERS** the Defence to file submissions on the next review of detention of the Accused, if it so wishes, by no later than **Monday, 13 November 2023**; and
- d. **DETERMINES** that any reply, if the SPO and Victims' Counsel so wish, shall be filed by no later than **Thursday, 16 November 2023**.



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



**Judge Gilbert Bitti**



**Judge Roland Dekkers**

Dated this Wednesday, 20 September 2023

At The Hague, the Netherlands.