



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-BC-2023-10**
The 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: Fidelma Donlon

Date: 26 November 2024

Language: English

Classification: **Public**

Public Redacted Version of
Decision on the Seventh Review of Detention of Ismet Bahtijari

To be notified to:

Specialist Prosecutor

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Felicity Gerry

Counsel for Haxhi Shala

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TRIAL PANEL I (Panel) hereby renders this decision on the seventh review of detention of Ismet Bahtijari.

I. PROCEDURAL BACKGROUND

1. On 26 September 2024 (Sixth Detention Decision),¹ the Panel reviewed the detention of Ismet Bahtijari (Mr Bahtijari) and ordered his continued detention.
2. On 6 November 2024, the Specialist Prosecutor's Office (SPO) filed its submissions on the seventh review of detention of Mr Bahtijari, requesting his continued detention (SPO Submissions).²
3. The Defence for Ismet Bahtijari (Bahtijari Defence) did not file a response.
4. [REDACTED].³
5. On 12 November 2024, upon request of the Parties, the Panel adjourned the hearings of 14 and 15 November 2024.⁴
6. [REDACTED].⁵
7. [REDACTED].⁶

¹ KSC-BC-2023-10, F00481, *Decision on the Sixth Review of Detention of Ismet Bahtijari*, 26 September 2024, confidential. A public redacted version was issued on 2 October 2024, [F00481/RED](#).

² KSC-BC-2023-10, F00582, *Prosecution submission pertaining to periodic detention review of Ismet Bahtijari*, 6 November 2024, public.

³ [REDACTED].

⁴ KSC-BC-2023-10, F00593, *Trial Panel I, Order on Adjournment of Hearings*, 12 November 2024, confidential, para. 5(a). A public redacted version was issued on the same day, [F00593/RED](#).

⁵ [REDACTED].

⁶ [REDACTED].

II. SUBMISSIONS

8. The SPO submits that the continued detention of Mr Bahtijari remains necessary, reasonable and proportionate, as there has been no change in circumstances that warrants deviating from the Panel's determination in the Sixth Detention Decision.⁷

9. More specifically, the SPO avers that there remains a grounded suspicion that Mr Bahtijari committed crimes within the jurisdiction of the Specialist Chambers (SC) as provided under Article 41(6)(a) of Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law).⁸

10. With respect to the first limb of Article 41(6)(b) of the Law, the SPO argues that Mr Bahtijari's risk of flight "is elevated to a 'sufficiently real possibility'", given the imminent commencement of the trial and the serious nature of the charges against Mr Bahtijari.⁹

11. With respect to the second limb of Article 41(6)(b) of the Law, the SPO avers that the Panel's findings in the Sixth Detention Decision continue to apply and thus Mr Bahtijari continues to present a risk of obstructing the SC proceedings.¹⁰

12. With respect to the third limb of Article 41(6)(b) of the Law, the SPO maintains its position that the unacceptable risk of the further commission of crimes by Mr Bahtijari, especially in light of the continuing disclosure, mandates his continued detention.¹¹

13. Lastly, the SPO maintains that: (i) no modalities of conditional release could sufficiently mitigate the existing risks, and (ii) as proceedings continue to move forward expeditiously, Mr Bahtijari's detention remains proportional.¹²

⁷ SPO Submissions, paras 1, 5, 18, 21, 26-27.

⁸ SPO Submissions, paras 6-7.

⁹ SPO Submissions, paras 8-10.

¹⁰ SPO Submissions, paras 11-15.

¹¹ SPO Submissions, paras 16-18.

¹² SPO Submissions, paras 19-20, 22-24.

14. On this basis, the SPO requests that Mr Bahtijari remain in detention.¹³

III. APPLICABLE LAW

15. The Panel notes Article 6(2) of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Articles 29, 31(5) and 53 of the Constitution of the Republic of Kosovo (Constitution), Articles 3(2), 21(3), and 41(6) and (10)-(12) of the Law and Rules 56(2) and 57(2) of the Rules.

IV. ANALYSIS

16. At the outset, the Panel recalls that the presumption of innocence, as provided for in Article 31(5) of the Constitution, Article 21(3) of the Law, and Article 6(2) of the ECHR, is the starting point for the assessment of the continued detention on remand.¹⁴ Accordingly, continued detention cannot be maintained lightly and the accused should be released once his continued detention ceases to be reasonable.¹⁵ The SPO bears the burden of establishing that the detention of the accused is necessary.¹⁶

A. GROUNDED SUSPICION

17. The Panel recalls that, as found in the “Decision on the Confirmation of the Indictment”,¹⁷ there is a “well-grounded suspicion” within the meaning of

¹³ SPO Submissions, para. 27.

¹⁴ KSC-BC-2020-06, IA004/F00005/RED, Court of Appeals, [Public Redacted Version of Decision on Hashim Thaçi’s Appeal Against Decision on Interim Release](#) (Thaçi Interim Release Appeal Decision), 30 April 2021, public, para. 17.

¹⁵ ECtHR, *Buzadji v. The Republic of Moldova* [GC], no. 23755/07, [Judgment](#) (*Buzadji v. The Republic of Moldova*), 5 July 2016, paras 89-90.

¹⁶ KSC-BC-2020-06, F00177/RED, Pre-Trial Judge, [Public Redacted Version of Decision on Hashim Thaçi’s Application for Interim Release](#) (Thaçi Interim Release Decision), 22 January 2021, public, para. 19 and references therein.

¹⁷ KSC-BC-2023-10, F00008, Pre-Trial Judge, *Decision on the Confirmation of the Indictment* (Confirmation Decision), 2 October 2023, strictly confidential and *ex parte*. A confidential redacted version and a public redacted version of the decision were filed on 12 October 2023, F00008/CONF/RED and F00008/RED. A

Article 39(2) of the Law that Mr Bahtijari committed offences within the SC's jurisdiction, namely intimidation during criminal proceedings "by serious threat, or any other means of compulsion", 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 (KCC), and Articles 15(2) and 16(3) of the Law.¹⁸ The Panel also recalls that, as found in the "Decision on the Confirmation of Amendments to the Indictment and Related Matters",¹⁹ there is further well-grounded suspicion that Mr Bahtijari is criminally liable for the offence of intimidation during criminal proceedings through 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.²⁰

18. Therefore, and in the absence of any contrary intervening information or developments, the Panel finds that the requirement under Article 41(6)(a) of the Law has not ceased to exist and hence continues to be met.

B. NECESSITY OF DETENTION

19. The Panel recalls that, once the threshold in Article 41(6)(a) of the Law is met, the grounds that would justify a person's deprivation of liberty must be "articulable" in the sense that they must be specified in detail.²¹ On the basis of the available

corrected version of the public redacted version of the decision was issued on 12 October 2023, [F00008/RED/COR](#).

¹⁸ [Confirmation Decision](#), paras 95, 111, 123, 126, 131, 135, 139, 144.

¹⁹ KSC-BC-2023-10, F00377, Pre-Trial Judge, *Decision on the Confirmation of Amendments to the Indictment and Related Matters* (Amendment Decision), 8 July 2024, confidential, paras 79(a)-(c), (g). A public redacted version was issued on 9 July 2024, [F00377/RED](#).

²⁰ [Amendment Decision](#), paras 57, 63, 66, 69, 70, 79(b). *See, similarly*, KSC-BC-2023-10, F00379, Specialist Prosecutor, *Prosecution Submission of Confirmed Amended Indictment*, 10 July 2024, public, with Annexes 1-2, confidential and Annexes 3-4, public, para. 23.

²¹ Article 19.1.31 of the Kosovo Criminal Procedure Code 2022, Law No. 08/L-032 defines "articulable" as: "the party offering the information or evidence must specify in detail the information or evidence being relied upon". *See also* KSC-BC-2020-06, IA001/F00005, Court of Appeals, [Decision on Kadri Veseli's Appeal Against Decision on Interim Release](#), 30 April 2021, public, paras 18-19.

evidence, the specific articulable grounds must support the “belief” that any of the risks under the three limbs of Article 41(6)(b) of the Law exist.²² The standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.²³ The Panel further recalls that it may refer to findings in prior decisions if it is satisfied that the evidence or information underpinning those decisions still supports the findings made at the time of the review.²⁴ Finally, since the three grounds under Article 41(6) of the Law are listed in the alternative, the existence of one ground suffices to determine the necessity of detention of the Accused.²⁵

1. Risk of Flight

20. As regards the risk of flight under Article 41(6)(b)(i) of the Law, the Panel recalls that it has previously found that Mr Bahtijari is not at flight risk on the basis of the following factors: (i) the cooperation shown by Mr Bahtijari towards the SPO following his arrest; (ii) Mr Bahtijari’s permanent place of residence in Kosovo; (iii) his rootedness in his residential community; and (iv) his stable family relationship and economic and social links with his home country.²⁶

21. To the extent that the SPO repeats arguments regarding the existence of such a risk,²⁷ the Panel will not address them further. With respect to the SPO’s general argument that the risk of flight increases due to the imminent start of the trial,²⁸ the Panel finds it unpersuasive. The Panel considers that the SPO fails to present specific reasoning based on evidence supporting the belief of a “sufficiently real possibility”

²² [Sixth Detention Decision](#), para. 32 and any references therein.

²³ [Sixth Detention Decision](#), para. 32 and any references therein.

²⁴ [Sixth Detention Decision](#), para. 32 and any references therein.

²⁵ [Sixth Detention Decision](#), para. 32 and any references therein.

²⁶ [Sixth Detention Decision](#), paras 33-34.

²⁷ SPO Submissions, para. 10.

²⁸ SPO Submissions, para. 10.

that Mr Bahtijari will abscond as a result of the advancement of the proceedings.²⁹ In light of the above, the Panel remains satisfied that Mr Bahtijari is not at flight risk and that such a risk, even if existent, could be adequately mitigated by conditions to be imposed upon him pursuant to Article 41(12) of the Law and Rule 56(5) of the Rules.³⁰

2. Risk of Obstructing the Progress of SC Proceedings

22. As regards the risk of obstructing proceedings under Article 41(6)(b)(ii) of the Law, the Panel finds that: (i) the circumstances and factors set out in the Six Detention Decision continue to apply;³¹ and (ii) no information or developments have arisen which undermine them and the conclusion they underpin. [REDACTED].

23. In light of the above, the Panel finds that there continues to be a risk that Mr Bahtijari might obstruct the progress of the SC's proceedings.

3. Risk of Committing Further Crimes

24. As regards the further commission of crimes under Article 41(6)(b)(iii) of the Law, the Panel is mindful of the fact that, while the existence of a risk of obstruction does not automatically translate into a risk of commission of further crimes, the factors underpinning the former risk are of relevance to the assessment of the latter risk in the circumstances of the present case.³²

25. Accordingly, in light of the above,³³ and in the absence of any contrary intervening information, the Panel finds that there continues to be a risk that

²⁹ Similarly, KSC-BC-2020-04, F00418, Trial Panel I, *Decision on the Ninth Review of Detention of Pjetër Shala*, 6 February 2023, confidential. A public redacted version was issued on the same day, [F00418/RED](#), para. 24 and references therein.

³⁰ [Sixth Detention Decision](#), para. 34.

³¹ [Sixth Detention Decision](#), paras 35-40.

³² [Sixth Detention Decision](#), para. 41 and any references therein.

³³ See *supra* paras 22-23.

Mr Bahtijari might commit further crimes, including against witnesses who have provided or could provide evidence in the case and/or are due to appear before this Panel. [REDACTED].³⁴

4. Conclusion

26. In light of the foregoing, the Panel finds that there are articulable grounds to believe that the risk of obstructing the progress of the proceedings before the SC and the risk of committing further crimes continue to exist, therefore necessitating Mr Bahtijari's continued detention in accordance with Article 41(6)(b) of the Law. The Panel will assess below whether these risks can be adequately mitigated by any conditions for his release.

C. CONDITIONAL RELEASE

27. The Panel notes that detention on remand should only be continued if there are no more lenient measures that could sufficiently mitigate the risks set out in Article 41(6)(b)(ii)-(iii) of the Law. The Panel has the obligation to inquire and evaluate, *proprio motu*, all reasonable conditions that could be imposed on an accused.³⁵

28. In this regard, as found in the Sixth Detention Decision, the Panel remains of the view that there are no conditions which could address the fact that: (i) Mr Bahtijari has the means and the possibility to approach Witness 1, and has likely access to the associated networks of his co-Accused Haxhi Shala and other senior KLA leadership; and, accordingly, (ii) should he be released, Mr Bahtijari would have the motive, means and opportunity to exert pressure on Witness 1 to dissuade him from

³⁴ See *supra* para. 22.

³⁵ [Sixth Detention Decision](#), para. 44 and any references therein.

participating in the proceedings, or to otherwise tamper with evidence.³⁶ The Panel recalls that, while the risk of illicit messages and instructions cannot be entirely eliminated, the measures in place at the SC Detention Facilities, viewed as a whole, provide assurances against unmonitored visits and Mr Bahtijari's communications with family members and preapproved visitors with a view to minimising the risk of obstruction as much as possible. Such measures, as well as additional measures, may be ordered *proprio motu* by the Panel pursuant to Rule 56(6) of the Rules.³⁷

29. Therefore, the Panel remains satisfied that it is only through the communication monitoring framework applicable at the SC Detention Facilities that Mr Bahtijari's communications can be restricted in a manner that will sufficiently mitigate the risk of obstructing the progress of the SC's proceedings and the risk of committing further crimes, as set out in Article 41(6)(b)(ii)-(iii) of the Law.

D. PROPORTIONALITY OF DETENTION

30. The Panel highlights the importance of the proportionality principle in the determination of the reasonableness of pre-trial detention and recalls that the longer a person remains in pre-trial detention, the higher the burden on the SPO to justify continued detention.³⁸ The duration of time in detention pending trial is a factor that needs to be considered along with the degree of the risks that are described in Article 41(6)(b) of the Law, in order to determine whether, all factors being considered, the continued detention "stops being reasonable" and the individual needs to be released.³⁹ However, the question whether it is reasonable for an accused to remain in detention must be assessed based on the facts and circumstances of each case and according to its specific features.⁴⁰

³⁶ [Sixth Detention Decision](#), paras 45-48.

³⁷ [Sixth Detention Decision](#), para. 45.

³⁸ [Sixth Detention Decision](#), para. 49 and any references therein.

³⁹ [Sixth Detention Decision](#), para. 49 and any references therein.

⁴⁰ [Sixth Detention Decision](#), para. 49 and any references therein.

31. In this respect, the Panel recalls that: (i) Mr Bahtijari has been detained since his arrest on 5 October 2023;⁴¹ (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;⁴² and (iii) the risks under Article 41(6)(b)(ii) and (iii) of the Law cannot be mitigated by any conditions for release.⁴³

32. Furthermore, pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, Mr Bahtijari's detention shall be reviewed every two months or as soon as a change in circumstances arises. The Panel has duly appraised the additional time spent in detention by Mr Bahtijari following the Sixth Detention Decision, including the resulting increase of the SPO's burden to justify Mr Bahtijari's continued detention. However, the Panel weighs these factors against the remaining ones and, in particular: (i) the serious nature of the charges against Mr Bahtijari; and (ii) the impossibility to mitigate the risks under Article 41(6)(b)(ii) and (iii) of the Law. As regards the advancement of the proceedings, the Panel recalls that on 12 November 2024, it adjourned the commencement of the trial, upon request of the Parties, [REDACTED].⁴⁴ Considering the above, the Panel finds that the detention of Mr Bahtijari has not become unreasonable under Rule 56(2) of the Rules.

33. For the foregoing reasons, the Panel concludes that, for the purposes of the periodic review of Mr Bahtijari's detention pursuant to Article 41(10) of the Law and Rule 57(2) of the Rules, the time Mr Bahtijari has spent in detention is not disproportionate.

⁴¹ See [Sixth Detention Decision](#), para. 50.

⁴² See *supra* para. 17. See also [Sixth Detention Decision](#), para. 50.

⁴³ See *supra* paras 28-29.

⁴⁴ See *supra* paras 4-7, 22.

V. DISPOSITION

34. For the above-mentioned reasons, the Panel hereby:

- a. **ORDERS** Mr Bahtijari's continued detention;
- b. **ORDERS** the SPO to file submissions on the next review of detention of Mr Bahtijari by no later than **Monday, 6 January 2025**;
- c. **ORDERS** the Defence to file submissions on the next review of detention of Mr Bahtijari, if it so wishes, by no later than **Monday, 13 January 2025**;
- d. **DETERMINES** that any reply, if the SPO so wishes, shall be filed by no later than **Friday, 17 January 2025**;

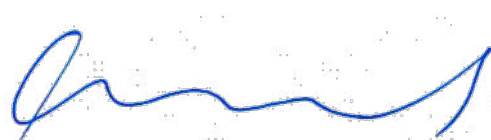


Judge Mappie Veldt-Foglia

Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Tuesday, 26 November 2024

At The Hague, the Netherlands.