



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: 30 March 2022

Language: English

Classification: Public

Public Redacted Version of

'Prosecution submissions for the ninth review of detention', KSC-BC-2020-05/F00339, dated 7 March 2022

Specialist Prosecutor's Office

Jack Smith

Counsel for the Accused

Julius von Bóné

Victims' Counsel

Anni Pues

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, and - although only one would suffice - each of the Article 41(6)(b) risks, continue to exist.⁴ The Accused may still obstruct the progress of the proceedings primarily by interfering with victims, witnesses, and/or their families,⁵ and measures other than detention are not capable of mitigating that.⁶ The risks of flight and of commission of further crimes⁷ also remain high. The probability of their occurrence may be substantially increased by the recent closure of the Prosecution case.⁸

B. CIRCUMSTANCES REQUIRING THAT THE ACCUSED REMAIN IN DETENTION

i. Grounded suspicion that the Accused committed crimes within the jurisdiction of the KSC – Article 41(6)(a)

3. Grounded suspicion that the Accused has committed crimes within the jurisdiction of the KSC, as repeatedly found to exist by the Panel,⁹ remains and no circumstances justifying the revision of this finding have occurred since the Eighth Detention Review. With the conclusion of the Prosecution case, and dismissal of the

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 Eighth Decision on Review of Detention, KSC-BC-2020-05/F00295, Confidential, 21 January 2022 ('Eighth Detention Review'), para.32.

⁴ Eighth Detention Review, KSC-BC-2020-05/F00295, paras 13-14.

⁵ Eighth Detention Review, KSC-BC-2020-05/F00295, paras 20-24.

⁶ Eighth Detention Review, KSC-BC-2020-05/F00295, paras 29-30.

⁷ Eighth Detention Review, KSC-BC-2020-05/F00295, paras 25-26.

⁸ Prosecution Notice of the Closing of its Case pursuant to Rule 129, KSC-BC-2020-05/F00308, 4 February 2022, Public.

⁹ Eighth Detention Review, KSC-BC-2020-05/F00295, para.14.

Defence's Rule 130 motion,¹⁰ this suspicion has only solidified.

ii. Risk of flight – Article 41(6)(b)(i)¹¹

4. As argued in previous submissions,¹² the flight risk is real, remains high, and is further increased by the recent completion of the Prosecution case, where the Accused, being now fully aware of all the inculpatory evidence, may attempt to avoid possible punishment by going into hiding, if released.

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

5. The Panel has repeatedly acknowledged the existence of a risk of obstruction of proceedings stemming from, *inter alia*: the Accused's close ties to the Kosovo intelligence apparatus, and related experience, technical knowledge and network; the Accused's knowledge of the charges; and the potential length of sentence in the event of conviction.¹³

6. Additionally, as identified by the Panel,¹⁴ witness evidence to date - including regarding witnesses W04391, W03594, W04676, W01679, W04600, W04674 and W04712 – has further exemplified the manner in which such interference could take place. The testimony of other witnesses, including W04699 and W04676, has also

¹⁰ Decision on the Defence Rule 130(1) motion to dismiss any or all charges of the Indictment, KSC-BC-2020-05/F00326, 23 February 2022.

¹¹ 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; and Eighth Detention Review, KSC-BC-2020-05/F00295, para.17), 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.

¹² Prosecution submissions for the Eighth Detention Review, KSC-BC-2020-05/F00290, 12 January 2022, para.4; 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.

¹³ Eighth Review of Detention, KSC-BC-2020-05/F00290, para.20; 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.

¹⁴ Eighth Review of Detention, KSC-BC-2020-05/F00290, paras 20-21. *See also* Prosecution submissions for the Eighth Detention Review, KSC-BC-2020-05/F00290, 12 January 2022, para.7.

described the general climate of witness interference and intimidation in Kosovo.¹⁵ This further reinforces arguments presented by the SPO in its previous submissions.¹⁶

7. The Accused's intent and ability to interfere with the criminal proceedings were demonstrated when, in the context of the UNMIK investigations regarding the murder of the victim in the present case, the Accused said to one of the witnesses: 'For as long as I am here, this case will not go ahead.'¹⁷

8. [REDACTED],¹⁸ only reinforces the notion that he poses a high risk of obstruction of proceedings. The Accused's continued detention thus also remains necessary to mitigate this risk.

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

9. The SPO references its previous submissions with regard to this risk.¹⁹ 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 the closure of the Prosecution case, and the dismissal of the Defence Rule 130 motion.²⁰

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

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

11. Detention is the only means to effectively limit the Accused's ability to flee or

¹⁵ Eighth Review of Detention, KSC-BC-2020-05/F00290, para.22.

¹⁶ Prosecution submissions for the Eighth Detention Review, KSC-BC-2020-05/F00290, 12 January 2022, para.7; Prosecution Submission for the Seventh Review of Detention, KSC-BC-2020-05/F00245, 8 November 2021, paras 7-9.

¹⁷ W04600, Transcript of Trial Hearing, KSC-BC-2020-05, 24 September 2021, pp.768-772.

¹⁸ [REDACTED]

¹⁹ 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.

²⁰ See Decision on the Defence Rule 130(1) motion to dismiss any or all charges of the Indictment, KSC-BC-2020-05/F00326, 23 February 2022.

go into hiding, obstruct the Court proceedings, and/or commit further crimes. This is especially true after the closure of the Prosecution case where the complete set of confidential material and testimonies are now available to the Accused. In such circumstances, release should not be granted as no assurances of the Accused or conditions imposed, would be sufficient to mitigate the existing risks.²¹

vi. Reasonable duration of detention

12. The Panel's prior findings regarding the reasonableness of the duration of detention in this case still stand.²²

13. The trial started on 15 September 2021, the Prosecution case was concluded on 4 February 2022, and the Defence case will likely commence already in March 2022.²³ 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 Panel.²⁴

C. RELIEF REQUESTED

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

²¹ 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.

²² Eighth Detention Review, KSC-BC-2020-05/F00295, paras 31-32.

²³ Third decision on the conduct of the proceedings, KSC-BC-2020-05/F00318, 9 February 2022, Public, para.16.

²⁴ See e.g. Second decision on the conduct of the proceedings, KSC-BC-2020-05/F00296, 21 January 2022; Decision on items used with witnesses W04603, W04669, W04676, W04391, W04390, and W04674 during their in-court testimony, KSC-BC-2020-05/F00304, 3 February 2022; Prosecution Application for Admission of remaining Material under Article 37 of the Law with Confidential Annexes 1-2, KSC-BC-2020-05/F00306, 4 February 2022; Decision on the application of Article 22(9) of the Law, setting further procedural steps in the case, and requesting information, KSC-BC-2020-05/F00310, 4 February 2022; Prosecution submissions on the conduct of the proceedings following the Defence's Rule 130(1) notice, KSC-BC-2020-05/F00316, 9 February 2022; Prosecution Response to Defence Rule 130(1) Motion to dismiss any or all charges of the Indictment, KSC-BC-2020-05/F00324; Decision on the Defence Rule 130(1) motion to dismiss any or all charges of the Indictment, KSC-BC-2020-05/F00326, 23 February 2022.



Word count: 1,395

Jack Smith
Specialist Prosecutor

Wednesday, 30 March 2022

At The Hague, the Netherlands.