



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

In: KSC-BC-2023-11
Specialist Prosecutor v. Haxhi Shala

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 20 November 2023

Language: English

Classification: Public

Public redacted version of 'Submission of Indictment for confirmation and related requests with strictly confidential and *ex parte* Annexes 1-3'

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Article 38(4) of the Law¹ and Rule 86(2)-(3) of the Rules,² the Specialist Prosecutor's Office ('SPO') hereby files an indictment for confirmation against **Haxhi SHALA** in respect of certain offences committed between at least 5 April 2023 and 12 April 2023 ('Indictment').³ Pursuant to Articles 6(2), 15(2), and 16(3), the Kosovo Specialist Chambers ('KSC') have jurisdiction over these offences because they relate to KSC official proceedings.⁴ Articles 7-9 do not apply.⁵

2. The Indictment is submitted together with supporting material⁶ and a detailed outline demonstrating the relevance of the evidentiary material to each allegation,⁷ as well as a photograph of **SHALA**.⁸

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 See Annex 1. Pursuant to Rule 86(1), the Specialist Prosecutor notified the President, who assigned a Pre-Trial Judge in accordance with Article 33(1)(a). See Decision Assigning a Pre-Trial Judge, KSC-BC-2023-11/F00001, 20 November 2023, Confidential. The SPO notes that Sabit JANUZI and Ismet BAHTIJARI, whom the SPO alleges were SHALA's co-perpetrators in the Indictment, have been separately charged by indictment in KSC-BC-2023-10 ('Case 10'). Annex 1 to Submission of confirmed Indictment, KSC-BC-2023-10/F00010/A01, 4 October 2023, Strictly Confidential ('Case 10 Indictment'). The SPO will seek to join this Indictment with the Case 10 Indictment pursuant to Rule 89(1) if and when the Indictment is confirmed.

⁴ See *Specialist Prosecutor v. Januzi and Bahtijari*, Corrected Version of Public Redacted Version of the Decision on the Confirmation of the Indictment, KSC-BC-2023-10/F00008/RED/COR, 2 October 2023 ('Case 10 Confirmation Decision'), para.22; *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on the Confirmation of the Indictment, KSC-BC-2020-07/F00074/RED, 11 December 2020 ('Case 7 Confirmation Decision'), para.21; *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on Defence Challenges, KSC-BC-2020-07/F00057, 27 October 2020 ('Case 7 Challenges Decision'), paras 22-27; *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on Request for Arrest Warrants and Transfer Orders, KSC-BC-2020-07/F00012/RED, 24 September 2020 ('Case 7 Arrest Warrants Decision'), para.17.

⁵ See Case 7 Confirmation Decision, KSC-BC-2020-07/F00074/RED, para.22; Case 7 Arrest Warrants Decision, KSC-BC-2020-07/F00012/RED, para.17; Case 7 Challenges Decision, KSC-BC-2020-07/F00057, para.25.

⁶ The supporting materials are being submitted as a separate package through Legal Workflow.

⁷ See Annex 2. See also Rule 86(3)(b). In Annex 2, the SPO has also cited to certain authorities interpreting and applying the elements of the relevant offences and modes of liability.

⁸ See Annex 3.

3. The Indictment and supporting material demonstrate a well-grounded suspicion⁹ that **SHALA** is individually criminally responsible for, as specifically alleged in the Indictment: (i) Criminal Offences Against the Administration of Justice and Public Administration, punishable under Chapters II and XXXI of the KCC¹⁰ and Articles 15(2) and 16(3); and (ii) Criminal Offences Against Public Order, punishable under Chapters II and XXXII of the KCC and Articles 15(2) and 16(3).¹¹

4. The Indictment pleads the material facts in the particular circumstances of the case against **SHALA** in conformity with relevant jurisprudence.¹² The SPO accordingly requests the Pre-Trial Judge to confirm the Indictment.

5. Under Article 3(8)(a), for security reasons and the proper administration of justice, the SPO hereby invokes a change of venue to the Host State in respect of this and all future stages of proceedings arising from or related to the Indictment.

6. In addition, the SPO requests the Pre-Trial Judge to (i) issue an arrest warrant and order for transfer for **SHALA** to the KSC Detention Facilities in The Hague ('Detention Facilities') pursuant to Articles 35(2), 39(3), 41, 53, and 55 and Rules 48, 50,

⁹ Article 38(4); Rule 86(1). *See also* Kosovo, Criminal No.04/L-123, Procedure Code, 2012, Article 19(1.12) ('Well-grounded suspicion – means filing an indictment. Possession of admissible evidence that would satisfy an objective observer that a criminal offence has occurred and the defendant has committed the offence').

¹⁰ Criminal Code of the Republic of Kosovo, Code No.06/L-074 (2019) ('KCC'). *See also* Case 7 Challenges Decision, KSC-BC-2020-07/F00057, para.24 (finding that, while Articles 6(2) and 15(2) refer to 2012 KCC, the 2019 KCC applies to the current proceedings).

¹¹ Other possible charges under the KCC include: Obstruction of evidence or official proceedings (Article 386), Violating secrecy of proceedings (Article 392), and Contempt of Court (Article 393).

¹² *See Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Defence Appeals Against Decision on Motions Alleging Defects in the Form of the Indictment, KSC-BC-2020-06/IA012/F00015/RED, 22 August 2022, paras 17-20, 46-48, 51, 92, 158, 179; 188; *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Defence Motions Alleging Defects in the Form of the Indictment, KSC-BC-2020-06/F00413/RED, 22 July 2021, paras 27-31, 33-34, 177; Case 7 Confirmation Decision, KSC-BC-2020-07/F00074/RED, paras 26-149; *Specialist Prosecutor v. Salih Mustafa*, Public Redacted Version of Decision on the Confirmation of the Indictment Against Salih Mustafa, KSC-BC-2020-05/F00008/RED, 5 October 2020, paras 33-39, 64-65.

53, 55, 200-202, and 208; and (ii) order the temporary non-disclosure of the Indictment, related documents or information to the public until further order.

II. SUBMISSIONS

A. REQUEST FOR ARREST WARRANT AND TRANSFER ORDER

7. The requirements under Article 41(6) for **SHALA**'s arrest and detention are fulfilled. The supporting materials establish grounded suspicion¹³ that **SHALA** has committed crimes within the jurisdiction of the KSC, as required under Article 41(6)(a). Further, though the satisfaction of only one of these criteria is sufficient to ground a warrant of arrest, **SHALA** should be detained on the basis of all three criteria specified in Article 41(6)(b). There are 'articulable grounds to believe' that: (1) there is a risk of flight; (2) **SHALA** will obstruct the progress of the criminal proceedings by influencing witnesses, victims, or accomplices; and (3) the seriousness of the crime, or the manner or circumstances in which it was committed and **SHALA**'s personal characteristics, past conduct, the environment and conditions in which he lives or other personal circumstances indicate a risk that he will repeat the criminal offences or arrange for crimes of violence to be committed against those perceived to be against him. Determining the existence of one of these three risks is a matter of assessing the possibility as opposed to the unavailability that such risks materialise.¹⁴

¹³ Kosovo, Criminal No.04/L-123, Procedure Code, 2012, Article 19(1.9). See also *Specialist Prosecutor v. Januzi and Bahtijari*, Public Redacted Version of the Decision on Request for Arrest Warrants and Transfer Orders, KSC-BC-2023-10/F00009/RED, 2 October 2023 ('Case 10 Arrest Warrants Decision'), paras 9, 17-23; Case 7 Arrest Warrants Decision, KSC-BC-2020-07/F00012/RED, para.18.

¹⁴ Case 10 Arrest Warrants Decision, KSC-BC-2023-10/F00009/RED, para.19; Case 7 Arrest Warrants Decision, KSC-BC-2020-07/F00012/RED, para.19; ICC, *Prosecutor v. Bemba Gombo et al.*, ICC-01/05-01/13-558, Judgment on the appeal of Mr Aimé Kilolo Musamba against the decision of Pre-Trial Chamber II of 14 March 2014 entitled "Decision on the 'Demande de mise en liberté provisoire de Maître Aime Kilolo Musamba,'" 11 July 2014, para.107.

1. Risk of flight

8. Once **SHALA** learns of the charges in the Indictment, he has a strong incentive to avoid being tried and risking conviction. **SHALA** has the means, motive, and opportunity to evade justice. As an initial matter, it is critical to note that, as detailed above, **SHALA** has already demonstrated a blatant disregard for the laws and rules underpinning this tribunal, including by repeatedly seeking to intimidate and influence the testimony of a protected witness. There is thus good reason to believe that **SHALA** would similarly disregard orders from this court regarding pre-trial release.

9. **SHALA** also has the means and opportunity to evade justice. For example, he has connections to [REDACTED], as well as to their associated networks. It is known that **SHALA** was cooperating with at least one additional unidentified person in relation to the interference efforts. Exacerbating this concern is the fact that although the KSC/SPO has a mandate to operate in Kosovo, there is significant risk that **SHALA** might abscond from the territorial jurisdiction of the KSC/SPO. Kosovo has only a small number of extradition agreements with other countries, which is significant because this is one of the mechanisms of cooperation for the KSC.¹⁵ Even amongst those countries that have extradition agreements with Kosovo, extradition to the KSC is not guaranteed – as seen in a recent Court of Appeals decision in Albania. When combined with the number of countries that simply do not recognise Kosovo as a state, it would be all too easy for **SHALA** to travel legally from Kosovo to a jurisdiction with no obligation to transfer him to the KSC. **SHALA** also undoubtedly has the connections to leave Kosovo through unlawful borders, making the surrender of his passport an inadequate solution.

2. Risk of obstructing the progress of criminal proceedings

¹⁵ Article 55(2); Rule 208.

10. **SHALA** has already demonstrated the means and intent to obtain and misuse confidential, witness-related information to obstruct and interfere with KSC judicial proceedings.

11. Moreover, **SHALA**'s close coordination with the Case 10 Accused Sabit JANUZI and Ismet BAHTIJARI¹⁶ in relation to their approaches to Witness 1 suggests that such coordination would continue and risks obstructing the progress of criminal proceedings.

12. From autumn 1998, **SHALA** commanded the KLA Military Police battalion of Brigade 121, under Fatmir LIMAJ, a named JCE member in the *Thaçi et al.* indictment,¹⁷ before serving as commander of Brigade 121.¹⁸ Along with LIMAJ, **SHALA** was implicated in the beating of Ajet GASHI at Llapushnik/Lapušnik prison, a charged murder victim in the *Thaçi et al.* case.¹⁹ Even after LIMAJ was promoted to the KLA General Staff with Rexhep SELIMI, both LIMAJ and SELIMI were escorted by **SHALA**.²⁰

13. JANUZI and BAHTIJARI served as soldiers in Brigade 121 and were subordinates of **SHALA** and LIMAJ.²¹

¹⁶ Case 10 Confirmation Decision, KSC-BC-2023-10/F00008/RED/COR, paras 71-87.

¹⁷ LIMAJ was tried at the ICTY for committing multiple war crimes at Llapushnik/Lapušnik in 1998. Although LIMAJ was ultimately acquitted, the trial resulted in multiple allegations of contempt arising from acts of witness intimidation aimed at preventing witnesses from testifying against LIMAJ and his co-accused. See generally ICTY, *Prosecutor v. Beqaj*, IT-03-66-R77, Judgment on Contempt Charges, 27 May 2005.

¹⁸ Annex 1 to Prosecution submission pursuant to Order F01283 (Public Redacted Version of 'Corrected Version of Prosecution Pre-Trial Brief,' KSC-BC-2020-06/F00709/A01, dated 24 February 2022), KSC-BC-2020-06/F01415/A01, 3 April 2023 ('SPO Pre-Trial Brief'), para.481.

¹⁹ SPO Pre-Trial Brief, KSC-BC-2020-06/F01415/A01, paras 329-330.

²⁰ See, e.g., Video reposted by **SHALA** on 16 June 2020 showing Rexhep SELIMI, Sabit SHALA, Haxhi SHALA, and Avdi RRACI visiting liberated town of Malisheva on 16 June 1999, available at https://www.facebook.com/watch/?ref=embed_video&v=2531319157179490 (last accessed on 9 September 2023).

²¹ 082895-083087, p.083353; 112906-TR-AT Part 1 Revised 1-ET, pp.14-15; 116063 TR ET Part 1, pp. 9-12; 116065 TR ET Part 1, pp. 7-9.

14. In 2010, following a request from LIMAJ, **SHALA** ran as a candidate for THAÇI's Democratic Party of Kosovo (*Partia Demokratike e Kosovës*, 'PDK').²² When KRASNIQI and LIMAJ split from PDK to form their own party *Nisma Socialdemokratike* ('Initiative') in 2014, **SHALA** joined them.²³

15. Ultimately, **SHALA** poses a continued risk of witness intimidation and obstruction of the proceedings.

- i. In coordination with JANUZI and BAHTIJARI, **SHALA** has already orchestrated approaches to Witness 1 on two occasions and demonstrated persistence in his obstructive efforts to pressure of Witness 1 to withdraw his testimony.
- ii. The underlying motive that prompted **SHALA**, JANUZI and BAHTIJARI to coordinate together and approach Witness 1—obstructing the KSC proceedings—remains relevant, and there remains the risk that **SHALA** may attempt to put further pressure on Witness 1 and his family to dissuade Witness 1 from participating further as an SPO witness or may engage in efforts to intimidate other witnesses.

16. Moreover, it is highly relevant that two separate KSC trial panels have already found there to be a 'prevalent climate of witness intimidation in Kosovo, in particular in respect of investigations/prosecutions of crimes attributed to ex-KLA members.'²⁴

As one KSC trial panel determined:

²² See e.g., Video related to **SHALA**'s run as a candidate for THAÇI's Democratic Party of Kosovo, available at <https://www.facebook.com/Aleanca.Official/videos/haxhi-shala-rrëfen-për-rrugëtimin-politik-pas-çlirimit/6joh96737781262169> (last accessed on 15 November 2023).

²³ See e.g., Presheva Jonë, NISMA e Krasniqit dhe Limajt, 26 February 2014, available at <https://www.preshevajone.com/nisma-e-krasniqit-dhe-limajt/> (last accessed on 20 November 2023).

²⁴ *Specialist Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of the Trial Judgement, KSC-BC-2020-07/F00611/RED, 18 May 2022, paras 576-577.

The evidence set out above shows that there is a pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the Specialist Chambers, their families and, more broadly, against those who provide evidence in investigations or prosecutions of crimes allegedly committed by former KLA members. Witnesses are stigmatised as “traitors” or “collaborators”, are unable to speak freely about the events they underwent, are subjected to threats and intimidation and live in constant fear that something will happen to them or their family. This climate has had a visible impact, albeit to different degrees, on the evidence provided by some of the witnesses who appeared before the Panel.²⁵

3. Risk of committing further crimes

17. **SHALA** directed JANUZI and BAHTIJARI to make repeated approaches to Witness 1, a person whom they believed to be a witness, to try and get him to withdraw his testimony. There is a significant risk **SHALA** will continue to threaten and intimidate witnesses.

18. For the foregoing reasons, there is good cause to believe that **SHALA** would ignore future orders of this court to, *inter alia*, refrain from disseminating protected information, engage in further intimidating and obstructive conduct, and/or not return for future proceedings.²⁶ Ordering his detention is the only reasonable means to address this risk.

²⁵ *Specialist Prosecutor v. Salih Mustafa*, Further redacted version of Corrected version of Public redacted version of Trial Judgment, KSC-BC-2020-05/F00494/RED3/COR, 16 December 2022, para.57.

²⁶ Notably, in Case 10, based on substantially similar submissions, the Pre-Trial Judge found all three criteria specified in Article 41(6)(b) to be satisfied. Case 10 Arrest Warrants Decision, KSC-BC-2023-10/F00009/RED, para.23.

4. Transfer to the Detention Facilities of the KSC

19. In light of the SPO's invocation of a change of venue to the Host State,²⁷ the SPO requests that the Pre-Trial Judge order the transfer of **SHALA** to the Detention Facilities, pursuant to Rule 50(1)-(2).

III. EXECUTION AND SERVICE

20. The SPO requests the Pre-Trial Judge to transmit the arrest warrant and transfer order to the SPO for execution and service in cooperation with the Registrar. The SPO, in cooperation with the Registrar, is the best-positioned competent authority for the service and/or execution of these orders.

21. Mindful of the need to act in conformity with the fundamental rights provided for in Chapter II of the Constitution, the order and authorisation will be executed by the SPO with appropriate measures protecting the fundamental rights of **SHALA** and victims/witnesses. Any interference with rights implicated by the measures will be limited to that which is strictly necessary. As soon as the arrest is effectuated, **SHALA** shall be informed of his rights under the Law.²⁸

22. The SPO requests authorisation to disclose, as appropriate and necessary, the order for the purpose of its execution.

²⁷ See para.5 above.

²⁸ [REDACTED].

IV. REQUEST FOR NON-DISCLOSURE OF INDICTMENT AND RELATED INFORMATION

23. Non-disclosure of the Indictment and related information is necessary at this stage to ensure the integrity of the proceedings, and the protection of individuals, including Witness 1. As set out above, the real risk of, *inter alia*, **SHALA**'s flight and obstruction of the progress of criminal proceedings and further crimes demonstrate good cause, pursuant to Rule 88(2), for the temporary non-disclosure of the Indictment, related documents and information to the public until further order. The SPO additionally requests the Pre-Trial Judge to order that the name and identifying information of any witness or victim identified in the Indictment or supporting materials shall not be disclosed to the public until further order of the Pre-Trial Judge or after hearing the SPO.

V. CLASSIFICATION

24. In accordance with Rules 85(4) and 86(2), this filing, its annexes, and supporting materials are strictly confidential and *ex parte*.

VI. RELIEF REQUESTED

25. Accordingly, the SPO requests that the Pre-Trial Judge:

- i. confirm the Indictment;
- ii. issue an arrest warrant and transfer order, in the terms requested in Section II; and

- iii. order the temporary non-disclosure of the Indictment, related documents and information as requested in Section V above.

Word count: 2851



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Specialist Prosecutor

Monday, 20 November 2023

At The Hague, the Netherlands.