



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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

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

Registrar: Fidelma Donlon

Date: 18 March 2024

Language: English

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Public redacted version of
Decision on the Sixteenth Review of Detention of Pjetër Shala

To be notified to:

Specialist Prosecutor

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TRIAL PANEL I (Panel) hereby renders this decision on the sixteenth review of detention of Pjetër Shala.

I. PROCEDURAL BACKGROUND

1. On 19 June 2020, further to a decision by the Pre-Trial Judge (Confirmation Decision),¹ the Specialist Prosecutor's Office (SPO) submitted a confirmed indictment against Pjetër Shala (Accused or Mr Shala).²
2. On 16 March 2021, further to an arrest warrant and transfer order issued by the Pre-Trial Judge,³ the Accused was arrested in the Kingdom of Belgium (Belgium),⁴ and was subsequently transferred on 15 April 2021 to the Detention Facilities of the Kosovo Specialist Chambers (KSC) in The Hague, the Netherlands.⁵

¹ KSC-BC-2020-04, F00007, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Pjetër Shala*, 12 June 2020, strictly confidential and *ex parte*. A confidential redacted version and a public redacted version were issued on 6 May 2021, F00007/CONF/RED and [F00007/RED](#).

² KSC-BC-2020-04, F00010, Specialist Prosecutor, [Submission of Confirmed Indictment](#), 19 June 2020, public, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential. A confidential lesser redacted version and a public further redacted version of the confirmed indictment were submitted on 31 March 2021, F00016/A01, confidential, and F00016/A02, public. A further lesser redacted confidential version of the confirmed indictment was submitted on 25 May 2021, F00038/A01. Following the Pre-Trial Judge's "Decision on Motion Challenging the Form of the Indictment" (F00089/RED, 18 October 2021), a corrected indictment was submitted on 1 November 2021, F00098/A01, confidential, and on 16 November 2021, [F00107/A01](#), public.

³ KSC-BC-2020-04, F00008, Pre-Trial Judge, *Decision on Request for Arrest Warrant and Transfer Order*, 12 June 2020, confidential. A public redacted version was issued on 6 May 2021, [F00008/RED](#). F00008/A01, Pre-Trial Judge, *Arrest Warrant for Mr Pjetër Shala*, 12 June 2020, strictly confidential and *ex parte*. A public redacted version was issued on 15 April 2021, [F00008/A01/RED](#).

⁴ KSC-BC-2020-04, F00013, Registrar, [Notification of Arrest Pursuant to Rule 55\(4\)](#), 16 March 2021, public.

⁵ KSC-BC-2020-04, F00019, Registrar, *Notification of Reception of Pjetër Shala in the Detention Facilities of the Specialist Chambers and Conditional Assignment of Counsel*, 15 April 2021, confidential, para. 2, with Annexes 1-2, confidential. A public redacted version was submitted on 26 April 2021, [F00019/RED](#).

3. On 15 June 2021, the Pre-Trial Judge rejected a request for provisional release submitted by the Defence for Mr Shala (Defence) (First Detention Decision).⁶ On 10 September 2021,⁷ 10 November 2021,⁸ 28 January 2022,⁹ 22 April 2022,¹⁰ 22 June 2022,¹¹ 21 September 2022,¹² 6 December 2022,¹³ 6 February 2023,¹⁴

⁶ KSC-BC-2020-04, F00045, Pre-Trial Judge, *Decision on Pjetër Shala's Request for Provisional Release*, 15 June 2021, confidential. A public redacted version was issued on 23 June 2021, [F00045/RED](#). The Court of Appeals upheld the First Detention Decision, see IA001/F00005, Court of Appeals, *Decision on Pjetër Shala's Appeal Against Decision on Provisional Release* (First Court of Appeals Decision), 20 August 2021, confidential. A public redacted version was issued on the same day, [IA001/F00005/RED](#).

⁷ KSC-BC-2020-04, F00075, Pre-Trial Judge, *Decision on Review of Detention of Pjetër Shala* (Second Detention Decision), 10 September 2021, confidential. A public redacted version was issued on the same day, [F00075/RED](#).

⁸ KSC-BC-2020-04, F00105, Pre-Trial Judge, *Decision on Review of Detention of Pjetër Shala* (Third Detention Decision), 10 November 2021, confidential. A public redacted version was issued on the same day, [F00105/RED](#). The Court of Appeals upheld the Third Detention Decision, see IA003/F00005, Court of Appeals, *Decision on Pjetër Shala's Appeal Against Decision on Review of Detention* (Second Court of Appeals Decision), 11 February 2022, confidential. A public redacted version was issued on the same day, [IA003/F00005/RED](#).

⁹ KSC-BC-2020-04, F00133, Pre-Trial Judge, *Decision on Review of Detention of Pjetër Shala* (Fourth Detention Decision), 28 January 2022, confidential. A public redacted version was issued on the same day, [F00133/RED](#).

¹⁰ KSC-BC-2020-04, F00188, Pre-Trial Judge, *Decision on Remanded Detention Review Decision and Periodic Review of Detention of Pjetër Shala* (Fifth Detention Decision), 22 April 2022, confidential. A public redacted version was issued on 28 April 2022, [F00188/RED](#). The Court of Appeals upheld the Fifth Detention Decision, see IA005/F00005, Court of Appeals, *Decision on Pjetër Shala's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention* (Third Court of Appeals Decision), 19 July 2022, confidential. A public redacted version was issued on the same day, [IA005/F00005/RED](#).

¹¹ KSC-BC-2020-04, F00224, Pre-Trial Judge, *Decision on Review of Detention of Pjetër Shala* (Sixth Detention Decision), 22 June 2022, confidential. A public redacted version was issued on the same day, [F00224/RED](#).

¹² KSC-BC-2020-04, F00282, Pre-Trial Judge, *Decision on Review of Detention of Pjetër Shala* (Seventh Detention Decision), 21 September 2022, confidential. A public redacted version was issued on the same day, [F00282/RED](#).

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

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

6 April 2023,¹⁵ 6 June 2023,¹⁶ 20 July 2023,¹⁷ 20 September 2023,¹⁸ 20 November 2023,¹⁹ and 19 January 2024 (Fifteenth Detention Decision),²⁰ the Pre-Trial Judge and, subsequently, the Panel reviewed the detention of the Accused and ordered his continued detention.

4. On 9 February 2024, the Panel closed the evidentiary proceedings in the present case and set the deadline for the submission of the Final Trial Briefs and statement on the impact of the alleged crimes on victims participating in the proceedings (Impact Statement).²¹

5. On 3 March 2024, the SPO filed its submissions on the sixteenth review of detention of Mr Shala, requesting the continued detention of the Accused (SPO Submissions).²²

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

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

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

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

¹⁹ KSC-BC-2020-04, F00721, Trial Panel I, *Decision on the Fourteenth Review of Detention of Pjetër Shala*, 20 November 2023, confidential. A public redacted version was issued on the same day, [F00721/RED](#).

²⁰ KSC-BC-2020-04, F00776, Trial Panel I, *Decision on the Fifteenth Review of Detention of Pjetër Shala*, 19 January 2024, confidential. A public redacted version was issued on the same day, [F00776/RED](#).

²¹ KSC-BC-2020-04, F00795, Trial Panel I, *Decision on the Defence motion for a crime site visit, closing the evidentiary proceedings and giving directions on final briefs, request for reparations and closing statements*, 9 February 2024, confidential, para. 52(b), (g). A public redacted version was issued on 20 February 2024, [F00795/RED](#).

²² KSC-BC-2020-04, F00805, Specialist Prosecutor, *Prosecution submissions for the sixteenth review of detention*, 5 March 2024, confidential, para. 15. A public redacted version was filed on 8 March 2024, F00805/RED.

6. On 12 March 2024, the Defence filed its response to the SPO Submissions and requested the Panel to order the conditional release of the Accused, subject to any conditions deemed appropriate (Defence Response).²³

7. On 14 March 2024, the SPO replied to the Defence Response (SPO Reply).²⁴ Victims' Counsel did not file any submissions.

II. SUBMISSIONS

A. SPO SUBMISSIONS

8. The SPO submits that the continued detention of the Accused remains reasonable and proportionate, as there are no new circumstances capable of changing the Panel's previous findings, the risks remain high, and they are further heightened by the approaching end of the trial.²⁵ More specifically, the SPO submits that no circumstances have intervened capable of changing the Panel's determination in its Fifteenth Detention Decision that there is still a (well-)grounded suspicion that the Accused has committed multiple crimes within the jurisdiction of the KSC.²⁶

9. The SPO also argues that no factors capable of changing the Panel's findings regarding the existence of the risks of obstruction and commission of further crimes have intervened since the Fifteenth Detention Decision either.²⁷ It adds that the close

²³ KSC-BC-2020-04, F00809, Defence, *Defence Submissions for the Sixteenth Review of Detention of the Accused*, 12 March 2024, confidential, para. 25. A public redacted version was filed on 15 March 2023, F00809/RED.

²⁴ KSC-BC-2020-04, F00811, Specialist Prosecutor, *Prosecution reply to Defence submissions for the sixteenth review of detention*, 14 March 2024, confidential. A public redacted version was filed on 15 March 2023, F00811/RED.

²⁵ SPO Submissions, paras 1-2.

²⁶ SPO Submissions, paras 4-6, referring to [Fifteenth Detention Decision](#), para. 21.

²⁷ SPO Submissions, para. 7.

of the evidentiary proceedings does not undermine the existence of these risks, as the Accused could still approach witnesses in retaliation.²⁸

10. Regarding the risk of flight, the SPO maintains its position that this risk exists and argues that it is further increased by the fact that the judgment is forthcoming, which makes the current time window until the announcement of the judgment the last possibility for the Accused to abscond.²⁹

11. The SPO further reiterates its argument that all these risks can only be mitigated by the Accused's continued detention at the KSC Detention Facilities, where his communications and movement can be effectively monitored and restricted.³⁰

12. Finally, the SPO avers that the Accused's detention remains reasonable and proportionate, considering the gravity of the charges, the existence of the above risks, the impossibility to mitigate such risks with conditions alternative to detention on remand, the reasonable pace of the proceedings, and the upcoming conclusion of the trial.³¹ For these reasons, the SPO requests the Panel to order the Accused's continued detention.³²

B. DEFENCE RESPONSE

13. The Defence maintains its previous submissions that the Accused's continued detention is unwarranted and unlawful.³³ More specifically, the Defence submits with regard to the risks of obstruction and commission of further crimes that the SPO has failed to engage with the current circumstances of the Accused and has failed to show why his detention remains necessary even after the close of the evidentiary

²⁸ SPO Submissions, para. 8.

²⁹ SPO Submissions, paras 9-10.

³⁰ SPO Submissions, para. 11.

³¹ SPO Submissions, paras 12-13.

³² SPO Submissions, para. 15.

³³ Defence Response, paras 2, 7.

proceedings.³⁴ The Defence adds that: (i) the statements made by the Accused in 2016 and 2019 [REDACTED] have been taken out of proportion and context and do not indicate any wish to threaten or harm [REDACTED]; (ii) [REDACTED]; (iii) the general climate of witness intimidation in Kosovo is unrelated to the Accused and cannot be relied upon to justify his protracted detention; (iv) the Accused has been on good behaviour and has not been subject to any additional restrictions or sanctions in the KSC Detention Facilities; his good behaviour and the passage of time are intervening circumstances that should be taken into account; and (v) the likelihood of the Accused risking an additional prosecution through the commission of further crimes is non-existent.³⁵

14. Concerning the risk of flight, the Defence takes issue with the SPO's submission that the imminent end of the case and forthcoming judgment increase the risk of flight. The Defence argues that this is entirely unsupported, speculative, and cannot amount to an intervening circumstance.³⁶

15. With regard to alternative measures to detention, the Defence reiterates its previous submissions that suitable measures exist and must be considered: house arrest in Belgium, no contact with witnesses and victims, no access to phone and internet except in the presence of his bail supervisor, daily reporting to the relevant authorities, surrendering all travel documents, and appearing in court whenever ordered to do so.³⁷

16. Lastly, the Defence argues that the continued detention of the Accused is disproportionate in light of the above intervening circumstances and the fact that family visits have recently been limited by the Registrar to 10 days per month, thereby

³⁴ Defence Response, para. 8.

³⁵ Defence Response, paras 11-16.

³⁶ Defence Response, para. 17.

³⁷ Defence Response, para. 20.

violating his right to respect for private and family life.³⁸ For these reasons, the Defence requests the Panel to order the Accused's conditional release.³⁹

C. SPO REPLY

17. The SPO submits in reply that, contrary to the Defence's submissions, there is no intervening circumstance that warrants the Panel's reconsideration of its findings on the necessity and proportionality of the Accused's detention and the Defence is simply repeating arguments already considered and rejected by the Panel.⁴⁰ The SPO further submits that, while it is not privy to the Registrar's decision that the Defence is referring to, this administrative decision appears to regulate the Accused's rights, rather than to restrict them, and concerns the conditions of his detention and not his interim detention or release.⁴¹

III. APPLICABLE LAW

18. The Panel notes Article 6(2) of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Articles 29, 31(5) and 53 of the Constitution of the Republic of Kosovo (Constitution), Articles 3(2), 21(3), and 41(6) and (10)-(12) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law), and Rules 56(2) and 57(2) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules).

³⁸ Defence Response, para. 21.

³⁹ Defence Response, para. 25.

⁴⁰ SPO Reply, para. 2.

⁴¹ SPO Reply, para. 3.

IV. ANALYSIS

19. At the outset, the Panel recalls that the presumption of innocence, as provided for in Article 31(5) of the Constitution, Article 21(3) of the Law, and Article 6(2) of the ECHR, is the starting point for the assessment of the continued detention on remand.⁴² Accordingly, continued detention cannot be maintained lightly and the Accused should be released once his continued detention ceases to be reasonable.⁴³ The SPO bears the burden of establishing that the detention of the Accused is necessary.⁴⁴

20. The Panel further recalls that it is not required to entertain submissions that merely repeat arguments that have already been addressed or to make findings on the factors already decided upon in its previous decisions.⁴⁵ Accordingly, the Panel will only address arguments that were not previously raised and considered.

A. GROUNDED SUSPICION

21. The Panel recalls that, in the Confirmation Decision, the Pre-Trial Judge determined that a “well-grounded suspicion” exists, within the meaning of Article 39(2) of the Law, that the Accused committed offences within the KSC’s jurisdiction.⁴⁶ Recalling that the “well-grounded suspicion” threshold is necessarily

⁴² KSC-BC-2020-06, IA004/F00005/RED, Court of Appeals, [Public Redacted Version of Decision on Hashim Thaçi’s Appeal Against Decision on Interim Release](#) (Thaçi Interim Release Appeal Decision), 30 April 2021, public, para. 17.

⁴³ ECtHR, *Buzadji v. The Republic of Moldova* [GC], no. 23755/07, [Judgment](#) (*Buzadji v. The Republic of Moldova*), 5 July 2016, paras 89-90.

⁴⁴ KSC-BC-2020-06, F00177/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Hashim Thaçi’s Application for Interim Release](#) (Thaçi Interim Release Decision), 22 January 2021, public, para. 19 and references therein.

⁴⁵ [Third Court of Appeals Decision](#), para. 20; [Second Court of Appeals Decision](#), para. 18; KSC-BC-2020-07, IA002/F00005, Court of Appeals, [Decision on Nasim Haradinaj’s Appeal Against Decision Reviewing Detention](#), 9 February 2021, public, para. 55.

⁴⁶ [Confirmation Decision](#), para. 140(a).

higher than the “grounded suspicion” required for continued detention,⁴⁷ the Panel reiterates that, by virtue of the Confirmation Decision, the requirement of Article 41(6)(a) of the Law has been met. Further, in its “Decision on the Defence Rule 130 Motion to Dismiss the Charge of Murder in the Indictment” (Rule 130 Decision), the Panel has found that the evidence presented during the SPO case, if accepted, is capable of supporting a conviction of the Accused for murder, under Count 4 of the Confirmed Indictment, under one or more of the modes of liability charged.⁴⁸ Accordingly, the Panel finds that the requirement under Article 41(6)(a) of the Law has not ceased to exist and therefore continues to be met.

B. NECESSITY OF DETENTION

22. The Panel recalls that, once the threshold in Article 41(6)(a) of the Law is met, the grounds that would justify a person’s deprivation of liberty must be “articulable” in the sense that they must be specified in detail.⁴⁹ On the basis of the available evidence, the specific articulable grounds must support the “belief” that any of the risks under the three limbs of Article 41(6)(b) of the Law exist.⁵⁰ The standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.⁵¹ The Panel further recalls that it may refer to findings in prior decisions if it is satisfied that the evidence or information underpinning those decisions still supports the findings

⁴⁷ [Confirmation Decision](#), para. 35. See also KSC-BC-2020-06, IA008/F00004/RED, Court of Appeals, [Public Redacted Version of Decision on Kadri Veseli’s Appeal Against Decision on Review of Detention](#), 1 October 2021, public, para. 21.

⁴⁸ KSC-BC-2020-04, F00652/RED, Trial Panel I, [Public redacted version of Decision on the Defence Rule 130 Motion to Dismiss the Charge of Murder in the Indictment](#), 15 September 2023, public, para. 34.

⁴⁹ Article 19.1.31 of the Kosovo Criminal Procedure Code 2022, Law No. 08/L-032 defines “articulable” as: “the party offering the information or evidence must specify in detail the information or evidence being relied upon”. See also KSC-BC-2020-06, IA001/F00005, Court of Appeals, [Decision on Kadri Veseli’s Appeal Against Decision on Interim Release](#), 30 April 2021, public, paras 18-19.

⁵⁰ [Thaçi Interim Release Decision](#), para. 20 and references therein.

⁵¹ [Third Court of Appeals Decision](#), para. 27.

made at the time of the review.⁵² Finally, since the three grounds under Article 41(6) of the Law are listed in the alternative, the existence of one ground suffices to determine the necessity of detention of the Accused.⁵³

1. Risk of Flight

23. The Panel recalls that it has previously found that the Accused is not at flight risk.⁵⁴ To the extent that the SPO repeats arguments regarding the existence of such a risk,⁵⁵ the Panel will not address them further. As to the SPO's argument that the risk of flight has increased in light of the imminent end of the case and the forthcoming judgment,⁵⁶ the Panel does not find that this circumstance is sufficiently strong to persuade the Panel to change its previous finding regarding this risk.⁵⁷ In light of the above, the Panel remains satisfied that the Accused is not at flight risk and that such a risk, even if it existed, could be adequately mitigated by conditions to be imposed upon him pursuant to Article 41(12) of the Law and Rule 56(5) of the Rules.⁵⁸

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

24. The Panel has previously established that there is a risk that the Accused will obstruct the criminal proceedings, under Article 41(6)(b)(ii) of the Law, based on the following factors and circumstances: (i) the Accused has made threatening statements in 2016 and 2019 [REDACTED]; (ii) the identities of (all) SPO witnesses are known to the Accused; (iii) SPO witnesses have testified and additional evidence has been

⁵² [Second Court of Appeals Decision](#), para. 18.

⁵³ [Thaçi Interim Release Appeal Decision](#), para. 78.

⁵⁴ [Fifteenth Detention Decision](#), para. 23.

⁵⁵ SPO Submissions, paras 9-10.

⁵⁶ SPO Submissions, para. 10.

⁵⁷ See KSC-BC-2020-05, F00489/RED, Trial Panel I, [Public redacted version of Thirteenth decision on review of detention](#), 18 November 2022, public, para. 15 and references therein.

⁵⁸ [Eighth Detention Decision](#), paras 20, 31 and references therein.

introduced during the SPO case, including potentially incriminating evidence; (iv) there is a risk – which is more than a “mere possibility” – that the Accused may act on threats previously made [REDACTED], as he can be [REDACTED] violent, [REDACTED]; and (v) there is a general, well-established, and ongoing climate of witness intimidation in Kosovo.⁵⁹

25. The Panel observes that these factors and circumstances continue to exist and no information or developments have arisen which undermine them and the conclusion they underpin.

26. Turning to the Defence’s argument that the Accused’s continued detention is no longer necessary after the end of the evidentiary proceedings,⁶⁰ the Panel recalls that the proceedings remain ongoing and the Panel can hear evidence – under exceptional circumstances – even after the closing of the case under Rule 136 of the Rules.⁶¹

27. Further, contrary to the Defence’s submissions,⁶² the information relied upon is both recent⁶³ and specific to the Accused and, in any case, the passage of time alone does not affect the relevance of the above facts and circumstances.⁶⁴

28. With regard to the Defence’s argument that [REDACTED]: (i) [REDACTED];⁶⁵ (ii) [REDACTED]; and (iii) the fact that [REDACTED] does not mitigate the risk articulated above, given the varied array of communication mediums that would be available to the Accused.⁶⁶

⁵⁹ [Fifteenth Detention Decision](#), paras 24-26; [Fourteenth Detention Decision](#), paras 16-18; [Thirteenth Detention Decision](#), paras 17-19; [Twelfth Detention Decision](#), paras 21-23; [Eleventh Detention Decision](#), paras 15-16, 20; [Tenth Detention Decision](#), paras 21-22.

⁶⁰ Defence Response, para. 8.

⁶¹ [Fifteenth Detention Decision](#), para. 27.

⁶² Defence Response, paras 11, 15.

⁶³ [REDACTED].

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

⁶⁵ [REDACTED].

⁶⁶ [Fifteenth Detention Decision](#), para. 28; [First Detention Decision](#), paras 46-48; [First Court of Appeals Decision](#), para. 61.

29. The Panel will not address further the Defence's arguments regarding the climate of witness intimidation in Kosovo, the Accused's good behaviour while in detention, and the likelihood of him risking an additional prosecution,⁶⁷ as these arguments have been considered and addressed before.⁶⁸

30. In light of the above, the Panel finds that there continues to be a risk that the Accused might obstruct the progress of the KSC's proceedings.

3. Risk of Committing Further Crimes

31. The Panel recalls that, while the existence of a risk of obstruction does not automatically translate into a risk of commission of further crimes, the factors underpinning the former are of relevance to the assessment of the latter in the present case.⁶⁹ It is further recalled that: (i) the Accused has now full knowledge of the case against him, including the identities of all SPO witnesses; (ii) following the presentation of the SPO case, the Accused has obtained specific insight into the evidence provided by the witnesses against him; (iii) in 2016 and 2019, the Accused made repeated threatening statements [REDACTED]; and (iv) [REDACTED].⁷⁰

32. Having examined the factors and circumstances previously relied upon and having assessed them anew,⁷¹ the Panel is satisfied that they continue to exist and that no intervening information or developments have arisen which undermine them and the conclusion they underpin. Accordingly, the Panel finds that there continues to be a risk that the Accused might commit further crimes, including against witnesses who have provided evidence in the case and/or appeared before this Panel.

⁶⁷ Defence Response, paras 12-16.

⁶⁸ [Fifteenth Detention Decision](#), paras 26, 29, 30.

⁶⁹ [Fifteenth Detention Decision](#), para. 32.

⁷⁰ [REDACTED].

⁷¹ [Fifteenth Detention Decision](#), para. 32.

33. Regarding the Defence's arguments, the findings articulated when assessing the risk of obstruction also apply when examining the risk under question here.

4. Conclusion

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

C. CONDITIONAL RELEASE

35. The Panel notes that detention on remand should only be continued if there are no more lenient measures that could sufficiently mitigate the risks set out in Article 41(6)(b)(i)-(iii) of the Law. The Panel has the obligation to inquire and evaluate, *proprio motu*, all reasonable conditions that could be imposed on an accused.⁷²

36. In this regard, the Panel recalls its previous considerations with regard to conditional release, including its assessment of the alternative conditions proposed by the Defence.⁷³ Specifically, bearing in mind the risk factors identified above, the Panel considers that the conditions proposed by the Defence,⁷⁴ including placing the Accused in house arrest at his residence in Belgium: (i) do not address the possibility of the Accused employing communication devices belonging to others or requesting others to use their devices for these purposes; and (ii) cannot ensure the effective

⁷² See KSC-BC-2020-05, F00489/RED, Trial Panel I, [Public redacted version of Thirteenth decision on review of detention](#), 18 November 2022, public, para. 23. See also KSC-BC-2020-06, IA017/F00011/RED, Court of Appeals, [Public redacted version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention](#), 5 April 2022, public, paras 26, 51.

⁷³ [Fifteenth Detention Decision](#), para. 37; [Fourteenth Detention Decision](#), para. 23; [Thirteenth Detention Decision](#), para. 25; [Twelfth Detention Decision](#), para. 28; [Eleventh Detention Decision](#), para. 26; [Tenth Detention Decision](#), para. 37; [Ninth Detention Decision](#), para. 38; [Eighth Detention Decision](#), paras 31-34.

⁷⁴ Defence Response, para. 20.

monitoring of the Accused's communications. Rather, such assurances and measures are possible only at the KSC Detention Facilities.⁷⁵

37. As regards any additional conditions to be imposed, having re-assessed the relevant findings previously made,⁷⁶ the Panel continues to be of the view that no additional conditions are currently available to adequately mitigate the existing risks. Therefore, the Panel remains satisfied that it is only through the communication monitoring framework applicable at the KSC Detention Facilities that the Accused's communications can be restricted in a manner that will sufficiently mitigate the risk of obstructing the progress of the KSC's proceedings and the risk of committing further crimes.

D. PROPORTIONALITY OF DETENTION

38. The Panel highlights the importance of the proportionality principle in the determination of the reasonableness of pre-trial detention and recalls that the longer a person remains in pre-trial detention, the higher the burden on the SPO to justify continued detention.⁷⁷ The duration of time in detention pending trial is a factor that needs to be considered along with the degree of the risks that are described in Article 41(6)(b) of the Law, in order to determine whether, all factors being considered, the continued detention "stops being reasonable" and the individual needs to be released.⁷⁸ However, the question whether it is reasonable for an accused to remain in detention must be assessed based on the facts and circumstances of each case and according to its specific features.⁷⁹

⁷⁵ [Fifteenth Detention Decision](#), para. 37; [Fourteenth Detention Decision](#), para. 23; [Thirteenth Detention Decision](#), para. 25; [Twelfth Detention Decision](#), para. 28; [Eleventh Detention Decision](#), para. 26; [Tenth Detention Decision](#), para. 37; [Ninth Detention Decision](#), para. 38; [Eighth Detention Decision](#), para. 32.

⁷⁶ [Fifteenth Detention Decision](#), para. 38.

⁷⁷ [Third Court of Appeals Decision](#), para. 37 with references therein.

⁷⁸ [Third Court of Appeals Decision](#), para. 37.

⁷⁹ ECtHR, [Buzadji v. the Republic of Moldova](#), para. 90.

39. In this respect, the Panel recalls that: (i) the Accused has been detained in Belgium since 16 March 2021 and subsequently at the KSC Detention Facilities since 15 April 2021; (ii) he is charged with four counts of war crimes that allegedly took place in Albania over the course of several weeks; (iii) he could be sentenced to a lengthy sentence, if convicted; and (iv) the risks under Article 41(6)(b)(ii) and (iii) of the Law cannot be mitigated by the proposed conditions and/or any additional conditions.

40. The Panel also notes that proceedings have progressed at a reasonable pace: (i) the trial commenced on 21 February 2023; (ii) between 27 March 2023 and 6 July 2023,⁸⁰ the SPO presented its case, during which the Panel heard the testimonies of 10 witnesses; (iii) on 21 August 2023, the Panel heard the testimonies of two (expert) witnesses called by Victims' Counsel;⁸¹ (iv) on 15 September 2023, the Panel rendered the Rule 130 Decision;⁸² (v) between 20 September 2023 and 15 January 2024,⁸³ the Defence presented its case, during which the Panel heard the testimonies of 10 witnesses; and (vi) on 9 February 2024, the Panel closed the evidentiary proceedings and set the deadline for the submission of the Final Trial Briefs and Impact Statement.⁸⁴ Furthermore, the Panel recalls that, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, the Accused's detention shall be reviewed every two months or as soon as a change in circumstances arises.

41. The Panel has duly appraised the additional time spent in detention by the Accused since the Panel's Fifteenth Detention Decision, including the resulting increased burden on the SPO to justify the Accused's continued detention.⁸⁵ However, weighed against the remaining factors, in particular: (i) the serious nature of the

⁸⁰ KSC-BC-2020-04, F00570, Specialist Prosecutor, *Prosecution notice of the closing of its case pursuant to Rule 129*, 6 July 2023, public.

⁸¹ KSC-BC-2020-04, Transcript of Hearing, 21 August 2023, public, pp. 2248-2342.

⁸² See footnote 48 above.

⁸³ KSC-BC-2020-04, F00772, Defence, *Defence Notice of Closing its Case Pursuant to Rule 131 of the Rules*, 15 January 2024, public.

⁸⁴ See para. 4 above.

⁸⁵ Defence Response, paras 21-23.

charges against the Accused; (ii) the Panel's finding that the risks of obstructing the proceedings and of committing further crimes continue to exist; (iii) the impossibility to mitigate the aforementioned risks under Article 41(6)(b)(ii) and (iii) of the Law; and (iv) the fact that the trial is proceeding without undue delay, the Panel finds that the detention of the Accused has not become unreasonable under Rule 56(2) of the Rules.

42. The Panel is further not persuaded by the Defence's submission that the Accused's conditional release is warranted following the Registrar's decision to limit family visit to 10 days per month.⁸⁶ The Defence seems to be confusing the question of the Accused's continued detention / (conditional) release, which is presently under consideration, with a matter that concerns strictly his conditions of detention. If the Defence takes issue with the Registrar's decision, it is free to submit a formal complaint or request for review to the appropriate authority, in accordance with the applicable procedures.⁸⁷

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

⁸⁶ Defence Response, para. 21.

⁸⁷ KSC-BD-09-Rev1, Registrar, *Registry Practice Direction on Detainees: Visits and Communications*, 23 September 2020, public, Article 9; KSC-BD-11-Rev1, Registrar, *Registry Practice Direction on Detainees: Complaints*, 23 September 2020, public.

V. DISPOSITION

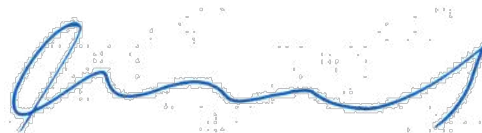
44. For the above-mentioned reasons, the Panel hereby:
- a. **ORDERS** the Accused's continued detention;
 - b. **ORDERS** the SPO and Victims' Counsel, if he so wishes, to file submissions on the next review of detention of the Accused by no later than **Friday, 3 May 2024**;
 - c. **ORDERS** the Defence to file submissions on the next review of detention of the Accused, if it so wishes, by no later than **Friday, 10 May 2024**; and
 - d. **DETERMINES** that any reply, if the SPO and Victims' Counsel so wish, shall be filed by no later than **Tuesday, 14 May 2024**.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Monday, 18 March 2024

At The Hague, the Netherlands.