

**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:** 13 November 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 Fourteenth Review of Detention**

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## I. INTRODUCTION

1. Pursuant to the Trial Panel's "Decision on the Thirteenth Review of Detention of Pjetër Shala",<sup>1</sup> the Defence for Mr Pjetër Shala ("Defence" and "Accused", respectively) hereby files its submissions regarding the continued detention of the Accused in response to the "Prosecution submissions for the fourteenth review of detention".<sup>2</sup>
2. On 16 March 2021, the Accused was arrested and placed in detention in Belgium.<sup>3</sup> On 19 April 2021, he pleaded not guilty to all charges set out in the Indictment.<sup>4</sup> To date, he has been in detention for two years, seven months and 29 days without being convicted of a crime. The Accused's detention for such a prolonged period of time cannot be considered necessary or proportionate.
3. The Accused's interim release is warranted as the Prosecution has failed to demonstrate that, if released, the Accused will flee, obstruct the proceedings, or commit further crimes. The Prosecution has therefore failed to meet the requirements of Article 41(6)(b) of Law No. 05/L-053 on the Specialist Chambers and Specialist Prosecutor's Office ("KSC Law").
4. Article 5 § 3 of the European Convention on Human Rights ("ECHR") guarantees that any person detained "shall be entitled to trial within a reasonable time or to release pending trial". The Defence submits that the approach in the decisions on detention by the Panel has resulted in precisely the "[q]uasi-automatic prolongation of detention [that] contravenes the

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<sup>1</sup> KSC-BC-2020-04, F00663, Decision on the Thirteenth Review of Detention of Pjetër Shala, 20 September 2023 (confidential) ("Thirteenth Detention Decision"), para. 32(c). All further references to filings in these submissions concern Case No. KSC-BC-2020-04 unless otherwise indicated.

<sup>2</sup> F00707, Prosecution submissions for the fourteenth review of detention, 6 November 2023 (confidential) ("Prosecution Submissions").

<sup>3</sup> F00013, Notification of Arrest of Pjetër Shala Pursuant to Rule 55(4), 16 March 2021, para. 5.

<sup>4</sup> T. 19 April 2021 p. 11.

guarantees set forth in Article 5 § 3” of the ECHR.<sup>5</sup> A fundamental right of Mr Shala that is guaranteed by the KSC Law and Rules is being ignored; the Defence urges the Panel to take its duties seriously and uphold Mr Shala’s right to be presumed innocent and be free unless concrete and specific reasons demand his continued detention. As developed below, the Prosecution has failed to demonstrate such reasons.

## II. PROCEDURAL BACKGROUND

5. The relevant procedural background is set out in the Thirteenth Detention Decision dated 20 September 2023.<sup>6</sup>

6. On 6 November 2023, the Prosecution filed the Prosecution Submissions.

## III. APPLICABLE LAW

7. Pursuant to Rule 57(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), the Panel seized with a case shall review a decision on detention on remand upon the expiry of two months from the last ruling on detention.

8. Article 41(6) of the KSC Law states that the Panel shall only order the detention of a person when: (a) there is a grounded suspicion that he has committed a crime within the jurisdiction of the Specialist Chambers; and (b) there are articulable grounds to believe that: (i) there is a risk of flight; (ii) there is a risk of the Accused obstructing the progress of the criminal proceedings by influencing witnesses, victims or accomplices; and (iii) there is a risk of the Accused committing further crimes.

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<sup>5</sup> ECtHR, *Tase v. Romania*, no. 29761/02, 10 June 2008, para. 40. See also *Mansur v. Turkey*, 8 June 1995, Series A no. 319-B, para. 55 and *Kalashnikov v. Russia*, no. 47095/99, 15 July 2002, paras. 116-118.

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

9. The standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.<sup>7</sup> In addition, the grounds that would justify an accused's deprivation of liberty must be "articulable" in the sense that they must be specified in detail.<sup>8</sup> The Prosecution bears the burden of establishing that the detention of an accused is necessary.<sup>9</sup>
10. Furthermore, the proportionality principle is important in determining the reasonableness of pre-trial detention.<sup>10</sup> The longer a person remains in pre-trial detention, the higher the burden on the Prosecution to justify continued detention.<sup>11</sup> 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, to determine whether, all factors being considered, the continued detention "stops being reasonable" and the individual needs to be released.<sup>12</sup>

#### IV. SUBMISSIONS

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

11. At the outset, the Defence maintains its previous submissions regarding the unlawfulness of the Accused's continued detention.<sup>13</sup> The Defence will address the Prosecution's submissions on each of the Article 41(6)(b) risks below.

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<sup>7</sup> Thirteenth Detention Decision, para. 14.

<sup>8</sup> Thirteenth Detention Decision, para. 14.

<sup>9</sup> Thirteenth Detention Decision, para. 11.

<sup>10</sup> Thirteenth Detention Decision, para. 27.

<sup>11</sup> Thirteenth Detention Decision, para. 27.

<sup>12</sup> Thirteenth Detention Decision, para. 27.

<sup>13</sup> F00648, Defence Submissions on the Thirteenth Review of Detention, 12 September 2023 (confidential), paras. 10-21; F00588, Defence Submissions for Twelfth Review of Detention, 13 July 2023 (confidential), para. 8; F00524, Defence Submissions for Eleventh Review of Detention, 26 May 2023 (confidential), paras. 6-28; F00468, Defence Submissions for Tenth Review of Detention, 24 March 2023 (confidential), paras. 6-19; F00403, Defence Submissions for Ninth Review of Detention, 26 January 2023, paras. 6-21; F00341, Defence Response to "Prosecution submissions for eighth review of

*The Risk of Flight*

12. In its Submissions, the Prosecution maintains the position that the Accused, if released, will abscond.<sup>14</sup> The Prosecution repeats its previous submissions that the Accused's knowledge of the evidence against him, including his own statements, demonstrates to the Accused that he "could face a lengthy sentence", which provides him with an incentive to flee; and that the Accused would have the means to do so.<sup>15</sup> Moreover, the Prosecution argues that the risk of flight has significantly increased following the Panel's Decision on the Defence Rule 130 Motion to Dismiss the Charge of Murder in the Indictment, where the Panel found that the evidence presented by the Prosecution could sustain a conviction for the war crime of murder, and that the Accused is "aware of the potential implications for his sentencing, should he be found guilty of murder".<sup>16</sup>
13. The Panel has repeatedly found that the Accused is not a flight risk.<sup>17</sup> The Defence maintains its position that the Accused is not a flight risk and recalls

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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 Response to 'Prosecution Submissions for Third Review of Detention', 21 January 2022, paras. 18-32.

<sup>14</sup> Prosecution Submissions, para. 7.

<sup>15</sup> Prosecution Submissions, para. 7.

<sup>16</sup> Prosecution Submissions, para. 8; F00652, Decision on the Defence Rule 130 Motion to Dismiss the Charge of Murder in the Indictment, 15 September 2023 (confidential) ("Rule 130 Decision"), para. 34.

<sup>17</sup> Thirteenth Detention Decision, para. 15; F00596, Decision on the Twelfth Review of Detention of Pjetër Shala, 20 September 2023 (confidential), para. 20; F00534, Decision on the Eleventh Review of Detention of Pjetër Shala, 6 June 2023 (confidential), para. 14; F00480, Decision on the Tenth Review of Detention of Pjetër Shala, 6 April 2023 (confidential), para. 17; F00418, Decision on the Ninth Review of Detention of Pjetër Shala, 6 February 2023 (confidential), 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

the Panel's finding in its Thirteenth Detention Decision that the Prosecution's arguments regarding the existence of such a risk "have been previously raised and dismissed by the Panel".<sup>18</sup>

14. The Prosecution's submissions relating to the Panel's Rule 130 Decision are inherently flawed and misconceived. While the Prosecution rightly noted that the Panel's finding in the Rule 130 Decision "is not one of guilt",<sup>19</sup> it is, in effect, seeking to have the Accused's detention status assessed under a lens which supposes a higher likelihood of guilt. In fact, the jeopardy of the Accused has not changed following the Rule 130 Decision. The Accused has long been aware of the "concrete possibility"<sup>20</sup> of conviction and sentencing but has never demonstrated the slightest indication of absconding. Thus, the reliance on the Decision as a factor weighing in favour of the Accused's continued detention is misplaced.
15. Further, the Defence recalls the Panel's finding that the risk of flight "cannot be gauged solely on the basis of the severity of the sentence faced by the Accused".<sup>21</sup> Rather, as repeatedly held by the European Court of Human Rights, the risk of absconding must be assessed in light of factors relating to the person's character, his morals, home, occupation, assets, family ties, links with

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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>18</sup> Thirteenth Detention Decision, paras. 15, 16.

<sup>19</sup> Prosecution Submissions, para. 8.

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

<sup>21</sup> F00596, Decision on the Twelfth Review of Detention of Pjetër Shala, 20 September 2023 (confidential), para. 17; ECtHR, *G. v. Russia*, no. 42526/07, 21 June 2016, para. 116; *Zherebin v. Russia*, no. 51445/09, 24 March 2016, para. 58.

the jurisdiction, and international contacts.<sup>22</sup> The Prosecution has failed to present any meaningful evidence on these factors, and is simply regurgitating a previously rejected submission on this point.<sup>23</sup>

### *The Risks of Obstruction and Commission of Further Crimes*

16. With respect to the risks of obstruction and commission of further crimes by the Accused, the Prosecution maintains that “the conclusion of the Prosecution case, with the Accused now having full knowledge of the evidence against him and of the identity of protected witnesses; the Accused’s threatening statements [REDACTED]; and the well-established and ongoing climate of intimidation against witnesses in Kosovo” establish the existence of such risks.<sup>24</sup>
17. The closing of the Prosecution’s case and the presentation of incriminating evidence are plainly insufficient to justify continued detention after almost two years and eight months of detention on remand. The Prosecution’s arguments, including the unspecified assumption of “witness interference, intimidation, and retaliation”,<sup>25</sup> are highly speculative and fail to demonstrate real risks. The Prosecution’s overemphasis on the “ongoing climate of intimidation against witnesses in Kosovo”, which is presented as an empty submission without any supporting evidence suggesting that the Accused may engage in any such behaviour, is misleading and fails to substantiate any articulable grounds. Such vague argument cannot be used to indefinitely justify the Accused’s detention.

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<sup>22</sup> F00596, Decision on the Twelfth Review of Detention of Pjetër Shala, 20 September 2023 (confidential), para. 17; ECtHR, *Merabishvili v. Georgia* [GC], no. 72508/13, Judgment, 28 November 2017, para. 223; *Becciev v. Moldova*, no. 9190/03, Judgment, 4 October 2005, para. 58.

<sup>23</sup> Prosecution Submissions, fn. 17 (referring to its submissions for the twelfth review of detention) *contra* F00596, Decision on the Twelfth Review of Detention of Pjetër Shala, 20 September 2023 (confidential), para. 19.

<sup>24</sup> Prosecution Submissions, para. 5.

<sup>25</sup> Prosecution Submissions, para. 6.

Further, the Defence maintains its submissions on the repeatedly cited “threatening statements” and submits that they do not substantiate a real risk of offending or committing further crimes.<sup>26</sup> The Prosecution must be held to the legal standard of presenting credible concerns that are more than a mere possibility of the alleged risks materialising.<sup>27</sup>

18. Regarding the Prosecution’s submissions relating to the Rule 130 Decision, the Defence submits that the Prosecution has, once again, failed to substantiate how the Decision demonstrates, let alone heightens, the risk that the Accused is likely to obstruct witnesses or commit further crimes if released. These Prosecution’s submissions are entirely speculative, and once again have the practical effect of encouraging this Panel to assess the detention of the Accused as though the Rule 130 Decision increased the likelihood of finding him guilty. The Accused has long been aware of the possibility of conviction and sentencing but has never demonstrated the slightest indication of obstructing witnesses nor committing further crimes.

B. Continued Detention is Disproportionate

19. The Prosecution submits that the continued detention of the Accused is proportional, reciting the gravity of the charges against the Accused, the possibility of a lengthy sentence, and the advancement of the trial.<sup>28</sup> The Prosecution cursorily lists factors including the hearing of three witnesses in October, [REDACTED], and the scheduling of four additional witnesses in

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<sup>26</sup> F00648, Defence Submissions on the Thirteenth Review of Detention, 12 September 2023 (confidential), para. 18.

<sup>27</sup> Thirteenth Detention Decision, para. 14.

<sup>28</sup> Prosecution Submissions, para. 10.



November 2023, but offers no explanation as to how these specific factors render the ongoing detention of the Accused proportionate.<sup>29</sup>

C. Alternative Measures

20. The Defence maintains its position that suitable measures alternative to detention exist and must be considered.<sup>30</sup> For instance, requiring the Accused to remain in in-house arrest at his residence in Belgium can sufficiently mitigate any potential risk posed by the Accused's interim release. The Accused repeats his willingness to commit himself and provide *any* guarantees deemed appropriate to remain at his home, not change his place of residence, surrender his passport and other travel documents, report daily to the Belgian police or other relevant authorities, be subject to close monitoring by the authorities, return to the KSC and appear in court whenever ordered to do so, and/or be subject to any other conditions deemed appropriate and ordered by the Panel.

V. CLASSIFICATION

21. Pursuant to Rule 82(3) and 82(4) of the Rules, these submissions are filed as confidential as they relate to confidential filings. The Defence will file a public redacted version of these submissions in due course.

VI. RELIEF REQUESTED

22. For the above reasons, the Defence respectfully requests the Panel to bring an end to the Accused'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.

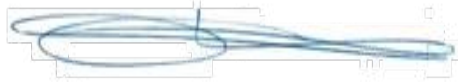
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<sup>29</sup> Prosecution Submissions, para. 10.

<sup>30</sup> F00648, Defence Submissions on the Thirteenth Review of Detention, 12 September 2023 (confidential), para. 21.

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Respectfully submitted,



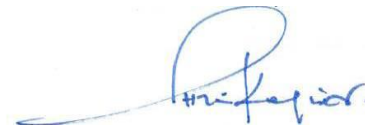
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Monday, 13 November 2023

The Hague, the Netherlands