



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

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

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

Registrar: Fidelma Donlon

Date: 20 July 2023

Language: English

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Public redacted version of

Decision on the Twelfth Review of Detention of Pjetër Shala

Acting Specialist Prosecutor

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Simon Laws

TRIAL PANEL I (Panel) hereby renders this decision on the twelfth 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 in The Hague, the Netherlands (KSC).⁵
3. On 15 June 2021, the Pre-Trial Judge rejected a request for provisional release submitted by the Defence for Mr Shala (Defence) (First Detention Decision).⁶

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

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

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

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

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

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

On 10 September 2021,⁷ 10 November 2021,⁸ 28 January 2022,⁹ 22 April 2022,¹⁰ 22 June 2022,¹¹ 21 September 2022,¹² 6 December 2022,¹³ 6 February 2023,¹⁴ 6 April 2023,¹⁵ and 6 June 2023 (Eleventh Detention Decision),¹⁶ the Pre-Trial Judge

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

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

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

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

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

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

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

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

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

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

¹⁶ KSC-BC-2020-04, F00534, Trial Panel I, *Decision on the Eleventh Review of Detention of Pjetër Shala*, 6 June 2023, confidential. A public redacted version was issued on the same day, [F00534/RED](#). Taking into consideration the upcoming summer judicial recess, the Panel varied the time-limits for the Parties' and Victims' Counsel's submissions on the next review of the Accused's detention.

and, afterwards, the Panel reviewed the detention of the Accused and ordered his continued detention.

4. On 6 July 2023, the SPO filed its submissions for the twelfth review of detention, requesting the continued detention of the Accused (SPO Submissions).¹⁷

5. On 11 July 2023, the Defence filed a request for, *inter alia*, an extension of the time-limit to file its submissions on the review of detention until 6 September 2023 (Defence Request).¹⁸

6. On 13 July 2023, the Panel rejected the Defence Request.¹⁹

7. On the same day, the Defence filed its response to the SPO Submissions and requested the Panel to order the Accused's interim release (Defence Response).²⁰

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

II. SUBMISSIONS

9. The SPO submits that the continued detention of the Accused remains necessary and proportional, as no new facts or circumstances have intervened capable of changing this finding since the Panel reached it in its Eleventh Detention Decision.²¹ More specifically, the SPO maintains that there continues to exist a (well-)grounded suspicion that the Accused has committed multiple crimes within the jurisdiction of the KSC, which was confirmed by the Panel in its Eleventh Detention Decision, as

¹⁷ KSC-BC-2020-04, F00566, Specialist Prosecutor, *Prosecution submissions for the twelfth review of detention*, 6 July 2023, confidential, para. 16. A public redacted version was filed on the same day, F00566/RED.

¹⁸ KSC-BC-2020-04, F00582, Defence, *Defence Request for an Extension of Time for its Submissions on the Next Review of Detention and its Response to the Prosecution Motion for Admission of Documentary Evidence Relating to the Accused*, 11 July 2023, public, para. 1, with Annex 1, confidential.

¹⁹ KSC-BC-2020-04, F00586, Trial Panel I, *Decision on the Defence Requests for an Extension of Time* (F00582), 13 July 2023, public, paras 6-11, 16(a).

²⁰ KSC-BC-2020-04, F00588, Defence, *Defence Submissions on the Twelfth Review of Detention of Pjetër Shala*, 13 July 2023, public, para. 9.

²¹ SPO Submissions, paras 1, 13-14.

there has been no development warranting the re-examination of this finding.²² According to the SPO, the (well-)grounded suspicion against the Accused has in fact increased as a result of the evidence provided by SPO witnesses that is now part of the trial record.²³ The SPO further argues that no factors capable of changing the Panel's finding that there is a risk of obstruction and commission of further crimes have intervened either.²⁴ Rather, according to the SPO, the risk of obstruction is further increased following the completion of the testimony of all SPO witnesses and the admission of evidence pursuant to Rules 153 and 155 of the Rules of Procedure and Evidence before the KSC (Rules), including evidence regarding the Accused's personal involvement in the crimes charged in the confirmed indictment, especially when viewed in light of the existence of a climate of witness intimidation and the Accused's threatening statements [REDACTED].²⁵ Moreover, the SPO alleges that, for the same reasons, the risk of commission of further crimes is also increased, especially with regard to the witnesses who have testified and their family members.²⁶ Further, the SPO advances that, at this stage of the proceedings, the Panel should reassess its previous finding that the Accused is not at flight risk, taking into consideration that: (i) the presentation and admission of the entirety of the SPO evidence increases, in the eyes of the Accused, the possibility of a lengthy prison sentence and, thus, his incentive to flee; and (ii) if released, the Accused could abscond with minimal resources, considering his past behaviour and the (potential) current place of residence of his family members in one of the countries of the Schengen territory.²⁷

10. The Defence responds that it fully maintains its previous submissions on the unlawfulness of the Accused's continued detention, which cannot be considered

²² SPO Submissions, paras 2, 4.

²³ SPO Submissions, para. 4.

²⁴ SPO Submissions, para. 5.

²⁵ SPO Submissions, paras 6-8.

²⁶ SPO Submissions, para. 9.

²⁷ SPO Submissions, paras 10-11.

necessary, nor proportional.²⁸ The Defence further reiterates the Accused's willingness to be subject to such conditions as the Panel deems appropriate in order to be released pending trial.²⁹

III. APPLICABLE LAW

11. 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.

IV. ANALYSIS

12. 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.³⁰ Accordingly, continued detention cannot be maintained lightly and the Accused should be released once his continued detention ceases to be reasonable.³¹ The SPO bears the burden of establishing that the detention of the Accused is necessary.³²

13. 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

²⁸ Defence Response, para. 8.

²⁹ Defence Response, para. 8.

³⁰ 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.

³¹ ECtHR, *Buzadji v. The Republic of Moldova* [GC], no. 23755/07, [Judgment](#) (*Buzadji v. The Republic of Moldova*), 5 July 2016, paras 89-90.

³² 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.

factors already decided upon in its previous decisions.³³ Accordingly, the Panel will only address arguments that were not previously raised and considered.

A. GROUNDED SUSPICION

14. The Panel recalls that, in the Confirmation Decision, the Pre-Trial Judge determined that a “well-grounded suspicion” existed, within the meaning of Article 39(2) of the Law, that the Accused committed offences within the KSC’s jurisdiction.³⁴ Recalling that the “well-grounded suspicion” threshold is necessarily higher than the “grounded suspicion” required for continued detention,³⁵ the Panel reiterates that, by virtue of the Confirmation Decision, the requirement of Article 41(6)(a) of the Law has been met. In this regard, and further to the witnesses’ testimonies heard to date and other supporting material, 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

15. 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.³⁶ On the basis of the available evidence,

³³ [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.

³⁴ [Confirmation Decision](#), para. 140(a).

³⁵ [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.

³⁶ 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.

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.³⁷ The standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.³⁸ The Panel further recalls that it may refer to findings in prior decisions if it is satisfied that the evidence or information underpinning those decisions still supports the findings made at the time of the review.³⁹ 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.⁴⁰

1. Risk of Flight

16. At the outset, the Panel clarifies that it may reconsider, in the context of Rule 57 of the Rules, the grounds it has previously confirmed or discarded, if new facts and circumstances support such a finding.

17. As regards the SPO’s argument that the presentation and admission of the entirety of the SPO evidence increases, in the eyes of the Accused, the possibility of a lengthy prison sentence, and, thus, his incentive to flee, the Panel recalls that the risk of absconding cannot be gauged solely on the basis of the severity of the sentence faced by the Accused.⁴¹ To the contrary, as repeatedly held by the European Court of Human Rights (ECtHR), the risk of absconding has to be assessed in light of the factors relating to the person’s character, his morals, home, occupation, assets, family ties, links with the jurisdiction and international contacts.⁴² Therefore, the Panel will assess

³⁷ [Thaçi Interim Release Decision](#), para. 20 and references therein.

³⁸ [Third Court of Appeals Decision](#), para. 27.

³⁹ [Second Court of Appeals Decision](#), para. 18.

⁴⁰ [Thaçi Interim Release Appeal Decision](#), para. 78.

⁴¹ [Ninth Detention Decision](#), para. 22; [First Detention Decision](#), para. 24. See also ECtHR, *G. v. Russia*, no. 42526/07, [Judgment](#), 21 June 2016, para. 116; *Zherebin v. Russia*, no. 51445/09, [Judgment](#), 24 March 2016, para. 58.

⁴² ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, [Judgment](#), 28 November 2017, para. 223; *Becciev v. Moldova*, no. 9190/03, [Judgment](#), 4 October 2005, para. 58.

whether there are other factors, raised by the SPO, justifying the Accused's continued detention under Article 41(6)(b)(i) of the Law.

18. In this regard, the Panel recalls its finding in the Eighth Detention Decision that the Accused is not at flight risk on the basis of the following factors: (i) the Accused has previously repeatedly complied with summonses before the International Criminal Tribunal for the Former Yugoslavia (ICTY); (ii) he has shown cooperation with the SPO and the authorities in Belgium before the confirmation of the indictment; (iii) he is a holder of Belgian nationality, has a permanent place of residence in Belgium, a family relationship with his children, two of which live in the same apartment building, and (iv) he has had economic and social ties to Belgium for a considerable period of time before he was arrested.⁴³ The Panel is unpersuaded that the presentation and admission of SPO evidence, to be assessed in its entirety at the end of the trial, has any bearing on the Panel's assessment of these factors.

19. The Panel is similarly not persuaded by the SPO's submissions, including the supporting material it presents, that the Accused's past behaviour and the (potential) current place of residence of his family members, in one of the countries of the Schengen territory sufficiently establish a risk of flight *vis-à-vis* the Accused. Notably, the material does not offer a solid basis to draw such conclusions.

20. Accordingly, 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.⁴⁴

⁴³ [Eighth Detention Decision](#), para. 20. See also [Eleventh Detention Decision](#), para. 14; [Tenth Detention Decision](#), para. 7; [Ninth Detention Decision](#), paras 21-26.

⁴⁴ [Eighth Detention Decision](#), paras 20, 31 and references therein.

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

21. The Panel recalls that it has previously established that there is a risk of obstruction of the criminal proceedings, under Article 41(6)(b)(ii) of the Law, on account of: (i) the ongoing presentation of evidence and the testimonies of SPO witnesses; (ii) the disclosure of the witnesses' identities and accompanying evidence, including potentially incriminatory information; (iii) the Accused's threatening statements [REDACTED]; and (iv) the general, well-established, and ongoing climate of witness intimidation in Kosovo.⁴⁵

22. The Panel observes that these factors and circumstances continue to exist and no information or development has arisen which undermines them and the conclusion they underpin. To the contrary, as argued by the SPO, the fact that the presentation of the SPO evidence has concluded and additional evidence has been admitted into record, including potentially incriminatory evidence, means that the risk of obstruction of the proceedings continues to exist.

23. Accordingly, 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

24. 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.⁴⁶ It is further recalled that: (i) the Accused has now full knowledge of the case against him, including the identities of the SPO witnesses, as the protective measures have been lifted *vis-à-vis* the Accused; and (ii) as recently as 2016 and 2019, the

⁴⁵ [Eleventh Detention Decision](#), paras 15-16, 20; [Tenth Detention Decision](#), paras 21-22; [Ninth Detention Decision](#), paras 27-28.

⁴⁶ [Eleventh Detention Decision](#), para. 21.

Accused made threatening statements [REDACTED].⁴⁷ Notably, the Panel notes that the testimonies of all SPO witnesses have now been completed, whereas the written statements and/or transcripts of statements of additional witnesses have been admitted into the record.⁴⁸ The Accused has therefore obtained specific insight into the overall case and evidence against him.

25. Having examined the factors and circumstances previously relied upon,⁴⁹ the Panel is satisfied that they continue to exist and that no intervening information or development has arisen which undermines them and the conclusion that they underpin. Accordingly, the Panel finds that there continues to be a risk that the Accused might commit further crimes, including against witnesses who have provided or could provide evidence in the case and/or appear before this Panel at future stages of the proceedings.

4. Conclusion

26. 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

27. 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

⁴⁷ [Eleventh Detention Decision](#), para. 21.

⁴⁸ KSC-BC-2020-04, F00562, Trial Panel I, *Decision on the Specialist Prosecutor's motion for admission of evidence pursuant to Rule 155 of the Rules*, 4 July 2023, confidential; F00556, Trial Panel I, *Decision on the Specialist Prosecutor's requests to admit the evidence of TW4-02 and TW4-04 under Rule 153 of the Rules*, 23 June 2023, confidential.

⁴⁹ [Eleventh Detention Decision](#), paras 21-23.

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.⁵⁰

28. 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.⁵¹ Specifically, bearing in mind the risk factors identified above, the Panel considers that the conditions proposed previously by the Defence, including placing the Accused in house arrest at his residence in Belgium: (i) do not address the possibility of the Accused employing communication devices belonging to others or requesting others to use their devices for these purposes; and (ii) cannot ensure the effective monitoring of the Accused's communications. Rather, such assurances and measures are possible only at the KSC's Detention Facilities.⁵²

29. As regards any additional conditions to be imposed, having re-assessed the relevant findings previously made,⁵³ the Panel continues to be of the view that no additional conditions are currently available to adequately mitigate the existing risks. Therefore, the Panel remains satisfied that it is only through the communication monitoring framework applicable at the KSC's Detention Facilities that the Accused's communications can be restricted in a manner that will sufficiently mitigate the risk of obstructing the progress of the KSC's proceedings and the risk of committing further crimes.

⁵⁰ 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.

⁵¹ [Eleventh Detention Decision](#), para. 26; [Tenth Detention Decision](#), para. 37; [Ninth Detention Decision](#), para. 38; [Eighth Detention Decision](#), paras 31-34.

⁵² [Eleventh Detention Decision](#), para. 26; [Tenth Detention Decision](#), para. 37; [Ninth Detention Decision](#), para. 38; [Eighth Detention Decision](#), para. 32.

⁵³ [Eleventh Detention Decision](#), para. 27.

D. PROPORTIONALITY OF DETENTION

30. 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.⁵⁴ 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.⁵⁵ 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.⁵⁶

31. In this respect, the Panel recalls that: (i) the Accused has been detained in Belgium since 16 March 2021 and subsequently at the KSC’s Detention Facilities since 15 April 2021; (ii) he is charged with four counts of war crimes that allegedly took place in Albania over the course of several weeks; (iii) he could be sentenced to a lengthy sentence, if convicted; and (iv) the risks under Article 41(6)(b)(ii) and (iii) of the Law cannot be mitigated by the proposed conditions and/or any additional conditions. The Panel also notes that: (i) the trial commenced on 21 February 2023, with the procedures prescribed under Rules 124 and 125 of the Rules, followed by the opening statements of the SPO, Victims’ Counsel and the Defence; (ii) the presentation of evidence by the SPO commenced on 27 March 2023; (iii) between 27 March 2023 and 4 July 2023, the Panel heard the testimonies of ten witnesses called by the SPO, including three expert witnesses; and (iv) the SPO closed its case on 6 July 2023.⁵⁷ Furthermore, the Panel recalls that, pursuant to Article 41(10) of the Law and

⁵⁴ [Third Court of Appeals Decision](#), para. 37 with references therein.

⁵⁵ [Third Court of Appeals Decision](#), para. 37.

⁵⁶ ECtHR, [Buzadji v. the Republic of Moldova](#), para. 90.

⁵⁷ KSC-BC-2020-04, F00570, Specialist Prosecutor, *Prosecution notice of the closing of its case pursuant to Rule 129*, 6 July 2023, public.

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.

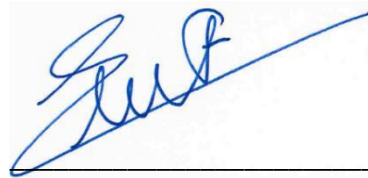
32. The Panel has duly appraised the additional time spent in detention by the Accused since the Panel's Eleventh Detention Decision, including the resulting increased burden on the SPO to justify the Accused's continued detention. However, weighed against the remaining factors and, in particular, the serious nature of the charges against the Accused, and the impossibility to mitigate the risks under Article 41(6)(b)(ii) and (iii) of the Law, the Panel finds that the detention of the Accused has not become unreasonable under Rule 56(2) of the Rules. In this regard, the Panel further notes that the SPO has already closed its case and the trial is proceeding without undue delays, as the Panel has already decided that Victims' Counsel will present his evidence in August 2023 and the Defence case is scheduled to start in September 2023.

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

V. DISPOSITION

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

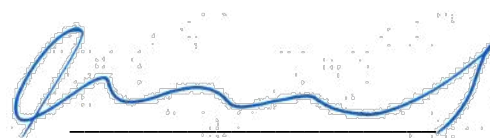
- a. **ORDERS** the Accused's continued detention;
- b. **ORDERS** the SPO and Victims' Counsel, if he so wishes, to file submissions on the next review of detention of the Accused by no later than **Tuesday, 5 September 2023**;
- c. **ORDERS** the Defence to file submissions on the next review of detention of the Accused, if it so wishes, by no later than **Tuesday, 12 September 2023**; and
- d. **DETERMINES** that any reply, if the SPO and Victims' Counsel so wish, shall be filed by no later than **Friday, 15 September 2023**.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Thursday, 20 July 2023

At The Hague, the Netherlands.