



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

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

Before: **Trial Panel I**
Judge Mappie Veldt-Foglia, Presiding
Judge Roland Dekkers
Judge Gilbert Bitti
Judge Vladimir Mikula, Reserve

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 5 July 2021

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Prosecution submissions for the fifth 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 Trial Panel ('Panel'),³ the Specialist Prosecutor's Office ('SPO') hereby files its submissions on the review of detention of Salih MUSTAFA ('Accused').
2. The Accused's continued detention remains necessary. There has been no change in circumstances which would alter the Panel's finding that there is a sufficiently real possibility that, if released, the Accused may interfere with victims, witnesses, and/or their families,⁴ and that no condition would sufficiently mitigate this risk.⁵ The risks of flight and of commission of further crimes also remain high. Indeed, since the last detention review, each of the Article 41(6)(b) risks have increased due to the imminent start of trial.

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 – Article 41(6)(a)
3. The well-grounded suspicion that the Accused has committed crimes within the jurisdiction of the KSC, found to exist by both the Pre-Trial Judge and the Panel,⁶ remains. No circumstances capable of changing this finding have intervened since the Fourth Detention Review.

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 Fourth Decision on Review of Detention, KSC-BC-2020-05/F00127, Public, 25 May 2021 ('Fourth Detention Review'), para.29.

⁴ Fourth Detention Review, KSC-BC-2020-05/F00127, paras 19-20.

⁵ Fourth Detention Review, KSC-BC-2020-05/F00127, paras 25-26, 29.

⁶ Fourth Detention Review, KSC-BC-2020-05/F00127, para.14.

ii. Risk of flight – Article 41(6)(b)(i)

4. The SPO respectfully submits that also the flight risk remains high, for the reasons previously set out.⁷ None of these circumstances have changed to date.

iii. Risk of interference with witnesses and victims – Article 41(6)(b)(ii)

5. In examining whether there was a risk that, if released, the Accused could obstruct the proceedings, the Panel found that he had the incentive, the experience, and the means to do so.⁸ Amongst the risks identified by the Panel in the Fourth Detention Review were intimidation or the exertion of pressure, including through threats and violence.⁹

6. Nothing has occurred which would mitigate that risk. Indeed, with the trial set to start on 15 September 2021, the risks of obstruction or interference by the Accused or his network will markedly increase, including as additional information is disclosed, and delayed disclosure redactions are lifted.

7. The Accused's continued detention thus remains essential to mitigate this risk. A fundamental mitigation measure with regard to this risk is the limiting and monitoring of the Accused's communications, something that could not be effectively enforced if he is provisionally or conditionally released.

iv. Risk that the Accused could commit crimes – Article 41(6)(b)(iii)

8. With respect to this limb of Article 41(6)(b), the SPO incorporates by reference its previous submissions.¹⁰ Although it is only necessary that one of the Article 41(6)(b) risks be established, there remains a risk that, if released, the Accused will commit further crimes, including crimes against the administration of justice over which the KSC has jurisdiction pursuant to Article 15 of the Law. Indeed, as with the Article 41(6)(b)(ii) risks, these risks have increased since the last detention review noting that

⁷ Prosecution Response on the Fourth Review of Detention, KSC-BC-2020-05/F00122, 17 May 2021.

⁸ Fourth Detention Review, KSC-BC-2020-05/F00127, para.19.

⁹ Fourth Detention Review, KSC-BC-2020-05/F00127, para.19.

¹⁰ Prosecution Response on the Fourth Review of Detention, KSC-BC-2020-05/F00122, 17 May 2021, paras 11-12.

(i) there is now a set date for the commencement of trial, and (ii) increased information is due to be disclosed.

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

9. The risks which exist, considered alone or together, can only be effectively managed in the Detention Centre.

10. Detention is the only means to effectively limit the Accused's ability to evade the KSC's jurisdictional reach,¹¹ obstruct the investigation or court proceedings, and/or commit further crimes. This is especially true at a stage of the proceedings where delayed disclosure redactions are about to be lifted and certain identities disclosed to the Accused. 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.¹²

vi. Reasonable duration of pre-trial detention

11. In the Fourth Detention Review, the Panel considered the gravity of the charges against the Accused, the efficient conduct of the proceedings, and the upcoming start of the trial to conclude that the Accused had not been detained for an unreasonably long period of time.¹³

12. The trial is now scheduled to start on 15 September 2021. Since the last detention review, the proceedings have advanced quickly and efficiently, with submissions being filed on several procedural and substantive issues of the upcoming

¹¹ While noting the Panel's determination that flight risk could be mitigated with conditions imposed on his release (Fourth Detention Review, KSC-BC-2020-05/F00127, para.18), the SPO maintains its submission that conditional release could be insufficient to prevent a person with the background, experience, and network of the Accused from fleeing, if he decided to do so.

¹² 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.

¹³ Fourth Detention Review, KSC-BC-2020-05/F00127, paras 27-28.

trial, and without any period of inactivity.¹⁴ Additional deadlines for trial preparation are upcoming in July.¹⁵

C. RELIEF REQUESTED

13. For the foregoing reasons, the SPO requests the Panel to order that the Accused remain in detention.

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Jack Smith

Specialist Prosecutor

Monday, 5 July 2021

At The Hague, the Netherlands.

¹⁴ See e.g. Prosecution Submissions pursuant to KSC-2020-BC-05-F00123 with Strictly Confidential and ex parte Annexes 1-2, KSC-2020-BC-05/F00130, 2 June 2021; Defence Submissions for Trial Preparation, KSC-BC-2020-05/F00128, 2 June 2021; Submission for Trial Preparation Conference, KSC-BC-2020-05/F00129, 2 June 2021. See also Joint Prosecution and Defence Proposal for the adoption of a Witness Preparation Protocol with Public Annex, KSC-BC-2020-05/F00143, 30 June 2021. See also Prosecution's motion for judicial notice of adjudicated facts with public Annex 1, KSC-BC-2020-05/F00144, 30 June 2021 and Defence submissions on adjudicated facts, KSC-2020-BC-05/F00142, 29 June 2021.

¹⁵ Fourth Detention Review, KSC-BC-2020-05/F00127, para.29.