

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

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**Haxhi Shala Reply to Prosecution Submission Pertaining to Periodic Detention
Review**

Specialist Prosecutor

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I. INTRODUCTION

1. Pursuant to the Second Decision on Review of Detention of Haxhi Shala (“Second Decision”),¹ the Defence for Mr. Haxhi Shala (“Defence”) hereby replies to the Prosecution Submission Pertaining to Periodic Detention Review of Haxhi Shala which the Specialist Prosecutor’s Office (“SPO”) filed on 24 May 2024 (“Prosecution Submissions”).

II. SUBMISSIONS

2. On 13 May 2024, in Haxhi Shala Submissions for Review of Detention (“Defence Submissions”),² the Defence argued that an extension of the Accused’s detention would be in violation of Article 5(3) of the European Convention for the Protection of Fundamental Rights and Freedoms³ (“ECHR”) and Article 41(6)(b) of the Law on Specialist Chambers and Specialist Prosecutor’s Office.⁴ In summary, the position in the Defence Submissions is as follows.

¹ KSC-BC-2023-10/F00246, 8 April 2024, Confidential.

² KSC-BC-2023-10/F00286, 13 May 2024, Confidential.

³ Ratified 04 November 1950, in force 03 September 1953, 213 UNTS 221.

⁴ Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, 3 August 2015.

3. The European Court of Human Rights (“ECtHR”) has held that in the normal course of events the alleged risks of an Accused disrupting an inquiry diminish with the passing of time as the inquiries are affected, statements taken and verifications carried out.⁵ In the instant case the risks of interference with the investigation and the related grounds for detention are now much reduced in view of the stage reached.⁶
4. The Pre-Trial Judge’s finding of a risk of committing further criminal offences rested on his finding on risk of interference with justice.⁷ Since owing the advanced stage in the proceedings there are now no articulable grounds to believe that there is a risk of interference with justice, the threshold in relation to commission of further criminal offences has not been met either.⁸
5. On risk of flight, the ECtHR has held that it necessarily decreases because as the time spent in detention increases the length of the term spent in prison on conviction diminishes because of the probability that the length of detention on remand will be deducted from the period of imprisonment which the

⁵ Defence Submissions, para. 13.

⁶ Defence Submissions , para. 18.

⁷ Second Decision, paras. 35-36.

⁸ Defence Submissions, paras. 19-20.

person concerned may expect if convicted. In this regard the risk for the Accused has diminished as well.⁹

6. In the Prosecution Submissions, the SPO asserted that there has been no change in circumstances since the Court's most recent decision to order detention on 8 April 2024 that merits deviating from that determination.¹⁰
7. The SPO's response is notable in that it fails to substantively address the Defence Submissions on the requirements of the ECHR. On the basis that detention is determined on the basis of the prosecution objections and the defence reply, in an adversarial process, this failing of the SPO is crucial to establishing whether there are sufficient grounds to deny what is a right for an accused person presumed innocent and not a privilege.
8. The SPO states: "Indeed, continued disclosure and the steady progression of the case continue to give Shala further access to sensitive information in the case against him and reinforce the necessity and reasonableness of detention."¹¹ The SPO's suggestion here is erroneous. The more the details and evidence of the case against the Accused are revealed, the less scope there is for reducing its strength and so the less inclined the Accused would be to

⁹ Defence Submissions paras. 22-24.

¹⁰ Prosecution submissions, para. 1.

¹¹ *Ibid.*, para. 1. See also paras. 7, 9.

attempt to interfere with the evidence against him, if he had any such inclinations.¹²

9. Furthermore, the mere citation of grounds, effectively rubber stamping what is set out in the legal and procedural regulations, will not constitute 'relevant and sufficient' reasons. The Court must examine all the circumstances arguing for and against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on the applications for release.¹³
10. In this regard it is noted that the SPO's insistence on the nature of the allegations, being offences against the administration of justice, being sufficient to justify continued detention falls woefully short of the required threshold. The SPO is reminded that Mr. Shala, as with all accused persons, is entitled to the full protection of the presumption of innocence and that a reasonable suspicion of having committed a serious offence against the administration of justice whilst it may be sufficient for arrest and initial

¹² cf. Defence Submissions, para. 18.

¹³ Eur. Court HR, *Toth v. Austria*, judgment of 25 November 1991, Series A no. 224, para. 67 and *Neumeister v. Austria*, judgment of 7 May 1974, Series A No. 8, p.37, paras. 4-5

detention it ceases to be a sufficient ground after the passage of time, and in this matter, the passage of five months.

III. CONCLUSION

11. For the foregoing reasons the Defence reaffirms its request in the Defence Submissions and requests that the Prosecution Submissions be dismissed.

IV. CLASSIFICATION

12. This filing is submitted confidentially pursuant to Rule 82(4) of the Rules.

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