



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

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Public redacted version of

'Prosecution reply to 'Defence submissions for the Fifteenth Review of Detention'

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Pjetër Shala

Jean-Louis Gilissen

Counsel for Victims

Simon Laws

I. INTRODUCTION

1. The Specialist Prosecutor's Office ('SPO') here replies¹ to a number of issues raised in the Defence Submissions.²

II. SUBMISSIONS

2. The Defence submits that the Accused no longer poses a risk of obstruction or committing further crimes.³ This is based simply on purported good behaviour during detention and the passage of time. However, neither factor has eroded the risks which exist in this case, and which arise from concrete circumstances specific to the Accused.

3. The mere lapse of time does not affect the relevance of the threatening statements made by the Accused as recently as 2016 and 2019 on the risks of obstruction and commission of further crimes – just as it has not changed the Accused's temperament.

4. The very recently conducted psychological examination found that [REDACTED]⁴

5. Arguably, these are exactly the circumstances posed by the current proceedings, and the impending judgment. It is notable in this regard that the Accused himself [REDACTED].⁵ This directly undermines the Defence's claim that the risk of obstruction is almost non-existent, considering the stage of proceedings, that the outcome of the case is unforeseeable and that the acquittal of the Accused is one possible result.⁶

¹ This reply is made pursuant to Rule 76 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers, KSC-BD-04/Rev3/2020, 20 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

² Defence Submissions for the Fifteenth Review of Detention, KSC-BC-2020-04/F00764, 12 January 2024, confidential ('Defence Submissions').

³ Defence Submission, KSC-BC-2020-04/F00764, paras 16-25.

⁴ [REDACTED].

⁵ [REDACTED].

⁶ Defence Submissions, KSC-BC-2020-04/F00764, para.25.

6. It is apparent that the behaviour of the Accused in the highly controlled environment of the detention center does not provide a reliable indication of how he would behave outside, where there would necessarily be a much lesser degree of oversight and regulation.

7. Indeed, the threatening statements and psychological findings noted above are also consistent with [REDACTED].⁷ According to explanations provided by the Accused, the [REDACTED] was prompted by a discussion concerning [REDACTED].⁸ This is yet another indication of the Accused's propensity to threaten and use violence against those with whom he has disagreements about [REDACTED] or grudges.

8. Finally, it is notable and surprising that the Defence seeks to place such reliance⁹ on jurisprudence coming from a case which has been recognised as having been plagued by witness interference and obstruction. The backdrop of the pervasive climate of fear and intimidation in Kosovo against witnesses and potential witnesses of the KSC has been acknowledged by the Court of Appeals as a relevant 'contextual consideration.'¹⁰ In fact, the Case 07 Trial Panel credited the testimony of Defence Expert Robert Reid, who remarked that, in over 20 years in the field, he had never seen witness intimidation on the level that exists in Kosovo.¹¹

9. The risks of obstruction and commission of further crimes by the Accused, therefore, remain actual and concrete.

⁷ [REDACTED].

⁸ [REDACTED]; *See also* Decision of Liège Court of First Instance, 6 January 2020, 118356-118384-ET, p.12.

⁹ Defence Submissions, KSC-BC-2020-04/F00764, para 23-25, 28.

¹⁰ *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA017/F00011/RED, 5 April 2022, paras 41-48; *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA014/F00008/RED, 31 March 2022, para.50; *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA015/F00005/RED, 25 March 2022, para.43.

¹¹ *Specialist Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2022-01/F00611/RED, 18 May 2022 para.577.

10. These risks can only be effectively managed in the KSC Detention Facilities. The Defence simply repeats already litigated proposals for alternative measures, which the Panel has already assessed thoroughly in previous decisions and found to be insufficient or not workable.¹² The Defence does not address how these could now be implemented, and it continues to be the case that none of the mentioned measures address the possibility of the Accused employing communication devices belonging to others or requesting others to use their devices for him, nor do they ensure the effective monitoring of the Accused's communication. As the Panel has held before, such assurances and measures are possible only at the KSC Detention Facilities.¹³

III. RELIEF REQUESTED

11. For the reasons set out above and in the prior submissions, the SPO requests the Panel to order the continued detention of the Accused.

¹² See Decision on the Fourteenth Review of Detention of Pjetër Shala, KSC-BC-2020-04/F00721, 20 November 2023, confidential ('Fourteenth Detention Decision'), paras 23-24 and references in footnote 63 to six previous decisions of the Panel on detention reviews, including particularly Decision on the Eighth Review of Detention of Pjetër Shala, KSC-BC-2020-04/F00365, 6 December 2022, confidential; paras 32-35.

¹³ Fourteenth Detention Decision, KSC-BC-2020-04/F00721, paras 22-23 and references in footnote 63.

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Kimberly P. West

Specialist Prosecutor

Wednesday, 17 January 2024

At The Hague, the Netherlands.