



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-BC-2023-10**
The 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: Fidelma Donlon

Date: 9 October 2024

Language: English

Classification: **Public**

Public redacted version of

Decision on the Shala Urgent Request for Temporary Release on Compelling Humanitarian Grounds

Specialist Prosecutor

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Registry

Fidelma Donlon

Counsel for Ismet Bahtijari

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Toby Cadman

TRIAL PANEL I (Panel) hereby renders this decision on the Shala urgent request for temporary release on compelling humanitarian grounds.

I. PROCEDURAL BACKGROUND

1. On 11 December 2023, Haxhi Shala (Mr Shala or Accused) was arrested,¹ pursuant to a decision² and an arrest warrant issued by the Pre-Trial Judge,³ upon request of the Specialist Prosecutor's Office (SPO),⁴ and further to the confirmation of an indictment against him.⁵
2. On 12 December 2023, Mr Shala was transferred to the Specialist Chambers (SC) Detention Facilities in The Hague, the Netherlands.⁶
3. On 9 February 2024, 8 April 2024, 5 June 2024 and 5 August 2024, the Pre-Trial Judge reviewed the detention of Mr Shala and ordered his continued detention.⁷

¹ KSC-BC-2023-11, F00008, Registrar, *Notification of Arrest of Haxhi Shala Pursuant to Rule 55(4)*, 11 December 2023, public, para. 4.

² KSC-BC-2023-11, F00006, Pre-Trial Judge, *Decision on Request for Warrant of Arrest and Transfer Order (Decision on Arrest)*, 4 December 2023, confidential, with Annexes 1-2, confidential. A public redacted version of the decision was issued on 22 December 2023, [F00006/RED](#).

³ KSC-BC-2023-11, F00006/A01, Pre-Trial Judge, *Arrest Warrant for Haxhi Shala*, 4 December 2023, confidential.

⁴ KSC-BC-2023-11, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Requests*, 20 November 2023, strictly confidential and *ex parte*, para. 25(ii), with Annexes 1, 3, strictly confidential and *ex parte*, and Annex 2, confidential. A confidential redacted version and a public redacted version of the main filing were submitted on 14 December 2023, F00002/CONF/RED and F00002/RED.

⁵ KSC-BC-2023-11, F00005, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 4 December 2023, confidential. A public redacted version of the decision was issued on 30 January 2024, [F00005/RED](#).

⁶ KSC-BC-2023-11, F00011, Registrar, *Notification of Reception of Haxhi Shala in the Detention Facilities of the Specialist Chambers*, 12 December 2023, public, with Annex 1, strictly confidential and *ex parte*.

⁷ KSC-BC-2023-10, F00165, Pre-Trial Judge, *Decision on Review of Detention of Haxhi Shala (First Detention Decision)*, 9 February 2024, confidential. A public redacted version was filed on 12 February 2024, [F00165/RED](#). The Supreme Court Panel and the Court of Appeals Panel upheld the First Detention

4. On 4 September 2024, the Pre-Trial Judge transmitted the case file to the Panel, pursuant to Rule 98(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules).⁸
5. On 4 October 2024, the Panel reviewed Mr Shala's detention and ordered his continued detention (Fifth Detention Decision).⁹
6. On 8 October 2024, the Defence for Mr Shala (Defence) filed the "Urgent Request for Temporary Release on Compelling Humanitarian Grounds" (Request).¹⁰
7. On the same date, the Registrar filed the "Registrar's Submissions on Shala Request for Temporary Release on Compassionate Grounds" (Registrar's Submissions).¹¹
8. On 9 October 2024, the SPO filed the "Prosecution Response to Shala Defence Request for Temporary Release on Humanitarian Grounds" (SPO Response).¹²

Decision, see PL001/F00006, Supreme Court Panel, [Decision on Haxhi Shala's Request for Protection of Legality](#), 9 September 2024, public; IA001/F00005, Court of Appeals Panel, *Decision on Haxhi Shala's Appeal Against Decision on Review of Detention*, 12 April 2024, confidential. A public redacted version was issued on the same day, [IA001/F00005/RED](#); F00246, Pre-Trial Judge, *Second Decision on Review of Detention of Haxhi Shala*, 8 April 2024, confidential. A public redacted version was issued on the same day, [F00246/RED](#); F00325, Pre-Trial Judge, [Third Decision on Review of Detention of Haxhi Shala](#), 5 June 2024, public; F00424, Pre-Trial Judge, *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](#).

⁸ KSC-BC-2023-10, F00468, Pre-Trial Judge, [Decision Transmitting the Case File to Trial Panel I](#), 4 September 2024, public, with Annex 1, confidential and Annex 2, public.

⁹ KSC-BC-2023-10, F00500, Trial Panel, *Decision on the Fifth Review of Detention of Haxhi Shala*, 4 October 2024, confidential. A public redacted version was issued on the same day, [F00500/RED](#).

¹⁰ KSC-BC-2023-10, F00513, Defence, *Urgent Request for Temporary Release on Compelling Humanitarian Grounds*, 8 October 2024, confidential and *ex parte*, with Annexes 1-2, confidential and *ex parte*. In correspondence CRSPD 85 ("*Briefing Schedule in Relation to F00513*"), dated 8 October 2024, the Panel established an expedited briefing schedule for the Registry and the SPO to respond to the Request.

¹¹ KSC-BC-2023-10, F00514, Registrar, *Registrar's Submissions on Shala Request for Temporary Release on Compassionate Grounds*, 8 October 2024, confidential and *ex parte*.

¹² KSC-BC-2023-10, F00515, Specialist Prosecutor, *Prosecution Response to Shala Defence Request for Temporary Release on Humanitarian Grounds*, 9 October 2024, confidential and *ex parte*.

II. SUBMISSIONS

9. The Defence submits that: (i) Mr Shala's father died early in the morning of 8 October 2024; (ii) the funeral has been arranged on the same day at 16:00 hours in [REDACTED], Kosovo; and (iii) that it is of utmost importance that Mr Shala should visit his father's grave and pay respect to and mourn with his family, including by providing emotional support to his mother and immediate family.¹³ The Defence requests the immediate temporary release of Mr Shala on compassionate grounds, for a period of three (3) days as soon as the visit can be arranged, to allow him to attend his father's funeral and to visit his mother and immediate family members in Kosovo.¹⁴

10. The Registrar submits that a custodial visit can be organised securely and swiftly, if secrecy is maintained and subject to certain operational and mission security requirements.¹⁵ Specifically, the Registrar submits that: (i) the earliest the necessary arrangements can be made for a safe and secure transfer of Mr Shala to Kosovo is [REDACTED], provided secrecy of the operation is maintained;¹⁶ (ii) she can accommodate a temporary transfer of Mr Shala in Kosovo [REDACTED];¹⁷ (iii) during the custodial visit, Mr Shala should remain in the custody of the SC, under escort at all times, and be temporarily accommodated in [REDACTED] ("Secure Transfer Facility"), with the chief custody officer taking any decision necessary regarding the visit on the basis of operational and security concerns, including terminating the visit;¹⁸ (iv) secure transport to and from [REDACTED] can be arranged on [REDACTED], subject to [REDACTED] being vacated by all non-authorised persons,

¹³ Request para. 11.

¹⁴ Request, paras 12, 16. In paragraph 1, the Defence only requests a period of 2 (two) days for Mr Shala to attend his father's funeral and to visit his mother and immediate family members.

¹⁵ Registrar's Submissions, para. 13.

¹⁶ Registrar's Submissions, para. 15.

¹⁷ Registrar's Submissions, paras 16-17.

¹⁸ Registrar's Submissions, paras 16, 23.

and with no more than [REDACTED] family members present with Mr Shala at the same time and in the same room;¹⁹ (v) secure transport to and from the grave site of the father for a solo, in-person custodial visit can be arranged;²⁰ and (vi) in-person visiting sessions on [REDACTED], with pre-identified immediate family members, can be arranged at the Secure Transfer Facility within the sight and hearing of the chief custody officer, and under the modalities proposed by the Registrar.²¹

11. The Registrar further submits that certain conditions must be met in order for the custodial visit to take place, as set out in paragraph 28 of the Registrar's Submissions, and consistent with prior custodial visits.²²

12. The SPO does not oppose a strictly supervised, fully custodial visit under strict conditions similar to those imposed for prior custodial visits.²³ It submits, however, that the persons authorised to meet Mr Shala and the specific addresses of any visit location should be notified and approved in advance for logistical and security reasons.²⁴ The SPO defers to the Panel's and Registry's assessment with regard to the necessary and feasible length, scope and location of any visit.²⁵

III. APPLICABLE LAW

13. The Panel notes Article 53(1) of the Law on Specialist Chambers and Specialist Prosecutor's Office (Law), and Rule 56(3) of the Rules.

¹⁹ Registrar's Submissions, paras 17-18.

²⁰ Registrar's Submissions, para. 19.

²¹ Registrar's Submissions, paras 20-22.

²² Registrar's Submissions, para. 28.

²³ SPO Response, paras 1, 5.

²⁴ SPO Response, para. 3.

²⁵ SPO Response, para. 5.

IV. ANALYSIS

A. TEMPORARY RELEASE ON COMPELLING HUMANITARIAN GROUNDS

14. The Panel notes that there is no unconditional right to temporary release on compelling humanitarian grounds.²⁶ A decision whether to release a person on such grounds is subject to the discretion of the Panel, but must account for all relevant circumstances and factors and include a reasoned opinion thereon.²⁷ What these factors are, as well as the weight to be accorded to them depends upon the particular circumstances of the case. Accordingly, the stage of the proceedings, the nature of the criminal offence, the Accused's character, the gravity of the relative's illness, the degree of kinship, the possibility of escorted leave and other circumstances informing the alleged "humanitarian" grounds are among the potentially relevant factors.²⁸

15. The Panel further notes that visiting the grave, or attending a funeral, or a memorial service, of an immediate family member, has been accepted, under certain conditions, in the SC and other jurisdictions, as a compelling humanitarian ground that might warrant temporary release.²⁹

16. The Panel recalls that Mr Shala is charged with two counts of offences against public order, namely obstructing official persons in performing official duties; and

²⁶ See ECtHR, *Lind v. Russia*, no. 25664/05, Judgment, 6 December 2007, para. 94. See also, for example, KSC-BC-2020-07, F00604/RED, Trial Panel II, *Public Redacted Version of the Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds* (Gucati Decision), 9 May 2022, public, para. 11.

²⁷ See Gucati Decision, para. 11. See also ICTY, *Prosecutor v. Popović et al.*, IT-05-88-AR65.4, IT-05-88-AR65.5 and IT-05-88-AR65.6, Appeals Chamber, [Decision on Consolidated Appeal Against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Goero's and Miletić's Motions for Provisional Release During the Break in the Proceedings](#), 15 May 2008, para. 6.

²⁸ See Gucati Decision, para. 11. See also ECtHR, *Lind v. Russia*, no. 25664/05, Judgment, 6 December 2007, para. 95. See also KSC-BC-2020-6, F00640/RED, Pre-Trial Judge, *Public Redacted Version of Third Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, 8 January 2022, public, para. 20.

²⁹ See for example, KSC-BC-2020-06, F00386/RED, Pre-Trial Judge, *Public Redacted Version of Second Decision on Veseli Defence Request for Temporary Release on Compassionate Grounds*, 8 July 2021, public, paras 15, 22 (the public redacted version was issued on 16 July 2021). See also for example, ICTY, *Prosecutor v. Popovic et al*, IT-05-88-A, Appeals Chamber, [Decision on Vinko Pandurević's Urgent Motion for Provisional Release on Compassionate Grounds](#), 11 January 2012.

one count of offences against the administration of justice and public administration, namely intimidation during criminal proceedings.³⁰

17. The Panel also notes that the SPO does not oppose a strictly supervised, fully custodial escorted visit for a limited duration and that both the SPO and the Registry set out a number of logistical measures and security conditions that they say would make such a visit feasible.³¹

18. For these reasons, the Panel finds that, on balance and in the present circumstances, the death of Mr Shala's father constitutes compelling humanitarian grounds, meeting the requirements of Rule 56(3) of the Rules, justifying Mr Shala's temporary release from the Detention Facilities for a custodial visit under strict conditions.

19. The Panel also notes that, as Mr Shala's father's funeral was scheduled to take place on Thursday, 8 October 2024, at 16:00 hours,³² it is not feasible for Mr Shala to attend the funeral, should the custodial visit be authorised.³³ Therefore, the Panel rejects this limb of the Request.

B. CONDITIONS OF CUSTODIAL VISIT

20. With regard to the conditions to be imposed on Mr Shala's custodial visit, the Panel recalls its previous findings that: (i) a risk of flight, a risk of obstructing the progress of the proceedings before the SC, and a risk of committing further crimes continue to exist in relation to Mr Shala; and (ii) imposing conditions in relation to Mr Shala's release would insufficiently mitigate these risks.³⁴ Therefore, in light of the security risks and logistics involved, the Panel considers that conditions falling short

³⁰ KSC-BC-2023-10, F00379/A03, Specialist Prosecutor, *Prosecution Submission of Confirmed Amended Indictment*, 10 July 2024, public, para. 33.

³¹ Registrar's Submissions, paras 13, 28; SPO Response, paras 3-5.

³² Request, para. 11.

³³ See also Request, para. 11.

³⁴ Fifth Detention Decision, paras 38, 46-47.

of those provided below would not sufficiently address the risks associated with the temporary release of Mr Shala.

21. The custodial visit shall last [REDACTED], departing on [REDACTED], and returning on [REDACTED]. The custodial visit shall be carried out under the following conditions:

- a) Mr Shala's visit shall at all times be under the condition of secrecy. Mr Shala, his immediate family members, and his Counsel shall refrain from informing any third party of the visit.³⁵ They shall make no press contacts or public statements in respect of this matter; said conditions shall be upheld until the custodial visit is concluded and Mr Shala returned from Kosovo;
- b) The Registry is only to provide this decision to the SPO, to Mr Shala, and Mr Shala's Lead Counsel. Lead Counsel shall not inform team members beyond those specifically holding the position of Counsel until Mr Shala's return from Kosovo. Counsel shall not disclose to any third party (including other members of his team) the existence of the present decision and/or the temporary release of Mr Shala until his return. Lead Counsel shall ensure that other Counsel and members of his team do not, directly or indirectly, comment publicly on this matter and do not share information pertaining to this matter with the media;
- c) Should Mr Shala's presence on the territory of Kosovo become known, the Registrar, the SPO [REDACTED], as appropriate and necessary, are authorised to make any statement they deem necessary in that regard or take any action they deem necessary for reasons of security, including terminating the custodial visit;
- d) Mr Shala shall be detained at the Secure Transfer Facility when not engaged in authorised visits. Mr Shala's movements in Kosovo shall allow travel

³⁵ The Panel clarifies that Counsel and Mr Shala are permitted to inform Mr Shala's family members of the conditions for the custodial visit.

between: (i) [REDACTED]; (ii) [REDACTED]; (iii) the gravesite of Mr Shala's deceased father; and (iv) the Secure Transfer Facility;

e) At all times, without exception, Mr Shala shall remain in the custody of the SC and under escort. At no time shall Mr Shala be alone and he shall remain in sight and within earshot of escorting officers at all times. The chief custody officer may exercise his or her discretion and take any decision he or she deems necessary regarding the custodial visit on the basis of operational security, including prematurely terminating the visit;

f) Lead Counsel for Mr Shala shall liaise with the Registry as soon as possible upon notification of the present decision and in any event prior to departure from The Hague and identify whether [REDACTED], and shall also specify the precise location of the grave of Mr Shala's father;

g) During Mr Shala's single time-limited visit to [REDACTED], no more than a total of [REDACTED] pre-approved family members, which may include immediate family members (parents, spouse, children, siblings, and grandchildren) are permitted to be present. To give effect to this, the Defence is ordered to submit copies of the photographic identification documents of [REDACTED] to the Registry for prior approval, as soon as possible upon notification of the present decision and in any event sufficiently in advance for the Registry to give its approval. During the visit [REDACTED], all [REDACTED] family attendees are required to present photographic identification to the chief custody officer and Mr Shala is not permitted to communicate with any person other than the [REDACTED] family attendees and SC escorting officers;

h) During Mr Shala's visit to the gravesite of the father, no immediate family members, or any other person, are permitted to be present;

- i) The Registry will facilitate in-person visiting sessions on [REDACTED], with pre-identified immediate family members at the Secure Transfer Facility. To give effect to this, the Defence is ordered to submit copies of photographic identification documents of any persons, who will be visiting Mr Shala at the Secure Transfer Facility, to the Registry for prior approval as soon as possible upon notification of the present decision and in any event sufficiently in advance for the Registry to give its approval;
- j) At the Secure Transfer Facility, Mr Shala will be permitted to have visits. The duration, timing, and number of such visits, and number of visitors will be at the sole discretion of the chief custody officer. Such visits will be conducted in a similar way to in-person family visits in the Detention Facilities in the Host State, namely pre-approved visitors need to present photographic identification to the chief custody officer to enter the Secure Transfer Facility, and the visits shall be conducted within the sight and hearing of the escorting officers and under any conditions deemed necessary by the chief custody officer. The chief custody officer will have the authority to terminate any visit in case of non-compliance with conditions set for the visits;
- k) Mr Shala shall not have access to communication devices or any other means of communication, including pen and paper, other than as facilitated by the SC;
- l) Mr Shala is not permitted to pass or receive items to or from any person without prior inspection and approval of the escorting officer(s);
- m) Mr Shala shall not have any contact whatsoever or in any way interfere with any victim or potential witness or otherwise interfere in any way with the proceedings or the administration of justice;
- n) Mr Shala shall not seek direct access to documents nor destroy evidence;

- o) Mr Shala shall not discuss his case with anyone, including the media, other than with his (Lead) Counsel;
- p) Mr Shala shall comply strictly with any further order of the Panel varying the terms or terminating his custodial visit; and
- q) Any breach of the conditions provided herein by Mr Shala, his (Lead) Counsel or his family shall result in the immediate termination of the temporary release from Detention Facilities.

22. The Panel considers that, given the urgent nature of the request and the present circumstances, the strict custodial conditions outlined above are necessary to outweigh any risks that Mr Shala may flee, obstruct the progress of the SC proceedings, or commit further crimes.

23. The Panel is further satisfied that, under the present circumstances, [REDACTED], enables adequate time for Mr Shala to take part in the mourning for the passing of his father, visit the gravesite of his father and meet pre-authorised family members to provide, and receive, emotional support, and is thus proportionate to the grounds for which the temporary release is sought.

24. The Panel reminds the Defence to provide all necessary information [REDACTED] in good time to the Registry, as set forth in this decision. The Panel reminds the Defence that [REDACTED].

25. Should there be a need to amend any of the above conditions, the Parties or Registry shall seize the Panel immediately.

C. EXECUTION OF CONDITIONS

26. In the implementation of the above conditions, the Panel authorises the Registry to make final operational and security arrangements with external partners and to notify any other authorities, including those in the Host State and Kosovo, as necessary for the implementation of this order.

27. Pursuant to Article 53(1) of the Law, the Panel recalls that all entities and persons in Kosovo shall cooperate with the SC and shall comply without undue delay with any decision issued by the SC or any request for assistance.

D. REPORTING OBLIGATIONS

28. Throughout the custodial visit, the Registry shall provide the Panel with an update on: (i) the transfer of Mr Shala to Kosovo; (ii) any breaches of the aforementioned conditions by Mr Shala or others; (iii) any early termination of the visit and reasons therefor; and (iv) Mr Shala's return to the detention unit of the SC in the Host State. The Registry shall file a report to the Panel on the implementation of this decision within 10 days of Mr Shala's return to the detention unit of the SC.

V. CLASSIFICATION

29. The Panel orders the Defence and the Registry to file public redacted versions of their respective filings, or request their reclassification as public, one week after Mr Shala's return to the Detention Facilities of the SC.

VI. DISPOSITION

30. For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS** the Request in part, to the extent specified above;
- b) **DISMISSES** the remainder of the Request as regards Mr Shala's attendance of his father's funeral for being moot;
- c) **ORDERS** Mr Shala to comply with all conditions specified in paragraph 21(a)-(q) above;
- d) **ORDERS** Lead Counsel to refrain from informing any team members who do not hold the position of Counsel of the existence of the present decision

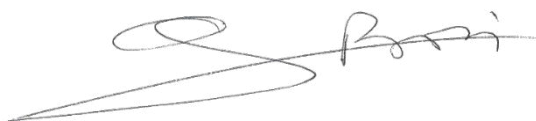
and/or the temporary release of Mr Shala until Mr Shala has returned to The Hague;

- e) **ORDERS** Counsel not to disclose to any third party (including other team members) the existence of the present decision and/or the temporary release of Mr Shala until Mr Shala has returned to The Hague;
- f) **ORDERS** Lead Counsel to ensure that other Counsel and members of his team do not, directly or indirectly, comment publicly on this matter and do not share information pertaining to this matter with the media until Mr Shala has returned to The Hague;
- g) **INSTRUCTS** the Registry to implement Mr Shala's custodial visit under the conditions specified in the present decision;
- h) **INSTRUCTS** the Parties and/or the Registry to seize the Panel immediately should an amendment to any of the conditions specified in the present decision be required;
- i) **AUTHORISES** the Registry to make arrangements with external partners for the implementation of this decision;
- j) **AUTHORISES** the Registry to notify any other authorities deemed necessary for the implementation of this decision;
- k) **REMINDS** authorities in Kosovo that they shall comply without undue delay with any decision issued by the SC or any request for assistance;
- l) **ORDERS** the Defence to provide to the Registry the particulars of any individuals who will be present at [REDACTED] and/or who will visit Mr Shala in the Secure Transfer Facility;
- m) **ORDERS** the Registry to provide updates and file a report as indicated in paragraph 28 above; and

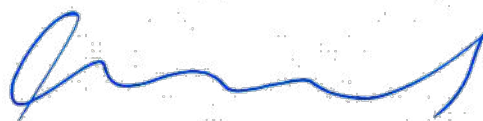
- n) **ORDERS** the Defence and the Registry to file public redacted versions of their respective filings, one week after Mr Shala's return to the Detention Facilities of the SC.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Wednesday, 9 October 2024

At The Hague, the Netherlands.