

**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:** 12 March 2024

**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 Sixteenth Review of  
Detention of the Accused**

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## I. INTRODUCTION

1. Pursuant to the Trial Panel's "Decision on the Fifteenth 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 sixteenth review of detention".<sup>2</sup>
2. The Accused's conditional release is warranted as at present the requirements of Article 41(6)(b) of Law No. 05/L-053 on the Specialist Chambers and Specialist Prosecutor's Office ("KSC Law") are not met.

## II. PROCEDURAL BACKGROUND

3. 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> Thus far, the Accused has been detained for nearly three years, which is clearly a disproportionate amount of time spent in detention on remand.
4. The relevant procedural background is set out in the Fifteenth Detention Decision dated 19 January 2024.<sup>5</sup>
5. On 5 March 2024, the Prosecution filed its submissions requesting the continued detention of the Accused as, in its view: (i) a grounded suspicion

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<sup>1</sup> KSC-BC-2020-04, F00776, Decision on the Fifteenth Review of Detention of Pjetër Shala, 19 January 2024 (confidential) ("Fifteenth Detention Decision"), para. 44(c). All further references to filings in these submissions concern Case No. KSC-BC-2020-04 unless otherwise indicated.

<sup>2</sup> F00805, Prosecution submissions for the sixteenth review of detention, 5 March 2024 (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.

<sup>5</sup> Fifteenth Detention Decision, paras. 1-8.

against the Accused continues to exist;<sup>6</sup> (ii) no circumstances exist that are capable of changing the Panel's findings on the existence of the risks of obstruction and commission of further crimes;<sup>7</sup> (iii) the Accused is a flight risk;<sup>8</sup> (iv) there are no alternate measures capable of mitigating these risks;<sup>9</sup> and (iv) continued detention is reasonable and proportionate.<sup>10</sup>

### III. APPLICABLE LAW

6. The relevant applicable law is set out in the Defence Submissions for the Fifteenth Review on Detention dated 12 January 2024.<sup>11</sup> In light of all factors, the continued detention "stops being reasonable".<sup>12</sup>

### IV. SUBMISSIONS

7. The Defence maintains its previous submissions regarding the unlawfulness of the Accused's continued detention.<sup>13</sup>

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

<sup>7</sup> Prosecution Submissions, paras. 7-8.

<sup>8</sup> Prosecution Submissions, paras. 9-10.

<sup>9</sup> Prosecution Submissions, para. 11.

<sup>10</sup> Prosecution Submissions, paras. 12, 13.

<sup>11</sup> F00764, Defence Submissions for the Fifteenth Review of Detention, 12 January 2024, (confidential), paras. 6-15.

<sup>12</sup> Fifteenth Detention Decision, para. 39.

<sup>13</sup> F00764, Defence Submissions for the Fifteenth Review of Detention, 12 January 2024, (confidential), paras. 16-37; F00715, Defence Submissions on the Fourteenth Review of Detention, 13 November 2023, (confidential), paras. 11-18; 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 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,

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

*Risks of obstruction and of commission of further crimes*

8. The Prosecution has failed to engage with the current circumstances of the Accused, failing to show why, on 12 March 2024, the detention of the Accused *remains* necessary, even after the end of the evidentiary stage of the trial proceedings.
9. On 9 February 2024, the Panel filed its decision closing the evidentiary proceedings.<sup>14</sup> The Prosecution contends that the Panel's decision "does not undermine the existence of these risks, considering that the Accused could still approach witnesses, whose identities are now known to him, in retaliation against the incriminating evidence they provided at trial".<sup>15</sup>
10. The Prosecution relied in support on: (i) the Accused's statements [REDACTED];<sup>16</sup> (ii) the Accused's knowledge of the evidence against him and of the identity of protected witnesses;<sup>17</sup> (iii) the alleged climate of intimidation against witnesses in Kosovo;<sup>18</sup> (iv) the Accused's alleged [REDACTED], [REDACTED], as shown by his [REDACTED] and [REDACTED].<sup>19</sup>
11. First, in regard to the statements concerning certain [REDACTED], the Defence notes that these were made in 2016 and 2019. They are taken out of proportion

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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> F00795, Decision on the Defence motion for a crime site visit, closing the evidentiary proceedings and giving directions on final briefs, request for reparations and closing statements, 9 February 2024 (confidential), paras 23, 36, 52(b) and (g).

<sup>15</sup> Prosecution Submissions, para. 8.

<sup>16</sup> Fifteenth Detention Decision, paras. 24, 32.

<sup>17</sup> Fifteenth Detention Decision, paras. 24, 32.

<sup>18</sup> Fifteenth Detention Decision, paras. 24, 29.

<sup>19</sup> Fifteenth Detention Decision, paras. 26, 32.

and context and do not indicate any wish to threaten or harm any [REDACTED]. [REDACTED]. There is no recent, specific, and reliable information suggesting that any of the [REDACTED] would be at risk in the event of the Accused being released.

12. The Prosecution has failed to identify and substantiate any concrete risk.<sup>20</sup> The alleged climate of witness intimidation in Kosovo, a country in which the Accused had not resided at the time of his arrest and had [REDACTED], is unrelated to the Accused and cannot be among the factors relied upon to justify his protracted detention.
13. Without a substantiation from the Prosecution that the Accused *himself* will seek to [REDACTED], the alleged general climate of witness intimidation in Kosovo is insufficient to justify his continued detention – particularly given that the Accused seeks to be released outside of Kosovo, away from [REDACTED].
14. Lastly, the Accused has not made any statements or acted in ways which would suggest that he would do anything to harass, intimidate, or otherwise obstruct any witnesses. Rather, the Accused has demonstrated good behaviour, and has not been subject to any additional restrictions or sanctions during his nearly three years of detention.
15. Even if detention were justified when the Accused was first taken into custody – which the Defence maintains it was not – he can no longer be credibly said to pose such risk, as the passage of time and his good behaviour while detained are intervening circumstances and should be treated as such.

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<sup>20</sup> ICTY, *Prosecutor v Ljube Boškoski and Johan Tarčulovski*, Case IT-04-82-PT, Decision on Johan Tarčulovski's Motion for Provisional Release, 18 July 2005, para. 18.

16. The Defence further submits that the likelihood of the Accused risking an additional prosecution, after the toll in his mental and physical conditions caused by the trial, through the commission of further crimes is non-existent – and thus his continued detention cannot be justified on this basis.

*Risk of flight*

17. With no acknowledgment of the Panel's repeated rejection of the Prosecution's arguments on this point,<sup>21</sup> the Prosecution repeats near verbatim its unsuccessful arguments from prior submissions,<sup>22</sup> without ever explaining why the Panel should reconsider these submissions, nor making a proper application under Rule 79 of the Rules to justify reconsideration. The illogical addition that the "imminent end of this case, and the forthcoming judgment render the current time window until the announcement of the judgment the last possibility to abscond [which] further increases the risk of flight"<sup>23</sup> is entirely unsupported, speculative, cannot amount to an intervening circumstance so as to alter the Panel's prior finding, and adds nothing to the already-rejected arguments.

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<sup>21</sup> F00776, Fifteenth Detention Decision, 19 January 2024 (confidential), para. 23; F00721, Fourteenth Detention Decision, 20 November 2023 (confidential), para. 15; F00663, 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 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>22</sup> Prosecution Submissions, para. 10.

<sup>23</sup> Prosecution Submissions, para. 10.

B. Alternative Measures Exist

18. The Defence continues to note that there are alternative measures available, and that provisional release has been found appropriate in other international criminal cases, even when the risk of obstruction was a greater degree than in the present case.<sup>24</sup>
19. It bears repeating that it is the onus of the Prosecution to demonstrate *why* alternative measures are insufficient in mitigating any risk posed by the release of the Accused.<sup>25</sup> The Prosecution has failed to articulate why alternative measures are insufficient in this *specific* case, but rather, once again, simply relied on general statements: the Detention Unit is the “only” way of “effectively” monitoring his communication<sup>26</sup> – a submission which does nothing to explain why and how the specific alternative measures proposed by the Defence are insufficient.
20. Alternative measures exist and are reasonable in the circumstances. The Accused is willing to enter into a release plan which would include, *inter alia*, house arrest in Belgium, no contact orders with all witnesses and victims (direct and indirect), no access to phone and internet except in the presence of his bail supervisor, daily reporting to the relevant authorities, surrendering all travel documents, appearing in court whenever ordered to do so, and any other conditions deemed reasonable and necessary by the Panel.<sup>27</sup>

C. Continued Detention is Disproportionate

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<sup>24</sup> In addition to the *Brahimaj* Release Decision and *Prlić* Release Decision, see, for example ICC, *Prosecutor v. Paul Gicheru*, Case No. ICC-01/09-01/20, 29 January 2021.

<sup>25</sup> See above at paras 11, 12.

<sup>26</sup> Prosecution Submissions, para. 11.

<sup>27</sup> The Defence submits that the conditions of release articulated in the *Brahimaj* Release Decision could be adapted to the current case, in addition to any other conditions the Panel deems necessary. See also ICTY, *Prosecutor v. Jovica Stanisic*, Case No. IT-03-69-PT, 28 July 2004, Decision on provisional release, para. 43.

21. The Defence submits that the continued detention of the Accused is disproportionate, particularly in light of the intervening circumstances outlined above, which serve to mitigate prior findings of risk. Further, given the Decision of the Registrar on 22 February 2024, which is subject to judicial review, limiting the right of the Accused to have contact with his family by establishing a 10-day period each month for scheduling family visits,<sup>28</sup> conditional release should be warranted. The limitations on family visits imposed by the Registrar, in the absence of any reasonable purported justification, violate the Accused's right to respect for his private and family life, which is amplified by the protracted length of detention on remand. The Panel cannot turn a blind eye on the disproportionate nature of the Accused's continued detention, particularly in circumstances which violate his Article 8 rights.
22. The mere fact that the Accused has been charged with serious crimes and could face a lengthy sentence is insufficient to discharge the Prosecution's burden to justify why detention remains necessary,<sup>29</sup> particularly in light of the jurisprudence which allows for the conditional release of individuals *convicted* of the very same crimes the Accused has been charged with, and where such individuals have not had unblemished disciplinary records while in custody or while provisionally released,<sup>30</sup> unlike the Accused in the present case.
23. The Prosecution's reliance on the Panel's prior observation that proceedings have progressed at a reasonable pace is misplaced.<sup>31</sup> The pace of the trial cannot serve to *justify* detention or render it proportionate on its own. Again, the Prosecution's approach to detention review has resulted in an

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<sup>28</sup> Decision of the Registrar, KSC/REG/IOR/6796, 22 February 2024.

<sup>29</sup> ICTY, *Prosecutor v Ljube Bošković and Johan Tarčulovski*, Case IT-04-82-PT, Decision on Johan Tarčulovski's Motion for Provisional Release, 18 July 2005, para 15.

<sup>30</sup> The Defence notes that Mr. Prlić was granted provisional release despite prior breaches of his release conditions, see *Prlić* Release Decision, paras 28, 29.

<sup>31</sup> Prosecution Submissions, para. 12.



impermissible reversal of the burden in justifying detention, as the Prosecution has failed to consider the unique circumstances of the Accused. Further, the mitigation of risks due to the end of proceedings and the undisputed good behaviour of the Accused while detained make conditional release warranted.

V. CLASSIFICATION

24. 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

25. For the above reasons, the Defence respectfully requests the Panel order the conditional release of the Accused, subject to any conditions that are deemed appropriate by the Panel.

**Word count: 2382**

Respectfully submitted,



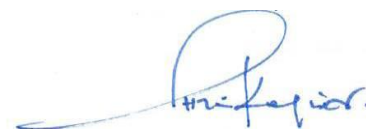
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Tuesday, 12 March 2024

The Hague, the Netherlands