



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

**In:** KSC-BC-2020-04  
**Specialist Prosecutor v. Pjetër Shala**

**Before:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor

**Date:** 22 June 2021

**Language:** English

**Classification:** Public

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**Public Redacted Version of 'Prosecution response to Application for Provisional Release on behalf of Mr Pjetër Shala,' filing KSC-BC-2020-04/F00042, dated 9 June 2021**

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**Specialist Prosecutor**  
Jack Smith

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## I. INTRODUCTION

1. The Motion for Provisional Release<sup>1</sup> of Mr Pjetër SHALA should be rejected, and Mr SHALA should remain in detention. As found in the Arrest Warrant Decision,<sup>2</sup> the criteria for detention under Article 41(6) of the Law<sup>3</sup> are satisfied. Those criteria continue to be met and, as discussed below, further information underscores the seriousness of the risks presented. No alternative measures sufficiently address these risks.

## II. SUBMISSIONS

### A. THE APPLICABLE LEGAL FRAMEWORK

2. The Pre-Trial Judge must be satisfied<sup>4</sup> that: (1) there is a grounded suspicion that Mr SHALA has committed a crime within the jurisdiction of the Specialist Chambers ('KSC'); and (ii) there are articulable grounds to believe that: (1) there is a risk of flight; (2) Mr SHALA will obstruct the progress of the criminal proceedings, including by influencing witnesses, victims or accomplices; or (3) the seriousness of the crime, or the manner or circumstances in which it was committed and Mr SHALA's personal characteristics, past conduct, the environment and conditions in which he lives or other personal circumstances indicate a risk that he will repeat the

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<sup>1</sup> Motion for Provisional Release of Pjetër SHALA, KSC-BC-2020-04/F00039, 27 May 2021, Confidential ('Motion for Provisional Release').

<sup>2</sup> Confidential Redacted Version of Decision on Request for Arrest Warrant and Transfer Order, KSC-BC-2020-04/F00008/CONF/RED, 12 June 2020, Confidential ('Arrest Warrant Decision'). Noting the disclosure of indictment supporting material, the Arrest Warrant Decision, which is currently designated as strictly confidential and *ex parte*, can now be reclassified as confidential. Consequently, the SPO respectfully requests the Pre-Trial Judge to direct the Registry to reclassify KSC-BC-2020-04/F00008 as confidential.

<sup>3</sup> Law No.05/L053 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>4</sup> Decision on Hysni Gucati's Appeal on Matters Related to Arrest and Detention, KSC-BC-2020-07/IA001/F00005, 9 December 2020, Public ('Appeals Decision'), para.51.

criminal offense, complete an attempted crime or commit a crime which he has threatened to commit.<sup>5</sup> The relevant assessment is as to the possibility – as opposed to the inevitability – of such future occurrences.<sup>6</sup> If these conditions are met, the person shall continue to be detained.<sup>7</sup>

3. On 12 June 2020, the Pre-Trial Judge found the Article 41(6) criteria to be met and Mr SHALA's detention to be necessary. Pursuant to the Motion for Provisional Release and Rule 57(2),<sup>8</sup> the Pre-Trial Judge must now consider anew whether those conditions continue to be satisfied. For the reasons set out below, it is clear that is the case and Mr SHALA's detention remains necessary.

#### B. THE ARTICLE 41(6) RISKS ARE ESTABLISHED

4. For the reasons set out in the Confirmation Decision,<sup>9</sup> there is a well-grounded suspicion that Mr SHALA committed multiple crimes within the jurisdiction of the KSC.

5. Further, and although just one would suffice, all three Article 41(6)(b) risks are present and no conditions sufficiently mitigate them. Considered together, the evidence presented amply demonstrates the risks that Mr SHALA presents if at liberty.

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<sup>5</sup> Article 41(6)(b)(i)-(iii).

<sup>6</sup> Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.67; Arrest Warrant Decision, KSC-BC-2020-04/F00008/CONF/RED, para.19. *See also* Decision on Jakup Krasniqi's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA002/F00005, para.26 (the relevant standard is less than certainty but more than a mere possibility).

<sup>7</sup> Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.51.

<sup>8</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>9</sup> Confidential Redacted Version of the Decision on the Confirmation of the Indictment Against Pjetër SHALA, KSC-BC-2020-04/F00007/CONF/RED, 12 June 2020.

## 1. Risk of flight

6. It has been established that a risk of flight exists because: (a) Mr SHALA has the incentive to flee now that he has been informed of the confirmed indictment against him and potential penalties; (b) this incentive is increased because he is aware of the publicly reported convictions of his alleged co-perpetrators, (c) he resides in a jurisdiction in which the Specialist Chambers does not have any direct means to compel his appearance at trial; and (d) he has the ability to travel freely to neighbouring countries and to assimilate into communities in these countries.<sup>10</sup> [REDACTED].<sup>11</sup>

7. Mr SHALA is now aware of the serious charges against him – which include allegations of cruel treatment, torture, and murder – and the significant sentencing exposure he faces if convicted. Indeed, two of Mr SHALA's alleged co-perpetrators, Sabit GECI and Xhemshit KRASNIQI, have been previously convicted and sentenced to significant terms of imprisonment in connection with incidents at the Kukës detention site. Although the authorities cited by Mr SHALA<sup>12</sup> stand for the proposition that the severity of sentence is not, alone and in the abstract, sufficient to support a lengthy period of detention,<sup>13</sup> these cases nonetheless make clear that

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<sup>10</sup> See Arrest Warrant Decision, KSC-BC-2020-04/F00008/CONF/RED, para.20.

<sup>11</sup> See Arrest Warrant Decision, KSC-BC-2020-04/F00008/CONF/RED, para.20.

<sup>12</sup> Motion for Provisional Release, KSC-BC-2020-04/F00039, para.26.

<sup>13</sup> See International Criminal Tribunal for the former Yugoslavia ('ICTY'), Case no. IT-04-82-PT, *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Decision on Johan Tarčulovski's Motion for Provisional Release, 18 July 2004, para.15; European Court of Human Rights ('ECtHR'), *Panchenko v. Russia*, no. 45100/98, 8 February 2004, paras.102, 105, 106 ('the gravity of the charges cannot *by itself* justify long periods of detention on remand ... [and] the risk of absconding ... cannot be gauged *solely* on the basis of the severity of the sentence faced') (emphasis added).

sentencing exposure is an important factor<sup>14</sup> that judges are required to consider.<sup>15</sup> As the Court of Appeals emphasised: ‘the nature of the offence as well as the severity of the penalty are important factors to consider when deciding whether detention is necessary in the circumstances of a particular case.’<sup>16</sup>

8. Mr SHALA contends that, in 2005 and 2007, he appeared when summonsed as a suspect before the ICTY<sup>17</sup> and that he has not taken steps to flee despite knowing of his legal exposure.<sup>18</sup> In addition, during his initial appearance, Mr SHALA stated that there had been ‘no need’ for an arrest because a summons would have been enough for him to appear.<sup>19</sup> But being aware of one’s suspect status is substantially different than facing formal charges in an indictment filed by a prosecutor and confirmed by a court.<sup>20</sup> Mr SHALA’s claim that he would have surrendered is ‘merely hypothetical.’<sup>21</sup>

9. The risk of nonappearance is increased given that Mr SHALA does not recognize the legitimacy of these proceedings. While Mr SHALA contends that ‘[h]is

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<sup>14</sup> ECtHR, *Panchenko v. Russia*, no. 45100/98, 8 February 2004, paras.102, 105 (noting that the severity of the sentence faced is a ‘relevant element in the assessment of the risk of absconding’). See also *Prosecutor v. Bemba*, Judgment on the Provisional Release Appeal, ICC-01/05-01/08-3249-Red, OA11, 20 May 2015, paras.1, 71 (holding that the Trial Chamber did not err in relying on the fact that charges had been confirmed against the accused as part of its analysis regarding the necessity of detention).

<sup>15</sup> ICTY, Case no. IT-04-82-PT, *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Decision on Johan Tarčulovski’s Motion for Provisional Release, 18 July 2004, paras. 15, 34 (noting that ‘a Trial Chamber must make specific reference to the length of the sentence the accused can expect if convicted, and the incentive this may give the accused to flee,’ and denying the accused’s motion for provisional release) (emphasis added).

<sup>16</sup> Appeals Decision, KSC-BC-2020-07/IA001/F00005, para.72.

<sup>17</sup> Motion for Provisional Release, KSC-BC-2020-04/F00039, para.22.

<sup>18</sup> Motion for Provisional Release, KSC-BC-2020-04/F00039, para.27.

<sup>19</sup> Transcript of Initial Appearance of Pjetër SHALA, KSC-BC-2020-04, 19 April 2021, Public, p.10:3-5 (‘Transcript of Initial Appearance’).

<sup>20</sup> See generally *Prosecutor v. Bemba*, Judgment on the Provisional Release Appeal, ICC-01/05-01/08-3249-Red, OA11, 20 May 2015, paras 1, 71.

<sup>21</sup> See *Prosecutor v. Lubanga*, Judgment on Lubanga’s Interim Release Appeal, ICC-01/04-01/06-824 OA7, 13 February 2007, para. 138. See also *Prosecutor v. Bemba*, Judgment on Bemba’s Interim Release Appeal, ICC-01/05-01/08-323 OA, 16 December 2008, para.56; *Prosecutor v. Bemba*, Judgment on Prosecution’s Conditional Release Appeal, ICC-01/05-01/08-631-Red OA2, 2 December 2009, para.75.

attitude, behaviour, and cooperation with the relevant authorities' have been 'exemplary,'<sup>22</sup> he has repeatedly stated that he does not recognise the Specialist Chambers, its authority, documents issued by it, or the authority of its officers.<sup>23</sup>

10. Moreover, the prevailing climate of obstruction in connection with KLA-related criminal proceedings, both in and outside Kosovo, allow for the mobilisation of supporters to assist Mr SHALA in fleeing to evade justice.<sup>24</sup> Mr SHALA contends that '[t]here is not even a slight indication as to the existence of any network of supporters' and that '[h]e maintains no links or connections to the political elites in Kosovo and has no other support that could feasibly be used to evade justice.'<sup>25</sup> But the KLA continues to enjoy broad support both inside and outside of Kosovo, and Mr SHALA's case has now received widespread press coverage in the region and internationally.<sup>26</sup> [REDACTED].<sup>27</sup> Taken together, these facts support the conclusion that Mr SHALA has the means and opportunity to evade justice.

11. [REDACTED].<sup>28</sup> [REDACTED].<sup>29</sup>

## **2. Risk of obstructing the investigation or committing a crime**

12. The SPO sought detention on the grounds that Mr SHALA's previous acts and conduct demonstrate a risk that he might interfere with witnesses, victims, or accomplices, and otherwise seek to obstruct proceedings, and that he has the

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<sup>22</sup> Motion for Provisional Release, KSC-BC-2020-04/F00039, para.22.

<sup>23</sup> [REDACTED]. *See also* Transcript of Initial Appearance, KSC-BC-2020-04, pp.7:13, 14:20 (describing the charges as 'ridiculous').

<sup>24</sup> *See generally* Obstructing the Investigation – Too many Obstacles, Too Little Evidence, in Sense Agency, ICTY: The Kosovo Case, 1998-1999, *available at* <https://kosovo.sense-agency.com/>.

<sup>25</sup> Motion for Provisional Release, KSC-BC-2020-04/F00039, p.9.

<sup>26</sup> [REDACTED].

<sup>27</sup> *See* Further redacted indictment, KSC-BC-2020-06/F00045/A03, 4 November 2020, Public, pp.24-25, 34-36, 47.

<sup>28</sup> Arrest Warrant Decision, KSC-BC-2020-04/F00008/CONF/RED, para.20.

<sup>29</sup> [REDACTED].

incentive, means, and opportunity to do so.<sup>30</sup> The SPO submitted that once Mr SHALA was informed of the charges, he might correctly deduce that the evidence against him would include [REDACTED], and [REDACTED].<sup>31</sup> The SPO also noted, *inter alia*, that [REDACTED].<sup>32</sup> Accordingly, it has been established that a risk of obstructing the investigation exists.<sup>33</sup>

13. While Mr SHALA [REDACTED],<sup>34</sup> his words speak for themselves. [REDACTED]. The Pre-Trial Judge correctly chose to take him at his word. If Mr SHALA is given the opportunity to interfere with witnesses now, there is every reason to believe he will take it.

14. These concerns are particularly acute given the parallels between Mr SHALA's [REDACTED] and the underlying conduct at issue in this case [REDACTED].<sup>35</sup> [REDACTED].<sup>36</sup> Since the disclosure of the indictment supporting material, which confirms the identities of a number of the witnesses against Mr SHALA, these risks have only increased.

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<sup>30</sup> Submission of Indictment for confirmation and related requests, KSC-BC-2020-04/F00002, 14 February 2020, Strictly Confidential and *Ex Parte*, paras.5, 8-11 ('Application for Arrest Warrant'). The Application for Arrest Warrant, which is currently designated as strictly confidential and *ex parte*, can also now be reclassified as confidential. Consequently, the SPO respectfully requests the Pre-Trial Judge to direct the Registry to reclassify KSC-BC-2020-04/F00002 as confidential.

<sup>31</sup> Application for Arrest Warrant, KSC-BC-2020-04/F00002, paras.9-10.

<sup>32</sup> Application for Arrest Warrant, KSC-BC-2020-04/F00002, para.10; [REDACTED].

<sup>33</sup> Arrest Warrant Decision, KSC-BC-2020-04/F00008/CONF/RED, paras.21-22.

<sup>34</sup> Motion for Provisional Release, KSC-BC-2020-04/F00039, paras.39-41.

<sup>35</sup> Application for Arrest Warrant, KSC-BC-2020-04/F00002, 14 February 2020, para. 9. *See also* Arrest Warrant Decision, KSC-BC-2020-04/F00008/CONF/RED, para.22.

<sup>36</sup> Application for Arrest Warrant, KSC-BC-2020-04/F00002, 14 February 2020, para. 9; [REDACTED].

15. These risks of obstruction are heightened by Mr SHALA's [REDACTED]<sup>37</sup> and by his repeated statements that he does not recognise the legitimacy of the Specialist Chambers<sup>38</sup> and views the charges against him as 'ridiculous.'<sup>39</sup>

16. For similar reasons, it has been established that there are grounds to believe that Mr SHALA will commit a crime.<sup>40</sup> [REDACTED] there is reason for concern that he will commit a crime [REDACTED] or another criminally obstructive act.<sup>41</sup> This includes the risk that he will use physical violence or threats of violence against [REDACTED], or other witnesses, or that he will attempt to procure or incite others to do so.<sup>42</sup>

### C. NO CONDITIONS SUFFICIENTLY MITIGATE THESE RISKS

17. Mr SHALA presents a list of conditions which could be applied in the event of his release.<sup>43</sup> However, no combination of these conditions is sufficient to mitigate the risks posed by Mr SHALA if released. Detention is the only means by which these risks can be adequately managed. The communications monitoring framework of the KSC Detention Centre will be particularly important to ensure that no confidential information disclosed to him is disseminated to the outside world.<sup>44</sup>

18. The KSC/SPO does not have the resources to adequately monitor provisionally released accused in Belgium. Moreover, as the Belgian authorities have noted in

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<sup>37</sup> See *supra*, para.9.

<sup>38</sup> See *supra*, para.11.

<sup>39</sup> See *supra*, para.11, note 29.

<sup>40</sup> Arrest Warrant Decision, KSC-BC-2020-04/F00008/CONF/RED, paras.22-23; Application for Arrest Warrant, KSC-BC-2020-04/F00002, para.11.

<sup>41</sup> Arrest Warrant Decision, KSC-BC-2020-04/F00008/CONF/RED, paras.22-23; Application for Arrest Warrant, KSC-BC-2020-04/F00002, para.11.

<sup>42</sup> See Application for Arrest Warrant, KSC-BC-2020-04/F00002, para.11.

<sup>43</sup> Defence Motion for Provisional Release, para.49.

<sup>44</sup> See *especially* Articles 4.2, 6-8 and 17 of the Registry Practice Direction on Detainees – Visits and Communications, KSC-BD-09/Rev1/2020, 23 September 2020.



previous litigation before the ICC, if an individual detained in Belgium wished to leave the country without the agreement of the supervising court, he could do so quickly.<sup>45</sup> While Mr SHALA has offered to surrender his passport,<sup>46</sup> he would not encounter systematic border controls within the Schengen area and would be able to travel freely there.<sup>47</sup> For similar reasons, electronic monitoring and home detention would be ineffective, given that Mr SHALA could likely leave his residence, remove any monitoring devices, and move beyond Belgium's borders before any arrest could be effected.<sup>48</sup> Likewise, given the wide variety of communications mediums available to the outside world, 'it is difficult to conceive of measures which might effectively counteract the risks associated with the suspect's communications with the external world.'<sup>49</sup> Accordingly, detention is the only option providing adequate guarantees for the effective management of these risks.<sup>50</sup>

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<sup>45</sup> See *Prosecutor v. Bemba*, Decision on Kilolo Request for Provisional Release, ICC-01/05-01/13-259, 14 March 2014, para.22; Observations of the Kingdom of Belgium on the Periodic Review of the Detention of Kilolo, ICC-01/05-01/13-605-AnxIII-tENG 07-10-2014 1/9 EK PT, 23 July 2014, p.3 ('Belgium Submission re *Kilolo*') (noting that '[I]f Mr Kilolo decided to leave the country without the Court's permission, the country's geography would allow him to do so very quickly. Furthermore, the national airport is close to his residence.').

<sup>46</sup> Motion for Provisional Release, p.11.

<sup>47</sup> See *Prosecutor v. Bemba*, Decision on Kilolo Request for Provisional Release, ICC-01/05-01/13-259, 14 March 2014, para.22 (noting that 'within the Schengen area . . . travel is to a great extent possible without the need that identity documents be shown or relied upon'); *Prosecutor v. Bemba*, Judgment on Kilolo Appeal of the Pre-Trial Chambers' Provisional Release Decision, ICC-01/05-01/13-558, 11 July 2014, para.107 (finding that it was not unreasonable to conclude that 'if released in Belgium, Mr Kilolo could possibly travel within the Schengen area without his passport and thus this could increase the risk of absconding from the jurisdiction of the Court').

<sup>48</sup> See *Prosecutor v. Bemba*, Decision on Kilolo Request for Provisional Release, ICC-01/05-01/13-259, 14 March 2014, para.22.

<sup>49</sup> See *Prosecutor v. Bemba*, Decision on Kilolo Request for Provisional Release, ICC-01/05-01/13-259, 14 March 2014, para.43. Moreover, the same factors that would support monitoring of electronic communications records under Belgian law (the continuation of the offences in question or an elevated risk of flight or non-appearance) 'would by themselves justify a decision to continue detention.' See Belgium Submission re *Kilolo*, p.5.

<sup>50</sup> See *Prosecutor v. Bemba*, Decision on Kilolo Request for Provisional Release, ICC-01/05-01/13-259, 14 March 2014, para.43.

III. CLASSIFICATION

19. The present submission is filed confidentially in accordance with Rule 82(4). A public redacted version will be filed.

IV. RELIEF REQUESTED

20. For the foregoing reasons, the relief sought by Mr SHALA should be rejected in full.

21. In addition, the SPO requests that the Pre-Trial Judge direct the Registry to reclassify KSC-BC-2020-04/F00002 and KSC-BC-2020-04/F00008 as confidential.

**Word Count: 3105**



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**Jack Smith**

**Specialist Prosecutor**

Tuesday, 22 June 2021  
At The Hague, the Netherlands.