



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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

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Prosecution submissions for the thirteenth review of detention

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A. INTRODUCTION

1. Pursuant to Article 41(6) and (10) of the Law¹ 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 thirteenth submission on the review of detention of Salih MUSTAFA ('Accused').

2. The Accused's continued detention remains necessary and proportionate.⁴ Grounded suspicion, and the risks enumerated in Article 41(6)(b), continue to exist.⁵ Despite the closure of the case against the Accused,⁶ he may still obstruct the progress of the proceedings, including possible appeals proceedings, by interfering with victims, witnesses, and/or their families.⁷ The risks of flight and of commission of further crimes⁸ are still present and remain high. At the same time, no new circumstances have intervened since the Twelfth Detention Review that would necessitate the revision of the previous findings of the Panel regarding its risk assessment.⁹

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,¹⁰ remains and there

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 Twelfth Decision on Review of Detention, KSC-BC-2020-05/F00482/RED, Public redacted version, 20 September 2022 ('Twelfth Detention Review'), para.30(b).

⁴ Twelfth Detention Review, KSC-BC-2020-05/F00482/RED, para. 14.

⁵ Twelfth Detention Review, KSC-BC-2020-05/F00482/RED, paras 12-22.

⁶ Transcript of the trial hearing, KSC-BC-2020-05, 15 September 2022, T.4859, line 15.

⁷ Twelfth Detention Review, KSC-BC-2020-05/F00482/RED, paras 16-17.

⁸ Twelfth Detention Review, KSC-BC-2020-05/F00482/RED, paras 20-21.

⁹ See the Second decision on the review of Salih Mustafa's restrictions on contacts and communications, 20 October 2022, KSC-BC-2020-05/F00486, whereby the Panel maintained that the risk of interference, paras 20-21.

¹⁰ Twelfth Detention Review, KSC-BC-2020-05/F00482/RED, paras 12-13.

has been no change of circumstances since the Twelfth Detention Review. Bearing in mind the entirety of evidence adduced at trial, the SPO believes that the required statutory threshold has not only been met, but has actually been surpassed.

ii. Risk of flight – Article 41(6)(b)(i)¹¹

4. Consistent with its previous submissions,¹² the SPO maintains that the flight risk is real, persistently high, and is further increased by the conclusion of the proceedings and the forthcoming judgment. Being now fully aware of the inculpatory evidence amassed against him, the Accused, if released and convicted, may attempt to go into hiding to avoid punishment. This is particularly valid in view of the Accused's intelligence expertise and contacts,¹³ and existence of a support network comprising, among others, Kosovo war veterans.¹⁴

iii. Risk of interference with witnesses and victims – Article 41(6)(b)(ii)

5. The risk of obstruction of proceedings through witness interference, has been repeatedly acknowledged by the Panel, as emanating, among other things, from: i) the Accused's knowledge of the identity of all SPO witnesses and his ties to some of them; ii) his close ties to the Kosovo intelligence apparatus, his professional experience, technical knowledge and network; iii) his awareness of the charges, and the expected length of sentence in the event of conviction; and iv) the pervasive climate of

¹¹ 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.

¹² See e.g. Prosecution submission for Twelfth Detention Review, KSC-BC-2020-05, F00470, 5 September 2022, para 4; Prosecution submission for the Eleventh Detention Review, KSC-BC-2020-05/F00447, 5 July 2022, 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.

¹³ Twelfth Detention Review, KSC-BC-2020-05/F00482/RED, paras 16-17.

¹⁴ See e.g. KSC-BC-2020-05 Trial Hearing, 23 March 2022, T.2697, 2714.

interference and intimidation in Kosovo, as confirmed by various SPO witnesses.¹⁵ Taken in the aggregate, these factors strongly militate for the Accused's continued detention as means of minimising the aforementioned risk.

6. Existence of this risk has been confirmed by the Panel in its recent decision to extend restrictions on the Accused's contacts and communications with the outside world.¹⁶ The main reason for extension was precisely the need to mitigate the existing risk of interference with victims and witnesses and/or their families, by preventing the Accused from disclosing their identities.¹⁷

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

7. This risk has been referenced by the SPO in its previous submissions, which were based on concrete factors specific to the Accused.¹⁸ There is a real possibility that if released, the Accused will commit further crimes including against the administration of justice over which the KSC has jurisdiction pursuant to Article 15 of the Law. Following the closure of the proceedings, and in view of the expected verdict, such potential for recidivism is now higher than before.

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

8. At this significantly advanced stage of the proceedings, where the case is closed, verdict expected, and the possible appeals proceedings looming, detention

¹⁵ Twelfth Detention Review, KSC-BC-2020-05/F00482/RED, paras 16-17; 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.

¹⁶ Second decision on the review of Salih Mustafa's restrictions on contacts and Communications, KSC-BC-2020-05/F00486, 20 October 2022 ('Second Review Decision on Communications').

¹⁷ Second Review Decision on Communications, KSC-BC-2020-05/F00486, paras 20-21.

¹⁸ 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.

presents itself to be the only effective way to mitigate the aforementioned risks.¹⁹ Only through detention will the Accused's ability to flee or to go into hiding, obstruct court proceedings, and/or commit further crimes be effectively and proportionately limited. No assurances of the Accused or conditions imposed would be sufficient to mitigate the existing risks,²⁰ and therefore no release should be granted.

vi. Reasonable duration of detention

9. The Panel's prior findings regarding the reasonableness of the duration of detention in this case still stand.²¹

10. The proceedings in this case have progressed at a reasonable pace, and there was no inaction on the part of the Parties or the Panel. The trial started on 15 September 2021, the Prosecution and Defence cases were concluded on 4 February and 26 May 2022 respectively,²² the evidentiary proceedings were concluded on 20 June 2022, the Final Trial Briefs were submitted by the Parties on 21 July 2022,²³ the hearing on the closing statements was held on 13-15 September 2022,²⁴ and on 15 September 2022 the case was closed.

C. RELIEF REQUESTED

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

¹⁹ Twelfth Detention Review, KSC-BC-2020-05/F00482/RED, paras 25-26.

²⁰ Twelfth Detention Review, KSC-BC-2020-05/F00482/RED, paras 25-26; 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.

²¹ Twelfth Detention Review, KSC-BC-2020-05/F00482/RED, paras 28-29; 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.

²² Third decision on the conduct of the proceedings, KSC-BC-2020-05/F00318, 9 February 2022, Public, para.16.

²³ 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.

²⁴; 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.

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At The Hague, the Netherlands.