



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

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

Before: **Pre-Trial Judge**
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 4 December 2023

Language: English

Classification: **Public**

**Public Redacted Version of Decision on Request for Warrant of Arrest and
Transfer Order**

Specialist Prosecutor

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THE PRE-TRIAL JUDGE,¹ pursuant to Articles 35(3), 39(3), 41, 53 and 55 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), as well as Rules 48(2), 49(1), 50(1), 53, 55, 86(6)(b), 200 and 202 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 20 November 2023, the Specialist Prosecutor's Office ("SPO") submitted for confirmation a strictly confidential and *ex parte* indictment, along with evidentiary material in support of the factual allegations, as well as an outline linking each item of evidentiary material to each allegation ("Indictment"), and a number of related requests ("Submission of Indictment").²
2. On 22 November 2023, the President of the Specialist Chambers ("SC") issued a decision invoking a change of venue to the Netherlands ("Host State").³
3. On 1 December 2023, the Pre-Trial Judge issued an order setting a target date for the issuance of the decision reviewing the Indictment.⁴
4. On 4 December 2023, the Pre-Trial Judge rendered a decision confirming the Indictment ("Confirmation Decision").⁵

¹ KSC-BC-2023-11, F00001, President, *Decision Assigning a Pre-Trial Judge*, 20 November 2023, confidential.

² KSC-BC-2023-11, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Requests*, 20 November 2023, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

³ KSC-BC-2023-11, F00003, President, *Decision Invoking a Change of Venue to the Host State* ("Decision on Change of Venue"), 22 November 2023, strictly confidential and *ex parte*.

⁴ KSC-BC-2023-11, F00004, Pre-Trial Judge, *Order Setting a Target Date for a Decision Pursuant to Article 39(2)*, 1 December 2023, strictly confidential and *ex parte*.

⁵ KSC-BC-2023-11, F00005, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 4 December 2023, strictly confidential and *ex parte*.

II. SUBMISSIONS

5. Along with confirmation of the Indictment, the SPO requests, *inter alia*, an arrest warrant and order for transfer for Haxhi Shala (“Mr Shala” or the “Accused”).⁶ To this end, the SPO asserts that the requirements under Article 41(6) of the Law are satisfied.⁷ More specifically, the SPO submits that there is a grounded suspicion that Mr Shala has committed crimes within the jurisdiction of the SC.⁸ The SPO also contends that there are articulable grounds to believe that the Accused (i) is a flight risk;⁹ (ii) will obstruct the progress of criminal proceedings by influencing witnesses, victims, or accomplices;¹⁰ and (iii) will repeat the criminal offences or arrange for crimes of violence to be committed against those perceived to be against him.¹¹

6. The SPO further requests that the Pre-Trial Judge orders the transfer of the Accused to the SC Detention Facilities in the Host State, pursuant to Rule 50 of the Rules.¹²

7. Moreover, the SPO requests that the Pre-Trial Judge transmits the arrest warrant and transfer order to the SPO for execution and service, in cooperation with the Registrar.¹³ In executing the arrest warrant and transfer order, the SPO also seeks authorisation to disclose them as necessary and appropriate for this purpose.¹⁴

⁶ Submission of Indictment, paras 6, 25(ii).

⁷ Submission of Indictment, para. 7.

⁸ Submission of Indictment, para. 7.

⁹ Submission of Indictment, paras 7-9.

¹⁰ Submission of Indictment, paras 7, 10-16.

¹¹ Submission of Indictment, paras 7, 17-18.

¹² Submission of Indictment, para. 19.

¹³ Submission of Indictment, para. 20.

¹⁴ Submission of Indictment, para. 22.

III. APPLICABLE LAW

8. Pursuant to Article 39(3) of the Law and Rules 48(2) and 86(6)(b) of the Rules, at the request of the SPO, the Pre-Trial Judge may issue any orders and warrants as may be required for the preparation of a fair and expeditious trial.

9. Pursuant to Article 41(6) of the Law, the SC shall only order the arrest and detention of a person when (a) there is a grounded suspicion that the person has committed a crime within the jurisdiction of the SC; and (b) there are articulable grounds to believe that the person: (i) is a flight risk; (ii) will destroy, hide, change or forge evidence of a crime or will obstruct the progress of the criminal proceedings by influencing witnesses, victims or accomplices; or (iii) will repeat the criminal offence, complete an attempted crime, or commit a crime that he or she has threatened to commit. Pursuant to Article 41(1), (4) and (5) of the Law, the issuance of the arrest warrant must be consistent with the fundamental rights provided for in Chapter II of the Constitution, and the person concerned must be informed of his or her rights under the Law with a view to exercising them before the Pre-Trial Judge.

10. Pursuant to Rule 53(2) of the Rules, the arrest warrant shall contain: (i) the name of the person and any other relevant identifying information; (ii) a specific reference to the crimes for which the person's arrest is sought; (iii) a concise statement of facts allegedly constituting those crimes; and (iv) where applicable, the detention facility of the SC to which the person shall be transferred. Pursuant to Rule 53(3) of the Rules, the arrest warrant shall remain in effect until otherwise ordered by the Panel.

11. Pursuant to Rule 50(1) of the Rules, if an arrest warrant is issued, the Panel shall order the competent authorities to transfer the person to the SC without delay, and may include conditions for the transfer and further detention, after consulting with the Registrar. Pursuant to Article 53(3) of the Law, a warrant of arrest issued by the

SC shall have the same force and effect as a warrant of arrest issued by any other Kosovo court.

12. Pursuant to Article 35(3) of the Law, the police within the SPO shall have the authority and responsibility to exercise powers given to the Kosovo Police under Kosovo law.

13. Pursuant to Rule 55(4) of the Rules, upon notification of the arrest of a person by the competent authorities, the Registrar shall make the necessary arrangements, with the competent authorities and the Host State, for the prompt transfer of the arrested person to a detention facility of the SC.

14. Pursuant to Article 41(7) of the Law, persons subject to arrest warrants may be detained in detention facilities overseen by the SC and managed by the Registry near the seat of the SC in the Host State, if proceedings are relocated thereto.

IV. DISCUSSION

A. JURISDICTION

15. The SPO seeks an arrest warrant and transfer order for the Accused, citizen of Kosovo, for offences under Article 15(2) of the Law in conjunction with Articles 387 (intimidation during criminal proceedings), as well as 401(1), (2) and (5) (obstructing official persons in performing official duties) of the 2019 Kosovo Criminal Code, Code No. 06/L-074 ("KCC"), committed between at least 5 April and 12 April 2023.¹⁵

16. Based on the information provided by the SPO, and without prejudice to subsequent determinations on this matter, the Pre-Trial Judge recalls that, as also articulated in the Confirmation Decision, pursuant to Articles 6(2) and 15(2) of the Law, the SC have jurisdiction over the offences of intimidation during criminal

¹⁵ Submission of Indictment, para. 1; Indictment, paras 4-5, 21, 30.

proceedings and obstructing official persons in performing official duties, under Articles 387 and 401 of the KCC, as they relate to SC official proceedings and officials, allegedly committed between at least 5 April and 12 April 2023.¹⁶

B. REQUIREMENTS OF ARTICLE 41(6) OF THE LAW

1. Offences Allegedly Committed

17. The Pre-Trial Judge recalls that, when confirming the Indictment, he found that there is a well-grounded suspicion that the Accused committed or attempted to commit, either alone or in co-perpetration, agreed to commit, or assisted in the commission of offences within the jurisdiction of the SC, namely intimidation during criminal proceedings within the meaning of Article 387 of the KCC and Article 15(2) of the Law, and obstructing official persons in performing official duties within the meaning of Article 401(1), (2) and (5) of the KCC and Article 15(2) of the Law.¹⁷ The Pre-Trial Judge therefore finds that the requirement set forth in Article 41(6)(a) of the Law has been met.

2. Necessity of the Arrest

18. The SPO submits that the arrest of the Accused is necessary because there are articulable grounds to believe that all three risks foreseen under Article 41(6)(b)(i)-(iii) of the Law exist.¹⁸

19. The Pre-Trial Judge recalls that the grounds allowing to deprive a person of his or her liberty are in the alternative, and must be articulable.¹⁹ The Pre-Trial Judge

¹⁶ Confirmation Decision, para. 22.

¹⁷ Confirmation Decision, paras 101, 117, 129, 132, 136, 140, 144, 149.

¹⁸ Submission of Indictment, para. 7.

¹⁹ KSC-BC-2020-06, IA001/F00005, Court of Appeals Panel, *Decision on Kadri Veseli's Appeal Against Decision on Interim Release* ("Veseli Interim Release Appeals Decision"), 30 April 2021, public, para. 15. See also Articles 19(1.9), 19(1.10) and 19(1.31) of the 2022 Kosovo Criminal Procedure Code, Code No. 08/L-032.

further recalls that determining the existence of any of these risks, so as to make the arrest of the person necessary, is a matter of assessing the possibility, rather than the inevitability that such risks materialise.²⁰

20. As regards the flight risk under Article 41(6)(b)(i) of the Law, the Pre-Trial Judge takes into account that the filing of the confirmed Indictment reflecting the gravity of the offences charged, together with the potential sentence, is one of the factors that has a bearing upon the assessment of the flight risk,²¹ and provides the Accused with a motive to evade justice. Further, the Pre-Trial Judge notes that, in principle, the Accused would have the opportunity to evade justice, including by traveling freely to jurisdictions beyond the reach of the SC. Likewise, considering that the Accused has already demonstrated a blatant disregard for the laws and rules of the SC, in particular court-ordered protective measures, the Pre-Trial Judge is not convinced that a summons would ensure the presence of the Accused during the proceedings. Additionally, the Pre-Trial Judge attaches some weight to the SPO submission that Mr Shala is a former commander of Brigade 121 of the Kosovo Liberation Army (“KLA”)²² [REDACTED],²³ [REDACTED]. The Pre-Trial Judge is also attentive to the fact that Mr Shala (i) [REDACTED];²⁴ and (ii) [REDACTED].²⁵ The Pre-Trial Judge thus considers that the Accused has over the years kept ties [REDACTED]²⁶ [REDACTED].²⁷ In this context, the Pre-Trial Judge recalls previous

²⁰ Veseli Interim Release Appeals Decision, para. 17. *Similarly*, ICC, *Prosecutor v. Bemba Gombo et al.*, ICC-01/05-01/13-558, Appeals Chamber, *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 Aimé Kilolo Musamba”*, 11 July 2014, para. 107.

²¹ *Similarly*, KSC-BC-2020-07, IA002/F0005, Court of Appeals Panel, *Decision on Nasim Haradinaj’s Appeal Against Decision Reviewing Detention*, 9 February 2021, public, para. 61.

²² Submission of Indictment, para. 12. 116063-TR-ET Part 1, p. 9, line 18 to p. 10, line 19; 116065-TR-ET Part 1, p. 7, lines 2-10.

²³ Submission of Indictment, para. [REDACTED]. [REDACTED].

²⁴ Submission of Indictment, para. [REDACTED].

²⁵ Submission of Indictment, para. [REDACTED]. [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED]. [REDACTED].

findings[REDACTED].²⁸ Accordingly, the Pre-Trial Judge is of the view that Mr Shala's [REDACTED] cannot be ignored in assessing the risk that he may revert to other like-minded individuals to find the means and assets to abscond. On the other hand, the Pre-Trial Judge observes that the SPO provides no further information about the Accused's personal circumstances, such as his home, occupation, assets or family ties.²⁹ Therefore, in light of the information and evidence, the Pre-Trial Judge finds that, while a risk of flight exists for the Accused, this risk is moderate.

21. As regards the obstruction of proceedings under Article 41(6)(b)(ii) of the Law, the Pre-Trial Judge recalls, at the outset, his findings in the Confirmation Decision as to the existence of a well-grounded suspicion that, on two separate occasions, Mr Shala instructed Sabit Januzi ("Mr Januzi") and Ismet Bahtijari ("Mr Bahtijari") (jointly, the "Case 10 Accused") to approach [REDACTED] ("Witness 1"), in order to dissuade him from testifying in SC proceedings.³⁰ The Pre-Trial Judge also recalls, *inter alia*, that (i) during the first approach, through Mr Bahtijari, Mr Shala threatened Witness 1 that failure to withdraw his testimony could result in [REDACTED];³¹ and (ii) during the second approach, through Mr Januzi who relayed the proposal, Mr Shala offered an incentive to Witness 1 in exchange for agreeing not to testify or provide evidence against Mr Selimi.³² The Pre-Trial Judge further recalls that Mr Shala purposefully targeted relatives of Witness 1, i.e. the Case 10 Accused, who had access to the witness, and would thus be better suited to persuade Witness 1 to withdraw his testimony against Mr Selimi.³³ In this regard, the Pre-Trial Judge considers that the Accused has the means and the intent to obtain and misuse witness-related information to obstruct and interfere with SC proceedings, including by exerting

²⁸ [REDACTED].

²⁹ See ECtHR, *Becciev v. Moldova*, no. 9190/03, Judgment, 4 October 2005, para. 58.

³⁰ Confirmation Decision, para. 92.

³¹ Confirmation Decision, para. 92.

³² Confirmation Decision, para. 93.

³³ Confirmation Decision, paras 97, 115.

pressure on Witness 1 and his family in order to dissuade him from further participating as an SPO witness. The Pre-Trial Judge further takes note of the close coordination between Mr Shala and the two Case 10 Accused in relation to their approaches to Witness 1,³⁴ which is indicative of the Accused's persistence in intimidation and obstruction efforts in the context of SC proceedings. Lastly, the Pre-Trial Judge makes the foregoing findings bearing in mind the pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the SC.³⁵ Therefore, in light of the information and evidence, the Pre-Trial Judge finds that the Accused may obstruct the progress of criminal proceedings.

22. As regards the further commission of crimes under Article 41(6)(b)(iii) of the Law, the Pre-Trial Judge is of the view that the relevant factors to be considered are the same as those recited in the above paragraph with respect to the obstruction of proceedings. In particular, the Pre-Trial Judge finds that there exists a risk that the Accused will repeat the offences alleged to have been committed by him. Therefore, in light of the information and evidence, the Pre-Trial Judge finds that the Accused may commit further offences.

23. In light of the foregoing, the Pre-Trial Judge finds that there are articulable grounds to believe that there is a risk that the Accused may flee (although this risk is moderate), obstruct the progress of the criminal proceedings, or commit further offences, therefore necessitating his arrest and detention, in accordance with Article 41(6)(b) of the Law.

³⁴ Confirmation Decision, paras 71, 74, 77-81, 83, 91, 96-98, 115, 119-123. *See also* Submission of Indictment, paras 11, 15(i).

³⁵ *See, amongst many*, KSC-BC-2020-04, F00663/RED, Trial Panel I, *Public Redacted Version of Decision on the Thirteenth Review of Detention of Pjetër Shala*, 20 September 2023, public, para. 17; KSC-BC-2020-05, F00494/RED3/COR, *Further Redacted Version of Corrected Version of Public Redacted Version of Trial Judgment*, public, paras 49-57; KSC-BC-2020-06, F01794, Trial Panel II, *Decision on Periodic Review of Detention of Rexhep Selimi*, 15 September 2023, public, paras 20, 33; KSC-BC-2020-07, F00611/RED, Trial Panel II, *Public Redacted Version of the Trial Judgment*, 18 May 2022, public, paras 576-581.

C. COMPLIANCE WITH FUNDAMENTAL RIGHTS

24. Insofar as the SPO undertakes to adopt appropriate measures that will protect the fundamental rights of the Accused when executing the arrest warrant,³⁶ the Pre-Trial Judge finds that nothing in its request for arrest warrant and transfer order is *prima facie* inconsistent with the fundamental rights provided for in Chapter II of the Constitution. To this effect, in accordance with Article 41(4) and (5) of the Law, and Rule 55(6) of the Rules, as soon as the Accused is in custody and falls under the jurisdiction of the SC, he shall be informed of his rights under the Law with a view to exercising them before the Pre-Trial Judge as soon as practicable.

D. ORDER FOR TRANSFER TO DETENTION FACILITIES OF THE SPECIALIST CHAMBERS

25. For security reasons and the proper administration of justice, the SPO has invoked a change of venue to the Host State pursuant to Article 3(8)(a) of the Law.³⁷ In light of this venue change,³⁸ the Pre-Trial Judge considers it necessary that the Accused is transferred to the SC Detention Facilities, managed by the Registrar, in the Host State. Pursuant to Article 41(7) of the Law and Rule 55(4) of the Rules, the Registrar shall execute the order for transfer to the SC Detention Facilities in the Host State, making the necessary arrangements for the prompt transfer of the Accused.

³⁶ Submission of Indictment, para. 21.

³⁷ Submission of Indictment, para. 5.

³⁸ Decision on Change of Venue, para. 4. In light of the aforementioned decision, the SPO request invoking a change of venue is moot.

E. EXECUTION AND SERVICE OF THE ORDERS

26. Pursuant to Article 35(3) of the Law, the police within the SPO has the authority and responsibility to exercise powers given to Kosovo Police under Kosovo law. It may therefore be considered a “competent authority” under Rule 49(1) of the Rules, capable of executing and serving orders of the SC, including the annexed arrest warrant.³⁹ In accordance with Rule 49(1) of the Rules, the Registrar shall transmit the transfer order in cooperation with the SPO. The SPO may, as appropriate and necessary, disclose the arrest warrant for the purposes of its execution.

27. If the SPO receives information about the Accused’s travel, whether planned or ongoing, or that the Accused is present on the territory of any Third State, the SPO shall promptly provide such information to the Registrar. If the Registrar receives such information from a source other than the SPO, she shall promptly provide any such information to the SPO. The Registrar shall thereafter, having consulted with the SPO, transmit the annexed arrest warrant and transfer order to the competent authorities of any Third State concerned, in conformity with Article 55 of the Law. If this is the case, the Pre-Trial Judge clarifies that the Registrar may, as appropriate and necessary, disclose the arrest warrant and transfer order for the purposes of their execution.

28. Upon arrival at the SC Detention Facilities, or in any case before the initial appearance, the Registrar shall submit a report on the arrest and transfer of the Accused to the Pre-Trial Judge, including (i) any relevant details and information provided by the SPO, and, (ii) in case the arrest and transfer are effectuated in/from a Third State, any information regarding the basis on which that Third State has agreed or may have assumed an obligation to provide assistance to the SC.

³⁹ In notifying the SPO of the present decision, along with the two annexes, through Legal Workflow, the transmission of the relevant documents to the SPO is deemed fulfilled pursuant to Rules 49(1) and 55(1) of the Rules.

V. DISPOSITION

29. For the above reasons, the Pre-Trial Judge hereby:
- a) **GRANTS** the request for arrest warrant (Annex 1);
 - b) **GRANTS** the request for transfer order (Annex 2);
 - c) **DIRECTS** the SPO to serve and execute the annexed arrest warrant in Kosovo;
 - d) **DIRECTS** the Registrar, in consultation with the SPO, to transmit the annexed arrest warrant and transfer order, if applicable, to the competent authorities of any Third State, for service and execution;
 - e) **DIRECTS** the SPO to consult with the Registrar on the necessary arrangements to be made, including any appropriate and necessary disclosure of the arrest warrant, for its execution and service;
 - f) **DIRECTS** the Registrar to execute the transfer of the Accused to the SC Detention Facilities in the Host State; and
 - g) **DIRECTS** the Registrar, upon arrival to the SC Detention Facilities, or in any case before the initial appearance, to submit a report on the arrest and transfer of the Accused, as specified in paragraph 28 of this decision.



Judge Nicolas Guillou

Pre-Trial Judge

Dated this Monday, 4 December 2023

At The Hague, the Netherlands.