

**In:** **KSC-BC-2023-10**

**Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala**

**Before:** **Pre-Trial Judge**

Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Haxhi Shala

**Date:** 12 March 2024

**Language:** English

**Classification:** **Confidential**

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**Haxhi Shala Submissions for Review of Detention**

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**Specialist Prosecutor**

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Jonathan Elystan Rees

Huw Bowden

**Counsel for Ismet Bahtijari**

Dr. Felicity Gerry

James O'Keefe

**Counsel for Haxhi Shala**

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## I. INTRODUCTION

1. The Defence for Mr. Haxhi Shala (“Defence”) hereby requests the release of Mr. Haxhi Shala (“Accused”) from detention in order to maintain compliance with Rule 56(2) of the Rules of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers<sup>1</sup> (“Rules”).

## II. PROCEDURAL BACKGROUND

2. On 4 February 2024 the Defence filed Response to Prosecution Submission Pertaining to Periodic Detention of Haxhi Shala<sup>2</sup> (“Defence Response”) seeking the Accused’s release from detention.<sup>3</sup>
3. On 9 February 2024, the Pre-Trial Judge issued the Decision on Review of Detention of Haxhi Shala<sup>4</sup> (“Decision on Review of Detention”). In paragraph 61(a), he ordered the Accused’s continued detention and in 61(b) he ordered him, if he wished to do so, to file submissions on the next review of detention by Tuesday, 12 March 2024 at 16:00.

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<sup>1</sup> KSC-BD-03/Rev3/2020.

<sup>2</sup> KSC-BC-2023-11/F00039, confidential.

<sup>3</sup> Ibid., para. 73(v).

<sup>4</sup> KSC-BC-2023-11/F00165 ‘Decision on Review of Detention of Haxhi Shala’, 9 February 2024.

4. In his Decision on Review of Detention the Pre-Trial Judge found that the grounds for detention in Article 41(6) of the Law on Specialist Chambers and Specialist Prosecutor's Office<sup>5</sup> ("Law") were met and that each of the three articulable grounds (risk of flight, obstruction of proceedings and further offences) were fulfilled.<sup>6</sup>
5. In his Decision on Review of Detention, the Pre-Trial Judge also found that "all required procedural steps relating to the pre-trial phase of the present case have been, are being or will be completed with a view to transmitting the case for trial by Friday, 3 May 2024."<sup>7</sup>
6. On 19 February 2024, the Accused filed an Interlocutory Appeal against the Decision on Review of Detention.<sup>8</sup> The Appeal is still pending.
7. On 1 March 2024, the Registrar filed an update on defence team funding ("1 March Update").<sup>9</sup> On 27 February 2024, Specialist Counsel for the Accused informed the Defence Office that the Ministry of Justice of Kosovo had decided to provide 1,000 EUR per month to fund the Accused's defence,

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<sup>5</sup> Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015.

<sup>6</sup> Ibid., paras. 18-47.

<sup>7</sup> Ibid., paragraph 59.

<sup>8</sup> KSC-BC-2023-10/IA002/F00001, confidential.

<sup>9</sup> KSC-BC-2023-10/F00193 'Registrar's Update on Defence Team Funding', 1 March 2024, confidential.

which he subsequently appealed.<sup>10</sup> On 29 February 2024, Specialist Counsel for the Accused informed the Defence Office that his appeal to the Minister of Justice had been refused.<sup>11</sup>

8. Paragraphs 2 and 4 of the 1 March Update confirm that the Specialist Counsel for the other two Accused in the joined case were in the same or a similar position with regards to funding. A further update from the Registrar of 8 March 2024 shows that there were no developments in the following week.<sup>12</sup>

### III. APPLICABLE LAW

9. Rule 56(2) of the Rules provides, in part: “The Panel shall ensure that a person is not detained for an unreasonable period prior to the opening of the case.”

### IV. SUBMISSIONS

10. The Defence respectfully submit that in order to ensure that the Accused is not detained for an unreasonable period prior to the opening of the case due to the uncertainty around the funding of the defence team, he should be released pursuant to Article 56(2) of the Rules.

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<sup>10</sup> Ibid., paragraph 3.

<sup>11</sup> Ibid.

<sup>12</sup> KSC-BC-2023-10/F00200, Registrar’s Update on Defence Team Funding with four confidential and ex parte Annexes, 8 March 2024, confidential.

11. The intended date of 3 May 2024 for the completion of pre-trial period is less than eight weeks away. The Defence submit that compliance with the deadline of Friday, 3 May 2024 is therefore unlikely in light of the current unresolved issues regarding defence team funding. The sum of 1,000 EUR per month is plainly insufficient. Making arrangements for a change to legal aid funding can be expected to prolong the time the Accused spends in pre-trial detention because of the procedure that will need to be followed before it can be granted. Accordingly, in order to ensure that the Accused is not detained for an unreasonable period he should be released.

## V. CONCLUSION

12. For the foregoing reasons the Defence requests that:
- (i) The unconditional release of the Accused from detention be ordered, or, in the alternative;
  - (ii) His release be ordered subject to one or more of the conditions to which he would consent.<sup>13</sup>

**Word Count: [709 words]**

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<sup>13</sup> Defence Response, para. 70.



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**Toby Cadman**

**Specialist Counsel**

**Tuesday, 12 March 2024**

**At London, United Kingdom**