

Case No.: KSC-BC-2020-04
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: Dr Fidelma Donlon

Date: 10 May 2024

Filing Party: Specialist Defence Counsel

Original Language: English

Classification: Public

THE SPECIALIST PROSECUTOR

v.

PJETËR SHALA

**Public Redacted Version of Defence Submissions for the Seventeenth Review of
Detention of the Accused**

Specialist Prosecutor's Office:

Kimberly P. West

Counsel for Victims

Simon Laws KC

Maria Radziejowska

Specialist Defence Counsel

Jean-Louis Gilissen

Hédi Aouini

Leto Cariolou

I. INTRODUCTION

1. Pursuant to the Trial Panel's "Decision on the Sixteenth Review of Detention of Pjetër Shala",¹ the Defence for Mr Pjetër Shala ("Defence" and "Accused", respectively) hereby files its submissions regarding the continued detention of the Accused in response to the "Prosecution submissions for the seventeenth review of detention".²
2. The Accused's conditional release is warranted as the requirements of Article 41(6)(b) of Law No. 05/L-053 on the Specialist Chambers and Specialist Prosecutor's Office ("KSC Law") are not met.

II. PROCEDURAL BACKGROUND

3. On 16 March 2021, the Accused was arrested and placed in detention in Belgium.³ On 19 April 2021, he pleaded not guilty to all charges set out in the Indictment.⁴ Thus far, the Accused has been detained for three years, one month, and twenty-four days, a clearly disproportionate amount of time in detention on remand.
4. The relevant procedural background is set out in the Sixteenth Detention Decision dated 18 March 2024.⁵
5. On 3 May 2024, the Prosecution filed its submissions requesting the continued detention of the Accused, arguing that: i) a ground suspicion continues to exist; ii) the continued detention of the Accused remains necessary, as each of the

¹ KSC-BC-2020-04, F00812, Decision on the Sixteenth Review of Detention of Pjetër Shala, 18 March 2024 (confidential) ("Sixteenth Detention Decision"), para. 44(c). All further references to filings in these submissions concern Case No. KSC-BC-2020-04 unless otherwise indicated.

² F00835, Prosecution submissions for the seventeenth review of detention, 3 May 2024 (confidential) ("Prosecution Submissions").

³ F00013, Notification of Arrest of Pjetër Shala Pursuant to Rule 55(4), 16 March 2021, para. 5.

⁴ T. 19 April 2021, p. 11.

⁵ Sixteenth Detention Decision, paras. 1-7.

Article 41(6)(b) risks exists and are further heightened by the end of the trial;
iii) the continued detention of the Accused remains proportionate.⁶

III. APPLICABLE LAW

6. The relevant applicable law is set out in the Defence Submissions for the Fifteenth Review on Detention dated 12 January 2024.⁷

IV. SUBMISSIONS

7. The Defence maintains its previous submissions regarding the unlawfulness of the Accused's continued detention.⁸

A. The Absence of Article 41(6)(b) Risks

8. The Prosecution has failed to engage with the current circumstances of the Accused, failing to show why, on 10 May 2024, the detention of the Accused *remains* necessary, even after the closure of the case against the Accused.

⁶ Prosecution Submissions, paras. 5-11.

⁷ F00764, Defence Submissions for the Fifteenth Review of Detention, 12 January 2024, (confidential), paras. 6-15.

⁸ F00809, Defence Submissions for the Sixteenth Review of Detention of the Accused, 12 May 2024, (confidential), paras. 7-25; F00764, Defence Submissions for the Fifteenth Review of Detention, 12 January 2024, (confidential), paras. 16-37; F00715, Defence Submissions on the Fourteenth Review of Detention, 13 November 2023, (confidential), paras. 11-18; F00648, Defence Submissions on the Thirteenth Review of Detention, 12 September 2023 (confidential), paras. 10-21; F00588, Defence Submissions for Twelfth Review of Detention, 13 July 2023 (confidential), para. 8; F00524, Defence Submissions for Eleventh Review of Detention, 26 May 2023 (confidential), paras. 6-28; F00468, Defence Submissions for Tenth Review of Detention, 24 March 2023 (confidential), paras. 6-19; F00403, Defence Submissions for Ninth Review of Detention, 26 January 2023, paras. 6-21; F00341, Defence Response to "Prosecution submissions for eighth review of detention", 8 November 2022, paras. 2-4, 7-20; F00273, Defence Response to "Prosecution submissions for seventh review of detention", 12 September 2022 (confidential), paras. 9-23; F00221, Defence Response to "Prosecution Submissions for Sixth Review of Detention", 15 June 2022 (confidential), paras. 7-16; IA005, F00004, Defence Reply to Response to Appeal Against the Pre-Trial Judge's Decision on Review of Detention of Pjetër Shala dated 22 April 2022, 23 May 2022 (confidential), paras. 4-14; IA005, F00001, Defence Appeal Against the Pre-Trial Judge's Decision on Review of Detention of Pjetër Shala dated 22 April 2022, 4 May 2022 (confidential), paras. 14-37; IA001, F00004, Defence Reply to Prosecution Response to Appeal Against the 'Decision on Pjetër Shala's Request for Provisional Release', 19 July 2021, paras. 4- 16; F00131, Defence Response to 'Prosecution Submissions for Third Review of Detention', 21 January 2022, paras. 18-32.

Risks of obstruction and of commission of further crimes

9. Between 15 and 17 April 2024, the Panel heard the Parties' and Victims' Counsel's closing submissions⁹. The Prosecution contended that the closure of the case against the Accused "does not undermine the existence of these risks. He may still obstruct the progress of the proceedings, including possible appeals proceedings, or commit further crimes by interfering with victims, witnesses and/or their relatives; or approaching them in retaliation against the incriminating evidence they provided at trial".¹⁰
10. The Prosecution relied on: (i) the Accused's threatening statements [REDACTED];¹¹ (ii) the Accused's knowledge of the identity of all Prosecution witnesses, including those who are protected victims;¹² (iii) the Accused's knowledge of the potentially incriminating evidence against him;¹³ (iv) the Accused's alleged propensity to act violently and impulsively, including in retaliation, as shown by his criminal record and the Defence expert psychologist's report;¹⁴ and (v) the alleged well-established and ongoing climate of intimidation against witnesses in Kosovo.¹⁵
11. As previously submitted, the Prosecution has failed to identify and substantiate any concrete risk.¹⁶ First, with regard to the statements concerning certain [REDACTED], the Defence reiterates that the statements, which were made at least five years ago, were removed from its original context. Besides, there is no

⁹ T. 15 April 2024, pp. 4077-4169; T. 16 April 2024, pp. 4170-4281; T. 17 April 2024, pp. 4282-4374.

¹⁰ Prosecution Submissions, para. 7.

¹¹ Sixteenth Detention Decision, paras 24, 28, 32.

¹² Sixteenth Detention Decision, paras 24, 28, 32.

¹³ Sixteenth Detention Decision, paras 24, 32.

¹⁴ Sixteenth Detention Decision, para. 24.

¹⁵ Sixteenth Detention Decision, paras 24, 29.

¹⁶ ICTY, *Prosecutor v Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-PT, Decision on Johan Tarčulovski's Motion for Provisional Release, 18 July 2005, para. 18.

concrete risk to [REDACTED], as [REDACTED], and the Accused has [REDACTED].

12. In regards to the Prosecution's argument that the Accused has a "propensity to act violently and impulsively",¹⁷ the Defence submits that the Accused has demonstrated good behaviour throughout his three years of detention, and has not been subject to any restrictions or sanctions during this time.
13. Further, the generalized atmosphere of witness intimidation in Kosovo is inadequate to justify the continued detention of the Accused, especially considering his request for release outside of Kosovo. In addition, the European Court of Human Rights has found that the reasons put forth to justify continued detention must apply concretely to the specific personal circumstances of a specific accused.¹⁸ The alleged climate of intimidation against witnesses in Kosovo is plainly insufficient for the purposes of specifically substantiating the risks of the Accused obstructing the proceedings or committing further crimes.
14. The Prosecution further argues that "having received the SPO's final trial brief and heard the closing submissions, the Accused may be more motivated than ever to obstruct, retaliate or otherwise seek to evade justice"¹⁹. This is merely speculative. The Accused has not shown any sign that he is fearful or aggressive following the end of the trial proceedings, as shown during closing statements, in which the Accused expressed he seeks justice.²⁰

Risk of flight

¹⁷ Sixteenth Detention Decision, para. 24.

¹⁸ ECtHR, *Buzadji v. Moldova* [GC], para. 122; *Rubtsov and Balayan v. Russia*, nos. 33707/14 and 3762/15, 10 April 2018, paras. 30-32; *Aleksanyan v. Russia*, no. 46468/06, 11 December 2008, para. 179, referring to *Panchenko v. Russia*, no. 45100/98, 8 February 2005, para. 107.

¹⁹ Prosecution Submissions, para. 7.

²⁰ T. 17 April 2024, p. 4373, lines 6-13.

15. The Prosecution repeats its unsuccessful arguments without showing any changed circumstance.²¹ Its arguments must be dismissed for the reasons developed in the Panel's previous decisions on this matter.²²

B. Alternative Measures Exist

16. The Prosecution has failed to substantiate that measures alternative to detention would not be appropriate in this specific case.

17. Alternative measures exist and are reasonable in the circumstances. The Accused could be granted provisional release while waiting for the issuing of the trial judgment. The Accused has shown his willingness to adhere to a release plan which would include, *inter alia*, house arrest in Belgium, no contact orders with all witnesses and victims (direct and indirect), no access to phone and internet except in the presence of his bail supervisor, daily reporting to the relevant authorities, surrendering all travel documents, appearing in court

²¹ Prosecution Submissions, para. 7.

²² Sixteenth Detention Decision, para. 23; F00776, Fifteenth Detention Decision, 19 January 2024 (confidential), para. 23; F00721, Fourteenth Detention Decision, 20 November 2023 (confidential), para. 15; F00663, Thirteenth Detention Decision, para. 15; F00596, Decision on the Twelfth Review of Detention of Pjetër Shala, 20 September 2023 (confidential), para. 20; F00534, Decision on the Eleventh Review of Detention of Pjetër Shala, 6 June 2023 (confidential), para. 14; F00480, Decision on the Tenth Review of Detention of Pjetër Shala, 6 April 2023 (confidential), para. 17; F00418, Decision on the Ninth Review of Detention of Pjetër Shala, 6 February 2023 (confidential), paras. 23, 26; F00365, Decision on the Eighth Review of Detention of Pjetër Shala, 6 December 2022 (confidential), paras. 20, 31. *See also* F00282, Decision on Review of Detention of Pjetër Shala, 21 September 2022 (confidential), para. 32; F00224, Decision on Review of Detention of Pjetër Shala, 22 June 2022 (confidential), para. 43; F00188, Decision on Remanded Detention Review Decision and Periodic Review of Detention of Pjetër Shala, 22 April 2022 (confidential), para. 46; F00133, Decision on Review of Detention of Pjetër Shala, 28 January 2022 (confidential), para. 39; F00105, Decision on Review of Detention of Pjetër Shala, 10 November 2021 (confidential), para. 37; F00075, Decision on Review of Detention of Pjetër Shala, 10 September 2021 (confidential), para. 40; F00045, Decision on Pjetër Shala's Request for Provisional Release, 15 June 2021 (confidential), 45.

whenever ordered to do so, and any other conditions deemed reasonable and necessary by the Panel.²³

C. Continued Detention is Disproportionate

18. The Defence submits that the continued detention of the Accused is disproportionate, particularly in light of the circumstances outlined above. The Panel cannot turn a blind eye on the disproportionate nature of the Accused's continued detention.

19. The mere fact that the Accused has been charged with serious crimes and could face a lengthy sentence is insufficient to discharge the Prosecution's burden to justify why detention remains necessary.²⁴

V. CLASSIFICATION

20. Pursuant to Rule 82(3) and 82(4) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, these submissions are filed as confidential as they relate to confidential filings. The Defence will file a public redacted version of these submissions in due course.

VI. RELIEF REQUESTED

21. For the above reasons, the Defence respectfully requests the Panel to grant the provisional release of the Accused, subject to any conditions that are deemed appropriate by the Panel.

Word count: 1879

²³ The Defence submits that the conditions of release articulated in the *Brahimaj* Release Decision could be adapted to the current case, in addition to any other conditions the Panel deems necessary. *See also* ICTY, *Prosecutor v. Jovica Stanisic*, Case No. IT-03-69-PT, 28 July 2004, Decision on provisional release, para. 43.

²⁴ ICTY, *Prosecutor v Ljube Bošković and Johan Tarčulovski*, Case IT-04-82-PT, Decision on Johan Tarčulovski's Motion for Provisional Release, 18 July 2005, para 15.

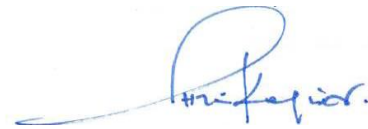
Respectfully submitted,



Jean-Louis Gilissen
Specialist Defence Counsel



Hédi Aouini
Defence Co-Counsel



Leto Cariolou
Defence Co-Counsel

Friday, 10 May 2024

The Hague, the Netherlands