



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 Roland Dekkers
Judge Gilbert Bitti
Judge Vladimir Mikula, Reserve

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 12 January 2022

Language: English

Classification: Public

Public redacted version of

**'Prosecution submissions for the eighth review of detention', F00290, dated 12
January 2022**

Specialist Prosecutor's Office

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A. INTRODUCTION

1. Pursuant to Article 41(6) and (10) of the Law¹ and Rule 57(2) of the Rules,² and in compliance with the order of the Trial Panel ('Panel'),³ 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 necessary and proportionate. Grounded suspicion continues to exist.⁴ There is also 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,⁵ and that no condition would sufficiently mitigate this risk.⁶ 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 near completion of the Prosecution's case, and the evidence 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,⁷ remains. No circumstances capable of changing this finding have intervened since the Seventh Detention Review. Indeed, after hearing the evidence provided by all Prosecution witnesses who have appeared so far, this well-grounded suspicion has

¹ 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.

² 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.

³ Seventh Decision on Review of Detention, KSC-BC-2020-05/F00267, Confidential, 23 November 2021 ('Seventh Detention Review'), para.32.

⁴ Seventh Detention Review, KSC-BC-2020-05/F00267, paras 11-12.

⁵ Seventh Detention Review, KSC-BC-2020-05/F00267, paras 18-22.

⁶ Seventh Detention Review, KSC-BC-2020-05/F00267, paras 26-28.

⁷ Seventh Detention Review, KSC-BC-2020-05/F00267, para.12.

been reinforced.

ii. Risk of flight – Article 41(6)(b)(i)⁸

4. The SPO submits that the flight risk exists and remains high, for the reasons previously set out.⁹ Additionally, as the SPO has presented most of its evidence and the Accused is now well aware of the strength of its case against him, his motivation to mobilise his support network to help him flee and go into hiding, if released, is stronger than ever.

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*, the Accused exerting pressure and intimidation himself and/or in collusion with other alleged perpetrators referred to in the Indictment.¹⁰ 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 amplify the risk in question.¹¹

6. These circumstances have not changed and this risk not only remains but is elevated by the disclosure of witnesses' identities, which markedly heightens the risk

⁸ 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; Seventh Detention Review, KSC-BC-2020-05/F00267, para.15), 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.

⁹ Prosecution Submissions for the Seventh Review of Detention, KSC-BC-2020-05/F00245, 8 November 2021, para.4; Prosecution Response on the Fourth Review of Detention, KSC-BC-2020-05/F00122, 17 May 2021, para.4.

¹⁰ Seventh Detention Review, KSC-BC-2020-05/F00267, para. 18-22; Sixth Detention Review, KSC-BC-2020-05/F00215, para. 19-22; Fifth decision on review of detention, KSC-BC-2020-05/F00158, 23 July 2021, paras 20-22; Fourth decision on review of detention, KSC-BC-2020-05/F00127, 25 May 2021, paras 19-20.

¹¹ Seventh Detention Review, KSC-BC-2020-05/F00267, para.18.

of obstruction and interference by the Accused or his network. [REDACTED].¹² The Accused's continued detention thus remains necessary to mitigate the risk of interference with witnesses and victims.

7. Witness testimonies heard to date have been further demonstrative of the influence of the Accused in Kosovo and his ability to affect the witnesses, and therefore the proceedings. In this respect, the SPO refers to submissions made previously.¹³

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

8. The SPO references its previous submissions with regard to this risk.¹⁴ There is a real risk 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 increased following recent testimonies, and as the conclusion of the prosecution case approaches.

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

9. 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.

10. 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, considering the confidential material and testimonies available to the Accused. Any assurances that the Accused may give would be insufficient to sufficiently mitigate the continuing risks. In such

¹² [REDACTED]

¹³ Prosecution Submission for the Seventh Review of Detention, KSC-BC-2020-05/F00245, 8 November 2021, paras 7-9.

¹⁴ 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.

circumstances, release, with or without conditions, should not be granted.¹⁵

vi. Reasonable duration of detention

11. The Trial Panel's prior findings regarding the reasonableness of the duration of detention in this case still stand.¹⁶

12. The trial started as scheduled on 15 September 2021 with the first witnesses testifying from 20 September 2021 onwards. The last Prosecution witness is anticipated to testify in early February 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.¹⁷

C. RELIEF REQUESTED

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

Word count: 1,266



Jack Smith
Specialist Prosecutor

Wednesday, 12 January 2022

At The Hague, the Netherlands.

¹⁵ 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.

¹⁶ Seventh Detention Review, KSC-BC-2020-05/F00267, paras 29-31.

¹⁷ See e.g. SPO Order of witness testimonies for the months of January and February 2022 with Annex 1, KSC-BC-2020-05/F00268, 23 November 2021; Annex 1 to SPO Order of witness testimonies for the months of January and February, KSC-BC-2020-05/F00268/A01; Decision on the Prosecution application, KSC-BC-2020-05/F00286, 17 December 2021; Prosecution Request for Admission of Exhibits from the Direct Examination of W04674 with Confidential Annex 1, KSC-BC-2020-05/F00288, 20 December 2021; Decision on items used with witnesses W03593, W04600, W01679 and W03594 during their in-court testimony, KSC-BC-2020-05/F00285, 17 December 2021; SPO Revised Order of witness testimonies for the months of November and December 2021 with Confidential Annex 1, KSC-BC-2020-F00241, 20 October 2021,