



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: **KSC-BC-2023-11**
Specialist Prosecutor v. Haxhi Shala

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

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 31 January 2024

Language: English

Classification: Public

**Public Redacted version of 'Prosecution submission pertaining to periodic detention
review of Haxhi Shala'**

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Haxhi Shala

Toby Cadman

I. INTRODUCTION

1. Pursuant to Article 41 of the Law¹ and Rule 57 of the Rules,² the Specialist Prosecutor's Office ('SPO') makes the following submissions in support of the need to detain the Accused Haxhi Shala ('Shala'). As the Pre-Trial Judge found in the Decision on Arrest and Transfer,³ the criteria for detention under Article 41(6) are satisfied. No conditions short of detention in the Kosovo Specialist Chamber's ('KSC') detention facilities would be sufficient to mitigate the risks of release under any conditions, and the period of detention is reasonable.

II. PROCEDURAL HISTORY

2. On 4 December 2023, the Pre-Trial Judge confirmed the indictment against Shala.⁴ On the same day, the Pre-Trial Judge also issued an arrest warrant for Shala and ordered his transfer to the KSC detention facilities in The Hague, the Netherlands.⁵
3. On 6 December 2023, the SPO filed the confirmed Indictment.⁶

¹ Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ Public Redacted Version of the Decision on Request for Arrest Warrants and Transfer Order, KSC-BC-2023-11/F00006/RED, 4 December 2023 ('Decision on Arrest and Transfer').

⁴ Decision on the Confirmation of the Indictment, KSC-BC-2023-11/F00005, 4 December 2023, Confidential ('Confirmation Decision').

⁵ Decision on Arrest and Transfer, KSC-BC-2023-11/F00006/RED.

⁶ Indictment, KSC-BC-2023-11/F00007/A01, 6 December 2023, Strictly Confidential and *Ex Parte* ('Indictment'). A public redacted version of the confirmed indictment was submitted on 12 December 2023, KSC-BC-2023-11/F00013/A01.

4. On 11 December 2023, Shala was arrested in Kosovo.⁷ On the next day, Shala was transferred to the KSC detention facilities in The Hague,⁸ in accordance with the Decision on Arrest and Transfer.
5. On 13 December 2023, Shala had his initial appearances before the Pre-Trial Judge.⁹
6. On 15 December 2023, the Pre-Trial Judge presided over the first status conference in this case.¹⁰
7. On 21 December 2023, Shala received Disclosure Package 2, which contained, *inter alia*, an audio recording [REDACTED] wherein he is implicated in the charged crimes (the 'Audio Recording').
8. On 19 January 2024, Shala received Disclosure Package 5, which contained, *inter alia*, [REDACTED].
9. On 25 January 2024, the Pre-Trial Judge issued the Scheduling Order for Submissions on Review of Detention,¹¹ ordering the SPO to file submissions on the first review of detention of Shala, by Wednesday, 31 January 2024, at 16h00.

III. APPLICABLE LEGAL FRAMEWORK

10. Before ordering that Shala be detained pending trial, the Pre-Trial Judge must be satisfied¹² that: (1) there is a grounded suspicion that Shala has committed a crime within

⁷ Notification of Arrest of Haxhi Shala Pursuant to Rule 55(4), KSC-BC-2023-11/F00008, 11 December 2023.

⁸ Notification of the Reception of Haxhi Shala in the Detention Facilities of the Specialist Chambers with one strictly confidential Annex, KSC-BC-2023-11/F00011, 12 December 2023.

⁹ Transcript (Initial Appearance), 13 December 2023.

¹⁰ Transcript (Status Conference), 15 December 2023.

¹¹ Scheduling Order for Submissions on Review of Detention, KSC-BC-2023-11/F00034, 25 January 2024.

¹² See *Specialist Prosecutor v. Januzi and Bahtijari*, Public Redacted Version of Decision on Sabit Januzi's Request for Interim Release, KSC-BC-2023-10/F00123/RED, 8 December 2023, ('Januzi Decision'), para.15; *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, KSC-BC-2020-07/IA001/F00005, 9 December 2020 ('Gucati Appeals Decision'), para.51.

the jurisdiction of the KSC; and (2) there are articulable grounds to believe that: (i) there is a risk of flight; (ii) Shala will obstruct the progress of the criminal proceedings, including by influencing witnesses, victims or accomplices; or (iii) the seriousness of the crime or the manner or circumstances in which it was committed and Shala's personal characteristics, past conduct, the environment and conditions in which he lives or other personal circumstances indicate a risk that he will repeat the criminal offense, complete an attempted crime or commit a crime which he has threatened to commit.¹³

11. As also recognised by the Pre-Trial Judge,¹⁴ the Court of Appeals has been clear that, once a grounded suspicion under Article 41(6)(a) is identified, an articulable basis of a single ground under Article 41(6)(b) is sufficient to support detention.¹⁵ The applicable standard is articulable grounds that support a 'belief' that there is a risk of one of the Article 41(6)(b) grounds occurring.¹⁶ The 'belief' test denotes 'an acceptance of the possibility, not the inevitability, of a future occurrence'.¹⁷ In other words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.¹⁸

¹³ Article 41(6)(b)(i)-(iii).

¹⁴ Decision on Arrest and Transfer, KSC-BC-2023-10/F00009/RED, para.19.

¹⁵ See *Specialist Prosecutor v. Gucati and Haradinaj*, Consolidated Decision on Nasim Haradinaj's Appeals Against Decisions on Review of Detention, KSC-BC-2020-07/IA007/F00004, 6 April 2022, para.49; See *Specialist Prosecutor v. Thaçi et al.*, Decision on Kadri Veseli's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA001/F00005, 30 April 2021 ('Veseli Interim Release Appeals Decision'), para.15. See also Articles 19(1.9), 19(1.10) and 19(1.31) of the 2022 Kosovo Criminal Procedure Code, Code No. 08/L-032 ('KCPC').

¹⁶ Januzi Decision, KSC-BC-2023-10/F00123/RED, par.32; Veseli Interim Release Appeals Decision, KSC-BC-2020-06/IA001/F00005, para.19.

¹⁷ See Januzi Decision, KSC-BC-2023-10/F00123/RED, par.32; Veseli Interim Release Appeals Decision, KSC-BC-2020-06/IA001/F00005, paras 13-19; *Specialist Prosecutor v. Thaçi et al.*, Decision on Kadri Veseli's Application for Interim Release, KSC-BC-2020-06/F00178, 22 January 2021, para.21 citing Gucati Appeals Decision, KSC-BC-2020-07/IA001/F00005, paras 63, 67.

¹⁸ Januzi Decision, KSC-BC-2023-10/F00123/RED, par.32; Veseli Interim Release Appeals Decision, KSC-BC-2020-06/IA001/F00005, para.17.

Articulable in this context means specified in detail by reference to the relevant information or evidence.¹⁹

12. When assessing the relevant factors, the Pre-Trial Judge may not conduct a piecemeal assessment, but must weigh all relevant factors taken together.²⁰

13. In considering whether an accused should be detained or released, the Pre-Trial Judge must consider whether measures other than detention would sufficiently reduce the risk of the Article 41(6)(b) factors occurring.²¹

14. If the Article 41(6) conditions are met and no lesser measures are available, the person shall continue to be detained.²²

IV. SUBMISSIONS

15. In the Decision on Arrest and Transfer, the Pre-Trial Judge found the Article 41(6) criteria to be met and Shala's detention to be necessary. The Pre-Trial Judge must now consider anew whether those conditions continue to be satisfied.²³ In doing so, the Pre-Trial Judge may refer to previous decisions and material and evidence already before

¹⁹ Januzi Decision, KSC-BC-2023-10/F00123/RED, par.32; *Specialist Prosecutor v. Thaçi et al.*, Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F01862, 16 October 2023, para.12 citing Article 19.1.30 of the KCPC 2012, Law No. 04/L-123 defining 'articulable' as: 'the party offering the information or evidence must specify in detail the information or evidence being relied upon'.

²⁰ Januzi Decision, KSC-BC-2023-10/F00123/RED, par.33.

²¹ 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, KSC-CC-PR-2017-1/F00004, 26 April 2017, para.14.

²² Gucati Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.51.

²³ See, *inter alia*, *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of the Decision on Jakup Krasniqi's Application for Interim Release, KSC-BC-2020-06/F00180/RED, 22 January 2021 ('Krasniqi Decision'), para.16. Following his first, *inter partes* detention ruling, the Pre-Trial Judge is not required to make findings on the factors already decided upon in the initial ruling on detention, but must examine these reasons or circumstances and determine whether they still exist. See, *inter alia*, *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F00371/RED, 25 June 2021, para.19.

him, without this affecting the *de novo* character of his decision.²⁴ For the reasons set out below, the SPO has fully discharged its burden²⁵ in showing that all Article 41(6) criteria are met and Shala's detention remains necessary.

A. GROUNDED SUSPICION

16. For the reasons set out in the Confirmation Decision²⁶ and affirmed in the Decision on Arrest and Transfer,²⁷ there is a well-grounded suspicion that Shala committed or attempted to commit crimes within the jurisdiction of the KSC. This level of suspicion exceeds the 'grounded suspicion' required for detention.²⁸

17. Nothing has occurred since these decisions were issued that would affect the Pre-Trial Judge's determination.

B. DETENTION IS JUSTIFIED UNDER ALL ARTICLE 41(6)(B) FACTORS

i. Risk of Flight (Article 41(6)(b)(i))

18. In previously finding Shala to present a flight risk, the Pre-Trial Judge considered: (1) the gravity of the offences charged, together with the potential sentence; (2) the opportunity to evade justice, including by travelling freely to jurisdictions beyond the reach of the KSC; (3) Shala's demonstrated blatant disregard for the laws and rules of the KSC, in particular court-ordered protective measures; and (4) Shala's position as a former

²⁴ Krasniqi Decision, KSC-BC-2020-06/F00180/RED, para.24.

²⁵ Krasniqi Decision, KSC-BC-2020-06/F00180/RED, para.17.

²⁶ Confirmation Decision, KSC-BC-2023-11/F00005, paras 101, 117, 129.

²⁷ Decision on Arrest and Transfer, KSC-BC-2023-11/F00006/RED, para.17.

²⁸ See *Specialist Prosecutor v. Shala*, Public Redacted Version of Decision on Pjetër Shala's Request for Provisional Release, KSC-BC-2020-04/F00045/RED, 15 June 2021 ('Shala Decision'), para.15.

commander of Brigade 121 of the Kosovo Liberation Army ('KLA') and his ties to other like-minded individuals who could provide the means and assets for him to abscond.²⁹

19. Having now been charged with and arrested for crimes allegedly aimed at undermining the evidence against [REDACTED],³⁰ Shala has an even stronger unity of interests with influential individuals from within the former senior KLA leadership [REDACTED].³¹ [REDACTED], the Pre-Trial Judge has noted that [REDACTED] cannot be ignored in assessing the risk that individuals in his support network, who share his firm opposition to the KSC, may be willing to give him access to assets and/or help him abscond.³² This network likewise has the means and incentives to assist those (perceived to be) [REDACTED].

20. More generally, the prevailing climate of obstruction in connection with KLA-related criminal proceedings, both in and outside Kosovo, allows for the mobilisation of supporters to assist Shala in fleeing to evade justice.³³

21. Further, Shala is now aware of the serious confirmed charges against him, that he may face a substantial prison sentence if convicted, and, through the ongoing disclosure process, he is gaining increasing knowledge about the strength of the evidence to be

²⁹ Decision on Arrest and Transfer, KSC-BC-2023-11/F00006, para.20.

³⁰[REDACTED].

³¹ See Januzi Decision, KSC-BC-2023-10/F00123/RED, paras 44-45; [REDACTED].

³² [REDACTED].

³³ See, generally, 'Obstructing the Investigation – Too many Obstacles, Too Little Evidence, in Sense Agency, ICTY: The Kosovo Case, 1998-1999', available at <https://kosovo.sense-agency.com/>.

presented against him.³⁴ All of these factors establish Shala's risk of flight as a 'sufficiently real possibility'.³⁵

22. Sentencing exposure is an important factor³⁶ that judges are required to consider.³⁷ In this regard, the potential maximum sentences for offences under KCC Articles 387 and 401 include substantial fines and up to ten years of imprisonment.³⁸ The sentences imposed upon Hysni Gucati and Nasim Haradinaj, who were also charged with obstruction offences before the KSC, were ultimately more than four years' imprisonment.³⁹

23. Further, regarding the ongoing disclosure process, since his arrest, significant inculpatory evidence has been disclosed to Shala, including, *inter alia*, the Audio Recording, which has been found relevant to risk of flight [REDACTED].⁴⁰

24. For all of those reasons, Shala poses a risk of flight if released from detention.

³⁴ See Januzi Decision, KSC-BC-2023-10/F00123/RED, paras 42-43; Selimi Decision, KSC-BC-2020-06/F00179/RED, para.31.

³⁵ See *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA003/F00005/RED, 30 April 2021 ('Selimi Appeals Decision'), para.44.

³⁶ Gucati Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.72; ECtHR, *Panchenko v. Russia*, 45100/98, Judgment, 8 February 2005, paras. 101-105 (noting that the severity of the sentence faced is a 'relevant element in the assessment of the risk of absconding'). See also ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-3249-Red OA11, Judgment on the Provisional Release Appeal, 20 May 2015 ('Bemba Decision'), paras. 1, 71 (holding that the Trial Chamber did not err in relying on the fact that charges had been confirmed against the accused as part of its analysis regarding the necessity of detention).

³⁷ ICTY, *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, IT-04-82-PT, Decision on Johan Tarčulovski's Motion for Provisional Release, 18 July 2004, paras. 15, 34 (noting that 'a Trial Chamber *must* make specific reference to the length of the sentence the accused can expect if convicted, and the incentive this may give the accused to flee,' and denying the accused's motion for provisional release) (emphasis added).

³⁸ Article 387 carries a maximum sentence of 10 years of imprisonment and Article 401 generally carries a maximum sentence of 3 years of imprisonment, with a maximum sentence of 5 years of imprisonment possible where the offence is committed against, *inter alia*, a judge, prosecutor, official of a court, or a prosecution officer.

³⁹ *Specialist Prosecutor v. Gucati and Haradinaj*, Appeal Judgment, KSC-CA-2022-01/F00114, para.442.

⁴⁰ [REDACTED].

ii. *Risk of Obstruction of Proceedings (Article 41(6)(b)(ii))*

25. In previously finding that Shala may obstruct the progress of criminal proceedings, the Pre-Trial Judge recalled: (1) that, on two separate occasions, Shala instructed Sabit Januzi ('Januzi') and Ismet Bahtijari ('Bahtijari') (collectively, the 'Case 10 Accused') to Approach Witness 1 to induce him to refrain from testifying in KSC proceedings; (2) that during the first approach, through Bahtijari, Shala threatened Witness 1 that failure to withdraw his testimony could result in [REDACTED]; (3) that during the second approach, through Januzi who relayed the proposal, Shala offered an incentive to Witness 1 in exchange for agreeing not to testify or provide evidence [REDACTED]; (4) that Shala purposefully targeted [REDACTED] - the Case 10 Accused- who had access to the witness, and would thus be better suited to persuade Witness 1 to withdraw his testimony [REDACTED]; (5) that Shala has the means and the intent to obtain and misuse witness-related information to obstruct and interfere with KSC proceedings, including by exerting pressure on Witness 1 [REDACTED] in order to dissuade him from [REDACTED]; (6) the close coordination between Shala and the two Case 10 Accused in relation to their approaches to Witness 1, which is indicative of the Shala's persistence in intimidation and obstruction efforts in the context of KSC proceedings; and (7) the pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the KSC.⁴¹

26. Such obstruction could also be magnified through or in conjunction with the networks discussed above, [REDACTED]. The Pre-Trial Judge has noted that

⁴¹ Decision on Arrest and Transfer, KSC-BC-2023-11/F00006/RED, para.21.

[REDACTED], and found that this is an important factor when addressing the risk of obstruction of proceedings.⁴²

27. The referenced backdrop of the pervasive climate of fear and intimidation in Kosovo against witnesses and potential witnesses of the KSC,⁴³ has been recognized by the Court of Appeals as a relevant 'contextual consideration.'⁴⁴ Similar findings were made in the *Mustafa* Trial Judgment⁴⁵ and the *Gucati and Haradinaj* Appeal Judgment.⁴⁶ The Trial Panel in Case 07 considered that 'witness protection has continued to be a live and critical issue in Kosovo,'⁴⁷ and credited the testimony of Defence Expert Robert Reid, who remarked that, in over 20 years in the field, he had never seen witness intimidation on the level that exists in Kosovo.⁴⁸

28. Moreover, Shala has now received highly sensitive information in the form of, *inter alia*, [REDACTED], and the risk of obstruction only further increases with continued disclosure.

⁴² [REDACTED].

⁴³ Decision, KSC-BC-2023-10/F00123/RED, para.57.

⁴⁴ *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA017/F00011/RED, 5 April 2022, paras 41-48; *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA014/F00008/RED, 31 March 2022, para.50; *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA015/F00005/RED, 25 March 2022, para.43.

⁴⁵ *Specialist Prosecutor v. Mustafa*, Further Redacted Version of Corrected Version of Public Redacted Version of Trial Judgment, KSC-BC-2020-05/F00494/RED3/COR, 16 December 2022 ('*Mustafa* Trial Judgment'), para.57.

⁴⁶ *Specialist Prosecutor v. Gucati and Haradinaj*, Appeal Judgment, KSC-CA-2022-01/F00114, 2 February 2023 (*Gucati and Haradinaj* Appeal Judgment), para.438 (*quoting* KSC-BC-2020-07, Transcript, 18 May 2022, pp.3858-3859).

⁴⁷ *Specialist Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2022-01/F00611/RED, 18 May 2022 ('Case 7 Judgment'), para.579.

⁴⁸ Case 7 Judgment, KSC-BC-2020-07/F00611/RED, para.577.

29. In this regard, Trial Panel II in Case 06 has consistently held that the disclosure of such highly sensitive information to the Defence necessarily results in it becoming known to a broader range of persons, including the relevant accused, which continues to amplify the risk of sensitive information pertaining to witnesses becoming known to members of the public before the witnesses in question give evidence.⁴⁹ In the context of the release of an accused, this would not be conducive to the effective protection of witnesses who have yet to testify.⁵⁰

30. In the comparable context of [REDACTED], the Pre-Trial Judge recently concluded that with the knowledge acquired so far, in the present circumstances, the risk of collusion for the purpose of obstructing the proceedings is particularly high.⁵¹

31. As held by the Trial Panel in Case 07, ‘the mere fact that the Accused is entitled to disclosure of relevant material does not mean that the Panel ought to ignore the risks that come with such disclosure, especially in the context of conditional release.’⁵²

32. For all of these reasons, there are concrete and objective risks that Shala may continue his efforts to obstruct the progress of criminal proceedings.

iii. Risk of Criminal Offences (Article 41(6)(b)(iii))

33. In previously finding that Shala may commit further crimes, the Pre-Trial Judge concluded that the relevant factors to be considered are the same as those with respect to

⁴⁹ See e.g. *Specialist Prosecutor v. Thaçi et al.*, Decision on Periodic Review of Detention of Kadri Veseli, KSC BC-2020-06/F02011, 15 December 2023 (‘Veseli Decision’), para.25; *Specialist Prosecutor v. Thaçi et al.*, Decision on Periodic Review of Detention of Hashim Thaçi, KSC BC-2020-06/F02012, 15 December 2023 (‘Thaçi Decision’), para.21.

⁵⁰ See Veseli Decision, KSC BC-2020-06/F02011, para.25; Thaçi Decision, KSC BC-2020-06/F02012, para.21.

⁵¹ [REDACTED].

⁵² *Specialist Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00507/RED, 21 December 2021, para.36.

the obstruction of proceedings.⁵³ In particular, the Pre-Trial Judge found that there exists a risk that Shala will repeat the offences alleged to have been committed by them.⁵⁴

34. Therefore, there are concrete and objective risks that Shala may commit further crimes.

C. NO MODALITIES OF CONDITIONAL RELEASE ARE ABLE TO SUFFICIENTLY MITIGATE THE RISKS

35. No combination of release conditions, nor any additional measures foreseen in Article 41(12), could sufficiently, and to a degree comparable to that of detention at the KSC detention facilities, mitigate the existing risks with respect to Shala.⁵⁵ Detention is the only means by which these risks can be adequately managed. The communications monitoring framework of the KSC detention facilities will be particularly important to ensure that Shala does not continue to engage in further obstructive and/or criminal behaviour.⁵⁶

36. Relevant specifically to the risk of flight, even were Shala to surrender his passport, that would not address the fact that international travel from Kosovo is legally⁵⁷ and illegally possible without a passport, including to countries with no obligation to transfer Shala to the KSC. For these same reasons, home confinement, even with electronic monitoring, would be ineffective, since Shala could remove any monitoring devices and flee the borders of Kosovo without any likelihood of being returned to the jurisdiction of

⁵³ Decision on Arrest and Transfer, KSC-BC-2023-11/F00006/RED, para.22.

⁵⁴ Decision on Arrest and Transfer, KSC-BC-2023-11/F00006/RED, para.22.

⁵⁵ See *Specialist Prosecutor v. Thaçi et al.*, Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020 06/F01720, 16 August 2023, para.30.

⁵⁶ See especially Articles 4.2, 6-8 and 17 of the Registry Practice Direction on Detainees – Visits and Communications, KSC-BD-09/Rev1/2020, 23 September 2020.

⁵⁷ For example, based on information available on the websites of the relevant Ministries of Foreign Affairs, a passport is not required for Kosovans traveling to, *inter alia*, Montenegro, North Macedonia, and Albania.

the KSC.⁵⁸ Similarly, a monetary surety would be insufficient to address the concrete risks of release, particularly when considered in light of Shala's access to resources through senior KLA leadership [REDACTED], and/or their associated networks.

37. Further, as previously recognised by the Pre-Trial Judge, the array of communication mediums available is so varied that it is only through the communication monitoring framework in place at the KSC detention facilities that the communications of an accused can be effectively restricted and monitored, thereby mitigating the risks of him obstructing KSC proceedings or engaging in or contributing to further crimes.⁵⁹ This is particularly germane to the instant case where varied forms of communications between the Shala and the Case 10 Accused were essential components to the planning and coordination of their criminal acts.

38. In this regard, the Pre-Trial Judge has emphasized that the Registrar and the relevant Panel, who have unrestricted access to confidential information concerning witnesses and victims, may take action more promptly than other authorities acting under a distinct framework.⁶⁰

⁵⁸ See generally ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-259, Decision on Kilolo Request for Provisional Release, 14 March 2014 ('Kilolo Decision'), para.22.

⁵⁹ See Januzi Decision, KSC-BC-2023-10/F00123/RED, par.71; Shala Decision, KSC-BC-2020-04/F00045/RED, para.46. See also Kilolo Decision, ICC-01/05-01/13-259, para.43.

⁶⁰ See Januzi Decision, KSC-BC-2023-10/F00123/RED, par.71

39. In the context of other cases, extremely robust combinations of conditions have been rejected by the Pre-Trial Judge,⁶¹ with the approval of the Court of Appeals⁶² and the Supreme Court.⁶³

40. In particular, the Pre-Trial Judge has recently reiterated 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; (ii) the very reason for establishing the KSC was that criminal proceedings against former KLA members could not be conducted in Kosovo; and (iii) the procedural framework and operational practice of the KSC 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 KSC.⁶⁴

41. Therefore, no modalities of conditional release are able to sufficiently mitigate the risks.

⁶¹ See *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Remanded Detention Review Decision and Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F00582/RED, 26 November 2021, paras 67-101; see also *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Remanded Detention Review Decision and Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F00576/RED, 23 November 2021, para.99.

⁶² See *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA014/F00008/RED, 31 March 2022, paras 34-45.

⁶³ See *Specialist Prosecutor v. Thaçi et al.*, Decision on Kadri Veseli's Request for Protection of Legality, KSC-BC-2020-06/PL001/F00008, 15 August 2022, paras 52-70.

⁶⁴ See Januzi Decision, KSC-BC-2023-10/F00123/RED, par.71.

D. DETENTION IS PROPORTIONAL

42. Given all of the above, the stage of proceedings in this case, the progress and disclosure already made and the framework and calendar set for pre-trial proceedings, detention is both reasonable and proportional at this time.⁶⁵

V. CLASSIFICATION

43. This filing is submitted confidentially pursuant to Rule 82(4). A public redacted version will be filed.

VI. CONCLUSION

44. For the foregoing reasons, the SPO respectfully submits that Shala should remain detained.

Word count: 4,068

Kimberly P. West
Specialist Prosecutor

Wednesday, 31 January 2024
At The Hague, the Netherlands

⁶⁵ See Januzi Decision, KSC-BC-2023-10/F00123/RED, par.75; [REDACTED]; Shala Decision, KSC-BC-2020-04/F00045/RED, para.49; Gucati Appeals Decision, KSC-BC-2020-07, IA001/F00005, paras 72-73.