



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:** The President of the Specialist Chambers  
Judge Ekaterina Trendafilova

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor's Office

**Date:** 2 July 2025

**Language:** English

**Classification:** Public

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Public redacted version of 'Prosecution response to Haxhi Shala's request for  
conditional release'

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1. The Request<sup>1</sup> for ‘conditional release’ pursuant to Article 51 of the Law<sup>2</sup> should be denied as it (i) constitutes an improper attempt to challenge a sentence imposed in accordance with the terms of Shala’s Plea Agreement,<sup>3</sup> (ii) fails to state any proper legal basis for the relief sought, and (iii) fails to establish any grounds warranting modification of Shala’s sentence.

2. First, Shala’s three-year sentence was imposed less than five months ago, pursuant to the terms of a Plea Agreement, which Shala understood and accepted.<sup>4</sup> The Plea Agreement explicitly set forth Shala’s understanding and agreement that ‘he will be precluded from pursuing appellate remedies against any judgment or sentencing decision’ that is consistent with the Plea Agreement, and specifically that ‘he will not appeal or otherwise challenge his sentence in the event that the Panel imposes a term of imprisonment of three (3) years or below.’<sup>5</sup> In now suggesting that Shala’s three-year sentence is anomalous and thus inappropriate and/or unjust—creating ‘additional hardship that the Trial Panel did not consider when it

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<sup>1</sup> Haxhi Shala Confidential and *ex parte* Request for Conditional Release, KSC-BC-2023-10/CR002, 26 June 2025, Confidential and *Ex Parte* (‘Request’).

<sup>2</sup> 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.

<sup>3</sup> Annex 1 to URGENT Prosecution submissions on plea agreements and sentencing, KSC-BC-2023-10/F00618, 6 December 2024, Confidential (‘Plea Agreement’).

<sup>4</sup> Transcript (Decision on Plea Agreements), 4 February 2024, pp. 615 (‘As regards sentencing, Mr. Shala agrees to the imposition of a sentence of three years’ imprisonment.’), 617. *See also* Transcript (Plea Agreement Hearing), 18 December 2024, pp. 407, 420-423. In the Plea Agreement, Shala acknowledged that he could be sentenced to ‘a term of imprisonment of up to and including ten (10) years’ imprisonment’ and agreed ‘to the imposition of a sentence of three years’ imprisonment.’ Plea Agreement, KSC-BC-2023-10/F00618, paras 10(a), 11.

<sup>5</sup> Plea Agreement, KSC-BC-2023-10/F00618, para.12(a)-(b). Plea agreements are essentially contracts and their terms have been routinely enforced by the courts. *See* ICC, Guidelines for Agreements Regarding Admission of Guilt, October 2020, para.13 (‘Every agreement [regarding admission of guilt] shall acknowledge that it is binding only on the accused and the Office of the Prosecutor . . .’); *Puckett v. United States*, 556 U.S. 129, 25 March 2009, pp. 137-138 (finding ‘plea bargains are essentially contracts’); *Ricketts v. Adamson*, 483 U.S. 1, 22 June 1987, pp. 3-5, 9-12. *See also* ECtHR, Grand Chamber, *Case of Scoppola v. Italy*, 10249/03, Judgment, 17 September 2009, para.139 (finding that where the Accused and the State had agreed to a summary procedure in place of a trial, requiring the Accused to waive certain fair-trial rights, the State could not ‘reduce unilaterally the advantages attached to the waiver’ as that would run ‘contrary to the principle of legal certainty and the protection of the legitimate trust of persons engaged in judicial proceedings’.).

passed the sentence and which cannot now be undone’<sup>6</sup>—the Request constitutes a disguised and improper backdoor attempt to challenge the exact sentence that Shala agreed to in the Plea Agreement and in court before the Trial Panel.<sup>7</sup>

3. Second, in contravention of Article 3(4) of the Law, the Request improperly seeks to apply the Kosovo Criminal Code (‘KCC’) in the area of post-conviction sentencing relief, where the Law, together with the Practice Direction on Commutation of Sentences<sup>8</sup> and Rules,<sup>9</sup> fully and comprehensively govern the consideration of such relief at the KSC.

4. The Request itself acknowledges that Shala has not served two-thirds of his sentence and ‘is not seeking commutation’.<sup>10</sup> The Request instead seeks to modify or alter his sentence consistent with KCC Article 90, which provides for ‘conditional release’ where the convicted person has served one half of a sentence of less than five years.<sup>11</sup>

5. Contrary to what is argued in the Request,<sup>12</sup> these provisions of the KCC—which have not been expressly incorporated into the KSC framework<sup>13</sup>—do, unambiguously, apply to the organisation, administration, functions or jurisdiction of

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<sup>6</sup> Request, KSC-BC-2023-10/CR002, para.20.

<sup>7</sup> To the extent that Shala argues that the sentence imposed by the Trial Panel should have been different in order to be consistent with prevailing practices and punishments in Kosovo, including as set forth in the Kosovo Criminal Code, *see* Article 44(4), the time to raise any such arguments was before he entered in to the Plea Agreement and certainly before he affirmed his understanding of and agreement to the sentence imposed by the Trial Panel, consistent with the Plea Agreement, in open court.

<sup>8</sup> Practice Direction on Commutation of Sentences, KSC-BD-48, 3 July 2023 (‘Practice Direction’).

<sup>9</sup> 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.

<sup>10</sup> Request, KSC-BC-2023-10/CR002, para.15.

<sup>11</sup> Request, KSC-BC-2023-10/CR002, paras 15-17.

<sup>12</sup> Request, KSC-BC-2023-10/CR002, para.18.

<sup>13</sup> *See* Law, Articles 3(2)(c) and 3(4).

the KSC/SPO, specifically the functions of the President,<sup>14</sup> and are, therefore, not applicable to the KSC.<sup>15</sup>

6. Nor do these KCC provisions fill any lacuna that arises from Article 51(2),<sup>16</sup> as post-conviction modification is addressed in the KSC framework. As acknowledged in the Request,<sup>17</sup> Article 10 of the Practice Direction provides the sole grant of power to the President to modify or alter a sentence in place of commutation in accordance with Article 51(2) of the Law and requires that Shala serve two-thirds of his sentence before seeking such relief.<sup>18</sup> Specifically, it is provided that if ‘the President finds that commutation of sentence is not appropriate, he or she may decide to modify or alter the sentence in accordance with Article 51(2) of the Law’.<sup>19</sup> This, however, occurs at the point of considering commutation—which can take place only after two-thirds of the sentence has been served, not before.<sup>20</sup> Article 51 does not confer any independent or alternative basis for seeking relief in the form of modification or alteration of the sentence allowing conditional release prior to that time.

7. Finally, Shala raises no grounds warranting such relief. His submissions consist of the following bare assertions: he is serving his sentence outside of Kosovo, away from his family, friends, and community; he proposes to agree to be subject to such conditions of release ‘as appear necessary [to] allay concerns that the KSC may still have’; and, his lack of disciplinary issues while serving his sentence.<sup>21</sup> None of these constitute a relevant change of circumstances since his sentencing was considered by

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<sup>14</sup> Rule 13 sets forth the ‘Functions of the President’ and Rule 13(2) grants the President the authority to issue practice directions, such as the Practice Direction on Commutation of Sentences. Similarly, Article 32, which also addresses the functions of the President, makes the President responsible for ‘the judicial administration’ of the KSC and ‘other functions conferred upon him or her by this Law’. Article 32(3).

<sup>15</sup> See *Specialist Prosecutor v. Thaçi et al.*, Decision on Motion Challenging the Form of the Indictment, KSC-BC-2020-04/F00089, 18 October 2021, para.23.

<sup>16</sup> *Contra* Request, KSC-BC-2023-10/CR002, para.18.

<sup>17</sup> Request, KSC-BC-2023-10/CR002, para.18.

<sup>18</sup> Practice Direction, KSC-BD-48, Articles 3(1), 10.

<sup>19</sup> Practice Direction, KSC-BD-48, Article 10.

<sup>20</sup> Rule 196(2); Practice Direction, KSC-BD-48, Articles 3(1), 10.

<sup>21</sup> Request, KSC-BC-2023-10/CR002, paras 19-21.

the Trial Panel just five months ago. Moreover, not incurring disciplinary issues while detained should be the expected standard of conduct, rather than a matter deserving of particular credit. Shala does not attempt to either set forth what conditions of release would be appropriate and sufficient in his case or substantively address the non-exhaustive list of factors set forth in Rule 196 for consideration by the President in her review of a sentence—including the gravity of Shala’s crimes.

8. His crimes are serious [REDACTED]. Shala admitted in court that he spearheaded a criminal group and directed his two co-Accused to twice approach a KSC witness at his home in order to induce the witness to refrain from giving evidence before the KSC.<sup>22</sup> He directed his co-Accused to offer the witness the promise of a benefit, namely that Shala and others would help the witness if he withdrew his testimony.<sup>23</sup> Shala, a former senior member of the Kosovo Liberation Army, was acting as part of and/or on behalf of a larger cabal involving others who have remained unnamed by him. The Trial Panel has noted that he did not show remorse for his crimes.<sup>24</sup> [REDACTED].<sup>25</sup>

9. [REDACTED].<sup>26</sup> Under Rule 196(3), and also KCC Article 90(1), [REDACTED] would accrue to Shala’s detriment in connection with any application from him for post-conviction relief—a pre-condition being that there are reasonable grounds to expect that Shala will not commit another offence. Ultimately, on the basis of the slim justifications it puts forth to justify conditional release as weighed against his conduct in this case [REDACTED], the Request fails to establish any grounds warranting modification of Shala’s sentence.

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<sup>22</sup> Transcript (Decision on Plea Agreements), 4 February 2024, pp.614-615.

<sup>23</sup> Transcript (Decision on Plea Agreements), 4 February 2024, pp.614-615.

<sup>24</sup> See Reasons for the Decision on the Plea Agreements, KSC-BC-2023-10/F00693, 27 February 2025, para.84.

<sup>25</sup> See Annex 1 to Prosecution submission of additional information for sentencing, KSC-BC-2023-10/F00629, 17 December 2024, Confidential, pp. 124053-124055.

<sup>26</sup> See Annex 1 to Prosecution submission of additional information for sentencing, KSC-BC-2023-10/F00629, pp. 124052-124055, 124082-124091.

10. In light of the foregoing, no oral hearing on the Request is necessary or appropriate. Should the President consider modification or alteration of the sentence and the imposition of conditions of release, at this point or in the future, the SPO respectfully requests the right to be heard regarding any such modification or alteration.

11. The filing is confidential pursuant to Rule 82(4).

**Word count: 1,697**



**Kimberly P. West**

**Specialist Prosecutor**

Wednesday, 2 July 2025

At The Hague, the Netherlands