



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2023-10
Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala

Before: Pre-Trial Judge
Judge Marjorie Masselot

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 18 June 2024

Language: English

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Prosecution response to F00329

Specialist Prosecutor's Office

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I. INTRODUCTION

1. The Request¹ by Haxhi Shala for reconsideration of the Decision² under Rule 79 of the Rules³ should be rejected. The Request fails to demonstrate any error of reasoning or injustice that warrants undertaking the exceptional measure of reconsideration. To the contrary, the Decision - even crediting *arguendo* the contentions in the Request - remains reasoned, free of error, and even identifies the currently available remedy to Shala of simply requesting a new review of his detention, thereby negating any potential injustice. In any event, even if a new review of detention were to be done at this time, Shala's continued detention would remain necessary and proportional for the reasons in the Decision.

II. SUBMISSIONS

2. Shala fails to meet his 'high threshold' burden⁴ for demonstrating that the exceptional undertaking of reconsideration is warranted in this case, as the Request fails to establish any clear error of reasoning or that reconsideration is necessary to avoid injustice.⁵

¹ Request for Reconsideration of Third Decision on Review of Detention of Haxhi Shala, KSC-BC-2023-10/F00329, 6 June 2024 ('Request').

² Third Decision on Review of Detention of Haxhi Shala, KSC-BC-2023-10/F00325, 5 June 2024 ('Decision').

³ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' are to the Rules.

⁴ See *Prosecutor v. Thaçi et al.*, Decision on Veseli Defence Request for Reconsideration of Decision to Admit P380, KSC-BC-2020-06/F01918, 9 November 2023, para.9.

⁵ See *Prosecutor v. Mustafa*, Decision on Specialist Prosecutor's Request for Reconsideration or Certification for Appeal, KSC-BC-2020-05/F00046, 5 November 2020, para.14; see also *Prosecutor v. Gucati & Haradinaj*, Decision on Request for Certification or Reconsideration of F00541, KSC-BC-2020-07/F00546, 1 February 2022, para.14; *Prosecutor v. Gucati & Haradinaj*, Decision on Haradinaj Defence's Application for Certification of F00328, KSC-BC-2020-07/F00372, 15 October 2021, para.21; *Prosecutor v. Gucati & Haradinaj*, Decision on the Haradinaj Application for Leave to Appeal the Decision on the Search and Seizure Videos, KSC-BC-2020-07/F00236, 15 June 2021, para.22; *Prosecutor v. Thaçi et al.*, Decision on Veseli Defence Request for Reconsideration and Leave to Appeal Decision on Confirmation of Amendments to the Indictment, KSC-BC-2020-06/F00842, 13 June 2022, para.29.

A. SHALA FAILS TO DEMONSTRATE A CLEAR ERROR OF REASONING IN THE DECISION

3. Shala appears to contend that the proportionality analysis of the Decision is inconsistent with the Pre-Trial Judge's Extension Decision,⁶ setting a new 'tentative' date for transmitting the case file to the Trial Panel of 5 July 2024.⁷ Notably, the Shala Defence did not oppose the Bahtijari Defence's request for an extension of time to file its pre-trial brief, and the resulting, limited delay in the tentative date for transmission to the Panel was therefore at the request of and/or unopposed by all three Defence teams.⁸ Whether delay is caused by the Defence is an objective factor which must be taken into account when assessing proportionality and/or reasonableness.⁹

4. While Shala is correct that the Pre-Trial Judge mentions the original 21 June 2024 date of transmission in the case progression portion of his proportionality analysis, this is only a small subcomponent of his overall - and still correct - reasoning that a 'concrete timeline has been set for the remainder of the pre-trial phase,' and that 'progress continues to be made in preparation for the transfer of the case to the Trial Panel.'¹⁰ The rest of the subcomponents of that analysis also remain correct, notably: (i) the SPO has completed its pre-trial obligations, with the exception of any material requiring judicial authorisation; (ii) the SPO and the Defence have submitted their points of agreement on matters of law and fact in a joint filing; (iii) the SPO has submitted its pre-trial brief; and

⁶ Decision on Bahtijari Request for Extension of Time, KSC-BC-2023-10/F00324, 5 June 2024 ('Extension Decision').

⁷ See Request, KSC-BC-2023-10/F00329, paras 11-16. The Request also notes that the Decision, relatedly, postponed the deadline for the Defence pre-trial briefs to 20 June 2024.

⁸ See Extension Decision, KSC-BC-2023-10/F00324, paras 6-7, 9.

⁹ See *Prosecutor v. Thaçi et al*, Decision on Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F01927, 15 November 2023, para.46 citing ECtHR, *Eckle v. Germany*, No. 8130/78, Judgment, 15 July 1982, para. 82.

¹⁰ Decision, KSC-BC-2023-10/F00325, para.49; Request, KSC-BC-2023-10/F00329, para.12.

(iv) the Defence shall submit its pre-trial brief.¹¹ In other words, as reinforced yet again in a different portion of the Pre-Trial Judge's proportionality analysis: '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 at a point in the foreseeable future.'¹²

5. In addition, the factors considered by the Pre-Trial Judge that do not directly relate to case progression also remain true, namely: (i) the length of detention since arrest; (ii) the potential sentence faced; (iii) that the relevant risks cannot be mitigated by the proposed conditions for release or any additional conditions; and (iv) pursuant to Article 41(10) of the Law¹³ and Rule 57(2), Shala's detention shall be reviewed every two months or as soon as a change in circumstances arises.¹⁴

6. Therefore, Shala has failed to demonstrate any clear error in the overall reasoning of the Pre-Trial Judge: a concrete timeline has been set for the remainder of the pre-trial phase, and progress continues to be made towards transmitting the case for trial at a point in the foreseeable future.¹⁵

B. SHALA FAILS TO DEMONSTRATE THE NECESSITY OF RECONSIDERATION TO AVOID INJUSTICE

7. As noted above and by the Pre-Trial Judge in the Decision,¹⁶ pursuant to Article 41(10) and Rule 57(2), Shala's detention shall be reviewed every two months or as soon as a change in circumstances arises. Therefore, reconsideration is completely unnecessary to

¹¹ Decision, KSC-BC-2023-10/F00325, para.49. As noted above, the date for submission of the pre-trial brief has changed.

¹² Decision, KSC-BC-2023-10/F00325, para.48.

¹³ Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

¹⁴ Decision, KSC-BC-2023-10/F00325, para.48.

¹⁵ See *Prosecutor v. Thaçi et al.*, Decision on Application for Reconsideration and Disqualification of a Judge from a Court of Appeals Panel, KSC-BC-2020-06/F00476, 17 September 2021, para.11.

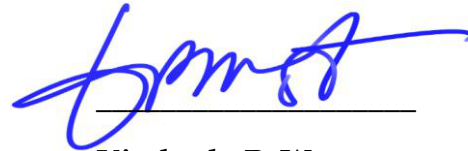
¹⁶ See *Supra* para.5.

avoid injustice. Indeed, for the reasons set out above and even if a new review were to be conducted now, the limited change in circumstances since the Decision, namely, the new, tentative date for transmission of the case to the Trial Panel, does not impact on the proportionality of Shala's continued detention at this time.

III. CONCLUSION

8. For the foregoing reasons, the Request should be rejected and Shala should continue to be detained.

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Kimberly P. West

Specialist Prosecutor

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At The Hague, the Netherlands