

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 29 June 2022

Filing Party: Defence Counsel

Original Language: English

Classification: Public

THE SPECIALIST PROSECUTOR
v.
PJETËR SHALA

Public Redacted Version of
Defence Response to “Prosecution submissions for sixth review of detention”

Specialist Prosecutor’s Office:
Jack Smith

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

Counsel for Victims
Simon Laws QC
Maria Radziejowska

I. INTRODUCTION

1. The Defence for Mr Pjetër Shala (“Defence”) files its Response to the “Prosecution submissions for sixth review of detention” pursuant to the “Decision on Remanded Detention Review Decision and Periodic Review of Detention of Pjetër Shala”.¹
2. The Defence submits that Mr Shala’s interim release is warranted as the Specialist Prosecutor’s Office (“SPO”) has failed to substantiate the alleged risks under Article 41(6) of Law No. 05/L-053 on the Specialist Chambers and Specialist Prosecutor’s Office (“KSC Law”).
3. Mr Shala was arrested on 16 March 2021. On 19 April 2021, he pleaded not guilty.² To date, he has been in detention for a total of one year, two months and thirty days. The Defence submits that pre-trial detention of such protracted length is neither necessary nor proportionate in the circumstances.
4. It is the position of the Defence that the Pre-Trial Judge should conduct an effective review of the lawfulness of continued detention and require the SPO to demonstrate the necessity of detention on the basis of existing and serious risks posed by the prospect of provisional release.

II. PROCEDURAL BACKGROUND

¹ KSC-BC-2020-04, F00213, Prosecution submissions for sixth review of detention, 8 June 2022 (confidential)(“Prosecution Submissions”); KSC-BC-2020-04, F00188, Decision on Remanded Detention Review Decision and Periodic Review of Detention of Pjetër Shala, 22 April 2022, (confidential)(“Detention Review Decision dated 22 April 2022”), para. 59(d). All further references to filings in this Response concern Case No. KSC-BC-2020-04 unless otherwise indicated.

² Transcript of 19 April 2021, p. 11.

5. The relevant procedural background is set out in the Pre-Trial Judge's Detention Review Decision dated 22 April 2022.³
6. On 4 May 2022, the Defence appealed the Pre-Trial Judge's Detention Review Decision dated 22 April 2022.⁴ On 16 May 2022, the SPO filed its Response and on 30 May 2022 the Defence replied.⁵

III. SUBMISSIONS

7. At the outset, the Defence notes that it fully maintains its previous submissions on the unlawfulness of Mr Shala's continued detention.⁶
8. The Defence submits that detention on remand should be the exception and be strictly necessary and allowed only in cases where no alternative measures can mitigate a risk posed by interim release. The presumption in favour of Mr Shala's innocence and his right to liberty pending trial must form the basis of any assessment as to the existence of any real and serious risk posed by interim release.

³ Detention Review Decision dated 22 April 2022, paras. 1-11.

⁴ IA005/F00001, Defence Appeal Against the Pre-Trial Judge's Decision on Review of Detention of Pjetër Shala dated 22 April 2022 (confidential)("Appeal dated 4 May 2022").

⁵ IA005/F00003, Prosecution response to "Defence Appeal against the Pre-Trial Judge's Decision on Review of Detention of Pjetër Shala dated 22 April 2022", 16 May 2022 (confidential); IA005/F00004, Defence Reply to Response to Appeal Against the Pre-Trial Judge's Decision on Review of Detention of Pjetër Shala dated 22 April 2022, 23 May 2022 (confidential), paras. 4-14.

⁶ Appeal dated 4 May 2022, paras. 14-47; IA005/F00004, Defence Reply to Response to Appeal Against the Pre-Trial Judge's Decision on Review of Detention of Pjetër Shala dated 22 April 2022, 23 May 2022 (confidential), paras. 4-14; IA001/F00001, Defence Appeal against the "Decision on Pjetër Shala's Request for Provisional Release", 28 June 2021 (confidential); 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; F00131, Defence Response to "Prosecution Submissions for Third Review of Detention", 21 January 2022, paras. 18-32.

9. The SPO impermissibly shifts the burden of proof to the Defence, arguing that the latter has not “identified any relevant change in circumstances since the last ruling on detention”.⁷
10. The SPO misrepresents the applicable standard which requires that the prosecution “bears the burden of establishing that the detention of the Accused is necessary”. It is firmly established that “the SPO must provide specific arguments and concrete evidence to establish that continued detention is necessary at the time of the review”.⁸
11. 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 the SPO has failed to demonstrate by concrete evidence that such risks are present, real, and existing. Article 41(6)(b) requires evidence meeting a high standard to rebut the presumption of interim release pending trial (see for instance: “will destroy, hide, change or forge evidence”, “will obstruct the progress of criminal proceedings by influencing witnesses, victims or accomplices”, “will repeat the criminal offence”).
12. Without even attempting to justify its assertions, the SPO submits that “each of the Article 41(6)(b) risks increased” since the Detention Review Decision dated 22 April 2022.⁹ The SPO tries to present “increased risks” as an automatic consequence of the advancement of the proceedings (“with proceedings continuing to move forward towards transfer of the case to a Trial Panel and the start of the trial” and due to the “recent disclosure of the evidence of additional witnesses”). The SPO fails to link specific evidentiary material to specific risks

⁷ Prosecution Submissions, para. 3.

⁸ Detention Review Decision dated 22 April 2022, para. 25.

⁹ Prosecution Submissions, para. 5.

and to Mr Shala's conduct.¹⁰ The SPO equally fails to identify any concrete risk or interference with any protected witness since Mr Shala's arrest. In the absence of concrete evidence substantiating the alleged risks, the protracted length of Mr Shala's detention on remand is no longer justified.

13. Without prejudice to the above, the Defence repeats the submissions it previously made in relation to the alleged risks and the disproportionate nature of Mr Shala's continued detention.¹¹
14. Assessing the proportionality of Mr Shala's detention requires consideration of the effects of continued detention on Mr Shala, including the lack of regular family visits and the financial implications resulting from his detention for his family. What *has* changed, since the last ruling on detention of 22 April 2022, is the significant passage of time, a factor requiring specific consideration as to the interference with Mr Shala's rights to liberty and protection of his private and family life.
15. The Defence reiterates that assuming that any accused awaiting trial could be held for as long as the trial might last on account of "unchanged" circumstances is plainly wrong and profoundly unjust. The lack of an effective review is in breach of the Accused's right to be presumed innocent and not to be deprived of his liberty arbitrarily. As the Pre-Trial Judge acknowledged in the Detention Review Decision dated 22 April 2022, "the duration of time in detention pending trial is a factor that needs to be considered along with the degree of the risks that are described in Article 41(6)(b) of the KSC Law, in order to determine whether,

¹⁰ Prosecution Submissions, paras. 5, 6, 10.

¹¹ See for instance F00171, Defence Submissions on Review of Detention and Response to the Order of the Pre-Trial Judge, 30 March 2022 (confidential), paras. 22-24; F00099, Defence Response to 'Prosecution Submissions for Second Review of Detention', 1 November 2021, paras. 20-35.

all factors being considered, the continued detention ‘stops being reasonable’ and the individual needs to be released”.¹²

16. 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. CLASSIFICATION


17. Pursuant to Rule 82(3) and 82(4) of the Rules, the present Response is filed as confidential as it relates to confidential filings.

V. RELIEF REQUESTED

18. For the above reasons, the Defence respectfully requests the Pre-Trial Judge to bring an end to Mr Shala’s continued detention and order his interim release or placement in house arrest at his residence in [REDACTED] subject to any conditions that are deemed appropriate.

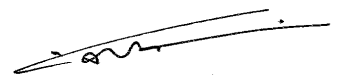
Word Count: 1321

Respectfully submitted,



Jean-Louis Gilissen
Specialist Defence Counsel

¹² Detention Review Decision dated 22 April 2022.



Hédi Aouini

Defence Co-Counsel

Wednesday, 29 June 2022

The Hague, the Netherlands