

In: KSC-BC-2023-10/CR002

**The Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and
Haxhi Shala**

Before: President of the Specialist Chambers

Judge Ekaterina Trendafilova

Registrar: Fidelma Donlon

Filing Participant: Specialist Counsel for Haxhi Shala

Date: 26 June 2025

Language: English

Classification: Public

**Publicly Redacted Version of Haxhi Shala Confidential and *ex parte* Request for
Conditional Release**

Specialist Prosecutor

Kimberly West

Counsel for Haxhi Shala

Toby Cadman

I. INTRODUCTION

1. Mr. Haxhi Shala ("Mr Shala") makes this request for conditional release, pursuant to Article 51 of the Law on the Specialist Chambers and Specialist Prosecutor's Office ("Law").¹

II. PROCEDURAL HISTORY

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.²
3. On 13 December 2023, an initial appearance before the Pre-Trial Judge took place.³ On 9 February 2024, 8 April 2024, 5 June 2024 and 5 August 2024, the

¹ Law No 05/L-053.

² 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.

³ KSC-BC-2023-11, First Appearance, Transcript, 13 December 2023, pp. 1-15.

Pre-Trial Judge issued decisions on review of the Accused's detention,⁴ in each of which his continued detention was ordered.⁵

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 2024.⁶
5. On 4 September 2024, the Pre-Trial Judge transmitted case file KSC-BC-2023-10 to Trial Panel I.⁷
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"),⁸ in both of which it ordered the Accused's continued detention.⁹

⁴ 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").

⁵ First Detention Decision, para. 61(a); Second Detention Decision, para. 51(a); Third Detention Decision, para. 51(a); Fourth Detention Decision, para. 61(a).

⁶ KSC-BC-2023-10/F00466, Decision Assigning Trial Panel I.

⁷ KSC-BC-2023-10/F00468, Decision Transmitting the Case File to Trial Panel I, para. 21(ii).

⁸ KSC-BC-2023-10/F00500, confidential; KSC-BC-2023-10/F00614, confidential.

⁹ Fifth Detention Decision, para. 55(a); Sixth Detention Decision, para. 36(a)

7. At a hearing on 18 December 2024,¹⁰ the Accused pleaded guilty to Counts 2 and 3 of the Indictment¹¹ following a plea agreement.¹²
8. At a hearing on 4 February 2025, the Trial Panel (i) approved the plea agreement entered into between the Specialist Prosecutor's Office and Mr Shala; (ii) found Mr Shala guilty of one charge of obstructing official persons in performing official duties and one charge of intimidation in criminal proceedings; and (iii) sentenced him to three (3) years of imprisonment with a deduction of time spent in detention since 11 December 2023.¹³

III. APPLICABLE LAW

9. Article 3(2) of the Law provides:

"The Specialist Chambers shall adjudicate and function in accordance with,

"a. the Constitution of the Republic of Kosovo,

"b. this Law as the lex specialis,

¹⁰ Transcript (Plea Agreement Hearing), 18 December 2024, p. 432.

¹¹ ANNEX 2 to Prosecution submission of confirmed amended Indictment, KSC-BC-2023-10/F00379/A01, 10 July 2024, confidential.

¹² 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.

¹³ Transcript of Hearing, 4 February 2025, confidential, p. 612, line 19 to p. 618, line 23.

“c. other provisions of Kosovo law as expressly incorporated and applied by this Law,

“d. customary international law, as given superiority over domestic laws by Article 19(2) of the Constitution, and

“e. international human rights law which sets criminal justice standards including the European Convention on Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights, as given superiority over domestic laws by Article 22 of the Constitution.

10. Article 3(4) of the Law provides:

“Any other Kosovo law, regulation, piece of secondary regulation, other rule or custom and practice which has not been expressly incorporated into this Law shall not apply to the organisation, administration, functions or jurisdiction of the Specialist Chambers and Specialist Prosecutor’s Office. This Law shall prevail over any and all contrary provisions of any other law or regulation.”

11. Article 12 of the Law provides:

“The Specialist Chambers shall apply customary international law and the substantive criminal law of Kosovo insofar as it is in compliance with customary international law, both as applicable at the time the crimes were

committed, in accordance with Article 7(2) of the European Convention of Human Rights and Fundamental Freedoms and Article 15(2) of the International Covenant on Civil and Political Rights, as incorporated and protected by Articles 19(2), 22(2), 22(3) and 33(1) of the Constitution.”

12. Article 51(2) of the Law provides, *inter alia*:

“The length of sentence may only be modified, altered or commuted by the Specialist Chambers or Agreed Arrangement if in place for that purpose in accordance with Article 60 (Residual Mechanism) [...] There shall only be commutation of sentence if the President of the Specialist Chambers, in consultation with the Specialist Chambers Judges, so decides on the basis of the interests of justice and the general principles of law.”

13. Rules 196(1) and 196(2) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”)¹⁴ provide:

“(1) The President shall have the right to commute any sentence, and shall decide on the matter after having heard the imprisoned person and upon consultation with the Judges.

¹⁴ KSC-BD-03/Rev3/2020.

“(2) After the imprisoned person has served two thirds (2/3) of the sentence, or 25 years in the case of life imprisonment, the President shall review the sentence to determine whether it should be commuted. Such a review shall not be conducted before that time.”

IV. SUBMISSIONS

14. The calculation of Mr. Shala’s sentence begins from the date of his arrest on 11 December 2023. He therefore served one half of his sentence on 11 June 2025 and will have served two thirds on 11 December 2025.
15. Rules 196(1) and 196(2) of the Rules provide for the review of an imprisoned person’s sentence in order to determine whether it should be commuted only after he or she has served two-thirds of the sentence. It is acknowledged that Mr. Shala has not reached that point and accordingly is not seeking commutation. He is, however, requesting modification or alteration of his sentence which Article 51 of the Law allows for in addition to commutation.
16. Article 90 of the Criminal Code of the Republic of Kosovo (“KCC”)¹⁵ provides:

¹⁵ Code No. 06/L-074, Official Gazette of the Republic of Kosovo No. 2, 14 January 2019.

"1. A convicted person may be granted conditional release in accordance with this Code and the Law on the Execution of Penal Sanctions. The conduct of the convicted person while serving his or her punishment shall be taken into consideration when deciding whether or not conditional release is granted.

"2. A person convicted of a criminal offence for which a punishment of at least five (5) years imprisonment has been provided, may be granted conditional release after serving two-thirds (2/3) of the imposed sentence. For other criminal offences, the convicted person may be granted conditional release after having served half of the imposed sentence."

17. Since Mr. Shala has already served half of his sentence of imprisonment of three (3) years, he may already be granted conditional release pursuant to Article 90(2) of the KCC.
18. Articles 90(1) and 90(2) of the KCC do not apply to the organisation, administration, functions or jurisdiction of the Specialist Chambers and Specialist Prosecutor's Office, nor are they in any way in conflict with the Law. Article 3(4) of the Law is therefore no impediment to their application by the Specialist Chambers. In fact, they fill a lacuna that arises from Article 51(2) of the Law in that it gives a legal basis for the alteration or modification of a sentence for which there is no further elucidation in either the Law or the

Rules. Article 10 of the Practice Direction on Commutation of Sentences¹⁶ provides for modification or alteration of a sentence if the President finds that a commutation of sentence is not appropriate, but it does not imply that the President may only modify or alter a sentence in these circumstances.

19. There have not been any disciplinary issues while Mr. Shala has been serving his sentence. Pursuant to Article 90(1) of the KCC, this should be taken positively into consideration when deciding whether to grant him conditional release.
20. In addition, Mr. Shala is a national of the Republic of Kosovo. He is serving a sentence of three (3) years' imprisonment in the Netherlands that a court of the Republic of Kosovo has imposed on him for offences committed in the Republic of Kosovo. This is a highly anomalous state of affairs. Ordinarily, if a court of a particular State has passed a sentence of imprisonment on a national of that State for an offence committed in that State, the convicted person will also serve the sentence in that State. This is not just a matter of general practice. It also ensures that the sentenced person is close to his or her family, friends and community. Mr. Shala has not been in this situation during his sentence, which is an additional hardship that the Trial Panel did not consider when it passed the sentence and which cannot now be undone.

¹⁶ KSC-BD-48, 3 July 2023.

However, in Mr. Shala's submission it should be taken into account in the decision on whether to grant conditional release.

21. Mr Shala intends [REDACTED] and [REDACTED] [REDACTED] [REDACTED]. Accordingly, as regards release conditions, Mr Shala will remain within the enforcement reach of the Specialist Chambers, as a domestic judicial institution in the Republic of Kosovo. He may be subject to such conditions as appear necessary to ensure full and proper adherence to any decision on conditional release that should allay concerns that the Special Chambers may still have.
22. Mr. Shala submits that the above submissions give sufficient grounds for him to be granted conditional release already at this stage. However, if the President finds that this is not the case, Mr. Shala requests, in the alternative, an oral hearing at which relevant legal and factual issues can be further elaborated upon. Since the Specialist Chambers have not so far granted conditional release prior to the service of two-thirds of a sentence, the fullest consideration of what Mr. Shala is seeking can be assured through oral argument.

V. RELIEF SOUGHT

23. Mr Shala requests that the President grant him conditional release subject to such conditions as the President considers appropriate or, in the alternative, that the President schedule an oral hearing at which further submissions may be made on his request.

Word Count: 1,811 words



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26 June 2025

At Dhaka, People's Republic of Bangladesh