



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

**In:** 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

**Registrar:** Dr Fidelma Donlon

**Filing Party:** Specialist Prosecutor's Office

**Date:** 19 May 2023

**Language:** English

**Classification:** Public

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**Public redacted version of**

**'Prosecution submissions for the eleventh review of detention'**

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## I. INTRODUCTION

1. The continued detention of Pjetër SHALA ('Accused') remains necessary and proportional. No new fact or circumstance has intervened capable of changing this finding since the Trial Panel reached it in the Tenth Detention Decision.<sup>1</sup> Rather, the ongoing presentation of the SPO's case, together with the latest procedural developments, increase the risk of obstruction and commission of further crimes, and warrant the Panel's reconsideration of the existence of the risk of flight.<sup>2</sup>

2. Grounded suspicion that the Accused committed crimes within the jurisdiction of the Kosovo Specialist Chambers ('KSC') continues to exist,<sup>3</sup> 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 have appeared/are to appear soon before the KSC, remain high.<sup>4</sup> In line with the determinations of the Trial Panel and the Court of Appeals,<sup>5</sup> the continuation of the Accused's detention is necessary and proportional.<sup>6</sup>

## 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.<sup>7</sup> The SPO bears the

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<sup>1</sup> See Decision on the Tenth Review of Detention of Pjetër Shala, KSC-BC-2020-04/F00480, 6 April 2023, confidential ('Tenth Detention Decision').

<sup>2</sup> Tenth Detention Decision, KSC-BC-2020-04/F00480, para.17. See also Decision on the Ninth Review of Detention of Pjetër Shala, KSC-BC-2020-04/F00418, 6 February 2023, confidential ('Ninth Detention Decision'), paras 21-26.

<sup>3</sup> See Tenth Detention Decision, KSC-BC-2020-04/F00480, para.13.

<sup>4</sup> Tenth Detention Decision, KSC-BC-2020-04/F00480, para.33.

<sup>5</sup> 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.

<sup>6</sup> Tenth Detention Decision, KSC-BC-2020-04/F00480, para.43.

<sup>7</sup> *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. Unless otherwise specified,

burden of 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.<sup>8</sup>

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.<sup>9</sup> This finding was made on the basis of a standard exceeding that required for the purposes of Article 41(6)(a). In its last review of detention, the Trial Panel confirmed that a grounded suspicion continues to exist.<sup>10</sup> Since then, there has been no development capable of changing this finding or warranting its re-examination.

B. EXISTENCE OF RISKS WARRANTING CONTINUED DETENTION PURSUANT TO ARTICLE 41(6)(B)

5. In the Tenth Detention Decision, the Trial Panel found that the risks of obstruction and commission of further crimes listed under Article 41(6)(b) continued to exist.<sup>11</sup> No factors capable of changing that finding have intervened since then. On the contrary, new developments 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.

6. In particular, the Trial Panel previously found that the start of the trial and the testimony of the first four SPO witnesses,<sup>12</sup> the existence of a climate of witness

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all references to 'Article' or 'Articles' are to Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

<sup>8</sup> Third Appeal Decision, KSC-BC-2020-04/IA005/F00005, para.18; Tenth Detention Decision, KSC-BC-2020-04/F00480, para.10.

<sup>9</sup> 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 ('Confirmation Decision').

<sup>10</sup> Tenth Detention Decision, KSC-BC-2020-04/F00480, para.13.

<sup>11</sup> Tenth Detention Decision, KSC-BC-2020-04/F00480, paras 26, 32.

<sup>12</sup> Tenth Detention Decision, KSC-BC-2020-04/F00480, para.22.

intimidation and interference in the context of the present case,<sup>13</sup> and the fact that the Accused made threatening [REDACTED],<sup>14</sup> all constituted concrete relevant factors in assessing the possibility that the Accused will try to obstruct proceedings.<sup>15</sup>

7. Since the Tenth Detention Decision, new procedural developments have occurred that constitute additional factors increasing that risk: The SPO presented the evidence of six live witnesses, who provided incriminating testimonies against the Accused. In addition, the SPO will present the evidence of a witness repeatedly challenged on different grounds by the Accused in the next evidentiary session *viva-voce*.<sup>16</sup>

8. In light of these circumstances and considering that [REDACTED], all of whom have the incentives and means to obstruct proceedings and interfere with and intimidate witnesses as repeatedly affirmed by Basic and Appeals Court Panels across cases of this court, there exists an increased risk of obstruction.

9. In the Tenth Detention Decision, the Panel reiterated that the factors underpinning the existence of a risk of obstruction are relevant to assess the risk of committing further crimes.<sup>17</sup> In this respect, the Panel considered that the Accused now has full knowledge of the case against him, has made threatening statements [REDACTED] as recently as 2016 and 2019, and that the presentation of evidence by the SPO is in progress.<sup>18</sup> For these reasons, the Panel concluded that the risk of committing further crimes continued to exist.<sup>19</sup> All of these factors continue to apply.

10. Lastly, the SPO submits that the abovementioned circumstances and in particular the Court of Appeals Panel's Decision on the admission of the Accused's

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<sup>13</sup> Tenth Detention Decision, KSC-BC-2020-04/F00480, para.24.

<sup>14</sup> Tenth Detention Decision, KSC-BC-2020-04/F00480, para.25.

<sup>15</sup> Tenth Detention Decision, KSC-BC-2020-04/F00480, para.26.

<sup>16</sup> Transcript (In-Court Oral Order), 4 May 2023, p.1351, line 12-p.1354, line 22.

<sup>17</sup> Tenth Detention Decision, KSC-BC-2020-04/F00480, para.29.

<sup>18</sup> Tenth Detention Decision, KSC-BC-2020-04/F00480, para.29.

<sup>19</sup> Tenth Detention Decision, KSC-BC-2020-04/F00480, paras 31-32.

prior statements<sup>20</sup> further merit the Panel's reassessment of the existence of the risk of flight.<sup>21</sup> The standard for reconsideration of grounds previously confirmed or discarded is the advent of new facts or circumstances.<sup>22</sup> The abovementioned new procedural developments, specifically the Appeal Decision on the admission of the Accused's prior statements meet this standard.

11. In its Appeal Decision, the Court of Appeals Panel upheld the Trial Panel's finding that the Accused's prior statements from 2005 and 2007 are admitted into evidence,<sup>23</sup> that his 2016 statement is "not inadmissible",<sup>24</sup> and that the Trial Panel did not commit errors of fact and law regarding the 2019 statement,<sup>25</sup> thus admitting it into evidence.

12. The fact that the Accused provided incriminatory evidence in his own statements, confirming the *viva-voce* testimony of the SPO's witnesses; and that these statements are now available to the Trial Panel for the purposes of its judgment are in itself enough incentive for the Accused, if released, to attempt to abscond. These new developments, accordingly, warrant the reconsideration of the Panel's findings on the flight risk of the Accused.

13. In light of these circumstances, all three risks under Article 41(6)(b) (continue to) exist, and the Accused's detention remains necessary.

#### C. PROPORTIONALITY OF THE CONTINUED DETENTION

14. In addition to being necessary, the continued detention of the Accused is proportional. As indicated above, the Accused is charged with four counts of war

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<sup>20</sup> Decision on Shala's Appeal Against Decision Concerning Prior Statements, KSC-BC-2020-04/IA006/F00007, 5 May 2023, public ('Appeal Decision').

<sup>21</sup> Tenth Detention Decision, KSC-BC-2020-04/F00480, para.17: In the Tenth Detention Decision, the Panel has upheld its finding in the Eighth and Ninth Detention Decisions that such risk did not exist. *See also* Ninth Detention Decision, KSC-BC-2020-04/F00418, para.23; Decision on the Eighth Review of Detention of Pjetër Shala, KSC-BC-2020-04/F00365, 6 December 2022, confidential, para.20.

<sup>22</sup> Ninth Detention Decision, KSC-BC-2020-04/F00418, para.21.

<sup>23</sup> Appeal Decision, KSC-BC-2020-04/IA006/F00007, paras 54, 69.

<sup>24</sup> Appeal Decision, KSC-BC-2020-04/IA006/F00007, para.81.

<sup>25</sup> Appeal Decision, KSC-BC-2020-04/IA006/F00007, paras 96, 108.

crimes and, if convicted, could face a lengthy sentence. Further, the ongoing presentation of the SPO's evidence and the Accused's full knowledge of the case against him increase the risks of obstruction and commission of crimes and together with the fact that the Trial Panel can now use the Accused's prior statements for the purposes of its judgment, reinstate the existence of the risk of flight. These risks under Article 41(6)(b) cannot be mitigated outside the Detention Facilities.

15. Against this backdrop, the Accused's continued detention remains necessary and proportional.

### III. CLASSIFICATION

16. This filing is confidential, as it references sensitive and confidential information. A public redacted version will be submitted.

### IV. RELIEF REQUESTED

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

**Word Count: 1,399**



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**Alex Whiting**

**Acting Specialist Prosecutor**

Friday, 19 May 2023

At The Hague, the Netherlands.