



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: 11 January 2022

Language: English

Classification: Public

Prosecution submissions for third review of detention

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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 since the Pre-Trial Judge reached this finding in the Detention Review Decision of 10 November 2021.²

2. The Pre-Trial Judge previously found: (i) grounded suspicion that the Accused committed crimes within the jurisdiction of the Specialist Chambers ('KSC');³ (ii) the existence of a risk of flight;⁴ (iii) articulable grounds to believe that the Accused will obstruct the progress of criminal proceedings, and will repeat or attempt to repeat the criminal offences;⁵ (iv) that the release conditions proposed by the Accused insufficiently mitigate the Article 41(6)(b) risks;⁶ and (v) that the continued detention of the Accused is proportional.⁷ No circumstances have intervened since the Detention Review Decision capable of changing these findings, which continue to be true in all respects. In fact, the Article 41(6)(b) risks have increased with the advancement of the pre-trial stage of the proceedings.

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 17 December 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. *See* Decision on Defence Request to Vary the Time Limit for Submissions on the Next Review of Mr Shala's Detention, KSC-BC-2020-04/F00110, 18 November 2021, para.9 and Submissions pursuant to the Pre-Trial Judge's Order Dated 14 December 2021, KSC-BC-2020-04/F00125, 16 December 2021, para.2.

² *See* Decision on Review of Detention of Pjetër Shala, KSC-BC-2020-04/F00105, 10 November 2021 ('Detention Review Decision').

³ Detention Review Decision, KSC-BC-2020-04/F00105, paras 17-20, 34.

⁴ Detention Review Decision, KSC-BC-2020-04/F00105, paras 21-26, 34.

⁵ Detention Review Decision, KSC-BC-2020-04/F00105, paras 26-34.

⁶ Detention Review Decision, KSC-BC-2020-04/F00105, paras 35-40.

⁷ Detention Review Decision, KSC-BC-2020-04/F00105, paras 41-46.

whether these reasons continue to exist under Article 41(6) of the Law.⁸ 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.⁹ The Defence has not identified any relevant change in circumstances since the last ruling on detention, and indeed, no changes have occurred.

1. Existence of a well-grounded suspicion

4. 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. There has been no development capable of changing this finding or warranting its re-examination by the Pre-Trial Judge.

2. Existence of risks warranting continued detention pursuant to Article 41(6)(b) of the Law

5. Further, and although just one would suffice, the Pre-Trial Judge found in his last detention review that all three of the risks listed under Article 41(6)(b) continued to exist.¹² This finding was based on concrete grounds and ample evidence. Indeed, each of the Article 41(6)(b) risks have stayed the same or have potentially increased since the Detention Review Decision, with the proceedings continuing to move forward towards the start of the trial.¹³ No circumstance has intervened, nor has the

⁸ *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.

⁹ KSC-BC-2020-07/IA002/F00005, para.55.

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/F00105, paras 17-20.

¹² Detention Review Decision, KSC-BC-2020-04/F00105, para.34.

¹³ The filing of the SPO's pre-trial brief and related documents is scheduled for 28 January 2022, and the filing of the chart pursuant to Rule 109(c) for 11 February 2022.

Defence pointed to any, capable of modifying the reasons underlying the Pre-Trial Judge's determinations in this regard.

6. These risks can only be mitigated through the continued detention of the Accused. In the Detention Review Decision, the Pre-Trial Judge found that the conditions proposed so far for conditional release are insufficient to mitigate the risks of obstruction of justice and of commission of crimes,¹⁴ and that any condition would in fact be insufficient to mitigate those risks in this case.¹⁵ Any further assurance that the Accused may give would be insufficient to overcome the concrete risks that release would cause. In these circumstances, release, with or without conditions, should not be granted.¹⁶

3. Proportionality of the continued detention

7. 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. The Pre-Trial Judge has also 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 steps of 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. Since the last detention review, the SPO has disclosed all items requested by the Defence under Rule 102(3) and has made further progress in

¹⁴ 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, *see* Detention Review Decision, KSC-BC-2020-04/F00105, para.37.

¹⁵ Detention Review Decision, KSC-BC-2020-04/F00105, paras 38, 40.

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/F00105, para.40.

obtaining clearance pursuant to Rule 107.¹⁸ Against this backdrop, Mr SHALA's 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

8. For the foregoing reasons, the SPO requests that the Pre-Trial Judge order that the Accused remain in detention.

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At The Hague, the Netherlands.

¹⁸ See Prosecution submissions for fifth status conference, KSC-BC-2020-04/F00127, 11 January 2022, paras 3, 5-6.