



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-BC-2023-10**
The Specialist Prosecutor v. Sabit Januzi and Ismet Bahtijari

Before: **Pre-Trial Judge**
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 8 December 2023

Language: English

Classification: **Public**

**Public Redacted Version of Decision on Sabit Januzi's Request for Interim
Release**

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 41 of the 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"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 5 October 2023, Sabit Januzi ("Mr Januzi" or "Accused") was arrested pursuant to a decision ("Decision on Arrest")² and an arrest warrant issued by the Pre-Trial Judge,³ upon request of the Specialist Prosecutor's Office ("SPO"),⁴ and further to the confirmation of an indictment against him and Ismet Bahtijari ("Mr Bahtijari" and "Confirmation Decision").⁵
2. On 6 October 2023, Mr Januzi was transferred to the Specialist Chambers ("SC") Detention Facilities in The Hague, the Netherlands.⁶
3. On 7 October 2023, the Pre-Trial Judge was notified of the assignment of Thomas Gillis as duty counsel to Mr Januzi.⁷

¹ KSC-BC-2023-10, F00001, President, *Decision Assigning a Pre-Trial Judge*, 11 September 2023, public.

² KSC-BC-2023-10, F00009, Pre-Trial Judge, *Decision on Request for Arrest Warrants and Transfer Orders*, 2 October 2023, confidential, with Annexes 1-4, confidential. A public redacted version of the decision was filed on 12 October 2023, F00009/RED.

³ KSC-BC-2023-10, F00009/A01, Pre-Trial Judge, *Arrest Warrant for Sabit Januzi*, 2 October 2023, confidential; F00012, Registrar, *Notification of Arrest of Sabit Januzi Pursuant to Rule 55(4)*, 5 October 2023, public.

⁴ KSC-BC-2023-10, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Requests* ("Submission of Indictment"), 11 September 2023, strictly confidential and *ex parte*, para. 32(ii), with Annexes 1 and 3, strictly confidential and *ex parte*, and Annex 2, confidential. A confidential redacted version and a public redacted version of the main filing were submitted on 12 October 2023, F00002/CONF/RED and F00002/RED.

⁵ KSC-BC-2023-10, F00008, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 2 October 2023, strictly confidential and *ex parte*. A confidential redacted version and a public redacted version of the decision were filed on 12 October 2023, F00008/CONF/RED and F00008/RED. A corrected version of the public redacted version of the decision was filed on 12 October 2023, F00008/RED/COR.

⁶ KSC-BC-2023-10, F00015, Registrar, *Notification of the Reception of Sabit Januzi in the Detention Facilities of the Specialist Chambers*, 6 October 2023, public, with Annex 1, strictly confidential and *ex parte*.

⁷ KSC-BC-2023-10, F00018, Registrar, *Notification of Assignment of Duty Counsel to Sabit Januzi*, 7 October 2023, public, with Annex 1, confidential.

4. On 11 October 2023, the Defence for Mr Januzi (“Defence”) filed an application for interim release (“Request”).⁸
5. On 12 October 2023, the first status conference in the case took place, during which the Defence indicated, and the Pre-Trial Judge accepted, that it intends to supplement its Request.⁹
6. On 2 November 2023, Jonathan Elystan Rees was approved as new duty counsel to Mr Januzi.¹⁰
7. On 3 November 2023, the second status conference in the case took place, during which the Pre-Trial Judge granted a request for variation of the time limits for the Defence to file supplementary submissions to its Request, and for the SPO to respond.¹¹
8. On 10 November 2023, the Defence filed supplementary submissions on the detention of the Accused (“Supplement to the Request”).¹²
9. On 17 November 2023, the SPO filed a consolidated response to the Request and the Supplement to the Request (“Response”).¹³
10. On 27 November 2023, the Defence replied to the Response (“Reply”).¹⁴

⁸ KSC-BC-2023-10, F00028, Defence for Mr Januzi, *Defence Submission on Detention on Remand*, 11 October 2023, confidential.

⁹ KSC-BC-2023-10, Transcript of Hearing, 12 October 2023, public, p. 69, lines 8-23. Subsequently, the Pre-Trial Judge extended the time limit for the SPO to submit a consolidated response to the Defence submissions, as supplemented, F00075, Pre-Trial Judge, *Decision on the Prosecution Request for Extension of Time*, 24 October 2023, public.

¹⁰ KSC-BC-2023-10, F00086, Registrar, *Notification of Assignment of Duty Counsel to Sabit Januzi*, 2 November 2023, public, with Annex 1, confidential.

¹¹ KSC-BC-2023-10, Transcript of Hearing, 3 November 2023, public, p. 84, line 20 to p. 86, line 13, p. 91, line 19 to p. 92, line 3.

¹² KSC-BC-2023-10, F00099, Defence for Mr Januzi, *Submission on Detention on Behalf of Sabit Januzi*, 10 November 2023, confidential. A corrigendum of the Supplement to the Request was issued on the same date, F00100, confidential.

¹³ KSC-BC-2023-10, F00107, Specialist Prosecutor, *Prosecution Response to Januzi Defence Detention Submissions*, 17 November 2023, confidential. A public redacted version was filed on 20 November 2023, F00107/RED.

¹⁴ KSC-BC-2023-10, F00114, Defence for Mr Januzi, *Reply to Prosecution Response to Januzi Defence Detention Submissions*, 27 November 2023, confidential.

II. SUBMISSIONS

11. The Defence submits that: (i) the evidence does not support a grounded suspicion that the Accused has committed the offences charged and, accordingly, Article 41(6)(a) of the Law is not satisfied;¹⁵ (ii) there is no risk that the Accused will flee;¹⁶ (iii) there are no articulable grounds to believe the Accused will destroy, hide, change or forge evidence of a crime or obstruct the progress of the criminal proceedings;¹⁷ (iv) there is no risk that he will repeat the alleged criminal offence, complete the attempted crime or commit any crime which he has threatened to commit.¹⁸ It further maintains that (i) should these risks be deemed to exist, they can be addressed sufficiently by imposing certain conditions to the Accused's release, as proposed by the Defence;¹⁹ and (ii) the Accused will comply with any other additional condition imposed by the Pre-Trial Judge.²⁰

12. The SPO opposes the Request and contends that: (i) subsequent developments to the Decision on Arrest have strengthened the basis for the Pre-Trial Judge's finding of a well-grounded suspicion that Mr Januzi committed or attempted to commit offences within the jurisdiction of the SC; and (ii) the grounds for detention set out in Article 41(6)(b) of the Law, as previously found by the Pre-Trial Judge in the Decision on Arrest, continue to justify the Accused's detention.²¹ It further argues that (i) no modalities of conditional release, neither proposed, nor additional, can sufficiently mitigate the existing risks with respect to Mr Januzi,²² and (ii) detention is both reasonable and proportional at this time of the proceedings.²³

¹⁵ Supplement to the Request, paras 11-16.

¹⁶ Request, para. 8; Supplement to the Request, paras 17-30.

¹⁷ Request, para. 9; Supplement to the Request, paras 31-37.

¹⁸ Request, para. 10; Supplement to the Request, paras 38-44.

¹⁹ Request, para. 7; Supplement to the Request, paras 30, 36, 43-44, 45-48.

²⁰ Request, para. 12.

²¹ Response, paras 18-42.

²² Response, paras 43-50.

²³ Response, paras 51-52.

13. In the Reply, the Defence renews its request for interim release, addressing the issues raised by the SPO in the Response.²⁴

III. APPLICABLE LAW

14. Pursuant to Article 41(2) of the Law, any person deprived of his or her liberty by arrest or detention shall be entitled to challenge the lawfulness of his or her arrest, and to have such challenge decided speedily by the SC and his or her release ordered if the detention is not lawful.

15. Pursuant to Article 41(6) of the Law, the SC shall only order the arrest and detention of a person when (a) there is a grounded suspicion that he or she has committed a crime within the jurisdiction of the SC; and (b) there are articulable grounds to believe that the person: (i) is a risk of flight; (ii) will destroy, hide, change or forge evidence of a crime, or will obstruct the progress of the criminal proceedings by influencing witnesses, victims or accomplices; or (iii) will repeat the criminal offence, complete an attempted crime, or commit a crime which he or she has threatened to commit.

16. Pursuant to Article 41(12) of the Law, in addition to detention on remand, the following measures may be ordered by the SC to ensure the presence of the Accused, including by video-teleconference, to prevent reoffending or to ensure successful conduct of criminal proceedings: summons, arrest, bail, house detention, promise not to leave residence, prohibition on approaching specific places or persons, attendance at police station or other venue, and diversion. Pursuant to Rule 56(5) of the Rules, the Panel may impose such conditions upon the release as deemed appropriate to ensure the presence of the detained person.

17. Pursuant to Rule 56(2) of the Rules, the Pre-Trial Judge shall ensure that a person is not detained for an unreasonable period prior to the opening of the case.

²⁴ Reply, paras 4-30.

18. Pursuant to Rule 57(2) of the Rules, after the assignment of a Pre-Trial Judge and until a judgment is final, the Panel seized with a case shall review a decision on detention upon the expiry of two (2) months from the last ruling on detention or at any time upon request by the Accused or the SPO, or *proprio motu*, where a change in circumstances since the last review has occurred.

IV. DISCUSSION

A. APPLICABLE STANDARDS

19. The Pre-Trial Judge recalls that, while an arrest warrant under Article 41(6) of the Law is issued *ex parte*, without participation of the Defence, Article 41(2) of the Law provides the detained person with an early opportunity to challenge the lawfulness of his or her arrest, including the grounds set out in Article 41(6) of the Law. Thus, the Pre-Trial Judge is called upon to inquire anew into the existence of facts justifying detention in light of the arguments advanced by the Parties.²⁵

20. The Pre-Trial Judge also underscores that any analysis of pre-trial detention is taken in the context of the detained person's presumption of innocence.²⁶ This means, as a consequence, that pre-trial detention cannot be maintained lightly,²⁷

²⁵ KSC-BC-2020-04, F00045/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Pjetër Shala's Request for Provisional Release ("First Shala Detention Decision")*, 23 June 2021, public, para. 13; KSC-BC-2020-07, F00058, Single Judge, *Decision on Request for Immediate Release of Nasim Haradinaj*, 27 October 2020, public, paras 12-13.

²⁶ KSC-CC-PR-2017-01, F00004, Specialist Chamber of the Constitutional Court, *Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("SCCC 26 April 2017 Judgment")*, 26 April 2017, public, para. 113; KSC-BC-2020-06, IA004/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Interim Release ("Thaçi Interim Appeal Decision")*, 30 April 2021, public, para 17, with further references. *See, similarly*, ECtHR, *McKay v. the United Kingdom*, no. 543/03, Judgment, 3 October 2006, para. 43.

²⁷ *Thaçi Interim Appeal Decision*, para. 17.

and that the SPO bears the burden of establishing that the detention of the Mr Januzi is necessary.²⁸

B. GROUNDED SUSPICION

21. As regards the threshold for continued detention, Article 41(6)(a) of the Law requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the SC. This is a condition *sine qua non* for the validity of the detained person's continued detention.²⁹

22. The Defence submits that the evidence does not support a grounded suspicion that the Accused has committed the offences charged.³⁰ It contends that: (i) each of the three offences charged in the indictment is based on a single threat allegedly uttered by Mr Bahtijari during the first approach to Witness 1;³¹ (ii) the Accused was not present when the alleged threat was uttered by Mr Bahtijari, and there is no evidence that he was aware that the threat was uttered;³² (iii) it does not follow from the context of the communications and the alleged circumstances that Mr Bahtijari's message to Witness 1 to withdraw his testimony was to be accompanied by unlawful means to reinforce it, and if so, whether those means were the use of serious threat or a promise, a gift or any other form of benefit;³³ (iv) whether Mr Bahtijari made any threat, based on the evidence, is itself equivocal;³⁴ and (v) by contrast, when Mr Januzi visited Witness 1, he did not threaten him.³⁵

²⁸ First *Shala* Detention Decision, para. 13; KSC-BC-2020-06, F00177/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Hashim Thaçi's Application for Interim Release* ("First Thaçi Detention Decision"), 22 January 2021, public, para. 19, with further references. See also ECtHR, *Merabishvili v. Georgia*, no. 72508/13, Judgment ("*Merabishvili v. Georgia*"), 28 November 2017, para. 234.

²⁹ First *Shala* Detention Decision, para. 14. See also ECtHR, *Merabishvili v. Georgia*, para. 222.

³⁰ Supplement to the Request, para. 16; Reply, para. 7.

³¹ Supplement to the Request, para. 11.

³² Supplement to the Request, para. 11; Reply, para. 6.

³³ Supplement to the Request, paras 12-13.

³⁴ Supplement to the Request, paras 14-15.

³⁵ Supplement to the Request, para. 15.

23. The SPO responds that: (i) the Pre-Trial Judge has already concluded that there is a well-grounded suspicion that the Accused committed or attempted the crimes charged, which exceeds the “grounded suspicion” threshold required for detention; and (ii) nothing has occurred since the issuance of the Confirmation Decision that would affect that determination.³⁶ It submits that the Defence’s claim that Mr Januzi was not aware of the threat made by Mr Bahtijari is speculative, and fails to consider the context of the communications as a whole, including their timing, sequence, and frequency, as found by the Pre-Trial Judge in the Confirmation Decision.³⁷ Notably, the SPO submits that, in voluntary interviews to the SPO, Mr Januzi confirmed several pieces of inculpatory information against him, most notably that he: (i) met with Witness 1 at the approximate time and place indicated in the indictment; (ii) discussed [REDACTED] with both Mr Bahtijari, Co-Perpetrator 1 and Witness 1 himself;³⁸ and (iii) had contacted [REDACTED] in an effort to arrange a meeting with Witness 1.³⁹

24. The Defence highlights that any earlier consideration by the Pre-Trial Judge of this issue was made *ex parte* and without the benefit of any submissions on behalf of the Accused.⁴⁰ It submits that: (i) the SPO does not challenge the submission that there is no evidence that the Accused was aware of Mr Bahtijari’s alleged threat; and (ii) contrary to the SPO’s assertion, the issue of the extent of the Accused’s knowledge as to the use of threat goes directly to the heart of the issue, namely, the Accused’s *mens rea*.⁴¹ It further submits that: (i) at the time of his interview to the SPO on 4 October 2023, Mr Januzi was misled as to his present status because the SPO deliberately withheld from Mr Januzi the fact that he

³⁶ Response, paras 17-18.

³⁷ Response, para. 20.

³⁸ Response, para. 19, with further reference to 116063-TR-ET Part 1, [REDACTED]; [REDACTED]; [REDACTED]; 116063-TR-ET Part 1, [REDACTED]; 116063-TR-ET Part 1, [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

³⁹ Response, para. 19, with further reference to 116063-TR-ET [REDACTED].

⁴⁰ Reply, para. 4.

⁴¹ Reply, para. 6.

already faced a confirmed indictment and he had the status of an Accused;⁴² as well as (ii) any “consent” given to that interview is vitiated by the misinterpretation and any alleged inculpatory information obtained by the SPO, as a result, should be disregarded for these purposes.⁴³

25. At the outset, the Pre-Trial Judge recalls that, in the Confirmation Decision, he determined, pursuant to Article 39(2) of the Law, that there is a well-grounded suspicion that Mr Januzi is criminally liable for offences within the jurisdiction of the SC, namely intimidation during criminal proceedings and obstructing official persons in performing official duties within the meaning of Articles 387 and 401(1), (2) and (5) of the 2019 Kosovo Criminal Code, Code No. 06/L-074 (“KCC”) and Articles 15(2) and 16(3) of the Law.⁴⁴ These findings were made on the basis of a standard exceeding the grounded suspicion threshold required for the purposes of Article 41(6)(a) of the Law.⁴⁵ The Pre-Trial Judge also recalls that he evaluated the supporting material in support of the charges holistically, without scrutinizing each item of evidentiary material in isolation.⁴⁶

26. As regards the Defence argument that the Accused did not threaten Witness 1 and was not present when Mr Bahtijari allegedly uttered the threat *vis-à-vis* Witness 1, the Pre-Trial Judge recalls that Mr Januzi, jointly with Mr Bahtijari and Co-Perpetrator 1, approached Witness 1 on two separate occasions to dissuade him from testifying.⁴⁷ The Pre-Trial Judge recalls that *Mr Januzi’s* acts and statements towards Witness 1, when considered against the communications with Co-Perpetrator 1 and Mr Bahtijari, created purportedly a serious threat to use force or to inflict serious harm on the witness and his family.⁴⁸ While the Defence

⁴² Reply, para. 5.

⁴³ Reply, para. 5.

⁴⁴ Confirmation Decision, paras 95, 111, 123, 126, 131, 135, 139, 144. *See also* Decision on Arrest, para. 17.

⁴⁵ Confirmation Decision, para. 24.

⁴⁶ Confirmation Decision, para. 24.

⁴⁷ Confirmation Decision, para. 88.

⁴⁸ Confirmation Decision, para. 89.

claims that Mr Januzi did not know that Mr Bahtijari had threatened Witness 1, there is evidence that shows the Accused knew that Mr Bahtijari had met Witness 1 and what he had said.⁴⁹ Whether Mr Januzi was present when Mr Bahtijari uttered the original threat is of no importance in this regard. Likewise, the Defence argument that the three offences charged rely allegedly on a single threat by Mr Bahtijari is without merit, as it selectively reflects the factual findings in the Confirmation Decision, disregarding the findings involving Mr Januzi. The Defence arguments must therefore fail.

27. As regards the Defence claim that the alleged communications do not suggest that any message from Mr Bahtijari was to be accompanied by unlawful means (threat) to reinforce it, is also not persuasive. First, the Defence disregards that Mr Bahtijari's message in itself was threatening in nature, as perceived by Witness 1.⁵⁰ Second, in disagreeing with the findings of the Pre-Trial Judge, the Defence simply presents a different reading of the facts, without more. As the Defence concedes,⁵¹ the Pre-Trial Judge considered the acts and statements of Mr Januzi against the context of the communications as a whole, including the timing, sequence and frequency of the communications between Mr Januzi, Mr Bahtijari and Co-Perpetrator 1 before and after the two alleged approaches to Witness 1.⁵² In addition, the Pre-Trial Judge recalls that he found that: (i) during the first approach to Witness 1, [REDACTED], Mr Bahtijari confirmed; and (ii) during the second approach to Witness 1, Mr Januzi (a) explicitly told Witness 1 that he was visiting him to follow-up on the Mr Bahtijari's first approach, thereby showing that Mr Januzi had direct knowledge of said visit and its purpose; (b) directly told Witness 1 that he had been sent by Co-Perpetrator 1

⁴⁹ See Confirmation Decision, paras 78-81 and evidentiary discussion reflected in footnotes 110-128 therein.

⁵⁰ 112906-TR-ET Part 1, p. 24, lines 12-14.

⁵¹ Response, para. 12.

⁵² Confirmation Decision, paras 116, 137 with reference to evidentiary material.

to clarify whether Witness 1 would withdraw his testimony in SC Proceedings.⁵³ Thus, the Defence argument is unpersuasive as it only partially and selectively considers the evidence.

28. By the same token, the Defence's understanding that Mr Bahtijari's statement is equivocal is not rooted in the evidence before the Pre-Trial Judge. The evidence suggests that Witness 1 perceived Mr Bahtijari to relay a message [REDACTED].⁵⁴ According to the evidence, the witness confronted Mr Bahtijari whether indeed Co-Perpetrator 1 [REDACTED]. The evidence shows that Mr Bahtijari, who, as reported by Witness 1, felt uncomfortable during the meeting, moved his head and confirmed it.⁵⁵ Even if the Pre-Trial Judge were to follow the Defence argument that Witness 1 "provoked" or "pulled out" the answer from Mr Bahtijari, this does not, without more, alter the determinations reached in the Confirmation Decision.

29. As a result, the Pre-Trial Judge finds that the Defence's selective interpretation of the evidence underpinning the findings against Mr Januzi in the Confirmation Decision does not disturb the overall findings that there is a well-grounded suspicion that Mr Januzi is criminally liable for offences within the jurisdiction of the SC, which exceeds the grounded suspicion required for detention under Article 41(6)(a) of the Law. In any event, the Pre-Trial Judge observes that the process of evaluating the evidence in support of the SPO's allegations, as set out in the confirmed indictment, will occur during the trial phase of the proceedings when Mr Januzi's guilt or innocence will be determined. Requiring anything more at this juncture would pre-judge the evidence before

⁵³ Confirmation Decision, para. 109. *See also* Response, para. 20.

⁵⁴ Confirmation Decision, para. 76 and footnotes 101 and 102 therein (112906-TR-ET Part 1, p. 8, lines 23-24, p. 11, lines 21-22, p. 20, lines 2-4; see also p. 11, lines 13-17; 112769-112772, p. 112770, para. 8; 112909-TR-ET Part 1, p. 6, lines 2-3, p. 8, lines 4-6).

⁵⁵ Confirmation Decision, para. 76 and footnote 103 therein (112906-TR-ET Part 1, p. 8, lines 23-25, p. 20, lines 4-5, p. 21, lines 7-12; p. 22, line 17 to p. 23, line 2; 112769-112772, p. 112770, para. 8; 112909-TR-ET Part 1, p. 6, lines 3-4, p. 6, lines 5-6).

(i) the SPO has an opportunity to present its case before a Trial Panel⁵⁶ and (ii) the Defence can challenge the veracity and strength of said evidence.

30. Lastly, the Parties argue over whether any allegedly inculpatory information obtained by the SPO in the interview with Mr Januzi on 4 October 2023, may be relied upon for the purpose of establishing a grounded suspicion. The Pre-Trial Judge observes that he had not been provided with and has not relied on the statement of the Accused to the SPO on 4 October 2023 in the Confirmation Decision or the Decision on Arrest. That being said, the Pre-Trial Judge does not deem it necessary to espouse his views on this particular statement and include any potentially incriminating information contained therein in his assessment. Thus, the Pre-Trial Judge finds it not necessary to address the propriety of the statement within the scope of this review.

31. The Pre-Trial Judge accordingly finds that, in the absence of any intervening information or development concerning the grounded suspicion, the requirement set forth in Article 41(6)(a) of the Law continues to be met.

C. NECESSITY OF DETENTION

32. Once the threshold in Article 41(6)(a) of the Law is met, the grounds that would justify the deprivation of a person's liberty must be *articulable* in the sense that they must be specified in detail.⁵⁷ In this regard, Article 41(6)(b) of the Law echoes the principle that the continued detention of a person can only be justified if there are specific indications of a genuine requirement of public interest, which outweigh the person's right to liberty.⁵⁸ Therefore, the Panel must rely on

⁵⁶ *Similarly*, KSC-BC-2020-05, F00052, Pre-Trial Judge, *Decision on Review of Detention*, 23 November 2020, public, para. 17.

⁵⁷ *See* Article 19(1.31) of the 2022 Kosovo Criminal Procedure Code, Code No. 08/L-032, which defines "articulable" as: "the party offering the information or evidence must specify in detail the information or evidence being relied upon". *See also, for example*, First Shala Detention Decision, para. 16; KSC-BC-2020-06, IA001/F00005, Court of Appeals Panel, *Decision on Kadri Veseli's Appeal Against Decision on Interim Release ("Veseli Interim Release Appeals Decision")*, 30 April 2021, public, para. 15.

⁵⁸ SCCC 26 April 2017 Judgment, para. 113.

case-specific reasoning and concrete grounds in deciding to continue detention,⁵⁹ The Pre-Trial Judge further recalls that, on the basis of the available evidence, the specific articulable grounds must support the “belief”⁶⁰ that any of the risks under the three limbs of Article 41(6)(b) of the Law exists, denoting an acceptance of the possibility, not the inevitability, of a future occurrence.⁶¹ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.⁶² The Pre-Trial Judge further observes that these grounds are in the alternative, and that the existence of one ground suffices to determine the necessity of detention.⁶³

33. As regards the nature of the assessment under Article 41(6)(b) of the Law, the Pre-Trial Judge recalls that, while the evaluation involves an element of discretion,⁶⁴ it must be based on the facts of the case and must be undertaken on an individual basis in light of the personal circumstances of the detained person.⁶⁵ When assessing the relevant factors, the Pre-Trial Judge may not conduct a piecemeal assessment, but must weigh all relevant factors taken together.⁶⁶

34. Three articulable grounds are listed in Article 41(6)(b) of the Law:

- a. the risk of flight;

⁵⁹ SCCC 26 April 2017 Judgment, para. 115; *Thaçi* Interim Appeal Decision, para. 22; First *Shala* Detention Decision, para. 16. See also ECtHR, *Perstner v. Luxembourg*, no. 7446/21, Judgment, 16 February 2023, para. 33; *Khudoyorov v. Russia*, no. 6847/02, Judgment, 8 November 2005, para. 173.

⁶⁰ See chapeau of Article 41(6)(b) of the Law.

⁶¹ First *Shala* Detention Decision, para. 16; First *Thaçi* Detention Decision, para. 20, with further references.

⁶² *Veseli* Interim Appeal Decision, para. 17. First *Shala* Detention Decision, para. 16.

⁶³ First *Shala* Detention Decision, para. 20; First *Thaçi* Detention Decision, para. 25.

⁶⁴ First *Thaçi* Detention Decision, para. 21, with further references.

⁶⁵ See First *Shala* Detention Decision, para. 17; First *Thaçi* Detention Decision, para. 21, with further references; similarly, ECtHR, *Aleksanyan v. Russia*, no. 46468/06, Judgment, 22 December 2008, para. 179.

⁶⁶ First *Shala* Detention Decision, para. 17; First *Thaçi* Detention Decision, para. 21, with further references.

- b. the risk of destroying, hiding, changing or forging evidence or obstructing the progress of the proceedings by influencing witnesses, victims or accomplices;
- c. the risk of repeating the criminal offence, completing an attempted crime or committing a crime which the Accused has threatened to commit.

35. As regards the Defence argument that the risk under Article 41(6)(b)(ii) of the Law is of a higher standard than the criteria in Article 41(6)(b)(i) and (iii) of the Law,⁶⁷ the Pre-Trial Judge recalls that this interpretation has been rejected in the jurisprudence of the SC. The Pre-Trial Judge recalls that, while there is a linguistic difference in the three prongs of Article 41(6)(b) of the Law, he remains unconvinced that its intended result is to impose different evidentiary thresholds to the three alternative criteria in Article 41(6)(b) of the Law.⁶⁸ Indeed, the Court of Appeals Panel in the case of the *Specialist Prosecutor v Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi* (KSC-BC-2020-06) (“Case 06”) confirmed that, despite the absence of the word “risk” in the formulation of Article 41(6)(b)(ii) of the Law, the threshold remains the same for the three prongs of Article 41(6)(b) of the Law.⁶⁹

36. As regards the Defence argument that the Article 41(6)(b)(ii) risk is specific to destroying, hiding, changing or forging evidence or obstructing the progress of the criminal proceedings that Mr Januzi is facing,⁷⁰ the Pre-Trial Judge agrees that the obstruction must likely occur in the criminal proceedings involving the Accused. Having said that, the Pre-Trial Judge observes that an accused’s

⁶⁷ This is based on the understanding that the Article 41(6)(b)(ii) prong does not contain the word “risk” (but the word “will”), whereas the Article 41(6)(b)(i) and (iii) prongs do, *see* Supplement to the Request, para. 6.

⁶⁸ Similarly, KSC-BC-2020-06, F00179/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Rexhep Selimi’s Application for Interim Release* (“First Selimi Detention Decision”), 22 January 2021, public, para. 20.

⁶⁹ KSC-BC-2020-06, IA003/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Rexhep Selimi’s Appeal Against Decision on Interim Release*, 30 April 2021, public, paras 25-32.

⁷⁰ Supplement to the Request, para. 7.

demonstrated willingness and ability to engage in obstructive criminal conduct in the context of a case, in which he is not the accused, may forecast a concrete risk in the case that he faces.

37. As regards the Defence argument that the Article 41(6)(b)(iii) risk pertains to the criminal offence(s) which the Accused has threatened to commit, thus excluding any further offences,⁷¹ the Pre-Trial Judge recalls his previous finding that the future crimes/offences need not be identical to those included in the charges or occurring in the same (possibly no longer existing) context as the one for which the Accused is prosecuted. Rather, on the basis of available information, the Pre-Trial Judge must assess whether there is a likelihood that the Accused, if released, will, under any form of responsibility, engage in or contribute to crimes similar to the underlying acts charged. The crimes predicted to be committed in the future need not be specified in detail.⁷²

38. Lastly, in relation to the grounds set forth in Article 41(6)(b)(ii)-(iii) of the Law, the Pre-Trial Judge emphasises that the risks may materialise as a result of the detained person's acts or omissions, but they do not require physical execution on his or her part.⁷³

1. Risk of Flight

39. The Defence submits that Mr Januzi is not a flight risk because: (i) he has been aware that he has been under investigation since the SPO searched his residence and vehicle and seized his mobile telephone upon authorization of the Single

⁷¹ Supplement to the Request, para. 8.

⁷² See First *Selimi* Detention Decision, para. 23; Similarly also, ICC, *Prosecutor v Bemba et al*, ICC-01/05-01/13-558, Appeals Chamber, *Judgment on the appeal of Mr Aimé Kilolo Musamba against the decision of Pre-Trial Chamber II of 14 March 2014 entitled "Decision on the 'Demande de mise en liberte provisoire de Maître Aimé Kilolo Musamba'"*, 11 July 2014, para. 116; *Prosecutor v Laurent Gbagbo*, ICC-02/11-01/11-278-Red, *Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled "Decision on the 'Requête de la Défense demandant la mise en liberte provisoire du président Gbagbo'"*, 26 October 2012, para. 70.

⁷³ First *Shala* Detention Decision, para. 19; First *Thaçi* Detention Decision, para. 24.

Judge on 3 May 2023, but has remained in Kosovo and has not attempted to flee;⁷⁴ (ii) the SPO conduct and the proceedings up to this point demonstrate that it has had no concern about a flight risk;⁷⁵ (iii) he has very strong ties to his community and has a permanent residence [REDACTED];⁷⁶ (iv) he has [REDACTED] and modest financial means;⁷⁷ and (v) he has no leadership, policy or other role at the War Veterans Association (“WVA”), except to assist in the organisation of small events, and since 2023 he has had no active role into politics and no intention to in the future.⁷⁸

40. The SPO responds that Mr Januzi is a flight risk. At first, it recalls the Pre-Trial Judge’s previous considerations set out in the Decision on Arrest, that is: (i) the gravity of the offences charged, together with the potential sentence; (ii) the opportunity to evade justice, including by travelling freely to jurisdictions beyond the reach of the SC; and (iii) the Accused’s demonstrated blatant disregard for the laws and rules of the SC, in particular court-ordered protective measures.⁷⁹ It adds that information about Mr Januzi’s associated networks and personal circumstances heighten the risk of flight and supplement related earlier considerations: (i) the Accused’s connection to Co-Perpetrator 1, [REDACTED] with strong ties to [REDACTED],⁸⁰ [REDACTED]; (ii) the Accused’s unity of interests with influential individuals from within the former senior KLA leadership, such as [REDACTED]; (iii) [REDACTED]’s support network that has the means and incentive to assist those (perceived to be) aligned with [REDACTED], including the Accused, in his firm opposition to the SC; (iv) his active membership in the WVA; (v) the prevailing climate of obstruction in

⁷⁴ Supplement to the Request, para. 17.

⁷⁵ Supplement to the Request, paras 18-22.

⁷⁶ Supplement to the Request, para. 23.

⁷⁷ Supplement to the Request, paras 24-25.

⁷⁸ Supplement to the Request, paras 26-27.

⁷⁹ Response, para. 22.

⁸⁰ Response, para. 24.

connection with KLA-related criminal proceedings, both in and outside Kosovo, allowing for the mobilisation of supporters to assist the Accused to flee.⁸¹ The SPO also adds that Mr Januzi's knowledge of the serious confirmed charges against him, as well as the substantial prison sentence he could face, if convicted, his increasing knowledge of the strength of the evidence against him through the disclosure process, establish his risk of flight as a "sufficiently real possibility".⁸² The SPO moreover argues that: (i) the Defence does not specifically indicate any physical or medical condition or family obligation that would root Mr Januzi to his place of residence; (ii) the Defence inaccurately asserts the extent of his cooperative behaviour prior and after his interview with the SPO on 4 October 2023; and (iii) at that time of the interview, Mr Januzi was not yet aware of the nature of the charges against him or the substance of the evidence.⁸³

41. The Defence replies that: (i) the SPO continues to rely only upon the same "general and abstract" arguments relating to alleged connections to former KLA commanders and the latter's associated networks, which led the Pre-Trial Judge to previously assess the risk of flight as "moderate" only; (ii) the Accused has no position of authority or influence, whether politically or within the WVA; and (iii) the cases of Hysni Gucati ("Mr Gucati") and Nasim Haradinaj ("Mr Haradinaj"), the two accused in case KSC-BC-2020-07 ("Case 07"), who did hold such positions, are clearly distinguishable from the present allegations, in role, scale and scope, and thus, the sentences imposed on them do not provide any useful guidance to the assessment of any likely sentence in the present case.⁸⁴ The Defence further specifies that Mr Januzi is not "retired" but [REDACTED]

⁸¹ Response, paras 25-28.

⁸² Response, paras 29-30.

⁸³ Response, paras 31-32.

⁸⁴ Reply, paras 8-10, 12-14.

prevents him from work regularly. According to the Defence, if he were to leave the family, he would be unable to sustain himself financially through work.⁸⁵

42. As regards the risk of flight, the Pre-Trial Judge considers relevant Mr Januzi's awareness of the serious charges he faces, notably three (3) counts involving intimidation during criminal proceedings (Article 387 of the KCC) and obstructing official persons in performing official duties (Article 401(1), (2) and (5) of the KCC). Mr Januzi is also aware of the underlying evidence⁸⁶ against him after his arrest, and is being progressively informed through disclosure of the full evidentiary record of his alleged criminal conduct.

43. Further, the Pre-Trial Judge takes into account the potential sentence, if convicted, which is also a relevant factor in the assessment of the flight risk⁸⁷ and provides the Accused with a motive to evade justice.⁸⁸ In this regard, the Pre-Trial Judge observes that Mr Gucati and Mr Haradinaj, who were also charged with offences against the administration of justice, were finally sentenced to four years and three months of imprisonment,⁸⁹ a sentence that Mr Januzi is likely aware of.⁹⁰ Having said that, the Pre-Trial Judge is mindful that the risk of the Accused absconding cannot be gauged solely on the grounds of the severity of the prison sentence faced, but must be assessed with reference to other relevant factors justifying detention.⁹¹

⁸⁵ Reply, para. 11.

⁸⁶ See Disclosure Package No. 2, 31 October 2023; and Disclosure Package No. 3, 3 November 2023.

⁸⁷ KSC-BC-2020-07, IA002/F0005, Court of Appeals Panel, *Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention*, 9 February 2021, public, para. 61.

⁸⁸ See, *similarly*, Decision on Arrest, para. 20.

⁸⁹ See also KSC-CA-2022-01, F00114, Court of Appeals Panel, *Appeal Judgment*, 2 February 2023, public, para. 442.

⁹⁰ The Pre-Trial Judge is mindful that the role of Mr Januzi, as well as the scope and the gravity of the offences are yet to be determined. See also Reply, para 13.

⁹¹ See KSC-BC-2018-01, F00503/RED, Single Judge, *Public Redacted Version of Reasons for Continued Detention ("Kilaj Reasons for Continued Detention")*, 9 November 2023, public, para. 39; First Shala Detention Decision, para. 24. See also ECtHR, *Becciev v. Moldova*, no. 9190/03, Judgment, 4 October 2005, para. 58.

44. As regards the means to flee, the Pre-Trial Judge notes that, even though Mr Januzi may not have held a high-ranking position in the hierarchy of the KLA, he has strong connections with Co-Perpetrator 1, [REDACTED], who has strong ties to [REDACTED].⁹² In this context, the Pre-Trial Judge further notes that Mr Januzi is alleged to have committed or attempted to commit, jointly with others, including Mr Bahtijari and Co-Perpetrator 1, offences aimed at undermining the evidence against [REDACTED].⁹³ The Pre-Trial Judge thus considers that the Accused has a strong unity of interests with influential individuals from within the former senior KLA leadership, such as Co-Perpetrator 1, and [REDACTED].

45. In this context, the Pre-Trial Judge recalls previous findings in Case 06 regarding [REDACTED].⁹⁴ In this regard, even though Mr Januzi alleges to have only an informal role without leadership, policy or other role at the WVA, the Pre-Trial Judge notes that he admits to continuously be affiliated with the WVA. Accordingly, the Pre-Trial Judge is of the view that Mr Januzi's close relationship with Co-Perpetrator 1, [REDACTED] with strong ties to [REDACTED], as well as his affiliation with the WVA, cannot be ignored in assessing the risk that he may revert to other like-minded to find the means and assets to abscond.⁹⁵ On the other hand, in the absence of additional information, the Pre-Trial Judge is not persuaded by the SPO's claim that the prevailing climate of obstruction in connection with KLA-related criminal proceedings, both in and outside Kosovo, and the media coverage of the Accused's case, allows for the mobilisation of supporters to assist the Accused in fleeing.⁹⁶

⁹² [REDACTED].

⁹³ [REDACTED].

⁹⁴ [REDACTED].

⁹⁵ See also, KSC-BC-2022-10, F00116, Pre-Trial Judge, *Decision on Ismet Bahtijari's Request for Interim Release*, ("First Bahtijari Detention Decision"), 29 November 2023, confidential, para. 30.

⁹⁶ See *Selimi Interim Release Appeals Decision*, paras 66-67. See also KSC-BC-2020-06, IA002/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Jakup Krasniqi's Appeal*

46. Likewise, whereas the Pre-Trial Judge accepts, as the Defence submits, that the Accused has limited income,⁹⁷ he is satisfied, when considering his financial means against his ties with Co-Perpetrator 1, [REDACTED] and/or the WVA, that Mr Januzi could have access to the resources, including those of Co-Perpetrator 1, and ultimately [REDACTED], for the purpose of fleeing to evade justice.

47. As regards the opportunity to flee, the Pre-Trial Judge notes that, in principle, Mr Januzi would have the opportunity to evade justice, including by traveling freely to jurisdictions beyond the reach of SC.⁹⁸

48. Conversely, the Pre-Trial Judge takes note of the Defence assertion that the Accused is rooted in his residential area.⁹⁹ The Pre-Trial Judge also observes that Mr Januzi has not attempted to flee, despite having knowledge of his status as a suspect in the SPO investigation and attending an SPO interview on the day before his arrest.¹⁰⁰ Indeed, the Pre-Trial Judge finds merit in the Defence's argument that when the SPO interviewed Mr Januzi on 4 October 2023 and did not arrest him, despite the Pre-Trial Judge's Decision on Arrest, it must have assessed that at the time he did not pose a flight risk.¹⁰¹ The Pre-Trial Judge notes favourably Mr Januzi's readiness to cooperate with the SPO and the SC. Lastly, the Pre-Trial Judge considers in Mr Januzi's favour the submission that [REDACTED].¹⁰² On balance, the Pre-Trial Judge considers that these factors only diminish, but do not eliminate, the risk of flight. At this juncture, it is worth recalling that it is the risk, not the inevitability of flight, that must be assessed.

Against Decision on Interim Release, 30 April 2021, public, para. 55. See also, *First Bahtijari Detention Decision*, para. 30.

⁹⁷ Supplement to the Request, paras 24-25; Reply, para. 8.

⁹⁸ Decision on Arrest, para. 20.

⁹⁹ Request, para. 8; Supplement to the Request, p. 23; Reply, para. 10.

¹⁰⁰ Request, para. 8; Supplement to the Request, paras 17-18, 31.

¹⁰¹ See similarly, KSC-BC-2020-06, F00178, Pre-Trial Judge, *Decision on Kadri Veseli's Application for Interim Release*, 22 January 2021, public, para. 32.

¹⁰² [REDACTED].

49. In light of the above, the Pre-Trial Judge finds that, while moderate, a risk of flight continues to exist in relation to Mr Januzi.

2. Risk of Obstructing the Progress of SC Proceedings

50. The Defence submits that Mr Januzi does not pose a risk of obstructing the progress of the criminal proceedings¹⁰³ because: (i) there is no suggestion that the Accused has destroyed, hidden, changed or forged evidence in relation to the criminal proceedings that he faces or any other criminal proceedings; and (ii) there are no specific circumstances which indicate that the Accused will obstruct the progress of the criminal proceedings (i.e. the proceedings that he faces), by influencing witnesses, victims or accomplices.¹⁰⁴ It further contends that Mr Januzi cooperated with the SPO investigation into his conduct.¹⁰⁵ As an aside, the Defence observes that whilst Mr Bahtijari is detained, Co-Perpetrator 1 has not been arrested. In its view, against the background of their alleged joint endeavour to dissuade Witness 1, the detention of Mr Januzi is not required since Co-Perpetrator 1 has not been arrested.¹⁰⁶

51. The SPO responds that there are concrete and objective risks that Mr Januzi may obstruct the conduct of the criminal proceedings.¹⁰⁷ To this end, the SPO recalls the previous considerations of the Pre-Trial Judge in the Decision on Arrest.¹⁰⁸ The SPO also submits that such obstruction could be done through or in conjunction with the networks of support discussed above, including Co-Perpetrator 1, [REDACTED], and/or the WVA.¹⁰⁹ Furthermore, the SPO submits that: (i) though Mr Januzi voluntarily gave his account of the events at issue in this case, he denies any criminal responsibility and his account conflicts

¹⁰³ Request, para. 9; Supplement to the Request, para. 35; Reply para. 20.

¹⁰⁴ Supplement to the Request, paras 32-35.

¹⁰⁵ Supplement to the Request, para. 34.

¹⁰⁶ Supplement to the Request, para. 37.

¹⁰⁷ Response, para. 39.

¹⁰⁸ Response, para. 34, with reference to Decision on Arrest, para. 21.

¹⁰⁹ Response, para. 35.

with both the account of Witness 1 and that of Mr Bahtijari,¹¹⁰ and (ii) despite any superficial cooperation with the investigation, available evidence shows concerted efforts of Mr Januzi consistent with destroying incriminating records related to his crimes.¹¹¹ Notably, the examination of the mobile telephone seized from Mr Januzi on 5 October 2023 reveals that Mr Januzi has deleted (or attempted to delete) from his mobile telephone all calls and chats with Mr Bahtijari and with Co-Perpetrator 1.¹¹² In addition, the SPO submits that: (i) the Defence's attempts to differentiate Mr Januzi's manner of intimidation/obstruction from that engaged in by Mr Bahtijari and Co-Perpetrator 1 ignores the context properly relied upon by the Pre-Trial Judge in the Confirmation Decision; and (ii) its arguments about the status and/or timing of arrests of Mr Januzi and/or Co-Perpetrator 1 ignore investigative and operational considerations, and are, therefore, irrelevant.¹¹³

52. In the Reply, the Defence rejects the SPO inference that Mr.¹¹⁴ The Defence further repeats its arguments in relation to the status and the timing of the arrest of Mr Januzi, and the fact that Co-Perpetrator 1 is not detained despite the alleged joint endeavour with Mr Januzi and Mr Bahtijari.¹¹⁵

53. As regards the risk of obstructing proceedings under Article 41(6)(b)(ii) of the Law, the Pre-Trial Judge recalls at the outset his findings in the Confirmation Decision concerning the existence of a well-grounded suspicion that Mr Januzi, jointly with others, including Mr Bahtijari and Co-Perpetrator 1, individually approached Witness 1 on two separate occasions for the purpose of inducing him to refrain from testifying against [REDACTED].¹¹⁶ The Pre-Trial Judge further recalls that, as part of these concerted efforts, (i) on the first occasion, Mr Bahtijari

¹¹⁰ Response, para. 36.

¹¹¹ Response, para. 36-37.

¹¹² Response, para. 37.

¹¹³ Supplement to the Request, para. 38.

¹¹⁴ Reply, paras 15-16.

¹¹⁵ Reply, paras 17-19.

¹¹⁶ Confirmation Decision, paras 88-89.

confirmed to Witness 1 that failure to withdraw his testimony could result in [REDACTED];¹¹⁷ and (ii) on the second occasion Mr Januzi: (a) explicitly told Witness 1 that he was visiting him to follow-up on Mr Bahtijari's first approach thereby showing that Mr Januzi had direct knowledge of said visit and its purpose; (b) directly told Witness 1 that he had been sent by Co-Perpetrator 1 to clarify whether Witness 1 would withdraw his testimony in SC proceedings.¹¹⁸

54. In light of the above, the Pre-Trial Judge attaches weight to the fact that the Accused has both the motive and the means to obtain and misuse witness-related information to obstruct and interfere with SC proceedings, including by exerting further pressure on Witness 1 and his family to dissuade him from participating as an SPO witness in the proceedings against Mr Januzi.¹¹⁹ In particular, since Mr Januzi is [REDACTED],¹²⁰ the Pre-Trial Judge considers that the Accused has an increased opportunity to directly interfere with Witness 1 and his family.¹²¹ Moreover, in light of the above findings in paragraphs 44-45, the Pre-Trial Judge is of the view that Mr Januzi's: (i) unity of interests with influential individuals from within the former KLA leadership, such as Co-Perpetrator 1 and [REDACTED]; and (ii) his likely access to their associated networks and resources, including those of the WVA, are important factors in assessing the risk of obstruction of proceedings.¹²² In this context, the Pre-Trial Judge notes that the risk of obstruction need not materialise in Mr Januzi personally tampering with evidence or exerting pressure on Witness 1, but may materialise, for instance, through further coordination with Co-Perpetrator 1, or the associated network of [REDACTED], such as the WVA.

¹¹⁷ Confirmation Decision, paras 76, 88.

¹¹⁸ Confirmation Decision, para. 109. *See similarly*, First Bahtijari Detention Decision, para. 36.

¹¹⁹ Decision on Arrest, para. 21. *See similarly*, First Bahtijari Detention Decision, para. 37.

¹²⁰ Confirmation Decision, para. 72. *See also* 112906-TR-ET Part 1, p. 12, line 19.

¹²¹ Decision on Arrest, para. 21.

¹²² *Similarly*, First Selimi Detention Decision, para. 37; Selimi Interim Release Appeals Decision, paras 61-63.

55. Further to the above, the Pre-Trial Judge likewise notes the close coordination between Co-Perpetrator 1, Mr Januzi and Mr Bahtijari as regards their approaches to Witness 1¹²³ which he finds indicative of the Accused's proneness to following directions from more senior individuals in the KLA hierarchy, and his persistence in intimidation and obstruction efforts in the context of SC proceedings.¹²⁴ Conversely, the Pre-Trial Judge attaches no weight to the Defence's argument that Co-Perpetrator 1 has not been charged or arrested, as it is speculative and irrelevant for the assessment on whether the Accused, if released, would likely obstruct the proceedings in the present case. If any, for the reasons already listed in paragraph 54, the mere fact that Co-Perpetrator 1 is not charged or detained actually reinforces the risk that Mr Januzi may obstruct the criminal proceedings.

56. With respect to the Defence's submissions on the SPO allegations that Mr Januzi deliberately deleted incriminating data from his phone call and message records from his mobile telephone, the Pre-Trial Judge observes that the extent of this litigation cannot be fully ascertained at this stage of the proceedings. Even if it is assumed, for the sake of argument, that the Defence's arguments were considered to be accurate, any such finding would have no impact on the Pre-Trial Judge's above findings on to the risk of Mr Januzi obstructing the proceedings he faces by interfering with Witness 1 and his family. Accordingly, the Pre-Trial Judge finds it neither necessary or appropriate to entertain a discussion on its merits.

57. Lastly, the Pre-Trial Judge assesses the above factors against the backdrop of the pervasive climate of fear and intimidation in Kosovo against witnesses and potential witnesses of the SC.¹²⁵

¹²³ Confirmation Decision, paras 72-87, 113-117.

¹²⁴ Confirmation Decision, paras 91-94, 108-110.

¹²⁵ See, amongst many, *Kilaj* Reasons for Continued Detention, para. 47; Decision on Arrest, para. 21, with further references; KSC-BC-2020-07, F00611/RED, Trial Panel II, *Public Redacted Version of the Trial Judgment*, 18 May 2022, public, paras 576-581; First *Bahtijari* Detention Decision, para. 39.

58. The Pre-Trial Judge accordingly finds that there continues to exist a risk that Mr Januzi will obstruct the progress of the proceedings he faces.

3. Risk of Repeating or Committing Further Crimes

59. The Defence submits that there is no risk that Mr Januzi will repeat the offences charged against him.¹²⁶ It states that Article 41(6)(b)(iii) of the Law requires there to be a specific risk of repeating *the* criminal offence (in this case, intimidation and obstruction directed towards Witness 1), completing an attempted crime (in this case, intimidation and obstruction directed towards Witness 1) or committing a crime which he has threatened to commit (in this case, the only threat alleged is towards Witness 1).¹²⁷ It maintains that, [REDACTED], there is no incentive for, or risk of, the Accused repeating the alleged criminal offence, completing the attempted crime or committing any crime which he has threatened to commit because the allegation he faced was specific to dissuading Witness 1 from giving evidence in SC proceedings.¹²⁸ Lastly, the Defence repeats its submissions that Co-Perpetrator 1 is neither charged nor arrested, as opposed to Mr Januzi.¹²⁹

60. The SPO responds that there are concrete and objective risks that Mr Januzi may commit further crimes.¹³⁰ It submits that, as found by the Pre-Trial Judge in the Decision on Arrest, the relevant factors to be considered for this ground are the same as those with respect to the obstruction of proceedings.¹³¹ It recalls in this regard that the Pre-Trial Judge determined that there exists a risk that the Accused will repeat the offences alleged to have been committed by him.¹³² It further avers that the Defence's argument that [REDACTED] does not eliminate the risk that

¹²⁶ Request, para. 10; Supplement to the Request, paras 38-44; Reply, para. 21.

¹²⁷ Request, para. 41.

¹²⁸ Supplement to the Request, paras 39-40.

¹²⁹ Supplement to the Request, para. 42.

¹³⁰ Response, para. 42.

¹³¹ Response, para. 40.

¹³² Response, para. 40.

Mr Januzi may commit further crimes, and ignores, for example, the incentive to further intimidate Witness 1 and interfere with his evidence in the current case.¹³³

61. As regards the further commission of crimes under Article 41(6)(b)(iii) of the Law, the Pre-Trial Judge is of the view that the relevant factors to be considered are the same as those outlined in paragraphs 53-58 above with respect to obstruction of proceedings. While the existence of such a risk does not automatically translate into a risk of committing further offences, the factors that underpin the former are of relevance to the assessment of the latter in the present case.¹³⁴ In particular, the Pre-Trial Judge considers that there exists a risk that the Accused will repeat the offences alleged to have been committed by him.

62. Accordingly, the Pre-Trial Judge finds that there continues to exist a risk that Mr Januzi will repeat or commit further offences.

4. Conclusion

63. As a result, the Pre-Trial Judge finds that there are articulable grounds to believe that Mr Januzi may flee (although this risk is moderate), obstruct the progress of SC proceedings, or commit further offences, therefore necessitating his continued detention in accordance with Article 41(6)(b) of the Law.

D. CONDITIONAL RELEASE

64. The Defence submits that, in the event that there should be, to some extent, risks under Article 41 (6)(b) of the Law, these could be properly mitigated by existing suitable measures alternative to detention.¹³⁵ The Defence proposes the following conditions: (i) surety in the sum of 5,000 EUR; (ii) surrendering of Mr Januzi's passport; (iii) requirement to live and sleep each night at his home address; (iv) daily reporting to the [REDACTED] police station or EULEX police

¹³³ Response, para. 41.

¹³⁴ Decision on Arrest, para. 22; First *Shala* Detention Decision, para. 39; First *Bahtijari* Detention Decision, para. 45.

¹³⁵ Supplement to the Request, paras 30, 36, 43-44; Reply, paras 22-24.

headquarters; (v) prohibition to contact directly or indirectly Witness 1, Mr Bahtijari or Co-Perpetrator 1; (vi) refraining from any contact or communication with (potential) witnesses or victims before the SC and SPO;¹³⁶ and (vii) geographical restrictions on his movements within Kosovo or areas thereof (“Proposed Conditions”).¹³⁷ The Defence further proposes conditions similar to those imposed on Mr Gucati by the SC President upon his early release (“Commutation Conditions”).¹³⁸ The Defence also submits, in the event that the Panel requires further assurances, Mr Januzi will abide by any conditions imposed.¹³⁹ If further submits that, even where the conditions for detentions in Article 41(6) of the Law are met, the Panel should order house detention in Kosovo as a proportionate measure in the particular circumstances of this case.¹⁴⁰

65. The SPO responds that the Defence fails to explain (i) how the conditions it proposes might address any of the Article 46(1)(b) risks, and (ii) how they would be monitored or enforced.¹⁴¹ It claims that, even if Mr Januzi were to surrender his passport, remain confined to his home with electronic monitoring, or provide a monetary surety, it would still not address the fact that: (i) international travel from Kosovo is legally and illegally possible without a passport, including to countries with no obligation to transfer the Accused to the SC; (ii) Mr Januzi could remove any monitoring devices and flee the borders of Kosovo; and (iii) he would have access to resources via Co-Perpetrator 1, [REDACTED], the WVA and their associated networks.¹⁴² The SPO avers that, given the varied forms of communication available between Mr Bahtijari and Co-Perpetrator 1, the communications monitoring framework in place at the SC Detention Facilities is

¹³⁶ Supplement to the Request, para. 44.

¹³⁷ Supplement to the Request, paras 30, 36, 43-44.

¹³⁸ KSCSC-2023-01/CS001/F00002, President, *Decision on Commutation, Modification or Alteration of Sentence*, 12 October 2023, public.

¹³⁹ Supplement to the Request, para. 44.

¹⁴⁰ Supplement to the Request, paras 9, 48.

¹⁴¹ Response, para. 45.

¹⁴² Response, para. 46.

particularly important to ensure that the Accused does not continue to engage in obstructive and/or criminal behaviour.¹⁴³ It adds that the measures in place at the SC Detention Facilities provide robust assurances against unmonitored visits and communications with family members and pre-approved visitors with a view to minimising the risks of obstruction and commission of further offences, and that in previous cases, the Kosovo Police have not provided guarantees establishing that they have the capacity to implement corresponding measures that sufficiently mitigate the existing risks.¹⁴⁴ The SPO further recalls the reasons why proceedings were relocated away from Kosovo, and notes that various international organisations have recently documented that corruption continues to affect the criminal justice sector in Kosovo.¹⁴⁵ It also highlights that the conditions imposed on Mr Gucati by the President when deciding on the commutation of his sentence were granted in a different procedural stage and recalls that, prior to the President's decision, Mr Gucati was detained throughout the proceedings, as repeatedly affirmed by SC Pre-Trial Judge, and the Trial and Court of Appeals Panels.¹⁴⁶

66. In the Reply, the Defence repeats its submissions in relation to its proposed conditions and adds that, if released with a requirement to abide with the above conditions, Mr Januzi would know that any breach, however minor, of any of the imposed conditions would lead to his immediate return to custody, thus providing a real incentive to abide by the same.¹⁴⁷

67. Before all else, the Pre-Trial Judge observes that the Commutation Conditions proposed by the Defence, as well as the circumstances with respect to Mr Gucati, are either inapplicable or incompatible with the present stage of the proceedings.

¹⁴³ Response, paras 44, 47-48.

¹⁴⁴ Response, para. 49.

¹⁴⁵ Response, para. 50.

¹⁴⁶ Response, para. 43.

¹⁴⁷ Reply, para. 25.

Mr Januzi is not in the same position as Mr Gucati when the SC President contemplated the Commutation Conditions. Accordingly, the Pre-Trial Judge will not consider those conditions any further.

68. As regards the question of conditional release, the Pre-Trial observes that Defence merely lists potential conditions without further explaining how they might address the risks foreseen under Article 41(6)(b) of the Law, in particular the ground set forth in Article 41(6)(b)(ii)-(iii) of the Law, given that Mr Januzi has both the motive and the means to interfere with proceedings before the SC, in particular interfering Witness 1 in the context of the proceedings against him, and to repeat or commit further offences.

69. As regards the flight risk, the Pre-Trial Judge finds that some of the Proposed Conditions could mitigate such a risk in relation to Mr Januzi. In this regard, the Pre-Trial Judge positively notes the Accused's readiness to remain in house arrest in Kosovo, live and sleep each night at his home address, surrender his passport and any other travel documents, report daily to the police and any other relevant authorities or be subject to close monitoring by them, to appear in court whenever ordered to do so, to attend proceedings by VTC,¹⁴⁸ and/or be subject to any other conditions deemed by the Pre-Trial Judge as appropriate.

70. However, as regards the risks of obstructing the progress of SC proceedings or committing further crimes, the Pre-Trial Judge finds that none of the conditions put forth by the Defence could restrict the ability of the Accused to obstruct the progress of the proceeding he faces and commit further offences. Notably, the Pre-Trial Judge is of the view that the conditions proposed by the Defence (i) do not address the possibility of Mr Januzi employing communication devices belonging to other persons or requesting others to use their devices for these purposes; and

¹⁴⁸ Request, para. 7.

(ii) cannot ensure the effective monitoring of Mr Januzi's communications.¹⁴⁹ In this regard, the Pre-Trial Judge is particularly mindful of the fact that the Accused is [REDACTED] with likely access to the associated networks and resources of Co-Perpetrator 1, [REDACTED] and the WVA. Accordingly, should he be released, even under restrictions on his movements throughout Kosovo or areas thereof, Mr Januzi would have the motive, the means and the opportunity to exert pressure on Witness 1 and his family to dissuade him from participating in the SC proceedings, or to otherwise tamper with evidence, directly and indirectly.¹⁵⁰ The Pre-Trial Judge considers that this risk can be effectively managed only through the communications monitoring regime available at the SC Detention Facilities.¹⁵¹

71. Likewise, while the Pre-Trial Judge may, in principle, order Mr Januzi to refrain from contacting Witness 1, Mr Bahtijari, Co-Perpetrator 1 or any other potential witness and/or co-perpetrator, he is of the view that such a commitment can neither be enforced nor monitored. The Pre-Trial Judge considers in this regard that the measures in place at the SC Detention Facilities, viewed as a whole, are designed to provide assurances against unmonitored visits and communications with family members and pre-approved visitors with a view to minimising the risks of obstruction and commission of further crimes as much as possible.¹⁵² In this regard, the Pre-Trial Judge emphasises that the Registrar and the Panel, who have unrestricted access to confidential information concerning witnesses and victims, may take action more

¹⁴⁹ See, similarly, First Shala Detention Decision, para. 46; Kilaj Reasons for Continued Detention, para. 60; KSC-BC-2020-04, IA001/F00005/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Pjetër Shala's Appeal Against Decision on Provisional Release* ("Shala Provisional Release Appeals Decision"), 20 August 2021, public, paras 53-61; First Bahtijari Detention Decision, para. 52.

¹⁵⁰ See also above, para. 62.

¹⁵¹ See, similarly, First Shala Detention Decision, para. 46; Shala Provisional Release Appeals Decision, para. 61; Kilaj Reasons for Continued Detention, para. 60. See also KSC-BC-2020-04, F00282/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Review of Detention of Pjetër Shala* ("Seventh Shala Detention Decision"), 21 September 2022, public, paras 33-34.

¹⁵² Seventh Shala Detention Decision, para. 33; Kilaj Reasons for Continued Detention, para. 61; First Bahtijari Detention Decision, para. 53.

promptly than other authorities acting under a distinct framework.¹⁵³ The Pre-Trial Judge further recalls that: (i) previous rulings in Case 06 have found that the Kosovo Police does not have the capacity to implement corresponding measures that sufficiently mitigate the existing risks;¹⁵⁴ (ii) the very reason for establishing the SC was that criminal proceedings against former KLA members could not be conducted in Kosovo;¹⁵⁵ and (iii) the procedural framework and operational practice of the SC have been specifically designed to ensure, to the maximum extent possible, the protection of witnesses, victims as well as others at risk with a view to implementing the mandate of the SC.¹⁵⁶

72. For the same reasons, the Pre-Trial Judge considers that no *additional* reasonable conditions imposed by the Pre-Trial Judge¹⁵⁷ are available to adequately mitigate the existing risks.

73. The Pre-Trial Judge accordingly finds that the Proposed Conditions, including any additional limitations imposed by the Pre-Trial Judge, would insufficiently mitigate the risk of obstructing SC proceedings or committing further crimes.

E. PROPORTIONALITY OF DETENTION

74. The Pre-Trial Judge takes note of the Defence's submission that detention must be proportional, and further recalls the importance of the proportionality

¹⁵³ Seventh *Shala* Detention Decision, para. 33; *Kilaj* Reasons for Continued Detention, para. 61; First *Bahtijari* Detention Decision, para. 53.

¹⁵⁴ See KSC-BC-2020-06, F00582/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Remanded Detention Review Decision and Periodic Review of Detention of Jakup Krasniqi* ("*Krasniqi* Remanded Detention Decision"), 26 November 2021, public, para. 77; First *Bahtijari* Detention Decision, para. 53/

¹⁵⁵ *Krasniqi* Remanded Detention Decision, para. 80, with further references. First *Bahtijari* Detention Decision, para. 54.

¹⁵⁶ *Krasniqi* Remanded Detention Decision, para. 80, with further references; First *Bahtijari* Detention Decision, para. 53.

¹⁵⁷ KSC-BC-2020-06, IA017/F00011/RED, Court of Appeals Panel, *Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 5 April 2022, public, para. 51; First *Bahtijari* Detention Decision, para. 54.

principle¹⁵⁸ in the determination of the reasonableness of pre-trial detention.¹⁵⁹ In the present case, and observing that Mr Januzi has been detained since 5 October 2023 only, the Pre-Trial Judge is of the view that no question of proportionality arises at this stage. To begin with, the review takes place after having granted the Defence twice an extension of time to supplement its submissions.¹⁶⁰ Further, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, the decision on detention of Mr Januzi will be regularly reviewed upon the expiry of two (2) months from the last ruling on detention or at any time upon request by the Accused or the SPO, or *proprio motu*, where a change in circumstances since the last review has occurred.

75. In addition to the above, the Pre-Trial Judge notes that: (i) the SPO has already discharged its disclosure obligations under Rules 102(1)(a) and 103 of the Rules,¹⁶¹ (ii) with additional disclosure obligations due to be completed shortly;¹⁶² (iii) two status conferences have been held, and the date for the submission of the SPO's pre-trial brief has already been determined;¹⁶³ (iv) a third status conference will be convened before court recess,¹⁶⁴ when the Parties will discuss the expected date of transmission to the case to a Trial Panel; (v) the proceedings are thus moving forward expeditiously.

¹⁵⁸ Request, paras 3-6; Supplement to the Request, paras 45-48; Reply, para. 28.

¹⁵⁹ KSC-BC-2020-07, IA001/F00005, Court of Appeals Panel, *Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention*, 9 December 2020, public, paras 72-73.

¹⁶⁰ See paragraph 7 above.

¹⁶¹ See Disclosure Package No. 2, 31 October 2023; Disclosure Package No. 3, 3 November 2023; Disclosure Package No. 4, 16 November 2023.

¹⁶² KSC-BC-2023-10, F00076, Pre-Trial Judge, Framework Decision on Disclosure of Evidence and Related Matters, 24 October 2023, confidential, para. 122(d)-(e). A public redacted version was filed on the same day, F00076/RED.

¹⁶³ KSC-BC-2023-10, Transcript of Hearing, 3 November 2023, public, p. 82, lines 10-15.

¹⁶⁴ KSC-BC-2023-10, Transcript of Hearing, 3 November 2023, public, p. 90, lines 17-19.

76. In light of the foregoing, the Pre-Trial Judge finds that the detention of Mr Januzi has not become unreasonable within the meaning of Rule 56(2) of the Rules.

V. DISPOSITION

77. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- (i) **REJECTS** the Request;
- (ii) **ORDERS** the Defence to file public redacted versions of the Request, Supplement to the Request and the Reply, or to indicate whether these filings may be reclassified as public, by **Friday, 15 December 2023**, at 16h00;
- (iii) **ORDERS** the Defence, if it so wishes, to file submissions on the next review of detention by **Tuesday, 16 January 2024** at 16h00, with responses and replies following the timeline set out in Rule 76 of the Rules; namely **Friday, 26 January 2024** at 16h00 for the response, and **Friday, 2 February 2024** for the reply; and
- (iv) **ORDERS** the SPO, should the Defence decide not to file any submissions by the aforementioned time limit, to file submissions on the next review of detention by **Monday, 22 January 2024**, with the Defence filing its submissions by **Monday, 29 January 2024**, if it so wishes.



Judge Nicolas Guillou

Pre-Trial Judge

Dated this Friday, 8 December 2023
At The Hague, the Netherlands.