



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-05
Specialist Prosecutor v. Salih Mustafa

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 13 January 2021

Language: English

Classification: Public

Prosecution Submissions on the Review of Detention

Specialist Prosecutor's Office

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A. INTRODUCTION

1. Pursuant to Article 41(6) and (10) of the Law¹ and Rule 57(2) of the Rules,² and in compliance with the order of the Pre-Trial Judge,³ the Specialist Prosecutor's Office ('SPO') hereby files its submissions on the review of detention of Salih MUSTAFA ('Accused').
2. On 14 February 2020, the SPO requested confirmation of the indictment against the Accused and the issuance of an arrest warrant against him ('Arrest Warrant Request').⁴ On 12 June 2020, the Pre-Trial Judge granted the Arrest Warrant Request, finding that there was a well-grounded suspicion that the Accused committed crimes within the jurisdiction of the Kosovo Specialist Chambers ('KSC'),⁵ and finding that there were articulable grounds to believe that the Accused was a flight risk, that he could intimidate victims and witnesses, and that he could commit further crimes if left free.⁶
3. On 24 September 2020, the Accused was arrested and transferred to the detention facility of the KSC.⁷
4. On 23 November 2020, the Pre-Trial Judge issued his first decision on the review of the Accused's detention on remand,⁸ where he confirmed the existence of a well-grounded suspicion of criminal liability and found that there were still

¹ 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.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). Unless otherwise indicated, all references to 'Rule(s)' are to the Rules.

³ Order for Submissions on the Review of Detention, KSC-BC-2020-05/F00064, Public, 5 January 2020.

⁴ Public Redacted Version of 'Submission of Indictment for confirmation and related requests', filing KSC-BC-2020-05/F00002 dated 14 February 2020, 2 October 2020, KSC-BC-2020-05/F00002RED, para.24(ii).

⁵ Public Redacted Version of Arrest Warrant for Mr Salih Mustafa, KSC-BC-2020-05/F00009/A01/RED, 12 June 2020, ('Arrest Warrant'), paras 1-2. *See also* Decision on Request for Arrest Warrant and Transfer Order, KSC-BC-2020-05/F00009, 12 June 2020.

⁶ Arrest Warrant, KSC-BC-2020-05/F00009/A01/RED, para.5.

⁷ Notification of Reception in the Detention Facilities of the Specialist Chambers, KSC-BC-2020-05/F00014, Public with strictly confidential Annex, 24 September 2020.

⁸ *See* Rule 57.

articulable grounds to believe that the three risks envisaged by Rule 41(6)(b) existed.⁹ The Pre-Trial Judge also found that none of the forms of conditional release listed in Article 41(12) were sufficient to mitigate these risks.¹⁰

5. At the status conference held on 14 December 2020, the SPO announced that it would file the pre-trial brief, the witness list, and the exhibits list required by Rule 95(4) by 15 February 2021,¹¹ with a view to the case being trial-ready as early as March 2021.¹²

6. The circumstances found to exist by the Pre-Trial Judge in the First Detention Review have not changed. Accordingly, the Accused's continued detention remains necessary.

B. CIRCUMSTANCES REQUIRING THAT THE ACCUSED BE KEPT IN DETENTION

i. Well-grounded suspicion that the Accused committed crimes within the jurisdiction of the KSC

7. In the First Detention Review, recalling his finding that there was a well-grounded suspicion that the Accused had committed crimes within the jurisdiction of the KSC, the Pre-Trial Judge found that the requirement of Article 41(6)(a) continued to be met.¹³ This suspicion remains, as there has been no development in the case warranting reconsideration of that finding.

ii. Risk of flight

8. In the First Detention Review, the Pre-Trial Judge recalled his previous finding that the Accused had both an incentive and the means to flee,¹⁴ and held that the disclosure of the materials supporting the indictment had increased that incentive, as it 'elucidate[d] the seriousness of the charges and [made] more concrete the possibility

⁹ Decision on Review of Detention, KSC-BC-2020-05/F00052, Public, 23 November 2020 ('First Detention Review'), para.32.

¹⁰ First Detention Review, KSC-BC-2020-05/F00052, para.37.

¹¹ Transcript of Status Conference, KSC-BC-2020-05, 14 December 2020, p.95.

¹² Transcript of Status Conference, KSC-BC-2020-05, 14 December 2020, p.90.

¹³ First Detention Review, KSC-BC-2020-05/F00052, paras 15, 18.

¹⁴ First Detention Review, KSC-BC-2020-05/F00052, para.22.

of conviction and the possible imposition of a lengthy sentence.¹⁵ On this basis, the Pre-Trial Judge found that the Accused remained at flight risk.

9. The circumstances considered by the Pre-Trial Judge have not changed since the First Detention Review. The risk of flight by the Accused remains, and may have only increased with the disclosure of further evidence in December 2020.¹⁶

iii. Risk of interference with witnesses and victims

10. In the First Detention Review, the Pre-Trial Judge recalled his previous finding that there were articulable grounds to believe that the Accused could attempt to obstruct the proceedings by interfering with witnesses and victims.¹⁷ He also noted that the limited scope of the case would facilitate the identification of and interference with witnesses and victims by an experienced intelligence officer such as the Accused. Further, the Pre-Trial Judge considered that the concrete risk of conviction which had materialised at this stage of proceedings amounted to a further incentive for interference.¹⁸ On this basis, the Pre-Trial Judge found that the risk of interference with victims and witnesses remained.¹⁹ There has been no change in the circumstances considered by the Pre-Trial Judge, and the risk of interference still exists.

11. Indeed, as noted above,²⁰ the additional disclosures made in December 2020 may only have further increased the Accused's incentive and opportunity to interfere with victims and witnesses.

iv. Risk that the Accused could commit crimes

12. In the First Detention Review, the Pre-Trial Judge recalled his finding that the Accused publicly bragging, at a press conference around 14 June 1999, about the execution of Serbs, demonstrated a risk that he may resort to threats or physical

¹⁵ First Detention Review, KSC-BC-2020-05/F00052, para.23.

¹⁶ Disclosure package 27, 1 December 2020 (139 evidentiary items) and Disclosure Package 28, 14 December 2020 (1 evidentiary item).

¹⁷ First Detention Review, KSC-BC-2020-05/F00052, para.27.

¹⁸ First Detention Review, KSC-BC-2020-05/F00052, para.27.

¹⁹ First Detention Review, KSC-BC-2020-05/F00052, para.28.

²⁰ See para.9 above.

violence against victims and witnesses. The Pre-Trial Judge further found that the same reasons indicating that the Accused may attempt to obstruct the proceedings also posed a risk that he could commit further crimes.²¹

13. The circumstances considered by the Pre-Trial Judge remain unchanged, and, if anything, as noted above,²² have only further increased. There is still a risk that, if released, the Accused will commit further crimes.

v. Continued detention is the only way to manage the risks posed by the Accused

14. The risks identified, considered alone or together, can only be effectively managed in the Detention Centre. Detention is the most effective means to limit the Accused's ability to flee or otherwise thwart the KSC's jurisdictional reach, obstruct the investigation or court proceedings, and/or commit further crimes. Any assurances that the Accused may give would be insufficient to guarantee compliance with any conditions or overcome the concrete risks of release. In such circumstances, release, with or without conditions, should not be granted.²³

C. RELIEF REQUESTED

15. For the foregoing reasons, the SPO requests that the Pre-Trial Judge order that the Accused remain in detention.

Word count: 1,190



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At The Hague, the Netherlands.

²¹ First Detention Review, KSC-BC-2020-05/F00052, para. 31.

²² See para.9 above.

²³ See, similarly, ICC, Appeals Chamber, *Prosecutor v. Gbagbo*, ICC-02/11-01/11-278-Red, Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled "Decision on [...]", 26 October 2012, para.80.