



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

In: KSC-BC-2023-10/PL001
Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala

Before: A Panel of the Supreme Court Chamber
Judge Ekaterina Trendafilova, Presiding
Judge Christine van den Wyngaert
Judge Daniel Fransen

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

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Prosecution response to Haxhi Shala's request for reconsideration

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Haxhi Shala's Request¹ for reconsideration of the Decision² should be rejected. The Request fails to demonstrate any error of reasoning or injustice that warrants undertaking the exceptional measure of reconsideration. Indeed, Shala simply uses the Request to repeat his same disagreement with regard to the underlying detention determinations that has already been rejected by multiple Chambers of the Kosovo Specialist Chambers ('KSC').

II. SUBMISSIONS

1. The Request fails to establish any clear error of reasoning or that reconsideration is necessary to avoid injustice.³

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

2. It is difficult to discern on what basis Shala is contending that a 'decision' was not made on his detention at the initial appearance.⁴ Alleging an error requires identifying the alleged error, presenting arguments in support of the claim, and explaining how

¹ Haxhi Shala's Re-filed Request for Reconsideration of the Supreme Court Chamber's Decision on Haxhi Shala's Request for Protection of Legality, KSC-BC-2023-10/PL001/F00009, 18 September 2024 ('Request').

² Decision on Haxhi Shala's Request for Protection of Legality, KSC-BC-2023-10/PL001/F00006, 9 September 2024 ('Decision').

³ 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.

⁴ Request, KSC-BC-2023-10/PL001/F00009, paras 3,4, 7-13.

the error invalidates the decision.⁵ As Shala fails to do this, the Request must be rejected.

3. As the Decision clearly noted in the very paragraph reproduced by Shala, Shala was invited to raise any issues about his detention at the post-arrest conference and made a submission that he did not have further issues to raise, after which, the Pre-Trial Judge confirmed his continued detention.⁶

4. In asserting that the Pre-Trial Judge's decision to continue Shala's detention, cannot be a 'decision' and/or does not meet the requirements of Article 5(3) of the European Convention on Human Rights ('ECHR'),⁷ Shala is merely expressing disagreement and repeating the same arguments that have been considered and rejected previously, while failing to engage with relevant jurisprudence and prior findings of the Panel.⁸ This alone warrants dismissal of the Request.⁹

5. However, as the SPO has noted previously,¹⁰ Shala's central complaint is something which the legal framework does not require. As Shala himself acknowledges, and as clearly recognised by both the Supreme Court Chamber¹¹ and the Court of Appeals,¹² the Arrest and Transfer Decision¹³ contained both the relevant submissions of the SPO and the reasoning of the Pre-Trial Judge, outlining the legal

⁵ *Prosecutor v. Gucati & Haradinaj*, Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, KSCS-BC-2020-7/IA001/F00005, 9 December 2020 ('Gucati Appeals Decision'), para.12.

⁶ See Request, KSC-BC-2023-10/PL001/F00009, para.9; Decision KSC-BC-2023-10/PL001/F00006, para.42.

⁷ Request, KSC-BC-2023-10/PL001/F00009, paras 9-13, 18-19.

⁸ Shala himself acknowledges as much when he notes, in summary, that this position was 'argued throughout the application for the protection of legality.' (Request, KSC-BC-2023-10/PL001/F00009, para.13).

⁹ See Decision KSC-BC-2023-10/PL001/F00006, para.14.

¹⁰ Prosecution response to Shala Defence 'Request for Protection of Legality against Haxhi Shala's Appeal Against Decision on Review of Detention', KSC-BC-2020-10/PL100/F00004, paras 16-17.

¹¹ Decision KSC-BC-2023-10/PL001/F00006, paras 40-42.

¹² Public Redacted Version of Decision on Haxhi Shala's Appeal Against Decision on Review of Detention, KSC-BC-2023-10/IA002/F00005/RED, 12 April 2024 ('Appeal Decision'), paras 27-34.

¹³ Public Redacted Version of Decision on Request for Warrant of Arrest and Transfer Order, KSC-BC-2023-10/F00006/RED, 4 December 2023 ('Arrest and Transfer Decision').

basis for Shala's detention.¹⁴ Repeating these factors, which the Pre-Trial Judge himself had decided upon just one week prior, at length during the initial hearing - as Shala seems to argue would have been necessary in order for the Pre-Trial Judge to confirm Shala's continued detention - was simply not required in the context of the degree of overall judicial oversight exercised, in conformity with the ECHR.

6. Shala also seems to repeat arguments that there was no 'decision' on the basis that the invitation by the Pre-Trial Judge for submissions from Shala was somehow not adequate,¹⁵ and/or because the Pre-Trial Judge made Shala aware of additional opportunities to challenge his detention in the future.¹⁶ Shala does not explain how either of these factors relate to whether a 'decision' was made. Nor does he explain how the invitation for submissions was not adequate for the purposes of the Panel's analysis, especially given the presence of Duty Counsel.

7. Finally, Shala's arguments regarding whether the Court of Appeal or the Pre-Trial Judge found that a 'decision' on detention had been made is simply a transparent attempt to manufacture discrepancy where none exists.¹⁷ As is apparent from the very paragraphs quoted in the Request,¹⁸ each of the Panels have consistently recognised the Arrest and Transfer Decision as the legal basis for Shala's arrest and detention, the continuation of which was confirmed by the Pre-Trial Judge at the initial appearance, having heard from Shala. The conclusion of the Court of Appeals that the overall process itself must, and did, comply with the ECHR in fact mirrors the conclusion reached by the Supreme Court Chamber in the Decision.¹⁹

¹⁴ *Contra*. Request, KSC-BC-2023-10/PL001/F00009, para 9, 11, 13.

¹⁵ Request, KSC-BC-2023-10/PL001/F00009, para.10.

¹⁶ Request, KSC-BC-2023-10/PL001/F00009, paras 9-12.

¹⁷ Request, KSC-BC-2023-10/PL001/F00009, paras 14-20.

¹⁸ Request, KSC-BC-2023-10/PL001/F00009, paras 15-16.

¹⁹ Decision KSC-BC-2023-10/PL001/F00006, paras 35-43.

8. Therefore, Shala has failed to demonstrate any clear error in the reasoning of the Decision.

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

9. The Supreme Court Panel observed that it could have dismissed Shala's Original Request²⁰ for failure to state a substantial violation of a provision contained in the Law, rather than violations of Article 5(3) of the ECHR.²¹ It nevertheless elected to consider the Original Request to examine if any substantial procedural unfairness attached to Shala's continued detention and found none.²² However, as Shala was never entitled to adjudication on the merits, it cannot be an injustice to not have the merits reconsidered.

10. An allegation of an error that has no chance of changing the outcome of a decision may be rejected on that ground.²³ Since his arrest, Shala has continued to have his detention status reviewed regularly pursuant to Article 41(10)²⁴ and Rule 57. For these reasons, reconsideration of the Decision would not change the current outcome of Shala's detention. Therefore, reconsideration is completely unnecessary to avoid injustice. Indeed, Shala's arguments on this front appear to seek only declaratory relief,²⁵ and are entirely premised on the claims of error which, as addressed above, are without merit.

²⁰ Request for Protection of Legality against Haxhi Shala's Appeal Against Decision on Review of Detention, KSC-BC-2023-10/PL001/F00001, 12 July 2024 ('Original Request').

²¹ Decision KSC-BC-2023-10/PL001/F00006, para.33.

²² Decision KSC-BC-2023-10/PL001/F00006, paras 34, 39-43.

²³ *Gucati Appeals Decision*, KSCS-BC-2020-7/IA001/F00005, para.12.

²⁴ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' herein refer to articles of the Law unless otherwise noted.

²⁵ Request, KSC-BC-2023-10/PL001/F00009, paras 5, 19, 21.

III. CONCLUSION

11. For the foregoing reasons, the Request should be rejected.

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Kimberly P. West

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Monday, 30 September 2024

At The Hague, the Netherlands.