



File number: KSC-BC-2023-10/PL001

Before: **A Panel of the Supreme Court Chamber**

Judge Ekaterina Trendafilova, Presiding
Judge Christine van den Wyngaert
Judge Daniel Fransen

Registrar: Fidelma Donlon

Date: 16 October 2024

Original language: English

Classification: **Public**

**Decision on Haxhi Shala's Request for
Reconsideration of Decision on Protection of Legality**

Specialist Prosecutor:

Kimberly P. West

Counsel for Sabit Januzi:

Jonathan Elystan Rees

Counsel for Ismet Bahtijari:

Felicity Gerry

Counsel for Haxhi Shala

Toby Cadman

THE PANEL OF THE SUPREME COURT CHAMBER of the Kosovo Specialist Chambers (“Supreme Court Panel” or “Panel”) noting Articles 41 and 48(6)-(7) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 79 of the Rules of Procedure and Evidence (“Rules”)¹ is seised of the “Haxhi Shala’s Re-filed Request for Reconsideration of the Supreme Court Chamber’s Decision on Haxhi Shala’s Request for Protection of Legality” (“Request for Reconsideration”).²

I. PROCEDURAL BACKGROUND

1. On 11 December 2023, Mr Shala was arrested in Kosovo pursuant to an arrest warrant issued by the Pre-Trial Judge,³ after the confirmation of an indictment against him.⁴ On 12 December 2023, Mr Shala was transferred to the Detention Facilities of the Specialist Chambers in The Hague, the Netherlands.⁵
2. On 13 December 2023, Mr Shala’s initial appearance took place before the Pre-

¹ Rules of Procedure and Evidence before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, (adopted on 17 March 2017, revised on 29 May 2017, amended on 29 and 30 April 2020).

² PL001/F00009, Haxhi Shala’s Re-filed Request for Reconsideration of the Supreme Court Chamber’s Decision on Haxhi Shala’s Request for Protection of Legality, 18 September 2024.

³ KSC-BC-2023-11/F00006/RED/A01/RED, Public Redacted Version of Arrest Warrant for Haxhi Shala, 28 February 2024 (strictly confidential version filed on 4 December 2023, reclassified as confidential on 29 February 2024) (“Arrest Warrant”). See also KSC-BC-2023-11/F00006/RED, Public Redacted Version of Decision on Request for Warrant of Arrest and Transfer Order, 22 December 2023 (strictly confidential and *ex parte* version filed on 4 December 2023, reclassified as confidential on 22 December 2023) (“Decision on Arrest and Transfer”); KSC-BC-2023-11/F00008, Notification of Arrest of Haxhi Shala Pursuant to Rule 55(4), 11 December 2023 (strictly confidential and *ex parte* reclassified as public on 15 December 2023).

⁴ KSC-BC-2023-11/F00005/RED, Public Redacted Version of the Decision on the Confirmation of the Indictment, 30 January 2024 (strictly confidential and *ex parte* version filed on 4 December 2023, reclassified as confidential on 12 December 2023) (“Confirmed Indictment”); KSC-BC-2023-11/F00013/A01, Annex 1 to Submission of Public Redacted Version of Confirmed Indictment, 12 December 2023. A confidential version of the Indictment was filed on 6 December 2023. See KSC-BC-2023-11/F00007/A01, Annex 1 to Submission of Confirmed Indictment, 6 December 2023 (strictly confidential and *ex parte* reclassified as confidential on 11 December 2023).

⁵ KSC-BC-2023-11/F00015/RED, Public Redacted Versions of the Report on the Arrest and Transfer of Haxhi Shala to the Detention Facilities with Strictly Confidential and *Ex Parte* Annexes 1-3, 3 July 2024 (strictly confidential and *ex parte* filed on 13 December 2023 reclassified as confidential on 15 December 2023).

Trial Judge and he was remanded in detention.⁶

3. On 8 February 2024, the Pre-Trial Judge granted the request by the Specialist Prosecutor's Office ("SPO") to join the case against Mr Shala with the case against Mr Sabit Januzi and Mr Ismet Bahtijari.⁷

4. On 9 February 2024, the Pre-Trial Judge issued the "Decision on Review of Detention of Haxhi Shala" ("Pre-Trial Judge's Decision"), ordering Mr Shala's continued detention.⁸

5. On 12 April 2024, the Appeals Panel issued the "Decision on Haxhi Shala's Appeal Against Decision on Review of Detention" ("Appeals Panel's Decision"), wherein it denied Mr Shala's appeal against the Pre-Trial Judge's Decision.⁹

6. On 12 July 2024, Mr Shala filed the "Request for Protection of Legality against Haxhi Shala's Appeal Against Decision on Review of Detention" ("Request for PoL").¹⁰

7. On 9 September 2024, the Supreme Court Panel issued its "Decision on Haxhi Shala's Request for Protection of Legality" ("Decision on PoL"), wherein it denied the Request for PoL in its entirety.¹¹

8. On 18 September 2024, Mr Shala filed the Request for Reconsideration.

9. On 30 September 2024, the SPO filed the "Prosecution's Response to Haxhi

⁶ KSC-BC-2023-11, Transcript, 13 December 2023.

⁷ F00161, Decision on Request for Joinder and Amendment of the Indictment, 8 February 2024 (confidential). A public redacted version was filed on the same day.

⁸ F00165, Decision on Review of Detention of Haxhi Shala, 9 February 2024 (confidential). A public redacted version of the decision was issued on the same day.

⁹ IA002/F0005, Decision on Haxhi Shala's Appeal Against Decision on Review of Detention, 12 April 2024. A public redacted version was filed on the same day.

¹⁰ PL001/F00001, Request for Protection of Legality against Haxhi Shala's Appeal Against Decision on Review of Detention, 12 July 2024.

¹¹ PL001/F00006, Decision on Haxhi Shala's Request for Protection of Legality, 9 September 2024.

Shala's request for reconsideration" ("Response").¹²

10. On 5 October 2024, Mr Shala filed the "Defence's Reply to the Prosecution's Response to Haxhi Shala's Request for Reconsideration of the Supreme Court Chamber's Decision on Haxhi Shala's Request for Protection of Legality" ("Reply").¹³

II. DISCUSSION

1. Submissions

11. Mr Shala seeks reconsideration of the Decision on PoL pursuant to Rule 79 of the Rules on the basis of "a clear error of a material fact".¹⁴ Mr Shala submits that this error "will cause injustice to the Accused by misrepresenting the position as to when and on what basis he was detained [...] [and it] consolidates a practice under the Law and the Rules that is not in compliance with Article 5(3) of ECHR".¹⁵ According to Mr Shala, the Panel incorrectly determined that the Pre-Trial Judge had taken a decision on his detention and neither the Court of Appeals Panel nor the Pre-Trial Judge found that a decision had been taken at the initial appearance in this respect.¹⁶

12. Mr Shala submits that it is clear that the wording used by the Pre-Trial Judge, namely "as you remain in detention" does not constitute a decision, and was not supported by any reasoning that would suggest that a decision had been taken.¹⁷ Mr Shala asserts that the Pre-Trial Judge did not seek the parties' submissions on the legality of his detention as required by Article 5(3) of the European Convention on Human Rights ("ECHR") nor did he ensure that Mr Shala understood the legal basis

¹² PL001/F00011, Prosecution Response to Haxhi Shala's Request for Reconsideration, 30 September 2024.

¹³ PL001/F00012, Defence's Reply to the Prosecution's Response to Haxhi Shala's Request for Reconsideration of the Supreme Court Chamber's Decision on Haxhi Shala's Request for Protection of Legality, 5 October 2024.

¹⁴ Request for Reconsideration, para. 5. See also Request for Reconsideration, paras 2-3, 17, 21.

¹⁵ Request for Reconsideration, para. 19. See also Reply, paras 5-6.

¹⁶ Request for Reconsideration, para. 4. See also Request for Reconsideration, paras 7, 14, 17; Reply, paras 3, 5, 10-11.

¹⁷ Request for Reconsideration, para. 9. See also Reply, para. 7.

for his detention.¹⁸ Mr Shala contends that it is clear from the Pre-Trial Judge's statement that his detention could be challenged by way of written submissions in accordance with Rule 57 of the Rules, that Mr Shala could not "advance oral submissions".¹⁹

13. Mr Shala further submits that the Court of Appeals Panel found that Mr Shala's detention following his initial appearance had been based on the initial warrant for his arrest and the transfer decision, as opposed to any decision taken at the initial appearance.²⁰ Mr Shala contends that the Pre-Trial Judge himself stated that the decision on his detention was based on the initial arrest warrant.²¹

14. The SPO responds that the Request for Reconsideration should be rejected, because it fails to demonstrate any error of reasoning or injustice that "warrants the undertaking of the exceptional measure of reconsideration".²² According to the SPO, Mr Shala simply repeats "his same disagreement with regard to the underlying detention determinations that has already been rejected by multiple Chambers".²³ The SPO contends that the Decision on PoL clearly set forth that Mr Shala was invited to raise any issues about his detention during the initial appearance and that the Pre-Trial Judge confirmed his continued detention when Mr Shala responded that he had nothing to add.²⁴

15. The SPO asserts that Mr Shala's "central complaint is something which the legal framework does not require".²⁵ The SPO contends that the arrest and transfer decision issued by the Pre-Trial Judge "contained both the relevant submissions of the SPO and

¹⁸ Request for Reconsideration, para. 10. See also Request for Reconsideration, paras 11, 13; See also Reply, para. 7.

¹⁹ Request for Reconsideration, para. 12. See also Reply, para. 8.

²⁰ Request for Reconsideration, para. 15. See also Reply, para. 4.

²¹ Request for Reconsideration, para. 16, citing F00165, Decision on Review of Detention of Haxhi Shala, 9 February 2024, para. 13. See also Reply, para. 8.

²² Response, para. 1. See also Response, paras 2, 8.

²³ Response, para. 1. See also Response, para. 4.

²⁴ Response, para. 3. See also Response, para. 6.

²⁵ Response, para. 5.

the reasoning of the Pre-Trial Judge, outlining the legal basis for [Mr] Shala's detention".²⁶ According to the SPO, it was therefore not necessary nor required by the ECHR for the Pre-Trial Judge to have repeated the reasons for Mr Shala's detention anew during the initial hearing.²⁷

16. The SPO further asserts that since Mr Shala failed to state what substantial violation of the procedures in the Law was occasioned, he "was never entitled to adjudication on the merits, it cannot be an injustice to not have the merits reconsidered".²⁸ Finally, the SPO contends that a reconsideration of the Decision on PoL will not change the outcome of the subsequent decisions on Mr Shala's detention, and reconsideration of that decision is therefore "completely unnecessary to avoid injustice".²⁹

17. Mr Shala replies that the Pre-Trial Judge at the initial appearance invited him to comment on his treatment in relation to his arrest, transfer and detention, not on the legality of his detention, as suggested by the SPO.³⁰ Mr Shala contends that while the Law may be silent on the requirement that the Pre-Trial Judge *proprio motu* review his detention at the initial appearance, the Kosovo Constitution and the ECHR still require him to do so.³¹ Alternatively, Mr Shala submits that reconsideration is necessary to avoid injustice by correcting a material error which underpins the Decision on PoL.³²

2. The Panel's assessment

18. The Panel recalls that reconsideration of decisions is an exceptional remedy, and that the "moving party [...] must demonstrate the existence of a clear error of

²⁶ Response, para. 5. See also Response, para. 7.

²⁷ Response, para. 5.

²⁸ Response, para. 9.

²⁹ Response, para. 10.

³⁰ Reply, para. 8.

³¹ Reply, para. 9.

³² Reply, para. 12. See also Reply, para. 13.

reasoning or that reconsideration is necessary to avoid injustice”.³³ Mere disagreement with the judicial reasoning or outcome of a decision is not sufficient to justify its reconsideration.³⁴ New arguments or facts may be relevant for reconsidering a decision but only if the moving party demonstrates how they justify revisiting the initial decision.³⁵

19. Having carefully considered Mr Shala’s arguments, the Panel does not find that he has demonstrated an error in the reasoning nor that reconsideration of the Decision on PoL is necessary to avoid injustice. Rather, Mr Shala merely disagrees with both the judicial reasoning and the outcome of the Decision on PoL.

20. More specifically, the Panel notes that Mr Shala does not engage with the fact that before his initial appearance he was provided with the certified copies of the Arrest warrant, the Transfer Order and that he was therefore aware of the legal basis and reasons for his arrest and transfer to the Detention Facilities of the Specialist Chambers.³⁶ Similarly, Mr Shala does not address the fact that he was invited to make submissions on his detention during the initial appearance.³⁷ The Panel recalls in this respect that the ECtHR requires that the person “be heard” and has referred in this context to the person being given the opportunity to “present the court with possible personal or other reasons mitigating against his detention after his actual arrest”.³⁸

21. The Panel finds that it is within the context set forth above that the Pre-Trial Judge’s decision continuing Mr Shala’s detention two months after his arrest, must be read. Specifically, the reference in that later decision by the Pre-Trial Judge to the legal

³³ Rule 79 of the Rules. See also KSC-BC-2020-07/F00278, Decision on the Request for Reconsideration of the Decision on Recusal or Disqualification, 20 August 2021 (“Decision on Reconsideration”), para. 3.

³⁴ Decision on Reconsideration, para. 4.

³⁵ Decision on Reconsideration, para. 4.

³⁶ See Decision on Protection of Legality, para. 41.

³⁷ Decision on Protection of Legality, para. 42.

³⁸ Cf., ECtHR, *Case of Kornev and Karpenko v. Ukraine*, Application No. 17444/04, Judgment, 21 October 2010, paras 44, 46.

basis for Mr Shala's arrest and the substantial requirements for Mr Shala's detention in that later decision does not imply that no decision was taken on Mr Shala's detention at the initial appearance.³⁹ Instead, this later decision further demonstrates that the Pre-Trial Judge carefully considered the substantial requirements for Mr Shala's detention, as well as the relevant legal documents which had been provided to Mr Shala in advance of the initial hearing and on which he did not comment when invited to do so. Moreover, the Panel recalls that the Pre-Trial Judge gave Mr Shala the opportunity to be heard on his detention more generally, without limiting this to his "treatment" as suggested by Mr Shala.

22. Finally, it is inherent that a court of higher instance will assess the facts and legal questions independently and may come to a different conclusion or characterisation of the facts or legal question than the lower courts. Accordingly, the mere fact that the Court of Appeals Panel may have made certain findings regarding the Pre-Trial Judge's decision on Mr Shala's detention does not constitute a ground for reconsideration of the Decision on PoL. In any event, the Panel notes that the Court of Appeals Panel found that the Pre-Trial Judge complied with the Law in respect of Mr Shala's detention.⁴⁰ The Panel therefore finds that Mr Shala failed to demonstrate an error in the reasoning of the Decision on PoL.

23. The Panel recalls that the Pre-Trial Judge thoroughly considered the requirements justifying Mr Shala's detention when issuing the Arrest Warrant and Transfer Order, Mr Shala was given an opportunity to review and understand the legal basis and the reasons for his arrest and detention in a language he understands, he was assisted by Counsel during this time and the Pre-Trial Judge sought his views on the detention at the initial appearance. Mr Shala's detention has thereafter been further thoroughly considered by the Pre-Trial Judge and the Trial Panel and confirmed by all subsequent decisions and Mr Shala was afforded the opportunity to

³⁹ Pre-Trial Judge's Decision, para. 13.

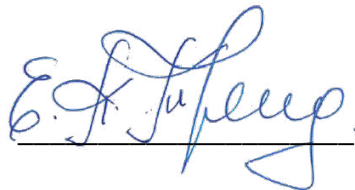
⁴⁰ Appeals Panel's Decision, paras 34-35.

make submissions in advance of these decisions on each occasion.⁴¹ In other words, the Panel is of the view that Mr Shala's rights have been sufficiently safeguarded as required by both the Law and Article 5(3) of the ECHR. The Panel is therefore of the view that Mr Shala has also failed to demonstrate that the Decision on PoL would cause an injustice.

24. Accordingly, the Panel sees no basis to take the exceptional measure of reconsidering its Decision on PoL and hereby rejects the Request for Reconsideration.

III. DISPOSITION

25. For these reasons, the Supreme Court Panel hereby **REJECTS** the Request for Reconsideration.

A handwritten signature in blue ink, appearing to read 'E. Trendafilova', written over a horizontal line.

Judge Ekaterina Trendafilova, Presiding

Dated this Wednesday, 16 October 2024

At The Hague, the Netherlands

⁴¹ See, e.g, Pre-Trial Judge's Decision; F00246/RED, Public redacted version of Second Decision on Review of Detention of Haxhi Shala, 8 April 2024; F00325/RED, Public redacted version of Third Decision on Review of Detention of Haxhi Shala, 5 June 2024; F00424, Fourth Decision on Review of Detention of Haxhi Shala, 5 August 2024 (confidential) (a public redacted version was issued on 30 August 2024, F00424/RED); F00500/RED, Public redacted version of Decision on the Fifth Review of Detention of Haxhi Shala, 4 October 2024.