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SPECIALIST PROSECUTOR'S OFFICE
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| **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:** | 5 September 2022 |
| **Language**: | English |
| **Classification**: | Public |

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# Prosecution submissions for the twelfth review of detention

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## A. INTRODUCTION

1. Pursuant to Article 41(6) and (10) of the Law[1] 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 twelfth submission 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 risk.[6] The risks of flight and of commission of further crimes[7] also remain high. The probability of their occurrence is substantially increased by the impending conclusion of the case marked by the closure of the Prosecution case,[8] the closure of the Defence case, [9] the closure of evidentiary proceedings,[10] the filing of final trial briefs,[11] and the scheduling of closing statements.[12] No new circumstances exist, only additional factors militating in favour of continued detention.[13]

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[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] Eleventh Decision on Review of Detention, KSC-BC-2020-05/F00454/RED, Public redacted version, 20 July 2022 ('Eleventh Detention Review'), para.30(b).
[4] Eleventh Detention Review, KSC-BC-2020-05/F00454/RED, paras 15-22.
[5] Eleventh Detention Review, KSC-BC-2020-05/F00454/RED, para.16.
[6] Eleventh Detention Review, KSC-BC-2020-05/F00454/RED, para.25.
[7] Eleventh Detention Review, KSC-BC-2020-05/F00454/RED, paras 20-21.
[8] Prosecution Notice of the Closing of its Case pursuant to Rule 129, KSC-BC-2020-05/F00308, Public, 4 February 2022.
[9] Defence Rule 131 Notice to close the Defence case, KSC-BC-2020-05/F00421, Public, 26 May 2022 ('Defence Rule 131 Notice').
[10] Decision on the closing of the evidentiary proceedings and related matters, KSC-BC-2020-05/F00439, Public, 20 June 2022 ('Decision on closing of evidentiary proceedings'), para.25(a).
[11] Corrected version of 'Prosecution Final Trial Brief pursuant to Rule 134(b) with Confidential Annex 1 and Public Annex 2', KSC-BC-2020-05/F00459/COR, 22 July, 2022; Corrected version of the Defense Final Trial Brief with Confidential Annex 1, KSC-BC-2020-05/F00457/COR, 21 July 2022.
[12] Decision on closing of evidentiary proceedings, KSC-BC-2020-05/F00439, paras 22 and 25(e).
[13] *See below*, paras 3-13.

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,[14] remains and no circumstances justifying the revision of this finding have occurred since the Eleventh Detention Review. After having adduced all the evidence in the case, the Prosecution avers that this suspicion has not only solidified, but the required threshold has been surpassed.

ii. Risk of flight – Article 41(6)(b)(i)[15]

4. As argued in previous submissions,[16] the flight risk is real, remains high, and is further increased by the conclusion of the evidentiary proceedings. Thus the Accused, being now fully aware of the evidentiary record, may attempt to avoid possible punishment by going into hiding, if released. The immediacy of the forthcoming verdict additionally heightens the risk of flight by the Accused, an individual with considerable intelligence experience,[17] and a network of loyal supporters, including veteran contacts.[18]

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[14] Eleventh Detention Review, KSC-BC-2020-05/F00454/RED, paras 12-13.

[15] 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; Eighth Detention Review, KSC-BC-2020-05/F00295, para.17; Ninth Detention Review, KSC-BC-2020-05/F00355, para.17, Tenth Detention Review, KSC-BC-2020-05/F00411, para.15, and Eleventh Detention Review, KSC-BC-2020-05/F00454/RED, 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.

[16] *See e.g.* Prosecution submission for the Eleventh Detention Review, KSC-BC-2020-05/F00447, para.4; Prosecution submission for the Tenth Detention Review, KSC-BC-2020-05/F00400, 29 April 2022, para.4; Prosecution submission for the Ninth Detention Review, KSC-BC-2020-05/F00339, 7 March 2022, para.4; Prosecution submissions for the Eighth Detention Review, KSC-BC-2020-05/F00290, 12 January 2022, para.4.

[17] Eleventh Detention Review, KSC-BC-2020-05/F00454/RED, paras 16-17.

[18] *See e.g.* KSC-BC-2020-05 Trial Hearing, 23 March 2022, T.2697, 2714.

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, his professional experience, technical knowledge and network, his awareness of the charges, and the potential length of sentence in the event of conviction.[19]

6. Additionally, as identified by the Panel,[20] the evidence of multiple witnesses has further exemplified the manner in which such interference could take place. Of particular relevance is also the pervasive, general climate of witness interference and intimidation in Kosovo, as explained by several witnesses.[21] This further reinforces arguments presented by the SPO in its previous submissions,[22] and strongly militates for the Accused's continued detention to mitigate the aforementioned risk.

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

7. The SPO references its previous submissions with regard to this risk, which were based on concrete factors specific to the Accused.[23] There is a real risk that, if released, the Accused will commit further crimes, including crimes against the

[19] Eleventh Detention Review, KSC-BC-2020-05/F00454/RED, paras 16-19; Tenth Detention Review, KSC-BC-2020-05/F00411, para.16-19; Ninth Detention Review, KSC-BC-2020-05/F00355, paras 18-25, 27; Eighth Review of Detention, KSC-BC-2020-05/F00290, para.20; Seventh Detention Review, KSC-BC-2020-05/F00267, paras 18-22; Sixth Detention Review, KSC-BC-2020-05/F00215, paras 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.

[20] Eleventh Detention Review, KSC-BC-2020-05/F00454/RED, para.16; Tenth Detention Review, KSC-BC-2020-05/F00411, para.16; Ninth Detention Review, KSC-BC-2020-05/F00355, para.17; Eighth Review of Detention, KSC-BC-2020-05/F00290, paras 20-21. *See also* Prosecution submission for the Ninth Detention Review, KSC-BC-2020-05/F00339, para.6; Prosecution submissions for the Eighth Detention Review, KSC-BC-2020-05/F00290, 12 January 2022, para.7.

[21] Eleventh Detention Review, KSC-BC-2020-05/F00454/RED, para.17; Tenth Detention Review, KSC-BC-2020-05/F00411, para.17; Ninth Detention Review, KSC-BC-2020-05/F00355, para.21; Eighth Review of Detention, KSC-BC-2020-05/F00290, para.22.

[22] *See e.g.* Prosecution submission for the Eleventh Detention Review, KSC-BC-2020-05/F00447, para.6; Prosecution submission for the Tenth Detention Review, KSC-BC-2020-05/F00400, para.6; Prosecution submission for the Ninth Detention Review, KSC-BC-2020-05/F00339, para.6; Prosecution submissions for the Eighth Detention Review, KSC-BC-2020-05/F00290, 12 January 2022, para.7.

[23] 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.

administration of justice over which the KSC has jurisdiction pursuant to Article 15 of the Law. The risk of committing further crimes has only increased following the closure of the evidentiary proceedings, and in view of the forthcoming conclusion of the case, and the expected verdict.[24]

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

8. The aforementioned objective and real risks exist and, at this significantly advanced stage of the proceedings, can only be effectively managed in detention.[25]

9. 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 after the closure of the evidentiary proceedings, like in this case. Another relevant factor is the imminence of the Panel's verdict. 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.[26]

vi. Reasonable duration of detention

10. The Panel's prior findings regarding the reasonableness of the duration of detention in this case still stand.[27]

11. The proceedings in this case have progressed at a reasonable pace: the trial started on 15 September 2021, the Prosecution and Defence cases were concluded on 4 February and 26 May 2022 respectively,[28] and the evidentiary proceedings were concluded on 20 June 2022. The Final Trial Briefs were submitted on 21 July 2022 with

[24] *See* Decision on closing of evidentiary proceedings, KSC-BC-2020-05/F00439, para.25(a).
[25] Eleventh Detention Review, KSC-BC-2020-05/F00454/RED, para.26.
[26] Eleventh Detention Review, KSC-BC-2020-05/F00454/RED, paras 23-26. *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.
[27] Eleventh Detention Review, KSC-BC-2020-05/F00454/RED, paras 27-29; Tenth Detention Review, KSC-BC-2020-05/F00411, paras 27-29; Ninth Detention Review, KSC-BC-2020-05/F00355, paras 36-37; Eighth Detention Review, KSC-BC-2020-05/F00295, paras 31-32.
[28] Third decision on the conduct of the proceedings, KSC-BC-2020-05/F00318, 9 February 2022, Public, para.16.

closing statements scheduled for 13-16 September 2022.[29] In addition, the Rules regulate the timeline for pronouncement of the trial judgment.[30] 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.[31]

C. RELIEF REQUESTED

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

**Word count: 1,610**

**Jack Smith**
**Specialist Prosecutor**

Monday, 5 September 2022

At The Hague, the Netherlands.

[29] Prosecution Final Trial Brief pursuant to Rule 134(b) with Confidential Annex 1 and Public Annex 2, KSC-BC-2020-05/F00459, 21 July, 2022; Defence Final Trial Brief with Confidential Annex 1, KSC-BC-2020-05/F00457, 21 July 2022; Public redacted version of Decision setting the agenda for the hearing on the closing statements and related matters, KSC-BC-2020-05/F00468/RED, 31 August 2022, para.7.

[30] Rule 159(1).

[31] *See e.g.* Decision on the closing of evidentiary proceedings and related matters, KSC-BC-2020-05/F00439, 20 June 2022; SPO and Defence Final Trial Briefs, *supra* footnote 11; Public redacted version of Decision setting the agenda for the hearing on the closing statements and related matters, KSC-BC-2020-05/F00468/RED, 31 August 2022.