

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: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Sabit Januzi

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Public Redacted Version of Defence Submissions on the Periodic Detention of
Sabit Januzi

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I. INTRODUCTION

1. Pursuant to Article 41 of the Law¹ and Rule 57(3) of the Rules², counsel on behalf of Sabit Januzi (hereafter referred to as 'Januzi') make the following submissions in support of his interim release from detention, remaining under the authority of the Kosovo Specialist Chambers, pending pronouncement of sentence.
2. In accordance with Rule 57(1) of the Rules, Januzi retains the right to have his detention reviewed every two months or as soon as a change in circumstances arises.

II. PROCEDURAL HISTORY

3. On 4 December 2024, the Panel issued a decision ordering Januzi's continued detention³.
4. It is submitted on behalf of Januzi that there has been a change in circumstances since the decision on detention dated 4 December 2024, namely, the entering of guilty pleas to Counts 2 and 3 on the Indictment by Januzi on 18 December 2024⁴. Those guilty pleas were entered pursuant to the Plea Agreement dated 6 December 2024⁵. The Panel are therefore invited to take these fresh

¹ Law No.05/L-053

² KSC-BD-03/Rev3/2020

³ KSC-BC-2023-10/F00613, *Decision on the Seventh Review of Detention of Sabit Januzi*, Trial Panel I, 4 December 2024, Confidential

⁴ Transcript page 483 lines 17-24 and page 484 lines 1-8

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

circumstances into consideration when reviewing Januzi's detention status, for the reasons outlined below.

III. SUBMISSIONS ON INTERIM RELEASE

5. As set out by the SPO in their submissions on detention status ("Prosecution Submissions")⁶, the relevant law to be applied here is set out in Articles 3, 21 and 41 of the Law, and Rules 56 and 57 of the Rules.
6. Article 41(6) of the Law provides that the detention of a person shall only be ordered when:
 - (a) there is a grounded suspicion that he has committed a crime within the jurisdiction of the Specialist Chambers; and
 - (b) there are articulable grounds to believe that:
 - i. There is a risk of flight;
 - ii. He will destroy, hide, change or forge evidence of a crime or specific circumstances indicate he will obstruct the progress of the criminal proceedings by influencing witnesses, victims or accomplices; or
 - iii. The seriousness of the crime, of the manner or circumstances in which it was committed and his personal circumstances, past conduct, the environment and conditions in which he lives or other personal circumstances indicate a risk that he will repeat the criminal offence, complete an attempted crime or commit a crime which he has threatened to commit.

⁶ KSC-BC-2023-10, *Prosecution submission pertaining to periodic detention review of Sabit Januzi*, Prosecution, 16 January 2025, Public

A. GROUNDED SUSPICION

7. Article 41(6)(a) of the Law requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the KSC. Januzi has now pleaded guilty to two offences within that jurisdiction, such that Article 41(6)(a) of the Law is satisfied.

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

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

8. Trial Panel I has previously concluded that Januzi is *not* a flight risk⁷. The Panel went on to find that even if such a risk did exist, that risk could be adequately mitigated by conditions imposed on him pursuant to Article 41(12) of the Law and Rule 56(5) of the Rules⁸. Those conditions are explored further below.
9. The SPO state at para 10 of the Prosecution Submissions that Januzi's guilty pleas elevate the risk of flight to a 'sufficiently real possibility'. On the contrary, it is submitted that Januzi's acceptance of responsibility for his actions, his guilty pleas and his remorse, reduce any residual spectre of risk of flight even

⁷ KSC-BC-2023-10/F00613, *Decision on the Seventh Review of Detention of Sabit Januzi*, Trial Panel I, 4 December 2024, Confidential at paragraph 9

⁸ KSC-BC-2023-10/F00613, *Decision on the Seventh Review of Detention of Sabit Januzi*, Trial Panel I, 4 December 2024, Confidential at paragraph 9

further.

10. The offences took place during a single week in April 2023. Since then, SPO officers attended at the address of Januzi on 3 May 2023, whereby he was made aware that he was under investigation. Januzi was also fully compliant and cooperative in the search and seizure of his devices from his home address. Januzi remained in Kosovo (save for a four-day holiday in August 2023) until his eventual detention. This included a period of court surveillance where Januzi's movements were monitored.
11. On 4 October 2023, Januzi attended at the EULEX compound in Kosovo (as requested by an earlier summons issued) where he was interviewed. He was permitted to leave the compound and return home on this date.
12. He was arrested and detained the following day on 5 October 2023, six months following the offences, 5 months after the SPO officers attended at his addressed arrest and three days after the indictment was confirmed.
13. There were no attempts to flee during his time at liberty.
14. Januzi is aware, by virtue of the Plea Agreement signed by him and the Prosecution, that he faces a custodial sentence of between 24 and 30 months (less time served).
15. Januzi has already been in custody for nearly 16 months. He will be eligible to apply for commutation or early release at the two thirds stage of any term of imprisonment. The earliest date upon which he may be eligible for

commutation/early release in accordance with the Plea Agreement is as soon as 5 February 2025 (only 12 days hence). The latest date upon which he may be eligible for commutation/early release in accordance with the Plea Agreement is 5 June 2025.

16. Januzi is 59 years old and has strong community ties. When at liberty, he lives in his family home in the small village of Drenas, Kosovo where he has lived all of his life. His home was built by the family on their plot, where he lives with his four children, two children in law and his six grandchildren, whom he spends most of his time with. The home is owned outright with no mortgage. Januzi's wife has passed away some years ago.

17. Januzi worked as a bricklayer with his three sons, forming a team of tradesmen. However, he has not been working regularly in recent times due to his poor health, namely advanced rheumatism in both knees and prostate issues.

18. Januzi's financial means are modest, with income being pooled to support the household of 13 people. He received, prior to his arrest, 170EUR/month war veterans' pension.

19. When at liberty, Januzi continued to hold an informal role within the War Veterans Association in his local village, assisting with organisation of events. His role did not extend to policy, leadership or similar.

20. In relation to politics, Januzi was previously the head of village branch of the Democratic Party of Kosovo (PDK) for Upper Fushticë but resigned from that

position at the beginning of 2023 and he has since been replaced. Since then Januzi has played no active role in the PDK and has no intention to in the future.

21. Importantly, Januzi has now publicly expressed remorse for his actions in April 2023, both through his counsel and in person⁹.

22. It is submitted in the circumstances that no such risk of flight exists, or that in the alternative, any residual risk can be addressed by the following proposed conditions:

- (a) Surety in the sum of 5000 EUR;
- (b) Surrender of Januzi's passport;
- (c) Requirement to live and sleep each night at his home address; and
- (d) Daily reporting to Drenas police station or EULEX police headquarters.

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

23. The Panel previously found that Januzi presents a risk of obstructing the proceedings, placing weight on:

24. Januzi's motive and means to obtain and misuse witness-related information to obstruct and interfere with KSC proceedings, including placing pressure on Witness 1 and his family to dissuade him from giving evidence before the KSC;

⁹ Transcript page 504 lines 1-5, page 511 lines 13-22, page 521 lines 9-21

- (a) Januzi's increased opportunity to directly interfere with Witness 1 and his family;
- (b) Januzi's connections with influential people from within the former Kosovo Liberation Army (KLA); and
- (c) Januzi's tendency to follow direction from more senior individuals in the KLA hierarchy which includes his co-accused, Haxhi Shala.

25. Due to the fact that Januzi has pleaded guilty to counts 2 and 3, there will no longer be a trial which would involve witnesses, including Witness 1 and W04891, having to give evidence before the KSC. Januzi now has no incentive to interfere with them, due to the fact that any attempt to place undue pressure could only *adversely* affect his position from this point forwards.

26. Additionally, Witness 1 has already given evidence in other proceedings before the KSC, and to Januzi's knowledge is not to due to give evidence in any other case.

27. Januzi has been fully cooperative with the investigation into his conduct since April 2023. He has now entered guilty pleas to counts 2 and 3, on an agreed factual basis, and he has publicly expressed remorse for his actions in April 2023, both through his counsel and in person¹⁰. In response to a direct question from the Presiding Judge of Trial Panel I, asking if he "would...do something similar again?", he publicly disavowed his previous conduct and declared that "I would never do it again"¹¹.

¹⁰ Transcript page 504 lines 1-5, page 511 lines 13-22, page 521 lines 9-21

¹¹ Transcript page 521 lines 14-17

28. Any residual concern can, in any event, be properly addressed by attaching the following condition to interim release:

(a) not to contact directly or indirectly Witness 1 or his family; and

(b) not to contact directly or indirectly his co-accused Ismet Bahtjari or Haxhi Shala.

29. In the event that the Panel requires even further assurance, Januzi will abide by any conditions imposed, including any geographical restriction on his movement within Kosovo or areas thereof and:

(a) Refraining from any contact or communication with witnesses or victims before the Specialist Chambers and SPO;

(b) Refraining from making any direct or indirect public statements about the Specialist Chambers and SPO;

(c) Abiding by any decision or order of the Specialist Chambers; and

(d) Refraining from making negative, violent, intimidating, threatening or coercive comments towards or about witnesses or other persons who are at

risk on the account of their cooperation with the Specialist Chambers, officials of the Specialist Chambers or the SPO.

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

30. The SPO highlights at para 15 of their submissions that there is an overlap between risk of obstructing proceedings and committing criminal offences, as previously established by this Panel.

31. In light of the previous submission made regarding reduced risk of obstructing KSC proceedings following the admissions of guilt, the Panel are invited to find that there is little or no risk of Januzi committing criminal offences if he were to be released pending sentence.

32. The SPO have raised no other reason, other than obstructing proceedings, which may warrant a concern that Januzi is at risk of committing criminal offences if released from detention. This concern is addressed in the submissions above. Any residual concerns of the Panel in that sense could be alleviated by stringent conditions, as proposed in the above section in reference to Article 41(6)(b)(ii).

33. The Trial Panel has heard during sentencing submissions on 18 December 2024 the details of Januzi's otherwise limited antecedents. In particular, there is nothing to suggest that what occurred in April 2023 – in relation to which Januzi has publicly expressed remorse – was anything other than an isolated

aberration.

C. CONDITIONS OF RELEASE ARE ABLE TO SUFFICIENTLY MITIGATE THE RISKS

34. Although the Panel have previously found that none of the proposed conditions for release, nor any additional measures under Article 41(12), could sufficiently mitigate the risk of obstruction and the commission of further crimes, it is submitted that a fresh assessment of detention status ought to be made, considering the decreased risk posed.

D. PROPORTIONALITY OF DETENTION ON REMAND

35. Januzi has been detained since his arrest on 5 October 2023. That means he has now been in detained, as of the writing of this response on 23 January 2025 for 476 days, or just under 16 months.

36. Although, the maximum sentences for the offences of obstruction and intimidation are five and ten years of imprisonment respectively, the Plea Agreement signed by the SPO concedes that the appropriate sentencing range for Januzi in the present case is between 24 and 30 months' imprisonment, at the very bottom end of the statutory range (24 months' imprisonment being the statutory minimum term), with credit to be given for time served pursuant to Rule 163(1) of the Rules.

37. 10 weeks have now passed since the court was first informed that the Prosecution had entered into Plea Agreements with the defence, agreeing an appropriate sentencing range of 24-30 months' imprisonment¹². Sentencing submissions were made by both Prosecution and defence on 18 December 2024, including a submission yet to be ruled upon that the imposition of a term of imprisonment in accordance with the agreed sentencing range should be accompanied by a second discretionary order that the sentence of imprisonment imposed is not to be executed unless the accused commits another offence during a stated verification period of not less than 1 year (that is, an order suspending any sentence of imprisonment leading to the immediate release of Januzi from custody). [REDACTED] The earliest date upon which Januzi may be eligible for commutation/early release in accordance with the Plea Agreement, 5 February 2025, is rapidly approaching (only 12 days hence) and yet no date for the pronouncement of sentence has been fixed. In these circumstances, the continued detention of Januzi is not proportionate and he should be granted interim release pending pronouncement of sentence.

IV. CONCLUSION

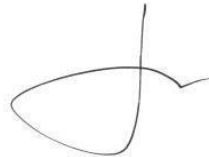
38. For the aforementioned reasons, it is submitted that Januzi ought to be released with or without conditions pending pronouncement of sentence.

V. CLASSIFICATION

¹² KSC-BC-2023-10/F00596, *URGENT Prosecution notification of plea agreements with confidential Annexes 1-3*, Prosecution, 13 November 2024, Confidential and KSC-BC-2023-10/F00596/A02, *Annex 2 to Prosecution notification of plea agreements*, Prosecution, 13 November 2024, Confidential

39. This filing is classified as confidential pursuant to Rule 82(4) of the Rules.

Word count: 2491 words

A handwritten signature in black ink, appearing to be 'J. E. Rees', written in a cursive style.

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23 January 2025

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