



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: 4 December 2024

Language: English

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Public Redacted Version of
Decision on the Sixth Review of Detention of Haxhi Shala

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TRIAL PANEL I (Panel) hereby renders this decision on the sixth review of detention of Haxhi Shala.

I. PROCEDURAL BACKGROUND

1. On 4 October 2024, the Panel reviewed the detention of Haxhi Shala (Mr Shala) and ordered his continued detention (Fifth Detention Decision).¹
2. [REDACTED].²
3. On 11 November 2024, the SPO filed its submissions on the periodic review of Mr Shala's detention (SPO Submissions).³
4. The Shala Defence did not file any submissions.
5. On 12 November 2024, upon request of the Parties, the Panel adjourned the hearings of 14 and 15 November 2024.⁴
6. [REDACTED].⁵
7. [REDACTED].⁶

II. SUBMISSIONS

8. The SPO submits that the continued detention of Mr Shala remains justified, necessary and reasonable, as there have been no developments that warrant deviating

¹ KSC-BC-2023-10, F00500, Trial Panel I, *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](#).

² [REDACTED].

³ KSC-BC-2023-10, F00589, Specialist Prosecutor, *Prosecution submission pertaining to periodic detention review of Haxhi Shala*, 11 November 2024, confidential. A public redacted version was filed on 12 November 2024, F00589/RED.

⁴ KSC-BC-2023-10, F00593, Trial Panel I, *Order on Adjournment of Hearings*, 12 November 2024, confidential, para. 5(a). A public redacted version was issued on the same day, [F00593/RED](#).

⁵ [REDACTED].

⁶ [REDACTED].

from the Panel's determinations in the Fifth Detention Decision.⁷ The SPO asserts that, to the contrary, the steady progression of the case and continued disclosure of incriminating and sensitive information increase the necessity of his detention.⁸ On this basis, the SPO submits that Mr Shala should remain in detention.⁹

III. APPLICABLE LAW

9. The Panel notes Article 6(2) of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Articles 29, 31(5) and 53 of the Constitution of the Republic of Kosovo (Constitution), Articles 3(2), 21(3), and 41(6) and (10)-(12) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law), and Rules 56(2) and 57(2) of the Rules.

IV. ANALYSIS

10. At the outset, the Panel recalls that the presumption of innocence, as provided for in Article 31(5) of the Constitution, Article 21(3) of the Law, and Article 6(2) of the ECHR, is the starting point for the assessment of the continued detention on remand.¹⁰ Accordingly, continued detention cannot be maintained lightly and the accused should be released once his or her continued detention ceases to be reasonable.¹¹ The SPO bears the burden of establishing that the detention of the accused is necessary.¹²

⁷ SPO Submissions, paras 1, 5.

⁸ SPO Submissions, paras 1, 5.

⁹ SPO Submissions, para. 29.

¹⁰ KSC-BC-2020-06, IA004/F00005/RED, Trial Panel II, [Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Interim Release](#), 30 April 2021, para. 17.

¹¹ ECtHR, [Buzadji v. The Republic of Moldova](#) [GC], application no. 23755/07, Judgment (*Buzadji v. The Republic of Moldova*), 5 July 2016, paras 89-90.

¹² KSC-BC-2020-06, F00177/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Hashim Thaçi's Application for Interim Release](#), 22 January 2021, public, para. 19 and references therein.

A. GROUNDED SUSPICION

11. The SPO submits that there remains a grounded suspicion that Mr Shala committed offences within the Specialist Chamber's (SC) jurisdiction, as there has been no development since the "Decision on the Confirmation of the Indictment"¹³ capable of changing the Panel's previous finding.¹⁴

12. The Panel recalls that, as found in the Confirmation Decision, there is a "well-grounded suspicion" within the meaning of Article 39(2) of the Law that Mr Shala is criminally liable, under various forms of criminal responsibility, for offences within the SC's jurisdiction, namely intimidation during criminal proceedings and obstructing official persons in performing official duties under 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.¹⁵

13. Therefore, and in the absence of any contrary intervening information or developments, the Panel finds that the requirement under Article 41(6)(a) of the Law continues to be met.

B. NECESSITY OF DETENTION

14. The Panel recalls that, once the threshold in Article 41(6)(a) of the Law is met, the grounds that would justify a person's deprivation of liberty must be "articulable" in the sense that they must be specified in detail.¹⁶ On the basis of the available

¹³ KSC-BC-2023-11, F00005, Pre-Trial Judge, *Decision on the Confirmation of the Indictment* (Confirmation Decision), 4 December 2023, confidential. A public redacted version of the decision was issued on 30 January 2024, [F00005/RED](#).

¹⁴ SPO Submissions, para. 7.

¹⁵ [Confirmation Decision](#), paras 101, 117, 129, 132, 136, 140, 144, 149. See also KSC-BC-2023-11, F00006, Pre-Trial Judge, *Decision on Request for Warrant of Arrest and Transfer Order*, 4 December 2023, confidential, with Annexes 1-2, confidential. A public redacted version of the decision was issued on 22 December 2023, [F00006/RED](#), para. 17.

¹⁶ Article 19.1.31 of the Kosovo Criminal Procedure Code 2022, Law No. 08/L-032 defines "articulable" as: "the party offering the information or evidence must specify in detail the information or evidence

evidence, the specific articulable grounds must support the “belief” that any of the risks under the three limbs of Article 41(6)(b) of the Law exist.¹⁷ The standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.¹⁸ The Panel further recalls that it may refer to findings in prior decisions if it is satisfied that the evidence or information underpinning those decisions still supports the findings made at the time of the review.¹⁹ Finally, since the three grounds under Article 41(6) of the Law are listed in the alternative, the existence of one ground suffices to determine the necessity of detention of the accused.²⁰

1. Risk of Flight

15. The SPO avers that Mr Shala’s risk of flight, as determined by the Panel in the Fifth Detention Decision,²¹ has only increased due to the imminent start of the trial.²²

16. As regards the risk of flight under Article 41(6)(b)(i) of the Law, the Panel finds that: (i) the circumstances and factors set out in the Fifth Detention Decision continue to apply;²³ and (ii) no information or developments have arisen which undermine them and the conclusion they underpin.

17. With respect to the SPO’s general argument that the risk of flight posed by Mr Shala at present has further increased due to the imminent start of the trial,²⁴ the Panel

being relied upon”. See also KSC-BC-2020-06, IA001/F00005, Court of Appeals Panel, [Decision on Kadri Veseli’s Appeal Against Decision on Interim Release](#), 30 April 2021, public, paras 18-19.

¹⁷ [Fifth Detention Decision](#), para. 20 and any references therein.

¹⁸ [Fifth Detention Decision](#), para. 20 and any references therein.

¹⁹ [Fifth Detention Decision](#), para. 20 and any references therein.

²⁰ [Fifth Detention Decision](#), para. 20 and any references therein.

²¹ [Fifth Detention Decision](#), paras 24-26, 38.

²² SPO Submissions, para. 11.

²³ [Fifth Detention Decision](#), paras 24-26.

²⁴ SPO Submissions, para. 11.

finds it unpersuasive, considering that the SPO fails to present specific reasoning based on evidence supporting said increase.²⁵

18. In light of the above, the Panel remains satisfied that there is a risk of flight in relation to Mr Shala.

2. Risk of Obstructing the Progress of SC Proceedings

19. The SPO submits that the Panel's findings in the Fifth Detention Decision continue to apply and, thus, Mr Shala continues to present a risk of obstructing the SC proceedings.²⁶

20. As regards the risk of obstructing proceedings under Article 41(6)(b)(ii) of the Law, the Panel finds that: (i) the circumstances and factors set out in the Fifth Detention Decision continue to apply;²⁷ and (ii) no information or developments have arisen which undermine them and the conclusion they underpin. [REDACTED].

21. In light of the above, the Panel is satisfied that there continues to be a risk that Mr Shala might obstruct the progress of the SC's proceedings.

3. Risk of Committing Further Offences

22. The SPO maintains its position that the unacceptable risk of further commission of crimes by Mr Shala, especially in light of the continuing disclosure, mandates his continued detention.²⁸

²⁵ *Similarly*, KSC-BC-2023-10, F00611, Trial Panel I, *Decision on the Seventh Review of Detention of Ismet Bahtijari*, 26 November 2024, confidential. A public redacted version was issued on 27 November 2024, [F00611/RED](#), para. 21 and any references therein.

²⁶ SPO Submissions, paras 12-16.

²⁷ [Fifth Detention Decision](#), paras 30-31.

²⁸ SPO Submissions, paras 17-18.

23. As regards the further commission of crimes under Article 41(6)(b)(iii) of the Law, the Panel remains mindful of the fact that the existence of the risk of obstruction does not automatically translate into a risk of committing further offences, but reiterates that the factors underpinning the former risk are of relevance to the assessment of the latter risk in the present case.²⁹

24. Accordingly, in the light of the above,³⁰ and in the absence of any contrary intervening information, the Panel finds that there continues to be a risk that Mr Shala might commit further offences, including against witnesses who have provided or could provide evidence in the case. [REDACTED].³¹

4. Conclusion

25. In light of the foregoing, the Panel finds that there are articulable grounds to believe that the risk of flight, the risk of obstructing the progress of the proceedings before the SC and the risk of committing further crimes continue to exist, therefore necessitating Mr Shala's continued detention in accordance with Article 41(6)(b) of the Law. The Panel will assess below whether these risks can be adequately mitigated by any conditions for his release.

C. CONDITIONAL RELEASE

26. The SPO avers that there has been no change in circumstances that warrants deviating from the Panel's prior determination that no modalities of conditional release could sufficiently mitigate the existing risks in relation to Mr Shala. To the

²⁹ [Fifth Detention Decision](#), para. 36 and any references therein.

³⁰ See *supra* paras 20-21.

³¹ See *supra* para. 20.

contrary, it asserts that the advancement of the case and continued disclosure render said risks higher than ever.³² It further submits that Mr Shala [REDACTED].³³

27. The Panel notes that detention on remand should only be continued if there are no more lenient measures that could sufficiently mitigate the risks set out in Article 41(6)(b)(i)-(iii) of the Law. The Panel has the obligation to inquire and evaluate, *proprio motu*, all reasonable conditions that could be imposed on an accused.³⁴

28. In this regard, as found in the Fifth Detention Decision, the Panel remains of the view that, while conditions previously proposed by the Defence could sufficiently mitigate Mr Shala's flight risk under Article 41(6)(b)(i) of the Law,³⁵ there are no conditions which could sufficiently mitigate the risks that Mr Shala might obstruct the progress of the SC proceedings and commit further offences as set out in Article 41(6)(b)(ii)-(iii) of the Law.³⁶ In particular, the Panel recalls its prior findings that no conditions could address the fact that Mr Shala could employ communication devices belonging to other persons or request others to use their devices for these purposes, noting, in this regard, Mr Shala's unity of interests with influential individuals from within the former leadership of the KLA.³⁷ The Panel further recalls its previous finding that, should he be released, Mr Shala would have the motive, means and opportunity to exert pressure on Witness 1 to dissuade him from participating in the proceedings, or to otherwise tamper with evidence.³⁸

29. The Panel further recalls that, while the risk of illicit messages and instructions cannot be entirely eliminated, the measures in place at the SC Detention Facilities, viewed as a whole, provide robust assurances against unmonitored visits and

³² SPO Submissions, paras 19-21.

³³ SPO Submissions, paras 6, 22.

³⁴ [Fifth Detention Decision](#), para. 42 and any references therein.

³⁵ [Fifth Detention Decision](#), para. 43.

³⁶ [Fifth Detention Decision](#), paras 44-45.

³⁷ [Fifth Detention Decision](#), para. 44.

³⁸ [Fifth Detention Decision](#), para. 44.

communications with family members and pre-approved visitors, with a view to minimising the risks of obstruction and commission of further offences. Such measures, as well as additional measures, may be ordered *proprio motu* by the Panel pursuant to Rule 56(6) of the Rules.³⁹

30. Therefore, in light of the foregoing, the Panel remains satisfied that it is only through the communication monitoring framework applicable at the SC Detention Facilities that Mr Shala's communications can be restricted in a manner to sufficiently mitigate the risk of obstructing the progress of the proceedings before the SC and the risk of committing further crimes, as set out in Article 41(6)(b)(ii)-(iii) of the Law.

D. PROPORTIONALITY OF DETENTION

31. The SPO submits that Mr Shala's detention remains both reasonable and proportional, taking into consideration, in particular, the expeditious progression of the case, as demonstrated by the date set for the commencement of the trial.⁴⁰

32. The Panel recalls the importance of the proportionality principle in the determination of the reasonableness of pre-trial detention, and that the longer a person remains in pre-trial detention, the higher the burden on the SPO to justify continued detention.⁴¹ The duration of time in detention pending trial is a factor that needs to be considered along with the degree of the risks that are described in Article 41(6)(b) of the Law, in order to determine whether, all factors being considered, the continued detention "stops being reasonable" and the individual needs to be released.⁴² However, the question whether it is reasonable for an accused to remain in

³⁹ [Fifth Detention Decision](#), para. 44.

⁴⁰ SPO Submissions, paras 23-27.

⁴¹ [Fifth Detention Decision](#), para. 49 and any references therein.

⁴² [Fifth Detention Decision](#), para. 49 and any references therein.

detention must be assessed based on the facts and circumstances of each case and according to its specific features.⁴³

33. In this regard, the Panel recalls that: (i) Mr Shala has been detained since his arrest on 11 December 2023;⁴⁴ (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;⁴⁵ and (iii) the risks under Article 41(6)(b)(ii) and (iii) of the Law cannot be mitigated by any conditions for release.⁴⁶

34. Furthermore, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, Mr Shala's detention shall be reviewed every two months or as soon as a change in circumstances arises. The Panel has duly appraised the additional time spent in detention by Mr Shala following the Fifth Detention Decision, including the resulting increase of the SPO's burden to justify Mr Shala's continued detention. However, the Panel weighs these factors against the remaining ones and, in particular: (i) the serious nature of the charges against Mr Shala; and (ii) the impossibility to mitigate the risks under Article 41(6)(b)(ii)-(iii) of the Law. As regards the advancement of the proceedings, the Panel recalls that on 12 November 2024, it adjourned the commencement of the trial, upon request of the Parties, [REDACTED].⁴⁷ [REDACTED].⁴⁸ Considering the above, the Panel finds that the detention of Mr Shala has not become unreasonable under Rule 56(2) of the Rules.

35. In light of the foregoing, the Panel concludes that, for the purposes of the periodic review of Mr Shala's detention pursuant to Article 41(10) of the Law and

⁴³ [Fifth Detention Decision](#), para. 49 and any references therein.

⁴⁴ [Fifth Detention Decision](#), para. 50.

⁴⁵ *See supra* para. 12.

⁴⁶ *See supra* paras 28-30.

⁴⁷ *See supra* para. 5.

⁴⁸ *See supra* para. 20.

Rule 57(2) of the Rules, the time Mr Shala has spent in detention is not disproportionate.

V. DISPOSITION

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

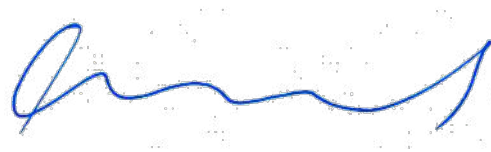
- a. **ORDERS** Mr Shala's continued detention;
- b. **ORDERS** the SPO to file submissions on the next review of detention of Mr Shala by no later than **Thursday, 16 January 2025, at 16:00**;
- c. **ORDERS** the Shala Defence to file submissions on the next review of detention of Mr Shala, if it so wishes, by no later than **Thursday, 23 January 2025, at 16:00**; and
- d. **ORDERS** the SPO to file a reply, if it so wishes, by no later than **Tuesday, 28 January 2025, at 16:00**.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Wednesday, 4 December 2024

At The Hague, the Netherlands.