



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

In: **KSC-BC-2023-10**
Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala

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

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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Public redacted version of 'Prosecution submission pertaining to periodic detention review of Haxhi Shala'

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I. INTRODUCTION

1. Pursuant to Article 41 of the Law¹ and Rule 57 of the Rules,² the Specialist Prosecutor's Office ('SPO') makes the following submissions in support of the need for the continued detention of Haxhi Shala. The Pre-Trial Judge has previously held that Shala's detention is justified on multiple bases, that no conditions short of detention in the Kosovo Specialist Chamber's ('KSC') detention facilities would be sufficient to minimise the risks, and that the detention period—taking all relevant circumstances into account—is reasonable. Since the most recent determination of the Pre-Trial Judge on 9 February 2024,³ there has been no change in circumstances that merits deviating from that determination. Indeed, continued disclosure and the steady progression of the case continue to give Shala further access to sensitive information in the case against him and reinforce the necessity and reasonableness of detention.

II. PROCEDURAL HISTORY

2. On 9 February 2024, the Pre-Trial Judge issued his Decision denying Shala's request for interim release.

3. On 8 February 2024, the Pre-Trial Judge joined the indictments charging Shala and his two co-Accused under case KSC-BC-2023-10.⁴ The SPO has since harmonized

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'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ Public Redacted Version of Decision on Review of Detention of Haxhi Shala, KSC-BC-2023-10/F00165/RED, 9 February 2024 ('Decision').

⁴ Public Redacted Version of Decision on Request for Joinder and Amendment of the Indictment, KSC-BC-2023-10/F00161/RED, 8 February 2024 ('Joinder Decision').

disclosure between the three Accused⁵ and submitted, *inter alia*, an amended indictment,⁶ and its Pre-Trial Brief (with accompanying materials).⁷

4. On 13 February 2024, a status conference was held, during which the Pre-Trial Judge indicated that transfer of the case file to the Trial Panel would be addressed at the next status conference,⁸ scheduled for 22 March 2024.

5. On 12 March 2024, Shala filed the Defence Submission requesting his release from detention.⁹

III. SUBMISSIONS

6. The Pre-Trial Judge has noted the law applicable to deciding such matters as set out in Article 41, and Rules 56 and 57.¹⁰

7. Since the most recent detention decision, there have been no developments that diminish the factors supporting the need for and reasonableness of detention. Indeed, the continued progression of the case and attendant disclosure of sensitive information in the case against Shala augment the necessity of detention.

A. GROUNDED SUSPICION

8. Article 41(6)(a) requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the KSC.¹¹ There remains a grounded suspicion that Shala has done so.¹² In the Confirmation Decision, the Pre-Trial Judge

⁵ See Disclosure Packages 16-18, disclosed on 16 February 2024.

⁶ See Submission of amended Indictment, KSC-BC-2023-10/F00176, 16 February 2024 ('Indictment Submission').

⁷ See Submission of Prosecution Pre-Trial Brief, witness and exhibit lists, and Rule 109(c) chart, KSC-BC-2023-10/F00177, 16 February 2024 ('Pre-Trial Brief Package').

⁸ Transcript (Status Conference), 13 February 2024, p.188.

⁹ Haxhi Shala Submissions for Review of Detention, KSC-BC-2023-10/F00210, 12 March 2024, Confidential ('Defence Submission').

¹⁰ Decision, KSC-BC-2023-10/F00165/RED, paras 7-10.

¹¹ Decision, KSC-BC-2023-10/F00165/RED, para.18.

¹² Decision, KSC-BC-2023-10/F00165/RED, para.23.

determined that there is a suspicion that Shala is liable for intimidation during criminal proceedings and obstructing official persons in performing official duties within the meaning of Articles 387 and 401(1), (2) and (5) of the 2019 Kosovo Criminal Code, Code No. 06/L-074 and Articles 15(2) and 16(3) of the Law,¹³ to a standard that exceeds that required for detention based on 'grounded suspicion.'¹⁴ Nothing has occurred since the Confirmation Decision was filed that would detract from the Pre-Trial Judge's determination.

B. DETENTION IS JUSTIFIED UNDER ALL ARTICLE 41(6)(B) FACTORS

i. Risk of Flight (Article 41(6)(b)(i))

9. The Pre-Trial Judge has previously concluded that Shala presents a moderate risk of flight.¹⁵ The Pre-Trial Judge considered that, in addition to Shala's awareness of the seriousness of the charges against him and potential sentence in the event of a conviction, Shala has also gained increased insight into the evidence underpinning these charges through the ongoing disclosure process, [REDACTED], as well as the audio recording and transcript [REDACTED], implicating Shala in the offences charged.¹⁶ The Pre-Trial Judge also found that Shala would have both the means and assets to flee, through his strong ties with influential individuals from within the former senior KLA leadership, and, in principle, the opportunity to evade justice, including by traveling freely to jurisdictions beyond the reach of KSC.¹⁷

10. Since the last review of detention, Shala has received an additional disclosure package and been informed that transfer of the case to the Trial Panel would be

¹³ Public Redacted Version of the Decision on the Confirmation of the Indictment, KSC-BC-2023-11/F00005/RED, paras 101, 117, 129.

¹⁴ Decision, KSC-BC-2023-10/F00165/RED, para.22.

¹⁵ Decision, KSC-BC-2023-10/F00165/RED, para.35.

¹⁶ Decision, KSC-BC-2023-10/F00165/RED, paras 30-31.

¹⁷ Decision, KSC-BC-2023-10/F00165/RED, paras 32-33.

addressed at the upcoming status conference. Continuing disclosure in combination with the steady progression of the case further elevates Shala's risk of flight.

ii. Risk of Obstruction of Proceedings (Article 41(6)(b)(ii))

11. Shala continues to present a risk of obstructing the proceedings. The Pre-Trial Judge has previously concluded that the risk that Shala will obstruct the progress of KSC proceedings continues to exist.¹⁸

12. The Pre-Trial Judge has found that Shala has both the motive and the means to obtain and misuse witness-related information to obstruct and interfere with KSC proceedings, including by acting in close coordination with Januzi and Bahtijari in relation to their approaches to Witness 1 with a view to dissuading Witness 1 from further participating in KSC proceedings as a witness, and purposefully targeting his co-Accused, [REDACTED] who would be better suited to persuade Witness 1 to withdraw his testimony [REDACTED].¹⁹ The close coordination between Shala and his co-Accused in relation to their approaches to Witness 1 is also indicative of the Accused's persistence in intimidation and obstruction efforts in the context of KSC proceedings.²⁰

13. Further to the above, the Pre-Trial Judge also noted that, as a result of the ongoing disclosure process, Shala has received increasing access to sensitive witness-related information, which is an important factor in assessing the risk of obstruction of proceedings.²¹ With the knowledge acquired so far, in the present circumstances, the risk of collusion for the purpose of obstructing the proceedings is particularly high.²²

¹⁸ Decision, KSC-BC-2023-10/F00165/RED, para.42.

¹⁹ Decision, KSC-BC-2023-10/F00165/RED, para.38.

²⁰ Decision, KSC-BC-2023-10/F00165/RED, para.38.

²¹ Decision, KSC-BC-2023-10/F00165/RED, para.40.

²² Decision, KSC-BC-2023-10/F00165/RED, para.40.

14. The Pre-Trial Judge assessed the above factors against the backdrop of the pervasive climate of fear and intimidation in Kosovo against witnesses and potential witnesses of the KSC,²³ which the Court of Appeals has agreed is a relevant ‘contextual consideration.’²⁴ Similar findings were made in the *Mustafa* Trial Judgment²⁵ and the *Gucati and Haradinaj* Appeal Judgment.²⁶ The Trial Panel in KSC-BC-2020-07 (‘Case 07’) considered that ‘witness protection has continued to be a live and critical issue in Kosovo,’²⁷ and 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.²⁸

15. In this regard, the SPO notes that, as held by the Trial Panel in Case 07, ‘the mere fact that the Accused is entitled to disclosure of relevant material does not mean that the Panel ought to ignore the risks that come with such disclosure, especially in the context of conditional release.’²⁹

²³ Decision, KSC-BC-2023-10/F00165/RED, para.41.

²⁴ *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.

²⁵ *Specialist Prosecutor v. Mustafa*, Further Redacted Version of Corrected Version of Public Redacted Version of Trial Judgment, KSC-BC-2020-05/F00494/RED3/COR, 16 December 2022 (‘*Mustafa* Trial Judgment’), para.57.

²⁶ *Specialist Prosecutor v. Guçati and Haradinaj*, Appeal Judgment, KSC-CA-2022-01/F00114, 2 February 2023 (*Gucati and Haradinaj* Appeal Judgment), para.438 (quoting KSC-BC-2020-07, Transcript, 18 May 2022, pp.3858-3859).

²⁷ *Specialist Prosecutor v. Guçati and Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2020-07/F00611/RED, 18 May 2022 (‘Case 7 Judgment’), para.579.

²⁸ Case 7 Judgment, KSC-BC-2020-07/F00611/RED, para.577.

²⁹ *Specialist Prosecutor v. Guçati and Haradinaj*, Public Redacted Version of Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00507/RED, 21 December 2021, para.36.

iii. *Risk of Criminal Offences (Article 41(6)(b)(iii))*

16. In previously finding that Shala may commit further crimes, the Pre-Trial Judge recalled that, even though the existence of a risk of obstruction does not automatically translate into a risk of committing further offences, the factors underpinning the former are of relevance to the assessment of the latter in the circumstances of the present case.³⁰ In particular, the Pre-Trial Judge found that Shala has the means and incentive to repeat the offences alleged to have been committed by him.³¹

17. Additionally, Trial Panel II in KSC-BC-2020-06 ('Case 06') has held that especially once information regarding sensitive witnesses has been disclosed to the Defence, any risk of the further commission of crimes must be avoided.³² Therefore, and especially in light of continuing disclosure, the unacceptable risk of the commission of further crimes mandates Shala's continued detention.

C. NO MODALITIES OF CONDITIONAL RELEASE ARE ABLE TO SUFFICIENTLY MITIGATE THE RISKS

18. As the Pre-Trial Judge has previously concluded, the relevant risks can only be effectively managed at the KSC's detention facilities.³³ Specifically regarding the risk of flight, the Pre-Trial Judge had previously found that certain conditions could sufficiently mitigate this risk.³⁴ However, this finding should be reconsidered given

³⁰ Decision, KSC-BC-2023-10/F00165/RED, para.45.

³¹ Decision, KSC-BC-2023-10/F00165/RED, para.45.

³² See e.g., *Specialist Prosecutor v Thaçi et al.*, Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F02125, 15 February 2024, para.26; *Specialist Prosecutor v Thaçi et al.*, Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F02126, 15 February 2024, para.27.

³³ Decision, KSC-BC-2023-10/F00156/RED, paras 55-56.

³⁴ Decision, KSC-BC-2023-10/F00156/RED, para.52.

the recent relevant development of travel to the EU without a visa now being possible for Kosovo citizens.³⁵

19. In any case, the Pre-Trial Judge found that none of these conditions for release, nor any additional measures foreseen in Article 41(12), could sufficiently mitigate the existing risks related to obstruction and the commission of further crimes.³⁶ In this regard, the Pre-Trial Judge was particularly mindful of the fact that Shala likely has access to the associated networks and resources of senior KLA leadership, and should he be released, he would have the motive, means and opportunity to exert pressure on Witness 1 [REDACTED] to dissuade him from participating in the proceedings, or to otherwise tamper with evidence.³⁷

20. The Pre-Trial Judge recognized that while the risk of illicit messages and instructions cannot be entirely eliminated, the measures in place at the KSC Detention Facilities, viewed as a whole, are designed to provide assurances against unmonitored visits and communications with family members and pre-approved visitors with a view to minimising the risks of obstruction and commission of further crimes.³⁸ In this regard, the Pre-Trial Judge and the Registrar, who have unrestricted access to confidential information concerning witnesses and victims, may take action more promptly than other authorities acting under a distinct framework.³⁹

21. The Pre-Trial Judge has also recognized that: (i) previous rulings in Case 06 have found that the Kosovo Police do not have the capacity to implement corresponding measures that sufficiently mitigate the existing risks; (ii) the very reason for establishing the KSC was that criminal proceedings against former KLA members

³⁵ European Commission, 'Visa-free travel for Kosovo citizens to the EU', 3 January 2024, accessed at https://home-affairs.ec.europa.eu/news/visa-free-travel-kosovo-citizens-eu-2024-01-03_en#:~:text=As%20of%201%20January%202024,Kosovo%20without%20issuing%20a%20visa.

³⁶ Decision, KSC-BC-2023-10/F00165/RED, para.53.

³⁷ Decision, KSC-BC-2023-10/F00165/RED, para.53.

³⁸ Decision, KSC-BC-2023-10/F00165/RED, para.54.

³⁹ See Decision, KSC-BC-2023-10/F00165/RED, para.54.

could not be conducted in Kosovo; and (iii) the procedural framework and operational practice of the KSC have been specifically designed to ensure, to the maximum extent possible, the protection of witnesses, victims as well as others at risk with a view to implementing the mandate of the KSC.⁴⁰

22. Nothing has occurred since the Pre-Trial Judge's previous determination warranting a different assessment on conditions, either generally or for a discrete period of time; rather, the progression of the case and attendant further disclosures render the underlying risks higher than ever.

D. DETENTION IS PROPORTIONAL

23. Detention remains proportional. At the last detention review, the Pre-Trial Judge found that the time Shala has spent in pre-trial detention is not unreasonable within the meaning of Rule 56(2).⁴¹

24. Whether it is reasonable for an accused to remain in detention must be assessed based on the facts of each case and according to its specific features, which in this case include that: (i) Shala is charged with two counts of obstructing official persons in performing official duties and one count of intimidation during criminal proceedings, which carry a possible sentence of up to five years and ten years of imprisonment, respectively; (ii) the risks under Article 41(6)(b)(ii) and (iii) cannot be mitigated by the proposed conditions for release, house arrest or any additional conditions; and (iii) all required procedural steps relating to the pre-trial phase of the present case have been, are being or will be completed with a view to transmitting the case for trial.⁴² The Pre-Trial Judge considered that the proceedings are moving forward expeditiously, notably since: (i) the SPO has already discharged its disclosure obligations under Rules 102(1)(a), 102(1)(b) and 103, and has provided notice under Rule 102(3); (ii) the

⁴⁰ See Decision, KSC-BC-2023-10/F00165/RED, para.54.

⁴¹ Decision, KSC-BC-2023-10/F00165/RED, para.60.

⁴² Decision, KSC-BC-2023-10/F00165/RED, para.59.

case against Shala has been joined with that of his co-Accused; (iii) a status conference was to be held on Tuesday, 13 February 2024, where a timeline for the remainder of the pre-trial phase will be adopted; and (iv) pursuant to Article 41(10) and Rule 57(2), Shala's detention shall be reviewed every two (2) months or as soon as a change in circumstances arises.⁴³

25. The proceedings continue to move forward expeditiously. Since granting of the joinder,⁴⁴ the SPO has harmonized disclosure between the three co-Accused⁴⁵ and submitted, *inter alia*, an amended indictment,⁴⁶ and its Pre-Trial Brief (with accompanying materials).⁴⁷ At the 13 February 2024 status conference, the Pre-Trial Judge indicated that the transfer of the case file to the Trial Panel would be addressed at the next status conference,⁴⁸ scheduled for 22 March 2024.

26. Shala submits that, due to the uncertainty around the funding of the defence team, in order to ensure that he is not detained for an unreasonable period prior to the opening of the case, he should be released pursuant to Rule 56(2).⁴⁹

27. This submission is premature and entirely speculative, especially considering both that Shala is in the process of applying for legal aid,⁵⁰ that the timing of applications for funding is a matter which was within the control of the Defence, and that transfer of the case file to the Trial Panel is set to be addressed at the 22 March 2024 status conference. The submission also ignores the sensitivity of the Pre-Trial Judge to this issue, with his reasonableness analysis expressly including that Shala's detention shall be reviewed every two (2) months or as soon as a change in

⁴³ Decision, KSC-BC-2023-10/F00165/RED, para.59.

⁴⁴ Joinder Decision, KSC-BC-2023-10/F00161/RED.

⁴⁵ See Disclosure Packages 16-18, disclosed on 16 February 2024.

⁴⁶ See Indictment Submission, KSC-BC-2023-10/F00176.

⁴⁷ See Pre-Trial Brief Package, KSC-BC-2023-10/F00177.

⁴⁸ Transcript (Status Conference), 13 February 2024, p.188.

⁴⁹ Defence Submission, KSC-BC-2023-10/F00210, paras 10-12.

⁵⁰ See Haxhi Shala Urgent Request for Interim Funding, KSC-BC-2023-10/F00223, 19 March 2024, Confidential, para.4.

circumstances arises. It would be unreasonable and contrary to the relevant law to determine now whether detention will continue to be justified on the basis of events and eventualities that may or may not come to pass in connection with a developing set of circumstances.

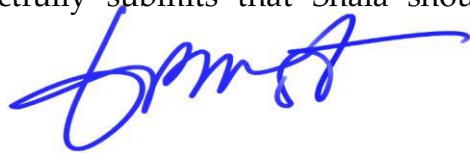
28. Given all of the above, detention remains both reasonable and proportional at this time.

IV. CLASSIFICATION

29. This filing is submitted confidentially pursuant to Rule 82(4). A public redacted version will be filed.

V. CONCLUSION

30. For the foregoing reasons, the SPO respectfully submits that Shala should continue to be detained.



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Kimberly P. West
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Thursday, 21 March 2024

At The Hague, the Netherlands