

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

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

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Haxhi Shala

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Haxhi Shala Submissions for Seventh Review of Detention

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I. INTRODUCTION

1. The Defence for Mr. Haxhi Shala (“Defence”) hereby makes its submissions for the seventh periodic review of detention.

II. PROCEDURAL BACKGROUND

2. On 11 December 2023, Mr. Haxhi Shala (“Accused”) was arrested in Prishtinë, Republic of Kosovo. The next day he was transferred to the Kosovo Specialist Chambers Detention Management Unit in The Hague, the Netherlands.¹
3. On 13 December 2023, an initial appearance before the Pre-Trial Judge took place.² On 9 February 2024, 8 April 2024, 5 June 2024 and 5 August 2024, the Pre-Trial Judge issued decisions on review of the Accused’s detention,³ in each of which his continued detention was ordered.⁴

¹ KSC-BC-2023-11/F00014, Decision Setting the Date for the Initial Appearance of Haxhi Shala and Related Matters, 12 December 2023, paras. 4-5.

² KSC-BC-2023-11, First Appearance, Transcript, 13 December 2023, pp. 1-15.

³ KSC-BC-2023-11/F00165, Decision on Review of Detention of Haxhi Shala, 9 February 2024, confidential (“First Detention Decision”); Second Decision on Review of Detention of Haxhi Shala, KSC-BC-2023-10/F00246, confidential, (“Second Detention Decision”); Third Decision on Review of Detention of Haxhi Shala, KSC-BC-2023-10/ F00325, (“Third Detention Decision”); Fourth Decision on Review of Detention of Haxhi Shala, KSC-BC-2023-10/F00424, confidential (“Fourth Detention Decision”).

⁴ First Detention Decision, para. 61(a); Second Detention Decision, para. 51(a); Third Detention Decision, para. 51(a); Fourth Detention Decision, para. 61(a).

4. On 3 September 2024 the President of the Kosovo Specialist Chambers assigned Trial Panel I consisting of Judge Roland Dekkers, Judge Mappie Veldt-Foglia, Judge Gilbert Bitti and Judge Vladimir Mikula (reserve) to the present case upon transmission of the case file on 4 September 2024.⁵
5. On 4 September 2024 the Pre-Trial Judge transmitted case file KSC-BC-2023-10 to Trial Panel I.⁶
6. On 4 October and 4 December 2024, the Panel issued respectively its Decisions on the Fifth and Sixth Reviews of Detention of Haxhi Shala (“Fifth Detention Decision” and “Sixth Detention Decision”),⁷ in both of which it ordered the Accused’s continued detention.⁸
7. At a hearing on 18 December 2024⁹ the Accused pleaded guilty to Counts 2 and 3 of the Indictment¹⁰ following a plea agreement.¹¹

⁵ KSC-BC-2023-10/F00466, Decision Assigning Trial Panel I.

⁶ KSC-BC-2023-10/F00468, Decision Transmitting the Case File to Trial Panel I, para. 21(ii).

⁷ KSC-BC-2023-10/F00500, confidential; KSC-BC-2023-10/F00614, confidential.

⁸ Fifth Detention Decision, para. 55(a); Sixth Detention Decision, para. 36(a)

⁹ Transcript (Plea Agreement Hearing), 18 December 2024, p. 432.

¹⁰ ANNEX 2 to Prosecution submission of confirmed amended Indictment, KSC-BC-2023-10/F00379/A01, 10 July 2024, confidential.

¹¹ Annex 1 to URGENT Prosecution submissions on plea agreements and sentencing, KSC-BC-2023-10/F00618/A01, 6 December 2024, confidential. Annex 1 was reclassified as public on 17 December 2024.

8. On 16 January 2025, the Specialist Prosecutor's Office ("SPO") made submissions pertaining to the periodic detention review of the Accused,¹² in which it argued that there had been no change in circumstances that would merit deviating from the Sixth Detention Decision. Rather, the SPO argued that "the progression of the case into its final stages reinforces the necessity and reasonableness of detention."¹³
9. The SPO also argues that there remains a grounded suspicion that the Accused has committed a crime within the jurisdiction of the Kosovo Specialist Chambers,¹⁴ there remains a risk of flight and that in fact in light of his recent guilty pleas the Accused's risk of flight has increased,¹⁵ the Accused continues to present a risk of obstructing the proceedings¹⁶ and, finally, "the unacceptable risk of the commission of further crimes requires Shala's continued detention."¹⁷

¹² KSC-BC-2023-10/F00640, Prosecution submission pertaining to periodic detention review of Haxhi Shala ("Prosecution Submissions").

¹³ Prosecution Submissions, para. 1.

¹⁴ Prosecution Submissions, paras. 6-7.

¹⁵ Prosecution Submissions, paras. 8-11.

¹⁶ Prosecution Submissions, paras. 12-15.

¹⁷ Prosecution Submissions, paras. 16-17.

III. APPLICABLE LAW

10. Pursuant to Article 41(6) of the Law on Specialist Chambers and Specialist Prosecutor's Office,¹⁸ ("Law"), the Specialist Chambers shall only order the arrest and detention of a person when (a) there is a grounded suspicion that he or she has committed a crime within the jurisdiction of the Specialist Chambers; and (b) there are articulable grounds to believe that (i) there is a risk of flight ("first limb"); (ii) he or she will destroy, hide, change or forge evidence of a crime or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses, victims or accomplices ("second limb"); or (iii) the seriousness of the crime, or the manner or circumstances in which it was committed and his or her personal characteristics, past conduct, the environment and conditions in which he or she lives or other personal circumstances indicate a risk that he or she will repeat the criminal offence, complete an attempted crime or commit a crime which he or she has threatened to commit ("third limb").

IV. SUBMISSIONS

¹⁸ Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015.

11. The Accused has been detained since 11 December 2023, for a period of more than one (1) year and one (1) month.
12. The continued detention of an accused can only be justified if there are specific indications of a genuine requirement of public interest, which outweigh the person's right to liberty.¹⁹ The Accused's detention cannot be maintained lightly, and the SPO bears the burden of establishing that the detention of the Accused is necessary.
13. The Defence maintains that the SPO cannot establish that the detention of the Accused is necessary, and with the passing of time and developments in the proceedings, there are no longer arguable grounds to support the existence of risks under Article 41(6)(b) of the Law.

Obstruction of proceedings

14. Firstly, the Defence submit that the Accused's guilty pleas and the existence of the plea agreement represent a "change in circumstances" that merits deviating from the Sixth Detention Decision. The Defence further submit that if the Accused is released from detention, his supposed incentive to obstruct proceedings will be very slight because he has now pleaded guilty to two Counts on the Indictment and has accepted a plea agreement. The SPO fails

¹⁹ Third Detention Decision, para. 24.

to address this in their submissions. Whilst the Trial Panel has not yet approved the Plea Agreement, the present state of affairs is such that the Accused can expect to be sentenced very soon on the two Counts on which he has pled guilty. He would therefore have little reason to interfere with the evidence against him even if he were inclined to do so.

15. The Defence concludes that in the present circumstances there are no articulable grounds to believe that there is a risk of obstruction of the progress of criminal proceedings as set forth in Article 41(6)(b)(ii).

Commission of further offences

16. In the Sixth Detention Decision, the Panel affirmed that whilst it remained mindful of the fact that the existence of the risk of obstruction did not automatically translate into a risk of committing further offences, the factors underpinning the former risk were of relevance to the assessment of the latter risk in the present case.²⁰ In light of its findings on risk of obstructing the progress of Kosovo Specialist Chambers proceedings and in the absence of any contrary intervening information, it found that there continued to be a

²⁰ Sixth Detention Decision, para. 23.

risk that Mr Shala might commit further offences, including against witnesses who have provided or could provide evidence in the case.²¹

17. Since there are no articulable grounds to believe that the Accused will obstruct proceedings, the inference on which the Trial Panel's finding on the commission of further offences no longer holds. Accordingly, the third limb of Article 41(6)(b) is not substantiated.

Risk of flight

18. The Defence submits that there is a very low risk of flight.
19. The Defence has pointed out that the European Court of Human Rights ("ECtHR") has held that as time in detention lengthens, the danger of flight diminishes.²² In *Neumeister v. Austria* the ECtHR held that "the danger of flight necessarily decreases as the time spent in detention passes by for the probability that the length of detention on remand will be deducted from the period of imprisonment which the person concerned may expect if convicted, is likely to make the prospect seem less awesome to him and reduce his temptation to flee".²³

²¹ Sixth Detention Decision, para. 24.

²² KSC-BC-2023-10/F00380, Haxhi Shala Submissions for Fourth Detention Review, para. 38, confidential.

²³ *Neumeister v. Austria*, Judgment, 27 June 1968, ECtHR, Appl. no. 1936/63, AS TO THE LAW, para. 10.

20. The Pre-Trial Judge repeatedly found that the Accused's risk of flight was moderate.²⁴ By the time that the next review of detention takes place, the Accused will have been detained for two months longer than at the last review on 4 December 2024, thereby in light of *Neumeister v. Austria* reducing even further the risk of flight. The risk has steadily been reduced since the Pre-Trial Judge first found it to be "moderate" almost one year ago.
21. In the Fifth Detention Decision, the Panel stated that it was "particularly attentive to the fact that it has very limited information about the Accused's personal circumstances, such as his home, occupation, assets and family ties, that are of relevance to evaluate the risk of flight".²⁵
22. As the Trial Panel is aware, the Accused very recently lost his father.²⁶ The Defence describe the impact and significance of this event in Written Submissions on Sentencing.²⁷ The Accused is very close to members of his immediate family and siblings. Therefore, in view of his current personal circumstances prolonged separation from them would cause very great

²⁴ First Detention Decision, para. 35; Second Detention Decision, para. 30; Third Detention Decision, para. 31; Fourth Detention Decision, para. 38.

²⁵ Fifth Detention Decision, para. 24.

²⁶ KSC-BC-2023-10/F00517/RED, Public redacted version of Decision on the Shala Urgent Request for Temporary Release on Compelling Humanitarian Grounds, 9 October 2024, para. 9.

²⁷ KSC-BC-2023-10/F00616, 6 December 2024, confidential.

distress.²⁸ Annexes 1-4 to the Written Submissions on Sentencing show the extremely high regard in which he is held by his family and community and the contribution that he is able to make to both of them and his country. These community ties reduce any motivation that it might be claimed that he has to flee.

23. Furthermore, there was no suggestion that the Accused attempted to flee when he was released on humanitarian grounds. On 9 October 2024, the Panel issued a Decision authorising Mr Shala's temporary and secure transfer to Kosovo, following the death of his father, to visit the gravesite and to meet family members, under certain specified conditions.²⁹ In her Report on the Visit, the Registrar wrote that Mr Shala abided by the instructions of the chief custody officer and the escorting officers during the custodial visit.³⁰
24. The Defence submit that for the foregoing reasons the risk of flight ground for detention in Article 41(6)(b) has not been proven.

²⁸ Written Submissions on Sentencing, Annexes 1-4.

²⁹ KSC-BC-2023-10/F00552, Public Redacted Version of Report of the Registrar Pursuant to Decision on Urgent Shala Defence Request for Temporary Release on Compelling Humanitarian Grounds ("Report of the Registrar"), 23 October 2024 (Date of original), 25 November 2024 (Date public redacted version), para. 3.

³⁰ Report of the Registrar, para. 18.

25. It is therefore submitted that since none of the three limbs of Article 41(6)(b) have been established, a ruling by which detention on remand is terminated should be given at the next review.

Conditional release

26. The Panel has the obligation to inquire and evaluate, *proprio motu*, all reasonable conditions that could be imposed on an accused.³¹
27. The Defence submits that for the reasons given above the risks of flight, obstruction of justice and commission of further offences do not meet the required threshold for detention given in Article 41(6) of the Law and therefore the Accused should be released from detention without conditions. However, in the alternative, if the Panel were to find the reduction in risk to be insufficient, the Defence submits that it would nevertheless justify release subject to the conditions that the Accused would agree to, as stated in the Response to Prosecution Submission Pertaining to Periodic Detention of Haxhi Shala, filed on 4 February 2024.³²

³¹ See Pjetër Shala Detention Decision, para. 32. See also KSC-BC-2020-06, IA017/F00011/RED, *Public redacted version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention*, 5 April 2022, paras. 26, 51.

³² KSC-BC-2023-11/F00039, confidential, para. 70.

28. Both the Pre-Trial Judge and the Trial Panel consistently held that some of the conditions proposed by the Defence in relation to the First Detention Decision could sufficiently mitigate the risk of flight.³³ As to obstruction of proceedings and commission of further offences, the risks are now much lower as a result of recent developments and, therefore, in the submission of the Defence, the imposition of conditions would ensure that they would not justify detention.

V. CONCLUSION

29. For the foregoing reasons the Shala Defence requests that at the next review of detention:

- (i) The detention on remand of the Accused be unconditionally terminated; or, in the alternative
- (ii) His release be ordered subject to one or more of the conditions to which he would consent.

Word Count: [2,209 words]

³³ First Detention Decision, para. 52; Second Detention Decision, para. 41; Third Detention Decision, para. 42; Fourth Detention Decision, para. 50; Fifth Detention Decision, para. 43; Sixth Detention Decision, para. 28.



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23 January 2025

At Abu Dhabi, United Arab Emirates