

Case No.: KSC-BC-2020-04
Specialist Prosecutor v. Pjetër Shala

Before: Pre-Trial Judge
Judge Nicolas Guillou,

Registrar: Dr Fidelma Donlon, Registrar

Date: 14 June 2021

Filing Party: Specialist Defence Counsel

Original Language: English

Classification: Public

THE SPECIALIST PROSECUTOR
v.
PJETËR SHALA

**Public Redacted Version of Reply to Prosecution's Response to Motion for
Provisional Release**

Specialist Prosecutor's Office:
Mr Jack Smith

Specialist Counsel for the Accused:
Mr Jean-Louis Gillissen
Mr Hedi Aouini

1. The Defence for Mr Pjetër Shala files this Reply to the Prosecution Response to the Motion for the Accused's provisional release.¹ The Reply is filed confidentially pending examination of the Motion by the Pre-Trial Judge. The Defence intends to file a public redacted version of the Reply once the Pre-Trial Judge issues his decision.

I. SUBMISSIONS

A. Procedural Violation of Mr Shala's Right to Access Important Information Supporting the Grounds for Depriving his Liberty

2. The Prosecution fails to respond and justify the interference with Mr Shala's right to access important information relied upon in support of the grounds for depriving his liberty. Mr Shala has been deprived of an effective opportunity to respond to the core of the Prosecution's arguments, in violation of his rights under Article 29(2) of the Kosovar Constitution, Article 41(1) and (6) of the Law and Article 5 of the ECHR.²
3. In its Response, the Prosecution requested the Pre-Trial Judge to reclassify its relevant submissions from *ex parte* to confidential.³ The Prosecution request showed the lack of any need for such redactions. The redactions constitute an interference with Mr Shala's right to access information that would enable him to respond effectively to the grounds relied upon to deprive him of his liberty.

¹ KSC-BC-2020-04, Prosecution response to Application for Provisional Release on behalf of Mr Pjetër Shala, 9 June 2021 (confidential)("Response"); KSC-BC-2020-04, Motion for Provisional Release, 27 May 2021 (confidential) ("Motion").

² See Motion, paras. 15, 31-35 and authorities cited therein.

³ Reply, n. 30.

In the absence of any attempt to justify such redactions, the interference with Mr Shala's rights has been disproportionate.⁴

4. It was only on 11 June 2021 that the Pre-Trial Judge authorised reclassification of the relevant filings from *ex parte* to confidential. This gives the Defence a limited opportunity at a very late stage to respond to the Prosecution's submissions requesting Mr Shala's arrest and continuing detention.
5. The prejudice the Defence has sustained as a result of the unnecessary and disproportionate redactions should be remedied by acknowledging the breach of Mr Shala's rights under Article 29(2) of the Kosovar Constitution and Article 5 of the ECHR and disregard the redacted allegations.

B. Reply to the Prosecution's Submissions Requesting Continued Detention

6. The Prosecution's objections to provisional release are speculative and unsubstantiated. The Prosecution fails to show a concrete basis for believing that the Accused would pose a flight risk. There is no realistic basis for fearing that the Accused may commit any offence. Absent any detailed and evidence-based risk assessment, the Prosecution fails to show that there are articulable grounds that justify detaining the Accused on remand.
7. In addition, should the Pre-Trial Judge be inclined to consider that such grounds exist, the Accused's pre-trial detention would be disproportionate in light of the proposed conditions for provisional release.

(i) Mr Shala is not a flight risk

⁴ Motion, paras. 31-35 and authorities cited therein.

8. The Prosecution merely repeats the arguments presented in its Submission of Indictment and Related Requests.⁵
9. The Prosecution's submissions that Mr Shala's intent to cooperate fully with the SC authorities and procedures may have changed merely because he is now facing a confirmed indictment (as opposed to being a suspect) are speculative and hypothetical. Mr Shala reiterates that there is no need to keep him in detention to ensure that he appears for trial and that being faced with a confirmed indictment makes him even more willing to cooperate and appear in order to clear his name at trial. The fact that he disputes the legitimacy of the proceedings and the truth of the Prosecution's allegations made against him is a lawful exercise of his right to a fair trial and has no bearing on his willingness to cooperate and appear for trial.
10. The Prosecution's submissions that the Pre-Trial Judge should deny the Motion given the "prevailing climate of obstruction in connection with KLA-related criminal proceedings" are vague, general, and unsubstantiated.⁶ The Prosecution purport to rely in this respect merely on a summary of the ICTY cases concerning Kosovo prepared by a news agency.⁷ The Prosecution fails to make *any* specific allegation suggesting that Mr Shala maintains links with the political elites in Kosovo or the KLA. The Prosecution's submissions about the popularity of the KLA, the media coverage of Mr Shala's case, or the alleged "unity of interests with influential individuals from within the former senior KLA leadership"⁸ provide no concrete grounds to infer that the Accused has the means or a realistic opportunity to evade justice.

⁵ Response, paras. 6,7; Submission of Indictment and Related Requests, para. 6.

⁶ Response, para. 10.

⁷ Response, n. 24 *referring to* a report by the Kosovo Sense Agency.

⁸ Response, para. 10.

11. Mr Shala has no intent to evade justice. He is indigent and has no means at his disposal which could be used to evade justice. Mr Shala reiterates in this respect that he has every intent to cooperate fully with the KSC authorities and undertakes to appear for trial as and when requested to do so.
12. Lastly, as regards Mr Shala's family situation, the fact that he maintains a separate residence from his children does not change the fact that such residence is in the same humble building as his children and that he has an active role in their lives and a close connection with them. His arrest and transfer to the Host State constitutes an interference with his right to protection of his family life that is not proportionate in the circumstances. This is particularly the case due to the inability of his family to visit him in the Host State and his willingness to agree to any required conditions for provisional release.⁹

(ii) Mr Shala poses no risk of obstructing the investigation or committing a crime

13. The Prosecution fails to identify any indication in the evidence or other ground to believe that the Accused has ever attempted to interfere with the evidentiary material, or has ever searched for or tried to contact any of the proposed witnesses, let alone consider or attempt to cause any harm to them.
14. Mr Shala's [REDACTED]. In this context, the protective measures in place should also be considered as an additional safeguard for the protection of the potential witnesses concerned with Mr Shala's provisional release.¹⁰

⁹ Motion for Provisional Release, para. 49.

¹⁰ Motion, n. 52.

15. The Prosecution suggests that “[i]f Mr SHALA is given the opportunity to interfere with witnesses now, there is every reason to believe he will take it.”¹¹ Nothing can be further from the truth.
16. When proposed witness Mr [REDACTED] sought to establish contact with Mr Shala through social media, Mr Shala perceived this as a threat and firmly blocked any further contact.¹²
17. Mr Shala never attempted to contact Mr [REDACTED] in any way despite the fact that he has been aware of his allegations for almost two decades. In addition, in his statement dated 14 January 2016, Mr Shala states that he saw Mr [REDACTED] “serving coffee in the factory in KUKES.” He states that he became upset and “[w]hen I saw that, I left KUKES for good. I never hit [REDACTED].”¹³ The [REDACTED] not a concrete threat. In fact, Mr Shala had found Mr [REDACTED] at Kukes, where Mr [REDACTED] was serving coffee. Should Mr Shala have any intention to harm Mr [REDACTED], he would have done so on the spot. Instead, directly after seeing Mr [REDACTED] at Kukes Mr Shala left Kukes for good.
18. For the past two decades, Mr Shala has done his utmost not to have any contact with the particular proposed witnesses, KLA supporters, or the political elite in Kosovo. Contrary to the speculative submissions by the Prosecution, there is absolutely no evidence that Mr Shala has ever, directly or indirectly, contacted, influenced, threatened or attempted to contact, influence, or threaten any witness.

¹¹ Response, para. 13.

¹² ERN 066866-066882-ET RED (066877); ERN 074117-074129-ET RED (074125).

¹³ Statement of Mr Shala to Belgian authorities, 14 January 2016, ERN 074117-074129-ET RED (074126).

19. The Pre-Trial Judge denied provisional release finding that “Mr Shala also has close ties to some victims and witnesses and therefore has increased means to interfere with them.”¹⁴ However, Mr Shala has no “close ties” with any victim or witness. Mr Shala described the relationship with the [REDACTED] brothers as follows: “my first cousin’s daughter had married [REDACTED], [REDACTED]’s and [REDACTED]’s uncle, whom I knew. The name of the [REDACTED] brothers’ father is [REDACTED] and I knew him as well.”¹⁵ The fact that Mr Shala has a distant family relation with one proposed witness and has met a number of his relatives cannot be taken to suggest that he has “close ties” with him or any other victim or witness. It also does not indicate any “increased means to interfere” with any witness or victim. Importantly, when Mr [REDACTED] sought to contact Mr Shala, Mr Shala perceived this as a threat and firmly blocked any further communication.¹⁶
20. The Prosecution grossly misrepresents the reality when it claims that the “risks of obstruction” are heightened by Mr Shala’s access to the network of KLA supporters.¹⁷ The Prosecution offers in support only its own arguments to that effect.¹⁸ Mr Shala has every right to challenge the legitimacy of the proceedings against him as well as the truth of the Prosecution’s allegations. The exercise of his rights in this respect cannot be held against him for the purposes of his request for provisional release.

(iii) Proposed Conditions for Provisional Release

21. There are more lenient measures that can mitigate any feared risk of absconding, obstructing the proceedings or committing any crime. The

¹⁴ Decision, para. 21.

¹⁵ See ERN 066866-066882-ET Revised (066876).

¹⁶ ERN 066866-066882-ET RED (066877); ERN 074117-074129-ET RED (074125).

¹⁷ Response, para. 15.

¹⁸ Response, n. 37.

Prosecution fails to demonstrate that pre-trial detention is a proportionate restriction of Mr Shala's rights.

22. The Prosecution's concerns about effective monitoring of Mr Shala's communications to ensure that no confidential information disclosed to him is disseminated to the outside world do not constitute a valid ground for continuing detention. The grounds on which detention can be justified are clearly set out in Article 41(1) and (6) of the Law and do not include concerns about disclosure of confidential information. In any event, there are ways alternative to detention that can sufficiently ensure non disclosure of confidential information. Mr Shala has already indicated that he is willing to agree to restricted internet access and access to a single mobile telephone for limited communication purposes that can be monitored by the authorities as appropriate.¹⁹
23. The Defence reiterates that co-operation between the KSC and Belgian authorities has been exemplary as shown by the circumstances surrounding Mr Shala's arrest, the search and seizure of his residence, and his transfer to the Host State. Any statements by Belgian authorities concerning a different accused in the context of different proceedings before a different international tribunal are simply not relevant to the adjudication of the present Motion.²⁰ It remains open to the Pre-Trial Judge to obtain assurances by the Belgian authorities as to the prospect of releasing Mr Shala in the territory of Belgium before ordering such release. The Prosecution's suggestion that Mr Shala can travel freely (without any travelling documentation) through the Schengen area at the time when the pandemic has resurrected borders within the territory of the EU is simply unrealistic.

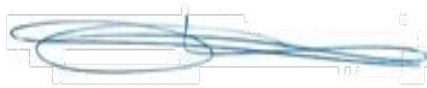
¹⁹ Motion, para. 49(vi).

²⁰ Response, para. 18.

IV. RELIEF REQUESTED

24. For these reasons, the Defence invites the Pre-Trial Judge to order Mr Shala's provisional release under any conditions found appropriate or order that he be placed under house arrest at his residence in Belgium.

Respectfully submitted,



Jean-Louis Gilissen
Specialist Defence Counsel



Hedi Aouini
Defence Co-Counsel

Monday, 14th June 2021

The Hague, the Netherlands

Word count: 1,999