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:	**Trial Panel I**
	Judge Mappie Veldt-Foglia, Presiding Judge
	Judge Roland Dekkers
	Judge Gilbert Bitti
	Judge Vladimir Mikula, Reserve Judge
Registrar:	Dr Fidelma Donlon
Filing Participant:	Specialist Prosecutor's Office
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Prosecution submission pertaining to periodic detention review of Ismet Bahtijari

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I. INTRODUCTION

1. Pursuant to Article 41 of the Law[1] 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 Ismet Bahtijari. The Pre-Trial Judge and this Panel have previously held that Bahtijari's detention is justified on multiple bases, that no conditions short of detention in the Kosovo Specialist Chambers ('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 Panel on 26 September 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 Bahtijari further access to sensitive information in the case against him and reinforce the necessity and reasonableness of detention.

II. PROCEDURAL HISTORY

2. On 26 September 2024, the Panel issued the Decision denying Bahtijari's request for interim release.

3. Since the Decision, ten (10) additional disclosure packages have been disclosed to the Accused.[4] In addition, the date for commencement of trial has been set for 14 November 2024.[5]

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[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 the Sixth Review of Detention of Ismet Bahtijari, KSC-BC-2023-10/F00481/RED, 26 September 2024 ('Decision').
[4] *See* Disclosure Packages 45-54.
[5] *See* Decision on the date for the commencement of the trial, KSC-BC-2023-10/F00559, 24 October 2024, para.17.

III. SUBMISSIONS

4. This Panel has noted the law applicable to deciding such matters, including as set out in Articles 3, 21, and 41, and Rules 56 and 57.[6]

5. Since the most recent 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 Bahtijari augment the necessity of detention.

A. GROUNDED SUSPICION

6. Article 41(6)(a) requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the KSC.[7] There remains a grounded suspicion that Bahtijari has done so.[8] The Pre-Trial Judge determined that there is a suspicion that Bahtijari 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,[9] to a standard that exceeds that required for detention based on 'grounded suspicion.'[10] The Panel also recalled that, as found in the Amendment Decision, there is further well-grounded suspicion that Bahtijari is criminally liable for the offence of intimidation during criminal proceedings through

[6] Decision, KSC-BC-2023-10/F00481/RED, para.23.
[7] *See* Decision, KSC-BC-2023-10/F00481/RED, para.29.
[8] Decision, KSC-BC-2023-10/F00481/RED, para.29.
[9] Decision, KSC-BC-2023-10/F00481/RED, para.29; Corrected Version of Public Redacted Version of the Decision on the Confirmation of the Indictment, KSC-BC-2023-10/F00008/RED/COR, 2 October 2023 ('Confirmation Decision'), paras 95, 111, 123, 126, 131, 135, 139, 144.
[10] *See* Decision, KSC-BC-2023-10/F00481/RED, para.30.

the additional limb of 'promise of a gift or any other form of benefit' under Article 387 of the KCC, and Articles 15(2) and 16(3) of the Law.[11]

7. As the case has progressed, it has only been reinforced that there remains a grounded suspicion that Bahtijari has committed crimes within the KSC's jurisdiction.[12]

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

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

8. The Pre-Trial Judge previously concluded that Bahtijari presents a moderate risk of flight.[13] The Pre-Trial Judge considered: (i) Bahtijari's awareness of the seriousness of the charges and potential sentence if convicted; (ii) his increased insight into the evidence underpinning these charges; (iii) his means to flee and opportunity to evade justice; and (iv) his awareness of the coming trial.[14] The Pre-Trial Judge also noted that Bahtijari is rooted in his community and was cooperative following his arrest, but found these favourable factors diminish but do not eliminate the risk of flight.[15]

9. This Panel has concluded that Bahtijari is not a flight risk and that such risk, even if existent, could be adequately mitigated by conditions to be imposed upon the Accused pursuant to Article 41(12) and Rule 56(5).[16]

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[11] Decision, KSC-BC-2023-10/F00481/RED, para.29 citing Public Redacted Version of Decision on the Confirmation of Amendments to the Indictment and Related Matters, KSC-BC-2023-10/F00377/RED, 8 July 2024 ('Amendment Decision'), paras 79 (a)-(c), (g).
[12] *See* Decision, KSC-BC-2023-10/F00481/RED, paras 29-31; Public redacted version of 'Prosecution submission pertaining to periodic detention review of Ismet Bahtijari', KSC-BC-2023-10/F00147/RED, 15 January 2024, Confidential, para.9; Public redacted version of 'Consolidated Prosecution response to Bahtijari Defence submissions on detention on remand', KSC-BC-2023-10/F00089/RED, 3 November 2023, paras 18-19.
[13] Decision on Review of Detention of Ismet Bahtijari, KSC-BC-2023-10/F00408, 26 July 2024 ('July Decision'), para.34.
[14] July Decision, KSC-BC-2023-10/F00408, para.32.
[15] July Decision, KSC-BC-2023-10/F00408, para.33.
[16] Decision, KSC-BC-2023-10/F00481/RED, paras 33-34.

10. However, given the seriousness of the charges and potential sentence and the now the imminent start of trial, Bahtijari's risk of flight at the present moment is elevated to a 'sufficiently real possibility'.[17]

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

11. Bahtijari continues to present a risk of obstructing the proceedings, consistent with the Panel's recent conclusions.[18]

12. As regards the risk of obstructing proceedings, the Panel attached weight to the specific circumstances of the case, namely (i) that, at this stage of the proceedings, it appears that Bahtijari has both the motive and the means to obtain and misuse witness-related information to obstruct and interfere with KSC proceedings, including by exerting pressure on Witness 1 and his family to dissuade him from participating as an SPO witness in proceedings before the KSC; (ii) Bahtijari's increased opportunity to directly interfere with Witness 1 and his family; (iii) Bahtijari's unity of interests with influential individuals from within the former KLA leadership, including his co-Accused, Haxhi Shala, and Bahtijari's likely access to their associated networks and resources; and (iv) Bahtijari's persistence in intimidation and obstruction efforts in the context of proceedings before the KSC.[19]

13. The Panel further considered the above together with the fact that: (i) Bahtijari continues to receive increasing access to sensitive witness-related information as a result of the ongoing disclosure process and the imminent start of the trial; and (ii) additional obstructive conduct alleged against Bahtijari has been confirmed in the Amendment Decision.[20]

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[17] *See e.g. Prosecutor v Thaçi et al.,* Decision on Hashim Thaçi's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA004/F00005, 30 April 2021, para.31.
[18] Decision, KSC-BC-2023-10/F00481/RED, para.40.
[19] *See Prosecutor v. Shala,* Summary of Trial Judgment, KSC-BC-2020-04, 16 July 2024, para.6.
[20] Decision, KSC-BC-2023-10/F00481/RED, para.36.

14. The Panel 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,[21] which the Court of Appeals has agreed is a relevant 'contextual consideration.'[22]

15. In this regard, the SPO notes that, as held Trial Panel II in case KSC-BC-2020-07 ('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.'[23]

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

16. In previously finding that Bahtijari may commit further crimes, the Panel recalled that, even though the existence of a risk of obstruction does not automatically translate

[21] Decision, KSC-BC-2023-10/F00481/RED, para.38.
[22] *See 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; *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; *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.
[23] *Prosecutor v. Gucati 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.

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.[24]

17. Additionally, Trial Panel II in case 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.[25]

18. Therefore, in the absence of any contrary intervening information,[26] and especially in light of continuing disclosure, the unacceptable risk for the commission of further crimes mandates Bahtijari's continued detention.

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

19. The relevant risks can only be effectively managed at the KSC's detention facilities, as recently reaffirmed by the Panel.[27]

20. The Panel found that none of Bahtijari's proposed 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.[28]

21. Nothing has occurred since the Panel's previous determination warranting a different assessment, 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.

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[24] Decision, KSC-BC-2023-10/F00481/RED, paras 47-48.
[25] *See e.g.*, *Prosecutor v Thaçi et al.*, Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F02125, 15 February 2024, para.26; *Prosecutor v Thaçi et al.*, Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F02126, 15 February 2024, para.27.
[26] Decision, KSC-BC-2023-10/F00481/RED, para.40.
[27] Decision, KSC-BC-2023-10/F00481/RED, paras 46-47.
[28] Decision, KSC-BC-2023-10/F00481/RED, paras 44-46.

D. DETENTION IS PROPORTIONAL

22. Detention remains proportional. At the last detention review, the Panel found that the time Bahtijari has spent in pre-trial detention is not disproportionate.[29]

23. The Panel recalled that: (i) Bahtijari has been detained since his arrest on 5 October 2023; (ii) he is charged with two counts of obstructing official persons in performing official duties and one count of intimidation during criminal proceedings, under alternative limbs of conduct, and pursuant to various modes of liability, carrying a possible sentence of up to five years and ten years of imprisonment, respectively; (iii) the risks under Article 41(6)(b)(ii) and (iii) cannot be mitigated by the proposed conditions for release and/or any additional conditions; and (iv) the start of the trial is imminent.[30]

24. The Panel also noted that Bahtijari's detention shall be reviewed every two months or as soon as a change in circumstances arises, and that weighed against the remaining factors and, in particular: (i) the serious nature of the charges against the Accused; (ii) the impossibility to mitigate the risks under Article 41(6)(b)(ii) and (iii); and (iii) the steady and significant advancement of the proceedings, including the imminent start of the trial, that the detention of Bahtijari has not become unreasonable under Rule 56(2).[31]

25. The proceedings continue to move forward expeditiously, demonstrated, in particular, by the date for commencement of trial having been set for 14 November 2024.

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

[29] Decision, KSC-BC-2023-10/F00481/RED, para.52.
[30] Decision, KSC-BC-2023-10/F00481/RED, para.50.
[31] Decision, KSC-BC-2023-10/F00481/RED, para.51.

IV. CONCLUSION

27. For the foregoing reasons, the SPO respectfully submits that Bahtijari should continue to be detained.

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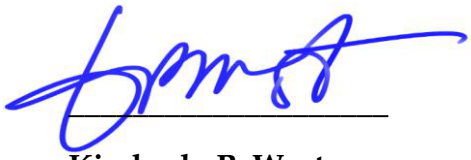

Kimberly P. West

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Wednesday, 6 November 2024

At The Hague, the Netherlands