

In: KSC-BC-2023-10

**The Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and
Haxhi Shala**

Before: Pre-Trial Judge

Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Haxhi Shala

Date: 11 February 2024

Language: English

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Urgent Request for Clarification of the Detention Status of Haxhi Shala

Specialist Prosecutor

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I. INTRODUCTION

1. The Defence for Mr. Haxhi Shala (“Accused”) seeks urgent clarification of his detention status and an order for his release if he is being held without a legal basis.

II. PROCEDURAL HISTORY

2. On 20 November 2023 the Specialist Prosecutor’s Office (“SPO”) submitted a request for confirmation of an Indictment and the issuance of an arrest warrant and transfer order for the Accused.¹
3. On 4 December 2023 the Pre-Trial Judge granted the SPO’s requests.²
4. On 11 December 2023, the Accused was arrested in Prishtinë, Republic of Kosovo.

¹ KSC-BC-2023-11/F00002, Submission of Indictment for confirmation and related requests with strictly confidential and ex parte Annexes 1-3, 20 November 2023, para. 25. A public redacted version was issued on 12 December 2023.

² KSC-BC-2023-11/F00006, Decision on Request for Warrant of Arrest and Transfer Order, 4 December 2023, confidential, paras. 29(a), (b).

5. On 12 December 2023, the Accused was transferred to the Kosovo Specialist Chambers Detention Management Unit in The Hague, the Netherlands.³
6. On 13 December 2023, an initial appearance before the Pre-Trial Judge took place at 14:00.⁴ The Pre-Trial Judge failed to issue any decision on the arrest, transfer and continued detention of the Accused.
7. At the first Status Conference on 15 December 2023 the Accused entered pleas of not guilty to each charge in the indictment.⁵ No ruling was made on the arrest, transfer and continued detention of the Accused.
8. On 25 January 2024 in the Scheduling Order for Submissions on Review of Detention, the Pre-Trial Judge noted that, “pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, the first review of the detention of Mr Shala is due on 9 February 2024” and set out a timetable in relation to this.⁶
9. On 4 February 2024 the Accused submitted the Response to Prosecution Submission Pertaining to Periodic Detention of Haxhi Shala⁷ (“Detention Response”), in which he requested, *inter alia*, that the Pre-Trial Judge find that

³ KSC-BC-2023-11/F00014, Decision Setting the Date for the Initial Appearance of Haxhi Shala and Related Matters, 12 December 2023, paras. 4-5.

⁴ KSC-BC-2023-11, First Appearance, Transcript, 13 December 2023, pp. 1-15.

⁵ KSC-BC-2023-11, Status Conference, Transcript, 15 December 2023, p. 42.

⁶ KSC-BC-2023-11/F00034, paras. 3-4.

⁷ KSC-BC-2023-11/F00039.

the Accused's detention was unlawful and order the unconditional release of the Accused from detention.⁸

III. APPLICABLE LAW

10. Article 5(4) of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR") provides:

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."⁹

11. Pursuant to Article 41(10) of the Law on Specialist Chambers and Specialist Prosecutor's Office¹⁰ ("Law"), until a judgement is final or until release, upon the expiry of two months from the last ruling on detention on remand, the Pre-Trial Judge or Panel seized with the case shall examine whether reasons for detention on remand still exist and render a ruling by which detention on remand is extended or terminated.

⁸ Detention Response, para. 73.

⁹ Cf. Constitution, Article 29(4); Law, Article 41(2).

¹⁰ Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015.

12. Rule 57(2) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers¹¹ (“Rules”) provides:

“After the assignment of a Pre-Trial Judge pursuant to Article 33(1)(a) of the Law and until a judgment is final, the Panel seized with a case shall review a decision on detention on remand upon the expiry of two (2) months from the last ruling on detention, in accordance with Article 41(6), (10), (11) and (12) of the Law or at any time upon request by the Accused or the Specialist Prosecutor, or proprio motu, where a change in circumstances since the last review has occurred.”

13. Article 16 of the Registry Practice Direction on Files and Filings before the Kosovo Specialist Chambers¹² (“Practice Direction”) provides, *inter alia*:

“1. Submissions received for filing during working hours (09:00 hours to 16:00 hours, Monday to Friday, excluding official holidays of the Specialist Chambers) shall be processed and distributed on the same working day. Submissions received for filing outside working hours will be processed and distributed on the next working day, unless an urgent measure pursuant to Article 17 has been requested and is justified.

¹¹ KSC-BD-03/Rev3/2020.

¹² KSC-BD-15, 17 May 2019.

“2. Submissions shall be registered as received on the date and time they are received by CMU [the Court Management Unit].....”

14. Pursuant to Article 17(2) of the Practice Direction, where CMU has been informed during working hours and after coordination by CMU with the Panel, urgent submissions received outside working hours shall, to the extent possible, be processed and distributed on the same working day.
15. Pursuant to Article 20(1) of the Practice Direction, Articles 16 and 17 shall apply *mutatis mutandis* to decisions submitted for filing by a Panel to CMU.
16. Article 25(1) provides that CMU shall notify the Panel and Participants of filings through an electronic notification to their Registry-provided email address, generated by Legal Workflow.

IV. SUBMISSIONS

17. As of now, no decision on review of the Accused’s detention by the Pre-Trial Judge has been posted on Legal Workflow.
18. If no such decision was submitted on 9 February 2024 to CMU, no review of detention on remand was undertaken within the time-period designated by the Pre-Trial Judge pursuant to Article 41(10) of the Law and Rule 57(2) of the

Rules. The Accused's detention after 9 February 2024 has therefore been unlawful. Pursuant to Article 5(4) of the ECHR, his release should be ordered.

19. If a Decision was submitted on 9 February after 4.00 pm and received by CMU, pursuant to Article 16 of the Practice Direction it would be registered as received on 9 February 2024 and processed and distributed on 12 February 2024, which is the next working day as 9 February fell on a Friday. It would follow that the Accused would be informed of the outcome of the review of his detention three days after it has been conducted. If the Pre-Trial Judge has ordered his continued detention, he would have spent three days in detention without formal notification of the outcome of the review of his detention and consequently without being told the reasons for his detention.

20. The Practice Direction facilitates filing at any time of a day on which the Kosovo Specialist Chambers is working. This has an understandable rationale in view of the pressure of work that can arise in criminal litigation. However, a decision on detention is no ordinary filing. It is of the utmost importance that an Accused should be informed promptly of the basis for his or her detention and the reasons for it. If the decision in the instant case needed to be filed after 16:00 on 9 February 2024, the procedure set forth in Article 16(2) of the Practice Direction should have been followed so that the Defence would have been informed of it on the day that it was taken. The Defence submits that, in the interests of transparency, if the filing took place after 16:00 on 9

February, there should be clarification of the reasons why the Accused was not informed of the outcome of the detention review on that day, including an explanation of why the procedure set forth in Article 16(2) of the Practice Direction was apparently not followed.

21. The submissions here are made without prejudice to those in the Detention Response.

22. **CONCLUSION**

23. For the foregoing reasons the Defence requests that:

- (i) If the Pre-Trial Judge did not submit to CMU a decision on review of detention at any time on Friday 9 February 2024, the release of the Accused be ordered;
- (ii) If the Pre-Trial Judge submitted a decision on review of detention after 4.00 p.m. on Friday 9 February and it is distributed on Monday 12 February 2024, a full clarification should be provided of the Accused's detention status after 9 February 2024, including an explanation of the failure to inform him about it on 9 February 2024.

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Toby Cadman

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11 February 2024

At London, United Kingdom