



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: **Trial Panel I**
Judge Mappie Veldt-Foglia, Presiding Judge
Judge Roland Dekkers
Judge Gilbert Bitti
Judge Vladimir Mikula, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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Public redacted version of 'Prosecution submission pertaining to periodic detention review of Haxhi Shala'

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I. INTRODUCTION

1. Pursuant to Article 41 of the Law¹ and Rule 57 of the Rules,² the Specialist Prosecutor's Office ('SPO') makes the following submissions in support of the need for the continued detention of Haxhi Shala. The Pre-Trial Judge and this Panel have previously held that Shala's detention is justified on multiple bases, that no conditions short of detention in the Kosovo Specialist Chambers ('KSC') detention facilities would be sufficient to minimise the risks, and that the detention period—taking all relevant circumstances into account—is reasonable. Since the most recent determination of the Panel on 4 October 2024,³ there has been no change in circumstances that merits deviating from that determination. 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.

II. PROCEDURAL HISTORY

2. On 4 October 2024, the Panel issued the Decision denying Shala's request for interim release.

3. Since the Decision, seven (7) additional disclosure packages have been disclosed to the Accused.⁴ In addition, the date for commencement of trial has been set for 14 November 2024.⁵

¹ 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.

² 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' herein refer to the Rules, unless otherwise specified.

³ Public redacted version of Decision on the Fifth Review of Detention of Haxhi Shala, KSC-BC-2023-10/F00500/RED, 4 October 2024 ('Decision').

⁴ See Disclosure Packages 49-54.

⁵ See Decision on the date for the commencement of the trial, KSC-BC-2023-10/F00559, 24 October 2024, para.17.

III. SUBMISSIONS

4. The Panel has noted the law applicable to deciding such matters, including as set out in Articles 3, 21, and 41, and Rules 56 and 57.⁶

5. Since the most recent detention decision, there have been no developments that diminish the factors supporting the need for and reasonableness of detention. Indeed, the continued progression of the case and attendant disclosure of incriminating and sensitive information in the case against Shala augment the necessity of detention.

6. [REDACTED].⁷ [REDACTED].

A. GROUNDED SUSPICION

7. Article 41(6)(a) requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the KSC.⁸ There remains a grounded suspicion that Shala has done so.⁹ In the Confirmation Decision, the Pre-Trial Judge determined that there is a suspicion that Shala is liable for intimidation during criminal proceedings and obstructing official persons in performing official duties within the meaning of Articles 387 and 401(1), (2) and (5) of the 2019 Kosovo Criminal Code, Code No. 06/L-074 and Articles 15(2) and 16(3) of the Law,¹⁰ to a standard that exceeds that

⁶ Decision, KSC-BC-2023-10/F00500/RED, para.13.

⁷ [REDACTED]

⁸ Decision, KSC-BC-2023-10/F00500/RED, para.17.

⁹ See Decision, KSC-BC-2023-10/F00500/RED, paras 18-19.

¹⁰ Public Redacted Version of the Decision on the Confirmation of the Indictment, KSC-BC-2023-11/F00005/RED ('Confirmation Decision'), 4 December 2023, paras 101, 117, 129.

required for detention based on ‘grounded suspicion.’¹¹ Nothing has occurred since the Confirmation Decision was filed that would detract from the Panel’s determination.

B. DETENTION IS JUSTIFIED UNDER ALL ARTICLE 41(6)(B) FACTORS

i. Risk of Flight (Article 41(6)(b)(i))

8. The Panel previously concluded that Shala presents a risk of flight.¹²

9. The Panel noted the factors previously considered by the Pre-Trial Judge, namely: (i) Shala’s awareness of the seriousness of the charges against him and the potential sentence in the event of a conviction; (ii) his increased insight into the evidence underpinning the charges through the ongoing disclosure process; and (iii) the transmission of the case file to the Panel.¹³

10. The Panel was also particularly attentive to the fact that it has very limited information about Shala’s personal circumstances, such as his home, occupation, assets and family ties, that are of relevance to evaluate the risk of flight, and that Shala has, in principle, the opportunity to evade justice, including by traveling freely to jurisdictions beyond the reach of KSC.¹⁴

11. Given all of the above in conjunction with the imminent start of trial, Shala’s risk of flight at the present moment has only increased.

¹¹ Decision, KSC-BC-2023-10/F00500/RED, para.18.

¹² Decision, KSC-BC-2023-10/F00500/RED, para.26.

¹³ Decision, KSC-BC-2023-10/F00500/RED, para.24.

¹⁴ Decision, KSC-BC-2023-10/F00500/RED, para.24.

ii. Risk of Obstruction of Proceedings (Article 41(6)(b)(ii))

12. Shala continues to present a risk of obstructing the proceedings, consistent with the Panel's recent conclusions.¹⁵

13. The Panel found that Shala has both the means and intent to obtain and misuse witness-related information to obstruct and interfere with KSC proceedings, bearing in mind that: (i) Shala acted in close coordination with his Co-Accused in relation to their approaches to Witness 1 with a view to dissuading the latter from further participating in KSC proceedings as a witness, denoting the Shala's persistence in his intimidation and obstruction efforts in the context of KSC proceedings; and (ii) Shala appears to have purposefully targeted his Co-Accused, who would be better suited to persuade Witness 1 to withdraw his testimony.¹⁶ In addition, the Panel attached weight to Shala's unity of interests with influential individuals from within the former leadership of the Kosovo Liberation Army.¹⁷

14. Furthermore, the Panel considered that the imminent start of the trial and Shala's increasing access to sensitive witness-related information as a result of the ongoing disclosure process constitute concrete relevant factors in assessing the possibility that Shala might obstruct the progress of the proceedings.¹⁸

¹⁵ Decision, KSC-BC-2023-10/F00500/RED, para.33.

¹⁶ Decision, KSC-BC-2023-10/F00500/RED, para.30.

¹⁷ Decision, KSC-BC-2023-10/F00500/RED, para.30.

¹⁸ Decision, KSC-BC-2023-10/F00500/RED, para.31.

15. The Panel assessed the above factors against the backdrop of the pervasive climate of fear and intimidation in Kosovo against witnesses and potential witnesses of the KSC,¹⁹ which the Court of Appeals has agreed is a relevant 'contextual consideration.'²⁰

16. In this regard, the SPO notes that, as held by the Trial Panel in Case 07, 'the mere fact that the Accused is entitled to disclosure of relevant material does not mean that the Panel ought to ignore the risks that come with such disclosure, especially in the context of conditional release.'²¹

iii. Risk of Criminal Offences (Article 41(6)(b)(iii))

17. In previously finding that Shala may commit further crimes, the Panel recalled that, even though the existence of a risk of obstruction does not automatically translate into a risk of committing further offences, the factors underpinning the former are of relevance to the assessment of the latter in the circumstances of the present case.²² In particular, the Panel found that Shala has the means and incentive to repeat the offences alleged to have been committed by him.²³

18. Additionally, Trial Panel II in Case 06 has held that especially once information regarding sensitive witnesses has been disclosed to the Defence, any risk of the further

¹⁹ Decision, KSC-BC-2023-10/F00500/RED, para.31.

²⁰ *Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA017/F00011/RED, 5 April 2022, paras 41-48; *Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA014/F00008/RED, 31 March 2022, para.50; *Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA015/F00005/RED, 25 March 2022, para.43.

²¹ *Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00507/RED, 21 December 2021, para.36.

²² Decision, KSC-BC-2023-10/F00500/RED, paras 36-37.

²³ Decision, KSC-BC-2023-10/F00500/RED, para.36.

commission of crimes must be avoided.²⁴ Therefore, and especially in light of continuing disclosure, the unacceptable risk of the commission of further crimes requires Shala's continued detention.

C. NO MODALITIES OF CONDITIONAL RELEASE ARE ABLE TO SUFFICIENTLY MITIGATE THE RISKS

19. The relevant risks can only be effectively managed at the KSC's detention facilities, as recently reaffirmed by the Panel.²⁵

20. The Panel found that none of Shala's proposed conditions for release, nor any additional measures foreseen in Article 41(12), could sufficiently mitigate the existing risks related to obstruction and the commission of further crimes.²⁶

21. Nothing has occurred since the Panel's previous determination warranting a different assessment on conditions, either generally or for a discrete period of time. Rather, the progression of the case and attendant further disclosures render the underlying risks higher than ever.

22. [REDACTED].²⁷ [REDACTED].²⁸ [REDACTED].

²⁴ See e.g., *Prosecutor v Thaçi et al.*, Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F02125, 15 February 2024, para.26; *Prosecutor v Thaçi et al.*, Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F02126, 15 February 2024, para.27.

²⁵ Decision, KSC-BC-2023-10/F00500/RED, paras 45-47.

²⁶ Decision, KSC-BC-2023-10/F00500/RED, paras 44-45.

²⁷ [REDACTED].

²⁸ [REDACTED].

D. DETENTION IS PROPORTIONAL

23. Detention remains proportional. At the last detention review, the Panel found that the time Shala has spent in pre-trial detention is not disproportionate.²⁹

24. The Panel recalled that: (i) Shala has been detained since his arrest on 11 December 2023; (ii) he is charged with two counts of obstructing official persons in performing official duties and one count of intimidation during criminal proceedings, under various forms of criminal responsibility, which carry a potential sentence of up to five years and ten years of imprisonment, respectively; (iii) the risks under Article 41(6)(b)(ii) and (iii) of the Law cannot be mitigated by the proposed conditions and/or any additional conditions.; and (iv) the start of the trial is imminent.³⁰

25. The Panel also noted that Shala's detention shall be reviewed every two months or as soon as a change in circumstances arises, and that weighed against the remaining factors and, in particular: (i) the serious nature of the charges against the Accused; (ii) the impossibility to mitigate the risks under Article 41(6)(b)(ii) and (iii); and (iii) the steady and significant advancement of the proceedings, including the imminent start of the trial, that the detention of Shala has not become unreasonable under Rule 56(2).³¹

26. The proceedings continue to move forward expeditiously, as demonstrated, in particular, by the date for commencement of trial having been set for 14 November 2024.

27. Given all of the above, detention remains both reasonable and proportional at this time.

²⁹ Decision, KSC-BC-2023-10/F00500/RED, para.52

³⁰ Decision, KSC-BC-2023-10/F00500/RED, para.50.

³¹ Decision, KSC-BC-2023-10/F00500/RED, paras 50-51.

IV. CLASSIFICATION

28. This filing is submitted as confidential in accordance with Rule 82(4) [REDACTED].

V. CONCLUSION

29. For the foregoing reasons, the SPO respectfully submits that Shala should continue to be detained.

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At The Hague, the Netherlands