



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

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

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

Registrar: Fidelma Donlon

Date: 20 November 2023

Language: English

Classification: **Public**

Public redacted version of

Decision on the Fourteenth Review of Detention of Pjetër Shala

To be notified to:

Specialist Prosecutor

Kimberly P. West

Counsel for the Accused

Jean-Louis Gilissen

Victims' Counsel

Simon Laws

TRIAL PANEL I (Panel) hereby renders this decision on the fourteenth 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 (KSC) in The Hague, the Netherlands.⁵
3. On 15 June 2021, the Pre-Trial Judge rejected a request for provisional release submitted by the Defence for Mr 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
 6 April 2023,¹⁵ 6 June 2023,¹⁶ 20 July 2023,¹⁷ and 20 September 2023

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](#).

¹⁶ 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](#).

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

(Thirteenth Detention Decision),¹⁸ respectively, the Pre-Trial Judge and, subsequently, the Panel reviewed the detention of the Accused and ordered his continued detention.

4. 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.¹⁹

5. On 6 November 2023, the SPO filed its submissions on the fourteenth review of detention of Mr Shala, requesting the continued detention of the Accused (SPO Submissions).²⁰

6. On 13 November 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).²¹

7. The SPO did not file a reply. Victims’ Counsel did not file any submissions.

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

¹⁸ KSC-BC-2020-04, F00663, Trial Panel I, *Decision on the Thirteenth Review of Detention of Pjetër Shala*, 20 September 2023, confidential. A public redacted version was issued on the same day, [F00663/RED](#).

¹⁹ 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).

²⁰ KSC-BC-2020-04, F00707, Specialist Prosecutor, *Prosecution submissions for the fourteenth review of detention*, 6 November 2023, confidential, para. 12. A public redacted version was filed on the same day, [F00707/RED](#).

²¹ KSC-BC-2020-04, F00715, Defence, *Defence Submissions for the Fourteenth Review of Detention*, 13 November 2023, confidential, para. 22. A public redacted version was filed on 13 November 2023, [F00715/RED](#).

changing the Panel's findings reached in its Thirteenth Detention Decision.²² More specifically, the SPO maintains that there continues to exist a (well-)grounded suspicion that the Accused has committed multiple crimes within the jurisdiction of the KSC. This was confirmed by the Panel in its Thirteenth Detention Decision and there has been no development warranting the reconsideration of this finding.²³ The SPO also argues that no factors capable of changing the Panel's findings regarding the existence of the risks of obstruction and commission of further crimes, have intervened since the Thirteenth Detention Decision.²⁴ The SPO alleges that these risks are further buttressed by: (i) by the issuance of the Panel's Rule 130 Decision; (ii) the upcoming testimonies of a number of Defence witnesses, including W03887 (a Kosovo Liberation Army co-fighter of the Accused at the time relevant to the Indictment), and (iii) the possibility that SPO witnesses who have already given evidence may be recalled, thus being susceptible to witness interference, intimidation and retaliation.²⁵ Regarding the risk of flight, the SPO maintains its position as to the existence of this risk, and additionally argues that the risk has significantly increased since the Panel issued its Rule 130 Decision, as the Accused now has further confirmation of the possibility that the evidence presented by the SPO could sustain a conviction for the war crime of murder.²⁶ The SPO reiterates its argument that those risks can only be mitigated by the Accused's continued detention at the KSC Detention Facilities.²⁷ Finally, the SPO avers that in light of the gravity of the charges, the possibility of a lengthy sentence, and the progress so far made in trial, the Accused's detention remains reasonable and proportionate at this stage.²⁸

²² SPO Submissions, paras 1-2.

²³ SPO Submissions, para. 4.

²⁴ SPO Submissions, para. 5.

²⁵ SPO Submissions, paras 6, 8.

²⁶ SPO Submissions, paras 7-8.

²⁷ SPO Submissions, para. 9.

²⁸ SPO Submissions, para. 10.

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.²⁹ The Defence submits that: (i) the Accused is not at flight risk, and recalls the Panel's finding in the Thirteenth Detention Decision in this regard;³⁰ (ii) the SPO's reliance on the Panel's Rule 130 Decision in relation to any of the risks is misplaced, as this decision is not one of guilt and the Accused has always been aware of the prospect of conviction and sentencing, but has not demonstrated an indication to abscond, obstruct witnesses or commit further crimes;³¹ (iii) the SPO's arguments in support of its submission that there is a risk of the Accused committing any crimes are general, vague and insufficient, and cannot be used to indefinitely justify the Accused's detention;³² (iv) cited "threatening statements" made by the Accused do not substantiate a real risk of offending;³³ (v) the SPO fails to demonstrate how procedural developments such as the hearing of witnesses, and admission of evidence render the ongoing detention of the Accused proportionate;³⁴ and (vi) suitable measures alternative to detention exist and must be considered, such as house arrest at the Accused's residence in Belgium.³⁵

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)

²⁹ Defence Response, para. 3.

³⁰ Defence Response, para. 13.

³¹ Defence Response, paras 14 and 18.

³² Defence Response, para. 17.

³³ Defence Response, para. 17.

³⁴ Defence Response, para. 19.

³⁵ Defence Response, para. 20.

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.³⁶ Accordingly, continued detention cannot be maintained lightly and the Accused should be released once his continued detention ceases to be reasonable.³⁷ The SPO bears the burden of establishing that the detention of the Accused is necessary.³⁸

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.³⁹ 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" exists, within the meaning of

³⁶ 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.

³⁷ ECtHR, *Buzadji v. The Republic of Moldova* [GC], no. 23755/07, [Judgment](#) (*Buzadji v. The Republic of Moldova*), 5 July 2016, paras 89-90.

³⁸ 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.

³⁹ [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.

Article 39(2) of the Law, that the Accused committed offences within the KSC's jurisdiction.⁴⁰ Recalling that the "well-grounded suspicion" threshold is necessarily higher than the "grounded suspicion" required for continued detention,⁴¹ 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 charged.⁴² 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.⁴³ 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.⁴⁴ The standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.⁴⁵ 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

⁴⁰ [Confirmation Decision](#), para. 140(a).

⁴¹ [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.

⁴² [Rule 130 Decision](#), para. 34.

⁴³ 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.

⁴⁴ [Thaçi Interim Release Decision](#), para. 20 and references therein.

⁴⁵ [Third Court of Appeals Decision](#), para. 27.

made at the time of the review.⁴⁶ 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.⁴⁷

1. Risk of Flight

15. The Panel recalls that it has previously found that the Accused is not at flight risk.⁴⁸ To the extent that the SPO's repeats arguments regarding the existence of such a risk,⁴⁹ the Panel will not address them further. As to the SPO's argument that the risk has increased since the last review of detention in light of the Panel's Rule 130 Decision,⁵⁰ the Panel is of the view that the Rule 130 Decision does not constitute a "change of circumstances", as this decision is not necessarily indicative of the Panel's final decision on the guilt or innocence of the Accused.⁵¹ Accordingly, the Panel does not find that this procedural development increases the risk of flight. Even if, for the sake of argument, the Rule 130 Decision were to be considered, the Panel recalls the relevant ECtHR jurisprudence, which treats the gravity of the charges and the prospect of a heavy sentence as only one amongst many other factors to consider when assessing the risk of flight.⁵² In light of the above, the Panel remains satisfied that the Accused is not at flight risk and that such a risk, even if it existed, could be adequately mitigated by conditions to be imposed upon him pursuant to Article 41(12) of the Law and Rule 56(5) of the Rules.⁵³

⁴⁶ [Second Court of Appeals Decision](#), para. 18.

⁴⁷ [Thaçi Interim Release Appeal Decision](#), para. 78.

⁴⁸ [Thirteenth Detention Decision](#), paras 15-16.

⁴⁹ See SPO Submissions, para. 7.

⁵⁰ See SPO Submissions, para. 8.

⁵¹ [Rule 130 Decision](#), paras 14-15, 22.

⁵² ECtHR, *Idalov v. Russia [GC]*, no. 5826/03, [Judgment](#), 22 May 2012, para. 145; *Becciev v. The Republic of Moldova*, no. 9190/03, [Judgment](#), 4 October 2005, para. 58; *Ilijkov v. Bulgaria*, no. 33977/96, [Judgment](#), 26 July 2001, paras 80-81.

⁵³ [Eighth Detention Decision](#), paras 20, 31 and references therein.

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

16. 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.⁵⁴

17. 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 proceedings are still ongoing, witnesses will continue to be heard, evidence tendered and witnesses who have testified may be recalled. As to the Defence's argument that the SPO allegation on witness intimidation in Kosovo amounts to "an empty submission",⁵⁵ the Panel finds it without merit. This climate is well established in previous KSC jurisprudence, and has been recently further underlined.⁵⁶ The Panel recalls that it is against this backdrop, that it assesses the risk that the Accused may obstruct the criminal proceedings. The Panel further recalls that when assessing any of the risks, including the risk of obstruction, the standard is not one of inevitability.⁵⁷ In this regard, the Panel is satisfied that there is more than a "mere possibility" of the risk materializing.

⁵⁴ [Thirteenth Detention Decision](#), paras 17-18; [Twelfth Detention Decision](#), paras 21-23; [Eleventh Detention Decision](#), paras 15-16, 20; [Tenth Detention Decision](#), paras 21-22.

⁵⁵ Defence Response, para. 17.

⁵⁶ See, amongst others, KSC-BC-2018-01, F000503/RED, Single Judge, *Public Redacted Version of Reasons for Continued Detention*, 9 November 2023, public, para. 47; KSC-BC-2023-10, F00009/RED, Single Judge, *Public Redacted Version of the Decision on Request for Arrest Warrants and Transfer Orders*, 2 October 2023, public, para. 21; KSC-BC-2020-07, F00611/RED, Trial Panel II, *Public Redacted Version of the Trial Judgment*, 18 May 2022, public, paras 576-581.

⁵⁷ See para. 13. above.

18. In light of the above, 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

19. 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.⁵⁸ It is further recalled that: (i) the Accused has now full knowledge of the case against him, including the identities of SPO witnesses, as the protective measures have been lifted *vis-à-vis* the Accused; (ii) following the closing of the SPO case, the Accused 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 repeated threatening statements [REDACTED].⁵⁹ As regards the Defence's argument regarding the climate of witness interference in Kosovo, the Panel refers to its finding above.

20. Having examined the factors and circumstances previously relied upon and assessed them anew,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 are yet to provide evidence in the case and/or appear before this Panel.

⁵⁸ [Thirteenth Detention Decision](#), para. 20.

⁵⁹ [Thirteenth Detention Decision](#), para. 20; [Eighth Detention Decision](#), paras 23 and 26.

⁶⁰ [Thirteenth Detention Decision](#), para. 20.

4. Conclusion

21. 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

22. 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.⁶¹

23. 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

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 [Thirteenth Detention Decision](#), para. 25; [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.

⁶³ [Thirteenth Detention Decision](#), para. 25; [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.

24. 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.

D. PROPORTIONALITY OF DETENTION

25. 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

26. 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

⁶⁴ [Thirteenth Detention Decision](#), para. 26.

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.

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.

27. The Panel also notes that proceedings have progressed at a reasonable pace: (i) the trial commenced on 21 February 2023; (ii) between 27 March 2023 and 6 July 2023,⁶⁸ 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;⁶⁹ (iv) on 15 September 2023, the Panel rendered the Rule 130 Decision;⁷⁰ and (vi) on 20 September 2023, the Defence began the presentation of its case.⁷¹ 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.

28. The Panel has duly appraised the additional time spent in detention by the Accused since the Panel's Thirteenth Detention Decision, including the resulting increased burden on the SPO to justify the Accused's continued detention.⁷² However, weighed against the remaining factors, in particular: (i) the serious nature of the charges against the Accused; (ii) the Panel's finding that the risks of obstructing the proceedings and of committing further crimes continue to exist; (iii) the impossibility to mitigate the aforementioned risks under Article 41(6)(b)(ii) and (iii) of the Law; and (iv) the fact that the trial is proceeding without undue delay, the Panel finds that the detention of the Accused has not become unreasonable under Rule 56(2) of the Rules.

29. 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.

⁶⁸ KSC-BC-2020-04, F00570, Specialist Prosecutor, *Prosecution notice of the closing of its case pursuant to Rule 129*, 6 July 2023, public.

⁶⁹ KSC-BC-2020-04, Transcript of Hearing, 21 August 2023, public, pp. 2248-2342.

⁷⁰ See para. 4 above.

⁷¹ KSC-BC-2020-04, Transcript of Hearing, 20 September 2023, public, pp. 2449-2576.

⁷² See Defence Response, paras 2, 10, 19.

V. DISPOSITION

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

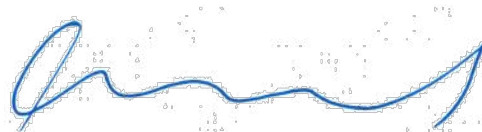
- a. **ORDERS** the Accused's continued detention;
- b. **ORDERS** the SPO and Victims' Counsel, if he so wishes, to file submissions on the next review of detention of the Accused by no later than **Friday, 5 January 2024**;
- c. **ORDERS** the Defence to file submissions on the next review of detention of the Accused, if it so wishes, by no later than **Friday, 12 January 2024**; and
- d. **DETERMINES** that any reply, if the SPO and Victims' Counsel so wish, shall be filed by no later than **Wednesday, 17 January 2024**.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Monday, 20 November 2023

At The Hague, the Netherlands.