



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  
Judge Roland Dekkers  
Judge Gilbert Bitti  
Judge Vladimir Mikula, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor

**Date:** 6 September 2021

**Language:** English

**Classification:** Public

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**Prosecution submissions for the sixth review of detention**

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**Specialist Prosecutor's Office**

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## A. INTRODUCTION

1. Pursuant to Article 41(6) and (10) of the Law<sup>1</sup> and Rule 57(2) of the Rules,<sup>2</sup> and in compliance with the order of the Trial Panel ('Panel'),<sup>3</sup> 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 lawful and necessary. Grounded suspicion continues to exist.<sup>4</sup> There is still a real possibility that, if released, the Accused may interfere with victims, witnesses, and/or their families, and more generally, may obstruct the progress of the proceedings,<sup>5</sup> and that no condition would sufficiently mitigate this risk.<sup>6</sup> 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 and the related disclosure of information identifying Prosecution witnesses.

## B. CIRCUMSTANCES REQUIRING THAT THE ACCUSED REMAIN 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, as found to exist by both the Pre-Trial Judge and the Panel,<sup>7</sup> remains. No circumstances capable of changing this finding have intervened since the Fifth Detention Review.

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> Fifth Decision on Review of Detention, KSC-BC-2020-05/F00158, Public, 23 July 2021 ('Fifth Detention Review'), para.31.

<sup>4</sup> Fifth Detention Review, KSC-BC-2020-05/F00158, para.15.

<sup>5</sup> Fifth Detention Review, KSC-BC-2020-05/F00158, paras 21-22.

<sup>6</sup> Fifth Detention Review, KSC-BC-2020-05/F00158, paras 27-28.

<sup>7</sup> Fifth Detention Review, KSC-BC-2020-05/F00158, para.15.

ii. Risk of flight – Article 41(6)(b)(i)<sup>8</sup>

4. The SPO respectfully submits that the flight risk does exist and remains high, for the reasons previously set out.<sup>9</sup> None of these circumstances have changed to date. Additionally, following the recent disclosure of information identifying key Prosecution witnesses,<sup>10</sup> the Accused is now fully aware of the strength of the Prosecution case and has even stronger motivation to mobilise his support network to help him flee and go into hiding, if released.

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

5. The Panel has repeatedly found that the risk of obstruction of proceedings is real and could take place through interference with victims and witnesses, and/or their families by, *inter alia*, exerting pressure and intimidating them by the Accused himself, as well as by colluding with other potential perpetrators referred to in the Indictment. The likelihood of that happening is evidenced by the Accused's ties to the Kosovo intelligence apparatus as well as by his experience and technical knowledge and network. The limited scope of the case and the small number of witnesses further increase the risk in question.<sup>11</sup>

6. These circumstances have not changed and this risk not only remains but is elevated by the recent aforementioned disclosure of witnesses' identities in view of the upcoming trial. Information identifying further witnesses is due to be released on a rolling basis in September and early October. Knowing the identities of all Prosecution witnesses will markedly heighten the risk of obstruction and interference by the Accused or his network. Recently adopted restrictive measures only confirm

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<sup>8</sup> 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 and Fifth Detention Review, KSC-BC-2020-05/F00158, paras 18-19), 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.

<sup>9</sup> Prosecution Response on the Fourth Review of Detention, KSC-BC-2020-05/F00122, 17 May 2021.

<sup>10</sup> Disclosure packages 50-60.

<sup>11</sup> Fifth Detention Review, KSC-BC-2020-05/F00158, para.21.

the accuracy of this assessment.<sup>12</sup> The Accused's continued detention thus remains essential to mitigate this risk.

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

7. The SPO references its previous submissions with regard to this risk.<sup>13</sup> It is hereby reiterated 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. As already indicated in the foregoing paragraphs, the risk of committing further crimes has only risen with the release of witness identifying information to the Defence and the Accused.

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

8. The aforementioned, objective and real risks exist, and at this advanced stage of the proceedings can only be effectively managed in the conditions of detention.

9. Detention is the only means to effectively limit the Accused's ability to flee or go into hiding, obstruct the court proceedings, and/or commit further crimes. This is especially true at this advanced stage of the proceedings, including the disclosures. Any assurances that the Accused may give would be insufficient to eliminate or mitigate the existing risks. In such circumstances, release, with or without conditions, should not be granted.<sup>14</sup>

vi. Reasonable duration of pre-trial detention

10. The Trial Panel's prior findings regarding the reasonableness of the duration of detention in this case still stand.<sup>15</sup>

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<sup>12</sup> Trial Panel's Decision, KSC-BC-2020-05/F00162, 2 August 2021, paras 23 and 32.

<sup>13</sup> Prosecution Response on the Fourth Review of Detention, KSC-BC-2020-05/F00122, 17 May 2021, paras 11-12; Prosecution submissions for the fifth review of detention, KSC-BC-2020-05/F00147, 5 July 2021, para.8.

<sup>14</sup> 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.

<sup>15</sup> Fifth Detention Review, KSC-BC-2020-05/F00158, para.29.

11. The trial is scheduled to start on 15 September 2021 with the first witnesses due to testify from 20 September onwards. Since the last detention review, the remaining procedural steps have swiftly been taken, all deadlines duly met and there was no inaction on the part of the Parties or the Trial Panel.<sup>16</sup>

C. RELIEF REQUESTED

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

**Word count: 1,106**



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**Jack Smith**

**Specialist Prosecutor**

Monday, 6 September 2021

At The Hague, the Netherlands.

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<sup>16</sup> See e.g. Prosecution Notice of Amended Exhibits and Witnesses Lists, KSC-BC-2020-05/F00161; Prosecution Submission concerning list of contacts of the Accused, KSC-BC-2020-05/F00168; 20 August 2021; KSC-BC-2020-05/F00162, 2 August 2021; Decision on the Submission and the Admissibility of Evidence, KSC-BC-2020-05/F00169, 25 August 2021; Decision on the Conduct of Proceedings, KSC-BC-2020-05/F00170, 26 August 2021; Decision on the Specialist Prosecutor's requests for disclosure, KSC-BC-2020-05/F00178, 1 September 2021; or several pre-trial, multi-paged disclosure batches of unredacted documents to the Defence by the SPO.