

Case No.: KSC-BC-2020-04
Specialist Prosecutor v. Pjetër Shala

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 28 April 2022

Filing Party: Specialist Defence Counsel

Original Language: English

Classification: Public

THE SPECIALIST PROSECUTOR
v.
PJETËR SHALA

**Public Redacted Version of “Defence Submissions on Review of Detention
and Response to the Order of the Pre-Trial Judge”**

Specialist Prosecutor’s Office:
Jack Smith

Specialist Counsel for the Accused:
Jean-Louis Gilissen
Hédi Aouini

Counsel for Victims:
Simon Laws QC

I. INTRODUCTION

1. Pursuant to the oral order of the Pre-Trial Judge issued on 4 March 2022,¹ the Defence for Mr Pjetër Shala (*'Defence'*) requests the Pre-Trial Judge to grant him interim release pursuant to Article 41(6) of the Law and Rule 57(2) of the Rules subject to the Conditions previously proposed before the Pre-Trial Judge and the Appeals Chamber.
2. The Defence submits that Mr Shala's interim release is warranted as the Prosecution has failed to demonstrate the alleged risks under Article 41(6) of the Law No. 05/L-053 on the Specialist Chambers and Specialist Prosecutor's Office (*'Law'*) as well as any basis justifying the Accused's continued detention.
3. Mr Shala has the right to be presumed innocent and the right not to be deprived of his liberty arbitrarily. Mr Shala was arrested on 16 March 2021 and on 19 April 2021 he pleaded not guilty. To date, he has been in detention for more than one year, specifically for a total of 379 days. The Defence submits that pre-trial detention of such protracted length is neither necessary nor proportionate, given, particularly, the scale of this case.
4. The Defence invites the Pre-Trial Judge to assess the need for continued pre-trial detention on the basis of the facts and circumstances of this case. It also invites the Pre-Trial Judge to require that the Prosecution demonstrate the existence of concrete risks posed by the prospect of provisional release. The longer Mr Shala remains in pre-trial detention, the higher the burden is on the Specialist Prosecutor's Office (*'SPO'*) to justify continued detention. It is not incumbent upon Mr Shala to demonstrate that reasons warranting his release exist.²

¹ Transcript of 4 March 2022, pp. 189, 190.

² KSC-BC-2020-07, F00390, Decision on Review of Detention of Hysni Gucati, 22 October 2021, para. 13.

5. The Defence reiterates that the prolonged pre-trial detention of Mr Shala to date, his limited ability to have meaningful contact with his immediate family, the extensive witness protection regime in place as well as the availability of alternative, effective, and less restrictive measures which meet the objectives served by detention, render his detention unnecessary and disproportionate. The Defence reiterates its request for Mr Shala's immediate release subject to the conditions previously proposed or any conditions deemed appropriate.
6. Following the Appeals Chamber Decision of 11 February 2022 and pursuant to the Pre-Trial Judge's order of 14 February 2022,³ the Defence was requested to enquire into the Government of Belgium's willingness and capacity to implement the conditions of provisional release that the Defence proposes. The Defence, through the Defence Office Coordination and the Registry, contacted the relevant Belgian authorities and requested their position on this matter.⁴ On 30 March 2022, the Defence was notified by the Immediate Office of the Registrar of the response by the Belgian Federal Ministry of Justice, which noted that [REDACTED].⁵
7. [REDACTED], the Defence will not invite the Pre-Trial Judge to consider the option of house arrest in Belgium without prejudice. The Defence will focus its present submissions instead on the unlawfulness of Mr Shala's continued detention and its request for his immediate release.

II. PROCEDURAL BACKGROUND

³ KSC-BC-2020-04, F00145, Order to the Registrar to Provide Information on the Detention Regime and for Submissions on the Review of Detention of Pjetër Shala, 14 February 2022 (Order of 14 February 2022), para. 10. *See also* KSC-BC-2020-04, IA003, F00005, Decision on Pjetër Shala's Appeal Against Decision on Review of Detention, 11 February 2022 (confidential).

⁴ Letter to the Government of Belgium, 28 February 2022 (confidential).

⁵ Email to the Defence Counsel by the Registry, 30 March 2022, at 6:14 pm.

8. On 22 November 2021, the Defence appealed the Pre-Trial Judge's Decision on Review of Detention of Mr Shala of 10 November 2021.⁶
9. On 28 January 2022, the Pre-Trial Judge issued his Decision on Review of Detention of Mr Shala, in which he ordered Mr Shala's continued detention.⁷
10. On 11 February 2022, the Court of Appeals Panel issued its decision on the Defence appeal against the Decision on Review of Detention of 10 November 2021.⁸ The appeal was partly granted and the Court of Appeals Panel remanded the matter to the Pre-Trial Judge for further consideration, in order to: (i) request further submissions from the Registrar on the detention regime at the Specialist Chambers' Detention Facilities; (ii) invite the Defence to '*consult with the Belgian authorities on their willingness and capacity to enforce the Proposed Conditions, the Alternative Conditions or any other conditions*'; and (iii) '*assess whether such conditions could mitigate the identified risks*'.⁹
11. On 14 February 2022, the Pre-Trial Judge ordered the Registrar to provide submissions on the detention regime applicable to the Specialist Chambers' Detention Facilities and the Defence was instructed to provide its submissions on the next review of detention by no later than 2 March 2022.¹⁰

⁶ KSC-BC-2020-04, IA003, F00001, Defence Appeal against the Decision on Review of Detention of Pjetër Shala of 10 November 2021, 22 November 2021 (confidential), *See also* KSC-BC-2020-04, F00105, Decision on Review of Detention of Pjetër Shala, 10 November 2021, (confidential) ('Decision on Review of Detention of 10 November 2021'). A public redacted version of the Decision on Review of Detention of 10 November 2021 was issued on the same day.

⁷ KSC-BC-2020-04, F00133, Decision on Review of Detention of Pjetër Shala, 28 January 2022 (confidential), para. 50 (a).

⁸ KSC-BC-2020-04, IA003, F00005, Decision on Pjetër Shala's Appeal Against Decision on Review of Detention, 11 February 2022 (confidential).

⁹ KSC-BC-2020-04, IA003, F00005, Decision on Pjetër Shala's Appeal Against Decision on Review of Detention, 11 February 2022 (confidential), paras. 60, 61.

¹⁰ KSC-BC-2020-04, F00145, Order to the Registrar to Provide Information on the Detention Regime and for Submissions on the Review of Detention of Pjetër Shala, 14 February 2022 ('Order of 14 February 2022'), para. 11.

12. On 22 February 2022, the Registry filed its submissions pursuant to the Order of the Pre-Trial Judge of 14 February.¹¹
13. On 1 March 2022, the Defence informed the Pre-Trial Judge that Mr Shala wished to waive his right to have his detention reviewed until the position of the Belgian Government on the conditions of provisional release and/or house arrest was communicated and requested additional time for filing its submissions on the next review of detention.¹²
14. On 4 March 2022, at the Sixth Status Conference, the Pre-Trial Judge issued an oral order granting the requested extension.¹³
15. On 30 March 2022, the Defence was informed of the Belgian Government's response to its request [REDACTED].

III. SUBMISSIONS

16. At the outset, the Defence notes that it fully maintains its previous submissions on the unlawfulness of Mr Shala's continued detention.¹⁴
17. The Defence submits that remand of Mr Shala into custody is only to be used in exceptional cases of last resort where no mitigating measures are capable of addressing an identified risk posed by interim release. The presumption in favour of Mr Shala's liberty pending trial must form the basis of any assessment

¹¹ KSC-BC-2020-04, F00152, Registry Submissions Pursuant to the Order to Provide Information on the Detention Regime (F00145), 22 February 2022 (confidential).

¹² KSC-BC-2020-04, F00160, Defence Request for an Extension of Time for its Submissions on the Next Review of Detention', 1 March 2022, para. 2.

¹³ Transcript of 4 March 2022, pp. 189-190.

¹⁴ KSC-BC-2020-04, F00001, Defence Appeal against the 'Decision on Pjetër Shala's Request for Provisional Release', 28 June 2021 (confidential); KSC-BC-2020-04, IA001, F00004, Defence Reply to Prosecution Response to Appeal Against the 'Decision on Pjetër Shala's Request for Provisional Release', 19 July 2021, paras. 4-16; KSC-BC-2020-04, F00131, Defence Reponse to 'Prosecution Submissions for Third Review of Detention', 21 January 2022, paras. 18 – 32.

as to any identifiable risk and any identifiable risk must not be based on a mere possibility or speculative assumptions.

18. The Pre-Trial Judge must examine the purported justification for the protracted duration of Mr Shala's detention taking into account Rule 56(2) which provides that the Accused is not detained for an unreasonable period and that preemptive action to prevent unreasonable detention is duly considered.
19. Although a tentative date for transmitting the case-file for trial has been set by the Pre-Trial Judge,¹⁵ currently the process by which the Prosecution discloses material to the Defence has not been completed. In this regard, the Defence inevitably will require additional time to analyse the disclosed material, conduct all necessary investigations and prepare its pre-trial brief before the case-file is transmitted for trial.
20. The Defence reiterates that there is *no* requirement that there be a '*change in circumstances*' for an in depth and effective review to take place with respect to the necessity and proportionality of Mr Shala's continued detention, especially after such a protracted period of detention. The test to be applied is whether any concrete risks under Article 41(6) of the Law have been substantiated and in such case, whether such risks can be mitigated by the imposition of suitable conditions.
21. Furthermore, the Defence submits that, pursuant to Article 29(2) of the Kosovo Constitution, every person arrested must be released pending trial unless particularly serious reasons substantiate a danger to the community or a substantial risk of fleeing before trial. In this respect, the Defence reiterates that it is the Prosecution's burden to demonstrate by concrete evidence that such risks are present, real and non-speculative.

¹⁵ Transcript of 4 March 2022, p. 242, lines 9-10.

22. Without prejudice to the above, the Defence repeats the submissions it previously made in relation to the alleged risks and the clearly disproportionate nature of continued detention.¹⁶
23. Assessing the proportionality of Mr Shala's detention, requires consideration of the effects of his continued detention on Mr Shala, including the lack of regular family visits and the financial implications resulting from his detention for his family. Continued detention in these circumstances has a disproportionate effect on his right to protection of his private and family life.
24. The Defence maintains its position that suitable measures can be implemented which can sufficiently mitigate any potential risk posed by Mr Shala's interim release and repeats Mr Shala's willingness to offer extensive undertakings and be subject to such conditions, as the Pre-Trial Judge deems appropriate.

IV. RELIEF REQUESTED

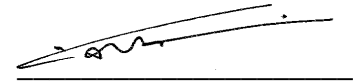
25. For the above reasons, the Defence requests the Pre-Trial Judge to end Mr Shala's continued detention and order his interim release, subject to any conditions that may be deemed necessary.

Respectfully submitted,



Jean-Louis Gilissen
Specialist Defence Counsel

¹⁶ See, for instance, KSC-BC-2020-04, F00099, Defence Response to 'Prosecution Submissions for Second Review of Detention', 1 November 2021, paras. 20-35.



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The Hague, the Netherlands

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