



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: 2 August 2021

Language: English

Classification: Public

Prosecution submissions for first review of detention

Specialist Prosecutor
Jack Smith

Counsel for the Accused
Jean-Louis Gilissen

I. INTRODUCTION

1. The continued detention of Pjetër SHALA ('Accused') remains necessary.¹ There has been no relevant change of circumstances detracting from the established reasons for detention.² Rather, the Article 41(6)(b) risks have increased since the Detention Decision.

2. The Pre-Trial Judge ('PTJ') previously found: (i) grounded suspicion that the Accused committed crimes within the jurisdiction of the Specialist Chambers ('KSC');³ (ii) articulable grounds to believe that the Accused will obstruct the progress of criminal proceedings, and will repeat or attempt to repeat the criminal offences;⁴ and (iii) that the release conditions proposed by the Accused insufficiently mitigated the Article 41(6)(b) risks.⁵ These findings continue to be true in all respects.

II. SUBMISSIONS

3. For purposes of a detention review under Rule 57(2), the reasons or circumstances underpinning detention must be reviewed in order to determine whether these reasons continue to exist under Article 41(6) of the Law.⁶ That determination inevitably concerns what has changed, if anything, since the previous

¹ The Defence filed no submissions on 23 July 2021, and therefore in accordance with the schedule set out by the Pre-Trial Judge, the Specialist Prosecutor's Office ('SPO') hereby files its submissions (Decision on Pjetër Shala's request for provisional release, KSC-BC-2020-04/F00045, 15 June 2021 ('Detention Decision'), para.50; *see also* public redacted version KSC-BC-2020-04/F00045RED).

² *See* Article 41 of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'); Rule 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Article' or 'Articles' herein refer to articles of the Law, and all references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ *See* Detention Decision, KSC-BC-2020-04/F00045, para.15.

⁴ Detention Decision, KSC-BC-2020-04/F00045, paras 29-41.

⁵ Detention Decision, KSC-BC-2020-04/F00045, paras 46-48.

⁶ *Prosecutor v. Gucati and Haradinaj*, Decision on Nasim Haradinaj's Appeal on Decision Reviewing Detention, KSC-BC-2020-07/IA002/F00005, 9 February 2021, para.55.

ruling on detention. The PTJ is not required to make findings on the factors already decided upon in the initial ruling on detention.⁷ The Defence has not raised any relevant change in circumstances, and none exist.

4. Indeed, each of the Article 41(6)(b) risks may have increased since the Detention Decision, noting in particular that on 31 July 2021 the Accused received a significant remaining portion of Rule 102(1)(b) disclosure,⁸ and therefore has even greater knowledge of the evidence against him.

5. For the reasons set out in the Confirmation Decision,⁹ there continues to be a well-grounded suspicion that the Accused committed multiple crimes within the jurisdiction of the KSC. Further, and although just one would suffice, all three Article 41(6)(b) risks continue to be present and no conditions sufficiently mitigate them.¹⁰

6. As previously found by the PTJ, the Accused *inter alia*: has an incentive to flee, and the possibility of obtaining support to do so;¹¹ and has, relatively recently, indicated a readiness to again resort to violence,¹² which contributed to the finding of continued risk under both the second and third limbs of Article 41(6)(b).

7. The risks identified in the Detention Decision, 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

⁷ KSC-BC-2020-07/IA002/F00005, para.55.

⁸ Disclosure Packages 48 and 49 (it is noted that there was a delay of over 16 hours between when these disclosure packages were released and when they were notified to the PTJ and parties).

⁹ 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.

¹⁰ The SPO notes the Pre-Trial Judge previously found that the risk of flight could be mitigated by the conditions proposed by the Defence (Detention Decision, KSC-BC-2020-04/F00045, para.45).

¹¹ Detention Decision, KSC-BC-2020-04/F00045, paras 24-28.

¹² Detention Decision, KSC-BC-2020-04/F00045, paras 32-35, 39.

reach, obstruct the investigation or court proceedings, and/or commit further crimes.¹³ 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.¹⁴

III. RELIEF REQUESTED

8. For the foregoing reasons, the SPO requests that the PTJ order that the Accused remain in detention.

Word Count: 738



Jack Smith
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Monday, 2 August 2021
At The Hague, the Netherlands.

¹³ Detention Decision, KSC-BC-2020-04/F00045, paras 46-48.

¹⁴ 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.