

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 26 September 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 seventh review of detention”

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Simon Laws QC
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I. INTRODUCTION

1. The Defence for Mr Pjetër Shala (“Defence”) files its Response to the “Prosecution submissions for seventh review of detention” pursuant to the Pre-Trial Judge’s instructions set out in his decision dated 2 August 2022.¹
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 approximately one and a half years. The Defence submits that pre-trial detention of such protracted length is neither necessary nor proportionate in the circumstances. Mr Shala should be released.

II. PROCEDURAL BACKGROUND

4. The relevant procedural background is set out in the Pre-Trial Judge’s Decision on Review of Detention of Pjetër Shala issued on 22 June 2022.³
5. On 19 July 2022, the Court of Appeals Panel denied the Defence Appeal Against the Pre-Trial Judge’s Decision on Review of Detention of Pjetër Shala dated 22 April 2022.⁴

¹ KSC-BC-2020-04, F00264, Prosecution submissions for seventh review of detention, 5 September 2022 (confidential)(“Prosecution Submissions”); KSC-BC-2020-04, F00245, Decision on Defence Request for Extension of Time for Submissions on Review of Detention, 2 August 2022 (“Decision on Extension Request”), para. 9(c). All further references to filings in this Response concern Case No. KSC-BC-2020-04 unless otherwise indicated.

² T. 19 April 2021 p. 11.

³ F00224, Decision on Review of Detention of Pjetër Shala, 22 June 2022 (confidential)(“Review of Detention Decision dated 22 June 2022”), paras. 1-9.

⁴ IA005, F00001, Defence Appeal Against the Pre-Trial Judge’s Decision on Review of Detention of Pjetër Shala dated 22 April 2022, 4 May 2022 (confidential)(“Appeal dated 4 May 2022”); IA005, F00005,

6. On 30 July 2022, Mr Shala waived his right pursuant to Article 41 of the KSC Law to have the lawfulness of his detention reviewed before the 22nd of August 2022, for a period of 5 weeks.⁵
7. On 2 August 2022, the Pre-Trial Judge granted the Defence's request for an extension of time to file submissions on the next review of detention by 26 August 2022; should Mr Shala decide not to file any submissions by that time, the Pre-Trial Judge ordered the SPO to file submissions on the next review of detention by 5 September 2022 and Mr Shala to respond by 12 September 2022.⁶
8. On 5 September 2022, the SPO filed the Prosecution Submissions on the next review of detention.⁷

III. SUBMISSIONS

9. At the outset, the Defence notes that it fully maintains its previous submissions on the unlawfulness of Mr Shala's continued detention.⁸
10. The Defence reiterates that 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

Decision on Pjetër Shala's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, 19 July 2022 (confidential) ("Appeal Decision dated 19 July 2022").

⁵ F00244, Submission in Support of the Request for an Extension of Time to Submit the Defence Observations on Next Review of Detention with Strictly Confidential Annex, 30 July 2022, paras. 3, 4; *see also* F00244, A01, Annex to Submission in Support of the Request for an Extension of Time to Submit the Defence Observations on Next Review of Detention, 1 August 2022 (strictly confidential).

⁶ Decision on Extension Request, para. 9 (b) and (c); *referring to* F00240, Defence Request for an Extension of Time for its Submissions on Review of Detention, 27 July 2022.

⁷ Prosecution Submissions.

⁸ F00221, Defence Response to "Prosecution Submissions for Sixth Review of Detention", 15 June 2022 (confidential), paras. 7-16; Appeal dated 4 May 2022, paras. 14-37; 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, 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.

the existence of any real and serious risk posed by interim release. The right to liberty should be the rule and detention on remand the exception, allowed only when strictly necessary and in cases where no alternative measures can mitigate a risk posed by interim release.

11. The obligation to justify Mr Shala's continued detention requires the SPO to provide specific arguments ("articulable grounds") and concrete evidence establishing that detention is necessary at the time of the review.⁹
12. Without linking specific evidence to Mr Shala's personal conduct to substantiate the existence of the Article 41(6) risks, the SPO merely: (i) submits that all three of the risks listed under Article 41(6)(b) of the KSC Law continue to exist, repeatedly referring to the Review of Detention Decision dated 22 June 2022 and the Appeal Decision dated 19 July 2022;¹⁰ and (ii) refers to developments in the case including the addition of W04305 to the SPO's witness list, the imminent transfer of the case to the Trial Panel and "imminent disclosure of the [REDACTED] witnesses" along with Mr Shala's increased insight into the case against him.¹¹
13. The Defence reiterates that the advancement of the proceedings and anticipated disclosure of the [REDACTED] witnesses, inherently involve Mr Shala's increased insight into the evidence disclosed but do not generate, let alone, increase the required risks and are certainly not capable of satisfying the applicable evidentiary standard for detention.¹²

⁹ 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. 25.

¹⁰ Prosecution Submissions, paras. 5, 6.

¹¹ Prosecution Submissions, para. 5.

¹² See, for instance, F00221, Defence Response to "Prosecution submissions for sixth review of detention", 15 June 2022 (confidential), para. 12.

14. With respect to the addition of W04305 to the SPO's witness list, the SPO should have indicated how such evidence incriminates Mr Shala, other than generically stating that W04305 [REDACTED].¹³ As the Defence has recently submitted, the evidence of W04350 is controversial; widespread inconsistencies between the respective accounts of the SPO's witnesses undermine the allegation that W04350 corroborates other proposed evidence, while the probative value of the purported identification of Mr Shala is considerably weakened by the fact that Mr Shala was not the only person referred to as "wolf".¹⁴
15. With respect to the risk of obstruction, the SPO cites Mr Shala's [REDACTED] and states that his [REDACTED] 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."¹⁵
16. The Defence submits that the SPO fails to substantiate the personal participation of Mr Shala in such "climate". Such imputed conduct is a mere speculation. Generic assertions on the basis of findings relevant to the facts of other proceedings should not suffice for a standard as strict and high as the standard imposed by Article 41(6)(b) of the KSC Law.
17. Moreover, the Defence reiterates that the extensively cited [REDACTED] must not be equated to any direct or indirect attempt to influence or attempt to influence any protected witness in this case. Mr Shala's [REDACTED]. Importantly, the [REDACTED].¹⁶

¹³ Prosecution Submissions, para. 5.

¹⁴ F00229, Response to the "Prosecution request pursuant to Rule 102(2), to amend its witness and exhibit lists, and for protective measures", 4 July 2022 (confidential), paras. 27-32.

¹⁵ Prosecution Submissions, para. 6.

¹⁶ See, *inter alia*, IA001, F00001, Defence Appeal against the "Decision on Pjetër Shala's Request for Provisional Release", 28 June 2021 (confidential), paras. 32, 33.

18. In the absence of concrete evidence substantiating the alleged risks, the protracted length of Mr Shala's detention on remand is not justified.
19. 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.¹⁷
20. The SPO fails to show that Mr Shala's continued detention is proportionate.¹⁸ The longer a person remains in pre-trial detention the higher the burden is on the SPO to justify continued detention.¹⁹
21. Assessing the proportionality of Mr Shala's detention requires consideration of the effects of continued detention on Mr Shala, including as to the interference with his rights to liberty and protection of his private and family life. Passage of time, including time passed since the last ruling on detention of 22 June 2022, is a significant a factor the SPO does not even attempt to address.²⁰
22. 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.²¹ 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,

¹⁷ 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.

¹⁸ Prosecution Submissions, para. 10.

¹⁹ Appeal Decision dated 19 July 2022, para. 37 and references cited therein.

²⁰ Prosecution Submissions, para. 10.

²¹ See, for instance, F00221, Defence Response to "Prosecution submissions for sixth review of detention", 15 June 2022 (confidential), para. 15.

all factors being considered, the continued detention ‘stops being reasonable’ and the individual needs to be released.”²²

23. The Defence maintains its position that suitable measures can be implemented which can sufficiently mitigate any potential risk factors 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

24. Pursuant to Rule 82(3) and 82(4) of the Rules,²³ the present Response is filed as confidential as it relates to confidential filings.

V. RELIEF REQUESTED

25. 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 Belgium subject to any conditions that are deemed appropriate.

Word Count: 1861

Respectfully submitted,



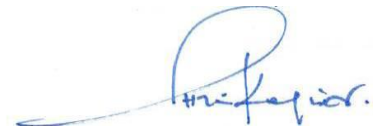
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²² Detention Review Decision dated 22 April 2022, para. 22.

²³ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”).



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Monday, 26 September 2022

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