



**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:** 8 November 2021

**Language:** English

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**Public Redacted Version of**

**‘Prosecution submissions for the seventh review of detention’ F00245, dated 8  
November 2021**

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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 recent disclosures revealing information identifying all remaining Prosecution witnesses, the progression of trial, and the evidence the Prosecution witnesses have provided during their testimonies.

## 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 Sixth Detention Review. Indeed, after hearing the evidence provided by the initial

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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> Sixth Decision on Review of Detention, KSC-BC-2020-05/F00215, Confidential, 23 September 2021 ('Sixth Detention Review'), para.33.

<sup>4</sup> Sixth Detention Review, KSC-BC-2020-05/F00215, paras 14-15.

<sup>5</sup> Sixth Detention Review, KSC-BC-2020-05/F00215, paras 19-22.

<sup>6</sup> Sixth Detention Review, KSC-BC-2020-05/F00215, paras 27-28.

<sup>7</sup> Sixth Detention Review, KSC-BC-2020-05/F00215, para.15.

Prosecution witnesses, this well-grounded suspicion has been at the very least reinforced.

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

4. The SPO 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 witness testimonies and disclosure of information identifying key Prosecution witnesses,<sup>10</sup> the Accused is fully aware of the strength of the Prosecution case. He has heard at least two witnesses implicate him in the detention and beatings that took place at the Zllash detention compound.<sup>11</sup> He heard another witness confirm his presence there when [REDACTED] was handed over to the BIA Unit.<sup>12</sup> The Accused now 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 intimidation by the Accused himself, as well as in collusion 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

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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 decision on review of detention, KSC-BC-2020-05/F00127, 25 May 2021, para.18; Fifth decision on review of detention, KSC-BC-2020-05/F00158, 23 July 2021, paras 18-19; Sixth Detention Review, KSC-BC-2020-05/F00215, 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.

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

<sup>10</sup> KSC-BC-2020-05, Transcripts of Trial Hearings, 20 September 2021 – 14 October 2021; Disclosure packages 61-92.

<sup>11</sup> See, e.g., KSC-BC-2020-05, Transcript of Trial Hearing, 20 September 2021, p.412; KSC-BC-2020-05, Transcript of Trial Hearing, 5 October 2021, pp.980-981.

<sup>12</sup> KSC-BC-2020-05, Transcript of Trial Hearing, 23 September 2021, p.729.

network. The limited scope of the case and the small number of witnesses further increase the risk in question.<sup>13</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 their upcoming testimonies. Knowing the identities of all Prosecution witnesses markedly heightens the risk of obstruction and interference by the Accused or his network. The adopted restrictive measures only confirm the accuracy of this assessment.<sup>14</sup> The Accused's continued detention thus remains essential to mitigate the risk of interference with witnesses and victims.

7. Additionally, the testimonies of the witnesses heard to date confirm the influence of the Accused in Kosovo and his ability to affect the witnesses, and therefore the proceedings. For example, W03593 refused to mention the names of individuals who relayed information to him about the Accused,<sup>15</sup> and became highly agitated when the name of [REDACTED] was mentioned during re-examination.<sup>16</sup>

8. W04600 testified that the Accused told him [REDACTED].

9. W03594 resisted testifying to the conditions and maltreatment at the Zllash detention compound. Initially, W03594 testified that the detainees at Zllash were in good physical condition and had not been maltreated.<sup>17</sup> After being confronted with his prior statements, W03594 admitted that he was hit with a stick,<sup>18</sup> and that the other detainees had bruises and markings as well.<sup>19</sup> [REDACTED].

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<sup>13</sup> Sixth Detention Review, KSC-BC-2020-05/F00215, para.19.

<sup>14</sup> Decision on Specialist Prosecutor's request for segregation and other measures, KSC-BC-2020-05/F00162, 2 August 2021, paras 23 and 32.

<sup>15</sup> See, e.g., KSC-BC-2020-05, Transcript of Trial Hearing, 22 September 2021, p.589.

<sup>16</sup> KSC-BC-2020-05, Transcript of Trial Hearing, 22 September 2021, p.660-661.

<sup>17</sup> KSC-BC-2020-05, Transcript of Trial Hearing, 12 October 2021, p.1076.

<sup>18</sup> KSC-BC-2020-05, Transcript of Trial Hearing, 12 October 2021, pp.1068-1069.

<sup>19</sup> KSC-BC-2020-05, Transcript of Trial Hearing, 14 October 2021, pp.1267-1270.

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

10. The SPO references its previous submissions with regard to this risk.<sup>20</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 recent testimonies and the release of the remaining witnesses' identifying information to the Defence and the Accused.

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

11. 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.

12. 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 recent disclosures and testimonies. 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>21</sup>

vi. Reasonable duration of pre-trial detention

13. The Trial Panel's prior findings regarding the reasonableness of the duration of detention in this case still stand.<sup>22</sup>

14. The trial started as scheduled on 15 September 2021 with the first witnesses testifying from 20 September onwards. The last Prosecution witnesses are anticipated

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<sup>20</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>21</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>22</sup> Sixth Detention Review, KSC-BC-2020-05/F00215, paras 30-32.

to testify in January 2022. Since the last detention review, all 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>23</sup>

C. RELIEF REQUESTED

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

**Word count: 1,435**



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**Jack Smith**

**Specialist Prosecutor**

Monday, 8 November 2021

At The Hague, the Netherlands.

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<sup>23</sup> See, e.g., SPO Revised Order of witness testimonies for the months of October, November and December 2021 with Confidential Annex 1, KSC-BC-2020-05/F00229, 6 October 2021; Prosecution Revised Request for Admission of Exhibits from the Direct Examinations of W03593 and W04600 with Revised Confidential Annex 1, KSC-BC-2020-05/F00228, 6 October 2021; Decision on the Prosecution application for the admission of prior statements of witness W04648 and related documents, KSC-BC-2020-05/F00235, 15 October 2021. Several multi-paged disclosure batches of lesser redacted documents relating to upcoming witnesses to the Defence by the SPO.