



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: 27 June 2022

Language: English

Classification: Public

Public Redacted Version of

**'Prosecution submissions for sixth review of detention', KSC-BC-2020-04/F00213,
dated 8 June 2022**

Specialist Prosecutor
Jack Smith

Counsel for Pjetër Shala
Jean-Louis Gilissen

Counsel for Victims
Simon Laws

I. INTRODUCTION

1. The continued detention of Pjetër SHALA ('Accused') remains necessary and proportional.¹ No new fact or circumstance has intervened capable of changing this finding since the Pre-Trial Judge reached it in the Fifth Detention Decision.²
2. Grounded suspicion that the Accused committed crimes within the jurisdiction of the Specialist Chambers ('KSC') continues to exist,³ and the risks that the Accused, if released, will abscond, obstruct the progress of the proceedings, or commit further crimes, including against witnesses who provided evidence to the SPO and/or are due to appear before the KSC, have further increased and remain high.⁴

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 whether these reasons continue to exist under Article 41(6) of the Law.⁵ That determination inevitably concerns what has changed, if anything, since the previous ruling on detention. The Pre-Trial Judge is not required to make findings on the factors already decided upon in the initial ruling on detention.⁶ The Defence has not

¹ The Defence filed no submissions, and therefore in accordance with the schedule set out by the Pre-Trial Judge, the Specialist Prosecutor's Office ('SPO') hereby files its submissions.

² See Decision on Remanded Detention Review Decision and Periodic Review of Detention of Pjetër Shala, KSC-BC-2020-04/F00188, 22 April 2022 ('Fifth Detention Decision').

³ Fifth Detention Decision, KSC-BC-2020-04/F00188, para.31.

⁴ Fifth Detention Decision, KSC-BC-2020-04/F00188, para.43.

⁵ *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.

⁶ KSC-BC-2020-07/IA002/F00005, para.55.

identified any relevant change in circumstances since the last ruling on detention, and indeed, no changes have occurred.

A. EXISTENCE OF A GROUNDED SUSPICION

4. For the reasons set forth in the Confirmation Decision⁷ and the Fifth Detention Decision,⁸ there continues to be a well-grounded suspicion that the Accused committed multiple crimes within the jurisdiction of the KSC, thereby exceeding the grounded suspicion standard required for the purposes of Article 41. There has been no development capable of changing this finding or warranting its re-examination by the Pre-Trial Judge.

B. EXISTENCE OF RISKS WARRANTING CONTINUED DETENTION PURSUANT TO ARTICLE 41(6)(B) OF THE LAW

5. The Pre-Trial Judge concluded in his last detention decision that all three of the risks listed under Article 41(6)(b) continued to exist.⁹ This finding was based on concrete grounds and ample evidence. Indeed, each of the Article 41(6)(b) risks increased since the Fifth Detention Decision, with proceedings continuing to move forward towards transfer of the case to a Trial Panel and the start of the trial.

6. In addition to the established factors previously identified by the Pre-Trial Judge,¹⁰ and which continue to apply, relevant factors in this regard include the [REDACTED] who corroborate the Accused's involvement and important role in the commission of the crimes charged in this case.

⁷ 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.

⁸ Fifth Detention Decision, KSC-BC-2020-04/F00188, paras 30-31.

⁹ Fifth Detention Decision, KSC-BC-2020-04/F00188, para.43.

¹⁰ Fifth Detention Decision, KSC-BC-2020-04/F00188, paras 35, 37-38, 40, 42.

7. No circumstance has intervened capable of modifying the reasons underlying the Pre-Trial Judge's determinations with regard to these risks.
8. The risks can only be mitigated and effectively managed through the continued detention of the Accused at the KSC's Detention Facilities. In the Fifth Detention Decision, the Pre-Trial Judge found that the Proposed Conditions, house arrest, and any additional conditions for release imposed by the Pre-Trial Judge are insufficient to mitigate the risks of obstruction or of commission of crimes,¹¹ and that only through the communication monitoring framework applicable at the KSC's Detention Facilities the Accused's communications can be restricted in a manner to sufficiently mitigate the risks.¹² This continues to be the case.
9. Under these circumstances, the only effective means to mitigate the risks found to exist by the Pre-Trial Judge is the Accused's continued detention at the KSC's Detention Facilities.

C. PROPORTIONALITY OF THE CONTINUED DETENTION

10. 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 risks under Articles 41(6) of the Law cannot be mitigated outside the Detention Facilities. Moreover, the Pre-Trial Judge has already scheduled the transmission of the case file to the Trial Panel for August 2022. Since the last detention review, the SPO has continued to discharge its disclosure obligations, including the fulfilment of remaining pre-trial disclosure

¹¹ Fifth Detention Decision, KSC-BC-2020-04/F00188, para.52.

¹² Fifth Detention Decision, KSC-BC-2020-04/F00188, para.52.

obligations on 27 May 2022. Against this backdrop, the Accused's continued detention remains justified and proportional.

III. CLASSIFICATION

11. This filing is classified as confidential as it contains reference to the content of confidential filings. A public redacted version will follow.

IV. RELIEF REQUESTED

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

Word Count: 828



Jack Smith

Specialist Prosecutor

Monday, 27 June 2022
At The Hague, the Netherlands.