



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: 25 October 2021

Language: English

Classification: Public

Prosecution submissions for second review of detention

Specialist Prosecutor
Jack Smith

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I. INTRODUCTION

1. The continued detention of Pjetër SHALA ('Accused') remains necessary and proportional.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 remained the same or increased since the Detention Decision and the Detention Review 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 (iii) that the release conditions proposed by the Accused insufficiently mitigate the Article 41(6)(b) risks;⁵ and (iv) that the continued detention of the Accused is proportional.⁶ 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

¹ The Defence filed no submissions on 13 October 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 Review of Detention of Pjetër Shala, KSC-BC-2020-04/F00075, 10 September 2021, Confidential ('Detention Review Decision'), para.49; *see also* public redacted version KSC-BC-2020-04/F00075RED).

² *See* Detention Review Decision, KSC-BC-2020-04/F00075, paras.28, 31, 37; Decision on Pjetër Shala's request for provisional release, KSC-BC-2020-04/F00045, 15 June 2021, Confidential ('Detention Decision'), para.50; *see also* public redacted version KSC-BC-2020-F00045RED.

³ *See* Detention Decision, KSC-BC-2020-04/F00045, para.15; Detention Review Decision, KSC-BC-2020-04/F00075, para.23.

⁴ Detention Decision, KSC-BC-2020-04/F00045, paras. 29-41; Detention Review Decision, KSC-BC-2020-04/F00075, para.32.

⁵ Detention Decision, KSC-BC-2020-04/F00045, paras. 46-48; Detention Review Decision, KSC-BC-2020-04/F00075, para.36.

⁶ Detention Decision, KSC-BC-2020-04/F00045, para.49; Detention Review Decision, KSC-BC-2020-04/F00075, para.47.

whether these reasons continue to exist under Article 41(6) of the Law.⁷ That determination inevitably concerns what has changed, if anything, since the previous ruling on detention. The PTJ is not required to make findings on the factors already decided upon in the initial ruling on detention.⁸ The Defence has not raised any relevant change in circumstances that would support a different result, and none exists.

4. Indeed, each of the Article 41(6)(b) risks have stayed the same or potentially increased since the Detention Review Decision, as the Accused has received additional Rule 102(1)(b) disclosures since the Detention Review Decision,⁹ and therefore has even greater knowledge of the evidence against him.

5. For the reasons set forth in the Confirmation Decision¹⁰ and the Detention Review Decision,¹¹ 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(b)(6)(b) risks continue to be present and no conditions sufficiently mitigate them.¹²

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;¹³ and has, relatively recently, indicated a readiness to again resort to violence, which contributed to the finding of continued risk under both the second and third limbs of Article 41(6)(b).¹⁴

⁷ *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.

⁸ KSC-BC-2020-07/IA002/F00005, para.55.

⁹ *See, e.g.*, Disclosures 13, 15 (102(1)(b) materials/translations).

¹⁰ Confidential Redacted Version of the Decision on the Confirmation of the Indictment Against Pjetër Shala, KSC-BC-2020-04/F0007/CONF/RED, 12 June 2020.

¹¹ Detention Review Decision, KSC-BC-2020-04/F00075, 10 September 2021, para.23.

¹² The SPO notes that 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.

¹³ Detention Decision, KSC-BC-2020-04/F00045, para.28; Detention Review Decision, KSC-BC-2020-04/F00075, para.28.

¹⁴ Detention Decision, KSC-BC-2020-04/F00045, paras 32-35, 39-40; Detention Review Decision, KSC-BC-2020-04/F00075, paras. 32, 36.

7. The risks identified in the Detention Decision and the Detention Review 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 reach, obstruct the investigation or court proceedings, and/or commit further crimes.¹⁵ 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.¹⁶

8. In addition to being necessary, the continued detention of the Accused is proportional. The Accused is charged with four counts of war crimes and, if convicted, could face a lengthy sentence, and the Pre-Trial Judge has found that the risks under Articles 41(6)(b)(ii) and (iii) of the Law cannot be mitigated by any conditions.¹⁷ Moreover, the necessary procedural points relating to the pre-trial phase of the case continue to move towards completion with a view to transmitting the case for trial at a point in the foreseeable future.¹⁸ Extensions to the disclosure schedule have been requested and/or agreed to by both parties.¹⁹ Against this backdrop, Mr SHALA's

¹⁵ Detention Decision, KSC-BC-2020-04/F00045, para. 46-48; Detention Review Decision, KSC-BC-2020-4/F00075, para.44.

¹⁶ 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.

¹⁷ Detention Review Decision, KSC-BC-2020-04/F00075, para.47.

¹⁸ Detention Review Decision, KSC-BC-2020-04/F00075, para.47.

¹⁹ See, e.g., SPO Request for Modification of Timeline for Preliminary Motions, 2 July 2021, public; Defence Request for an Extension of Time for its Response to the Prosecution Submission for First Review of Detention, KSC-BC-2020-04/F00059, 9 August 2021, public; SPO Notice to the Pre-Trial Judge Regarding the Disclosure of Rule 102(1)(b) materials and request for limited deferral of disclosure obligations for select items, KSC-BC-2020-04/F00051, strictly confidential and *ex parte*, 31 July 2021; *Defence Motion for an Extension of Time for its Rule 102(2) Request*, KSC-BC-2020-04/F00074, 9 September 2021; Defence Response to Prosecution Request for Deferral of Disclosure Obligations, KSC-BC-2020-04/F00062, Public, 16 August 2021, paras. 2 and 4; Defence Response to Prosecution Request for Modification of Deadlines, KSC-BC-2020-04/F00077, Confidential, 10 September 2021; Defence Request for Variation of Time Limit for its Rule 102(2) Request, KSC-BC-2020-04/F00086, Public, 13 October

continued detention since his 16 March 2021 arrest in Belgium and his 15 April 2021 transfer to the detention facilities of the KSC remains proportional.

III. RELIEF REQUESTED

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

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At The Hague, the Netherlands.

2021. *See also* Transcript of 23 September 2021 Status Conference, KSC-BC-2020-04, Tr. 89:20-23, 90:8-13.25:7-22.