



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

Date: 28 January 2025

Language: English

Classification: Public

Prosecution reply to Shala's submissions on detention review

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Sabit Januzi

Jonathan Elystan Rees

Counsel for Ismet Bahtijari

Felicity Gerry

Counsel for Haxhi Shala

Toby Cadman

1. The Response¹ should be rejected, and Haxhi Shala should remain detained. The Response fails to meaningfully challenge the well-established grounds for detention in this case.
2. The Specialist Prosecutor's Office ('SPO') has already detailed how, consistent with prior rulings of the Pre-Trial Judge and this Panel, detention continues to be appropriate in this case for Shala.²
3. Shala's submissions related to risk of obstruction rest largely on the belief that his plea agreement will be accepted and there will not be a trial in this case.³ The Panel has previously observed,⁴ and recently confirmed,⁵ in the context of detention that it has yet to approve the plea agreement in this case; as such, it would be premature to proceed at this juncture on the assumption that the case against Shala has run its course. Further, similar self-serving and 'generic' assertions about obstruction not being in the interest of the Accused⁶ have already been rejected.⁷
4. Shala's contention that the length of his detention to date has meaningfully decreased any potential sentence of imprisonment such that his risk of flight has diminished⁸ has previously been considered and rejected.⁹ Given the relatively short amount of time that has passed since then, and considered against either his agreed

¹ Haxhi Shala Submissions for Seventh Review of Detention, KSC-BC-2023-10/F00652, 23 January 2025 ('Response').

² Prosecution submission pertaining to periodic detention review of Haxhi Shala, KSC-BC-2023-10/F00652, 23 January 2025.

³ See Response, KSC-BC-2023-10/F00652, para.14.

⁴ Decision on the Sixth Review of Detention of Haxhi Shala, KSC-BC-2023-10/F00614, 4 December 2024, Confidential ('Sixth Decision'), para.34; Decision on the Seventh Review of Detention of Sabit Januzi, KSC-BC-2023-10/F00613, 4 December 2024, Confidential, para.32.

⁵ Decision on the Eighth Review of Detention of Ismet Bahtijari, KSC-BC-2023-10/F00660, 24 January 2025, Confidential ('Bahtijari Decision'), para.30.

⁶ See Response, KSC-BC-2023-10/F00652, para.14.

⁷ See Public Redacted Version of Decision on Ismet Bahtijari's Request for Interim Release, KSC-BC-2023-10/F00116/RED, 29 November 2023, para.40).

⁸ See Response, KSC-BC-2023-10/F00652, paras 19-20.

⁹ Public Redacted Version of Fourth Decision on Review of Detention of Haxhi Shala, KSC-BC-2023-10/F00424/RED, 5 August 2024, para.37.

upon sentence in his plea agreement, the maximum sentence in this case, or the sentence imposed for the Accused in KSC-BC-2020-07 ('Case 07') — four years and three months of imprisonment — this contention should again be rejected.

5. Given that a trial cannot be ruled out in this case, Shala's submissions on conditional release fail to make any meaningful rebuttal¹⁰ to the Panel's conclusion that if released, 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.¹¹ Nor do the conditions proposed by Shala¹² address the Panel's 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, especially in light of Shala's unity of interests with influential individuals from within the former leadership of the KLA.¹³ Regarding enforcement more generally, it is well-established that the Kosovo Police do not have the capacity to implement measures that sufficiently mitigate existing risks.¹⁴ In any case, especially given Shala's inability to articulate a significant change in circumstance, the Panel has already functionally considered and rejected the conditions proposed by Shala as part of their continuing obligation to inquire and evaluate, *proprio motu*, all reasonable conditions that could be imposed on an Accused.¹⁵

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

¹⁰ See Response, KSC-BC-2023-10/F00653/RED, paras 26-28.

¹¹ Sixth Decision, KSC-BC-2023-10/F00614, para.28

¹² See Response, KSC-BC-2023-10/F00653/RED, para.27.

¹³ Sixth Decision, KSC-BC-2023-10/F00614/RED, para.28; see also Bahtijari Decision, KSC-BC-2023-10/F00660, para.40.

¹⁴ See Public Redacted Version of Decision on Review of Detention of Isni Kilaj, KSC-BC-2018-01/F00547/RED, 5 January 2024, para.64

¹⁵ See Response, KSC-BC-2023-10/F00652, para.26.; Sixth Decision, KSC-BC-2023-10/F00613/RED, para.27; Response to Prosecution Submission Pertaining to Periodic Detention of Haxhi Shala, KSC-BC-2023-11/F00039, February 2024, Confidential, para.70.

Word count: 641



Kimberly P. West
Specialist Prosecutor

Tuesday, 28 January 2025

At The Hague, the Netherlands