



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 Party: Specialist Prosecutor

Date: 9 September 2022

Language: English

Classification: Public

Public Redacted Version of

'Prosecution submissions for seventh review of detention', KSC-BC-2020-04/F00264, dated 5 September 2022

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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 Sixth Detention Decision.² Rather, the Court of Appeals Panel has upheld the Pre-Trial Judge's conclusion that the risk of obstruction continues to exist³ and endorsed his assessment that SHALA's ongoing detention is proportionate.⁴
2. Grounded suspicion that the Accused committed crimes within the jurisdiction of the Specialist Chambers ('KSC') continues to exist,⁵ and the risks that the Accused, if released, will abscond, obstruct the proceedings, or commit further crimes, including against witnesses who provided evidence to the SPO and/or are due to appear before the KSC, remain high.⁶

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 they continue to exist under Article 41(6) of the Law.⁷ The SPO bears the burden of

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 Review of Detention of Pjetër Shala, KSC-BC-2020-04/F00224, 22 June 2022, confidential ('Sixth Detention Decision').

³ Decision on Pjetër Shala's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-04/IA005/F00005, 19 July 2022, confidential ('Third Appeal Decision'), paras 29, 31. Considering that the conditions set forth in Article 41(6)(b) of the Law are alternative to each other, the Appeals Panel did not deem necessary to address the risk of committing further crimes: see Third Appeal Decision, KSC-BC-2020-04/IA005/F00005, para.32.

⁴ Third Appeal Decision, KSC-BC-2020-04/IA005/F00005, paras 40-41.

⁵ Sixth Detention Decision, KSC-BC-2020-04/F00224, paras 24-25.

⁶ Sixth Detention Decision, KSC-BC-2020-04/F00224, para.40.

⁷ *Prosecutor v. Gucati and Haradinaj*, Decision on Nasim Haradinaj's Appeal Against Decision Reviewing Detention, KSC-BC-2020-07/IA002/F00005, 9 February 2021, public, para.55.

establishing that the detention of the Accused remains necessary at the time of the review and must provide specific arguments and concrete evidence to that effect.⁸

A. EXISTENCE OF A GROUNDED SUSPICION

4. The Pre-Trial Judge found in the Confirmation Decision that there is a well-grounded suspicion that the Accused committed multiple crimes within the jurisdiction of the KSC.⁹ This finding was made on the basis of a standard exceeding that required for the purposes of Article 41(6)(a) of the Law. In his last review of detention, the Pre-Trial Judge confirmed that a grounded suspicion continued to exist.¹⁰ Since then, 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) of the Law continued to exist.¹¹ This finding was based on concrete grounds and ample evidence.¹² The Court of Appeals Panel agreed with the Pre-Trial Judge's assessment.¹³ In addition to these established factors, which continue to apply, relevant additional factors include the SPO's

⁸ Third Appeal Decision, KSC-BC-2020-04/IA005/F00005, para.18; Sixth Detention Decision, KSC-BC-2020-04/F00224, para.19.

⁹ Confidential Redacted Version of the Decision on the Confirmation of the Indictment Against Pjetër Shala, KSC-BC-2020-04/F00007/CONF/RED, 6 May 2021, confidential.

¹⁰ Sixth Detention Decision, KSC-BC-2020-04/F00224, paras 24-25.

¹¹ Sixth Detention Decision, KSC-BC-2020-04/F00224, para.40.

¹² Sixth Detention Decision, KSC-BC-2020-04/F00224, paras 30, 33-34, 39.

¹³ Third Appeal Decision, KSC-BC-2020-04/IA005/F00005, paras 29, 31-32. The Court of Appeals Panel dismissed SHALA's second and third grounds of appeal concerning the risk of flight considering that the Pre-Trial Judge's conclusion that his detention should continue was not based on this factor: *see* Third Appeal Decision, KSC-BC-2020-04/IA005/F00005, para.22.

addition to its witness list of W04305,¹⁴ who provides evidence relevant to [REDACTED], the imminent transfer of the case file to the Trial Panel on 21 September 2022,¹⁵ [REDACTED],¹⁶ and Mr. SHALA's increased insight into the case against him.

6. With particular regard to the risk of obstruction, Mr. SHALA's [REDACTED],¹⁷ an assessment endorsed by the Court of Appeals Panel.¹⁸ These statements must be considered in the context of the broader climate of witness intimidation and interference in Kosovo, which the Trial Panel in the *Gucati and Haradinaj* case recently confirmed continues to exist.¹⁹ The Trial Panel found beyond reasonable doubt that Hysni Gucati and Nasim Haradinaj, by publicly revealing confidential information about protected witnesses, 'contributed to and amplified the serious fears and concerns of many of those who gave evidence to the SC/SPO or who were likely to do so'.²⁰ [REDACTED], considered against the backdrop of this persistent climate of intimidation, show that there remains a high risk that Mr. SHALA may obstruct the progress of SC proceedings if he is released.
7. In light of these circumstances, the risks under Article 41(6)(b) of the Law continue to exist, and SHALA's detention remains necessary.

¹⁴ Decision on Specialist Prosecutor's Rule 102(2) and Related Requests, KSC-BC-2020-04/F00234, 20 July 2022, confidential ('Decision on Rule 102(2) and Related Requests'); Submission of amended witness and exhibit lists with strictly confidential and *ex parte* Annexes 1-2 and confidential redacted Annexes 3-4, KSC-BC-2020-04/F00243, 29 July 2022, public, with strictly confidential and *ex parte* Annexes 1-2, and confidential redacted Annexes 3-4.

¹⁵ Decision on Rule 102(2) and Related Requests, KSC-BC-2020-04/F00234, para.46(f).

¹⁶ [REDACTED].

¹⁷ Sixth Detention Decision, KSC-BC-2020-04/F00224, paras 33-34.

¹⁸ Third Appeal Decision, KSC-BC-2020-04/IA005/F00005, para.29.

¹⁹ *Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2020-07/F00611/RED, 18 May 2022, public, paras 577-579 ('Gucati and Haradinaj Trial Judgment').

²⁰ Gucati and Haradinaj Trial Judgment, KSC-BC-2020-07/F00611/RED, paras 581, 585.

8. These risks can only be mitigated and effectively managed through the continued detention of the Accused at the KSC's Detention Facilities. In the Sixth Detention Decision, the Pre-Trial Judge found that the conditions proposed by the Defence, and any additional conditions for release imposed by the Pre-Trial Judge, are insufficient to mitigate the risks of obstructing the progress of KSC proceedings or committing further crimes,²¹ and that only through the communication monitoring framework applicable at the KSC's Detention Facilities the Accused's communications can be restricted so as to sufficiently mitigate the risks.²² The Court of Appeals Panels endorsed the Pre-Trial Judge's assessment.²³
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 Article 41(6)(b) 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 21 September 2022. Since the last detention review, the SPO has continued to discharge its disclosure obligations, including the fulfilment of remaining pre-trial disclosure obligations. Against this backdrop, the Accused's continued detention remains justified and proportional.

²¹ Sixth Detention Decision, KSC-BC-2020-04/F00224, paras 44, 48.

²² Sixth Detention Decision, KSC-BC-2020-04/F00224, para.48.

²³ Third Appeal Decision, KSC-BC-2020-04/IA005/F00005, paras 33-34.

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: 1,214



Jack Smith

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Friday, 9 September 2022
At The Hague, the Netherlands.