



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 Sabit Januzi

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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 Sabit Januzi. The Pre-Trial Judge and this Panel have previously held that Januzi'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 4 December 2024,³ there has been no change in circumstances that merits deviating from that determination. Indeed, the progression of the case into its final stages reinforces the necessity and reasonableness of detention.

II. PROCEDURAL HISTORY

2. On 4 December 2024, the Panel issued the Decision denying Januzi's request for interim release.

3. Since the Decision, an additional disclosure package has been disclosed to the Accused.⁴ In addition, pursuant to a plea agreement,⁵ Januzi has pleaded guilty to Counts 2 and 3 of the Indictment⁶ dated 10 July 2024.⁷

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 Seventh Review of Detention of Sabit Januzi, KSC-BC-2023-10/F00613/RED, 4 December 2024 ('Decision').

⁴ See Disclosure Package 58.

⁵ See Annex 2 to URGENT Prosecution submissions on plea agreements and sentencing, KSC-BC-2023-10/F00618/A02, 6 December 2024.

⁶ ANNEX 2 to Prosecution submission of confirmed amended Indictment, KSC-BC-2023-10/F00379/A01, 10 July 2024, Confidential ('Indictment').

⁷ See Transcript (Plea Agreement Hearing), 18 December 2024, pp. 483-484.

III. SUBMISSIONS

4. The Panel has noted the law applicable to deciding such matters, including as set out in Articles 3, 21, and 41, and Rules 56 and 57.⁸

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 augments 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.⁹ There remains a grounded suspicion that Januzi has done so.¹⁰ The Pre-Trial Judge determined that there is a suspicion that Januzi 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,¹¹ to a standard that exceeds that required for detention based on 'grounded suspicion.' The Panel also recalled that, as found in the Amendment Decision, there is further well-grounded suspicion that Januzi is criminally liable for the offence of intimidation during criminal proceedings through

⁸ Decision, KSC-BC-2023-10/F00613/RED, paras 15-16.

⁹ Decision, KSC-BC-2023-10/F00613/RED, paras 17-18.

¹⁰ See Decision, KSC-BC-2023-10/F00613/RED, paras 17-18.

¹¹ Lesser Redacted Version of Public Redacted Version of the Decision on the Confirmation of the Indictment, KSC-BC-2023-10/F00008/RED2/COR, 2 October 2023, paras 95, 111, 123, 126, 131, 135, 139, 144; Public Redacted Version of the Decision on the Confirmation of Amendments to the Indictment and Related Matters, KSC-BC-2023-10/F00377/RED, 8 July 2024 ('Amendment Confirmation Decision'), paras 53, 56-57, 70.

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.¹²

7. As the case has progressed, it has only been reinforced that there remains a well-grounded suspicion that Januzi has committed crimes within the KSC’s jurisdiction.¹³ On 19 December, Januzi pleaded guilty to Counts 2 and 3 of the Indictment pursuant to a plea agreement and agreed-upon factual basis statement.

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 Januzi presents a moderate risk of flight.¹⁴ The Pre-Trial Judge considered: (i) Januzi’s awareness of the seriousness of the charges and potential sentence if convicted; (ii) his increased insight into the evidence underpinning the charges; (iii) his means to flee and opportunity to evade justice; and (iv) his awareness of the upcoming trial.¹⁵

9. This Panel has concluded that Januzi 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

¹² Decision, KSC-BC-2023-10/F00613/RED, para.17.

¹³ See Public redacted version of ‘Prosecution response to Januzi Defence detention submissions’, KSC-BC-2023-10/F00107/RED, 17 November 2023, para.19; Public Redacted Version of Prosecution submission pertaining to periodic detention review of Sabit Januzi, KSC-BC-2023-10/F00149/RED, 22 January 2024, para.4; Amendment Confirmation Decision, KSC-BC-2023-10/F00377/RED, 8 July 2024, paras 53, 56-57, 70.

¹⁴ Decision on Review of Detention of Sabit Januzi, KSC-BC-2023-10/F00423, 5 August 2024 (‘August Decision’, para.37.

¹⁵ August Decision, KSC-BC-2023-10/F00613/RED, para.34.

¹⁶ Decision, KSC-BC-2023-10/F00481/RED, para.21.

10. However, given Januzi's guilty pleas to serious charges and potential sentence to years of imprisonment, Januzi's risk of flight at the present moment is elevated is elevated to a 'sufficiently real possibility'.¹⁷

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

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

12. The Panel attached weight to the specific circumstances of the case, namely that: (i) at this stage of the proceedings, it appears that Januzi has both the motive and the means to obtain and misuse witness-related information to obstruct and interfere with KSC proceedings, including by exerting further pressure on Witness 1 and his family to dissuade him from participating as an SPO witness in proceedings before the KSC; (ii) Januzi has an increased opportunity to directly interfere with Witness 1 and his family; (iii) Januzi has a unity of interests with influential individuals from within the former Kosovo Liberation Army (KLA) leadership, including his co-Accused, Haxhi Shala; and (iv) he is prone to follow directions from more senior individuals in the KLA hierarchy and has shown persistence in intimidation and obstruction efforts in the context of proceedings before the KSC.¹⁹

13. The above factors must be assessed against the backdrop of the pervasive climate of fear and intimidation in Kosovo against witnesses and potential witnesses of the KSC, which the Court of Appeals has agreed is a relevant 'contextual consideration'.²⁰

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/F00613/RED, paras 22-23.

¹⁹ Decision, KSC-BC-2023-10/F00613/RED, para.22; Decision on the Sixth Review of Detention of Sabit Januzi, KSC-BC-2023-10/F00501, 4 October 2024, para.23.

²⁰ 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-

14. 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.’²¹

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

15. In previously finding that Januzi may commit further crimes, the Panel 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.²²

16. 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.²³ Therefore, and especially in light of continuing disclosure, the unacceptable risk for the commission of further crimes mandates Januzi’s continued detention.

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

17. The relevant risks can only be effectively managed at the KSC’s detention facilities, as recently reaffirmed by the Panel.²⁴

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.

²¹ *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.

²² Decision, KSC-BC-2023-10/F00613/RED, paras 24-25.

²³ 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.

²⁴ Decision, KSC-BC-2023-10/F00613/RED, para.29.

18. The Panel found that none of Januzi'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.²⁵

19. Nothing has occurred since the Panel'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

20. Detention remains proportional. At the last detention review, the Panel found that the time Januzi has spent in pre-trial detention is not disproportionate.²⁶

21. The Panel recalled that: (i) Januzi 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.²⁷

22. The Panel also noted that Januzi'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

²⁵ Decision, KSC-BC-2023-10/F00613/RED, paras 27-29.

²⁶ Decision, KSC-BC-2023-10/F00613/RED, para.33.

²⁷ Decision, KSC-BC-2023-10/F00613/RED, para.31.

steady and significant advancement of the proceedings, such that the detention of Januzi has not become unreasonable under Rule 56(2).²⁸

23. The proceedings continue to move forward expeditiously, demonstrated, in particular, by Januzi having pleaded guilty to counts 2 and 3 of the Indictment.²⁹

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

IV. CONCLUSION

25. For the foregoing reasons, the SPO respectfully submits that Januzi should continue to be detained.

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At The Hague, the Netherlands

²⁸ Decision, KSC-BC-2023-10/F00613/RED, paras 32-33.

²⁹ See Annex 2 to URGENT Prosecution submissions on plea agreements and sentencing, KSC-BC-2023-10/F00618/A02, 6 December 2024; Transcript (Plea Agreement Hearing), 18 December 2024, pp. 483-484.