

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

**Before:** **Trial Panel I**  
Judge Mappie Veldt-Foglia, Presiding Judge  
Judge Roland Dekkers  
Judge Gilbert Bitti  
Judge Vladimir Mikula, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Date:** 24 April 2023

**Filing Party:** Specialist Defence Counsel

**Original Language:** English

**Classification:** Public

**THE SPECIALIST PROSECUTOR**

**v.**

**PJETËR SHALA**

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**Public Redacted Version of  
Defence Submissions for the Tenth Review of Detention**

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## I. INTRODUCTION

1. Pursuant to the Trial Panel (“Panel”)’s instructions set out in the “Decision on the Ninth Review of Detention of Pjetër Shala”, the Defence for Mr Pjetër Shala (“Defence” and “Accused”, respectively) files these submissions on the tenth review of detention in response to the “Prosecution submissions for the tenth review of detention”.<sup>1</sup>
2. On 16 March 2021, the Accused was arrested and detained in Belgium.<sup>2</sup> On 15 April 2021, he was transferred to the Detention Facilities of the Specialist Chambers (“SC”) in the Hague, the Netherlands.<sup>3</sup> On 19 April 2021, he pleaded not guilty to all the charges set out in the Indictment.<sup>4</sup> To date, the Accused has been in detention on remand for over two years.
3. The Accused’s interim release is warranted as the Specialist Prosecutor’s Office (“SPO”) has failed to substantiate that, if released, the Accused will abscond, obstruct the proceedings, or commit further crimes, and thus, has failed to meet the requirements of Article 41(6)(b) of the Law No. 05/L-053 on the Specialist Chambers and Specialist Prosecutor’s Office (“KSC Law”).<sup>5</sup> The Accused’s protracted detention cannot be considered justified, necessary, or proportional. He must be released.

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<sup>1</sup> KSC-BC-2020-04, F00418, Decision on the Ninth Review of Detention of Pjetër Shala, 6 February 2023 (confidential) (“Ninth Detention Decision”), para. 45(c); F00390, Prosecution submissions for the tenth review of detention, 18 January 2023 (confidential) (“SPO Submissions”). All further references to filings in these submissions concern Case No. KSC-BC-2020-04 unless otherwise indicated.

<sup>2</sup> F00013, Notification of Arrest of Pjetër Shala Pursuant to Rule 55(4), 16 March 2021, para. 5.

<sup>3</sup> F00019, Notification of Reception of Pjetër Shala in the Detention Facilities of the Specialist Chambers and Conditional Assignment of Counsel, 15 April 2021 (confidential), para. 2.

<sup>4</sup> T. 19 April 2021 p. 11. *See also* F00010, A01, Annex 1 to Submission of confirmed indictment with strictly confidential and *ex parte* Annexes 1-2, 19 June 2020. A corrected indictment was submitted on 1 November 2021: F00098, A01, Annex 1 to Submission of corrected indictment with confidential Annex 1.

<sup>5</sup> The SPO bears the burden of establishing that the detention of the Accused is necessary. Ninth Detention Decision, paras. 11, 42, 44.

## II. PROCEDURAL BACKGROUND

4. The relevant procedural background is set out in the Panel's Ninth Detention Decision issued on 6 February 2023.<sup>6</sup>
5. On 16 March 2023, the SPO filed its submissions on the tenth review of detention.<sup>7</sup>

## III. SUBMISSIONS

6. At the outset, the Defence fully maintains its previous submissions on the unlawfulness of the Accused's continued detention.<sup>8</sup>
7. The presumption in favour of the Accused's innocence and his right to liberty pending trial must form the basis of any assessment as to whether the SPO has successfully demonstrated real and serious risk posed by interim release.<sup>9</sup> 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.<sup>10</sup>

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<sup>6</sup> Ninth Detention Decision, paras. 1-7.

<sup>7</sup> SPO Submissions.

<sup>8</sup> F00403, Defence Submissions for Ninth Review of Detention, 26 January 2023, paras. 6-21; F00341, Defence Response to "Prosecution submissions for eighth review of detention", 8 November 2022, paras. 2-4, 7-20; F00273, Defence Response to "Prosecution submissions for seventh review of detention", 12 September 2022 (confidential), paras. 9-23; F00221, Defence Response to "Prosecution Submissions for Sixth Review of Detention", 15 June 2022 (confidential), paras. 7-16; 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; 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), paras. 14-37; 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 Reponse to 'Prosecution Submissions for Third Review of Detention', 21 January 2022, paras. 18-32.

<sup>9</sup> F00273, Defence Response to "Prosecution submissions for seventh review of detention", 12 September 2022 (confidential), para. 10.

<sup>10</sup> See also Article 9(3) of the International Covenant on Civil and Political Rights, which provides that "[i]t shall not be the the general rule that persons awaiting trial shall be detained in custody, but release

A. *The Absence of Article 41(6)(b) Risks*

8. The Panel has repeatedly found that the Accused is not a flight risk.<sup>11</sup> The SPO has made no submissions in relation to such risk in its submissions on the tenth review of detention. The Defence maintains its submissions on this matter. The Accused is not a flight risk.<sup>12</sup>
9. With respect to the risk of obstruction and the risk of commission of further crimes, the SPO argues that additional factors increase such risks, “particularly in light of the Accused’s incentives and means, and the persisting climate of intimidation of witnesses and interference with criminal proceedings against former KLA members”.<sup>13</sup> The SPO fails to explain at all which “incentives and means” the Accused has that increases such risks. The Accused is indigent, has no means at his disposal which could be used to obstruct justice, has left Kosovo since 1999, and has no links to any network there.<sup>14</sup>
10. The European Court of Human Rights found that the reasons invoked for ordering and prolonging detention must not be general or abstract,<sup>15</sup> but must

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may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement”.

<sup>11</sup> Ninth Detention Decision, paras. 23, 26; F00365, Decision on the Eighth Review of Detention of Pjetër Shala, 6 December 2022 (confidential), paras. 20, 31. *See also* F00282, Decision on Review of Detention of Pjetër Shala, 21 September 2022 (confidential), para. 32; F00224, Decision on Review of Detention of Pjetër Shala, 22 June 2022 (confidential), para. 43; F00188, Decision on Remanded Detention Review Decision and Periodic Review of Detention of Pjetër Shala, 22 April 2022 (confidential), para. 46; F00133, Decision on Review of Detention of Pjetër Shala, 28 January 2022 (confidential), para. 39; F00105, Decision on Review of Detention of Pjetër Shala, 10 November 2021 (confidential), para. 37; F00075, Decision on Review of Detention of Pjetër Shala, 10 September 2021 (confidential), para. 40; F00045, Decision on Pjetër Shala’s Request for Provisional Release, 15 June 2021 (confidential), 45.

<sup>12</sup> F00403, Defence Submissions for Ninth Review of Detention, 26 January 2023, paras. 8-11.

<sup>13</sup> SPO Submissions, para. 5.

<sup>14</sup> F00039, Motion for Provisional Release, 27 May 2021 (confidential), para. 22-25; F00066, Defence Response to Prosecution Submissions for First Review of Detention, 1 September 2021, para. 20.

<sup>15</sup> ECtHR, *Buzadji v. Moldova* [GC], no. 23755/07, 5 July 2016, para. 122; *Boicenco v. Moldova*, no. 41088/05, 11 July 2006, para. 142, referring to *Smirnova v. Russia*, nos. 46133/99 and 48183/99, 24 July 2003, para. 63 and *Sarban v. Moldova*, no. 3456/05, 4 October 2005, para. 99; *Khudoyorov v. Russia*, no. 6847/02, 8 November 2005, para. 173.

contain references to specific facts and show why the reasons apply concretely to the specific personal circumstances of the specific applicant to justify continued detention.<sup>16</sup> The SPO's allegations about a "persisting" climate of witness intimidation and interference with criminal proceedings against former KLA members remain entirely unsubstantiated. Its submission is perfunctory, and fails to provide any concrete factual circumstance that such a "climate" exists in the context of *this* case when there is no indication that Accused has or will interfere with any witnesses or proceedings.

11. Specifically, regarding the risk of obstruction, the SPO submits that additional factors increase this risk, including: (i) the fact that the trial started on 21 February 2023; (ii) the presentation of evidence will commence on 27 March 2023; (iii) the amendment of the SPO's Exhibit List with an updated DNA report on the alleged murder victim and an updated expert report containing an assessment of the updated DNA report; and (iv) the additional knowledge that the Accused has gained concerning SPO investigations and evidence of [REDACTED] through the recent disclosure of additional evidence and identities of a number of witnesses ordered by the Panel.<sup>17</sup>
12. With respect to the above factors, the Defence reiterates that the advancement of the proceedings and the disclosure of evidence and the identity of witnesses do not generate, let alone, increase the risks under Article 41(6)(b) of the KSC Law, and are plainly insufficient to satisfy the applicable evidentiary standard for detention.<sup>18</sup> In particular, the SPO fails to present any specific reasoning why the disclosure of the two DNA reports in this case and the disclosure of evidence

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<sup>16</sup> *Buzadji v. Moldova* [GC], para. 122; *Rubtsov and Balayan v. Russia*, nos. 33707/14 and 3762/15, 10 April 2018, paras. 30-32; *Aleksanyan v. Russia*, no. 46468/06, 11 December 2008, para. 179, referring to *Panchenko v. Russia*, no. 45100/98, 8 February 2005, para. 107.

<sup>17</sup> SPO Submissions, paras. 6, 7.

<sup>18</sup> F00273, Defence Response to "Prosecution submissions for seventh review of detention", 12 September 2022 (confidential), para. 13; F00221, Defence Response to "Prosecution submissions for sixth review of detention", 15 June 2022 (confidential), para. 12.

and identities of witnesses [REDACTED] indicate that the Accused will obstruct the proceedings. The Defence submits that alternative measures should be implemented to mitigate any concern about Prosecution witnesses and in the absence of any effort in that regard, the protracted detention of the Accused is disproportionate.

13. In contending that the risk of obstruction has increased, the SPO also lays particular weight on the fact that <sup>19</sup> [REDACTED] is not relevant as a factor justifying the Accused's detention. As stated above, the SPO fails to elaborate on what such "incentives and means" the Accused has that increases the risk of obstruction. The SPO's submissions are cursory and unpersuasive. It is not based on any concrete evidence suggesting that the Accused in this case will obstruct the proceedings.
14. Regarding the risk of commission of further crimes, the SPO generally lists the factors of the Accused's additional knowledge of the case and the climate of witness intimidation in Kosovo.<sup>20</sup> As stated above, such vague arguments are insufficient. They contain no specific reasoning nor discussion of the Accused's personal circumstances to substantiate the risk of commission of further crimes.
15. The SPO also cites the Panel's finding that in 2019 the Accused has made threatening statements [REDACTED]. <sup>21</sup> The Defence reiterates that the repetitively cited "threatening statements" cannot and must not be equated to any direct or indirect attempt to interfere with or attempt to interfere with any protected witnesses in this case. The Accused's statements were made in the abstract and referred to events that took place more than 20 years ago when the

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<sup>19</sup> SPO Submissions, para. 7.

<sup>20</sup> SPO Submissions, para. 8.

<sup>21</sup> SPO Submissions, para. 8.

Accused was questioned in the absence of a lawyer and in breach of his rights as a suspect.<sup>22</sup>

*B. Disproportionality of the Continued Detention*

16. As regards the SPO submission relating to the proportionality of the continued detention of the Accused, its general argument that continued detention is proportional is plainly inadequate.<sup>23</sup> The SPO fails to present specific and sufficient justifications how continued detention for such a protracted period of over two years is proportionate in the specific circumstances of this case.
17. Assessing the proportionality of the Accused's detention also requires consideration of the effects of continued detention on the Accused, including the interference with his rights to liberty and protection of his private and family life.<sup>24</sup> In contending that continued detention is proportional, the SPO fails entirely to take into account the Accused's rights.
18. The SPO has failed to produce any concrete grounds capable of showing that the Accused's continued detention is necessary and proportional. No reason exists to suggest that the Accused would not abide by any measures imposed by the Panel if he were to be granted interim release. The Accused's continued detention is unlawful. He should be granted interim release.

*C. Alternative Measures*

19. The Defence maintains that alternative measures can be implemented which can adequately mitigate any potential risk factors posed by the Accused's interim

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<sup>22</sup> IA001, F00001, Defence Appeal against the "Decision on Pjetër Shala's Request for Provisional Release", 28 June 2021 (confidential), paras. 32, 33.

<sup>23</sup> SPO Submissions, para. 11.

<sup>24</sup> F00273, Defence Response to "Prosecution submissions for seventh review of detention", 12 September 2022 (confidential), para. 21.



release. The SPO fails to demonstrate how the procedural developments in this case and the abstract factors it relies on demonstrate the absence of any release conditions that could mitigate any potential risks under Article 41(6)(b) of the KSC Law.<sup>25</sup> The Accused repeats that he is willing to offer extensive undertakings and be subject to *any* conditions as the Panel deems appropriate. In addition, the SPO fails to acknowledge the Accused's commitment to prove his innocence at trial.

#### IV. CLASSIFICATION

20. Pursuant to Rule 82(3) and 82(4) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, the present submission is filed as confidential as it relates to a confidential filing. As it contains no confidential information, the Defence seeks leave to reclassify it as public in due course.

#### V. RELIEF REQUESTED

21. For the above reasons, the Defence respectfully requests the Panel to order the Accused's interim release or placement in house arrest at his residence in Belgium or any other conditions deemed appropriate.

**Word count: 2296**

Respectfully submitted,



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<sup>25</sup> SPO Submissions, para. 9.

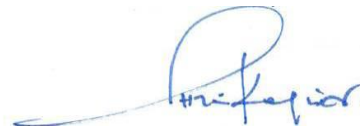


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Monday, 24 April 2023

The Hague, the Netherlands