

In: **KSC-BC-2023-10**

The Specialist Prosecutor v. Sabit Januzi and Ismet Bahtjari

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

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Sabit Januzi

Date: 11 October 2023

Language: English

Classification: Confidential

Defence Submission on Detention on Remand

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I. INTRODUCTION

1. On 5 October 2023, the Accused was arrested by the SPO in Kosovo. On 6 October 2023, he was transferred to the SC Detention Facilities in The Hague, the Netherlands. On 4 October 2023 the Accused was invited to be questioned by the Special Prosecutor's Office (SPO) at the Eulex facility in Pristina. He was invited at 9 o'clock in the morning. On his way to the facility he got a phone call that the interrogation was postponed till 3 pm the same day. At that time he presented himself at the facility. He was questioned in presence of Mr Kushtrim Bytyqi, his appointed lawyer. Mr Bytyqi hold office in Pristina.

When the interrogation was finished, approximately at 8 pm on 4 October 2023 the Accused went home, his lawyer Mr Bytyqi was handed a cd-rom with the videotaped interrogation on it.

On 5 October 2023 at approximately 6h30 am the Accused was visited at his home by law enforcement and asked to come out to sign some official documents from the Kosovo Specialist Chambers. He was handed over the arrest warrant signed 3 October 2023 by the Pre-Trial Judge. Subsequently he was deprived of his liberty.

II. PROCEDURAL BACKGROUND

2. The relevant procedural background is set out in the Decision setting the Date for the Initial Appearances of Sabit Januzi and Ismet Bahtjari and Related Matters dated 6 October 2023 (paragraphs 1 to 6).

III. SUBMISSIONS

3. The presumption of innocence of the Accused is the starting point for the assessment of continued detention on remand. The burden of establishing that continued detention is necessary lies solely with the Prosecution. The presumption of innocence is also set forth in article 21 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's office (hereafter 'The Law'): "The accused shall be presumed innocent until proved guilty beyond reasonable doubt according to the provisions of this Law."
4. The right to liberty should be the rule and detention the exception; allowed only where shown to be strictly necessary and proportionate in that no alternative measures can mitigate a risk posed by interim release.
5. Article 5 § 3 of the European Convention on Human Rights ("ECHR"), Article 29(2) of the Constitution of Kosovo, and Article 41(5) of the KSC Law guarantee that any person detained "shall be entitled to trial within a reasonable time or to release pending trial". Similarly, Rule 56(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules") provides that the Panel "shall ensure that a person is not detained for an unreasonable period prior to the opening of the case". Article 19.2 of The Law states the following: "The Rules of Procedure and Evidence shall reflect the highest standards of international human rights law including the ECHR and ICCPR with a view to ensuring a fair and expeditious trial taking into account the nature, location and specificities of the proceedings to be heard by the Specialist Chambers."

6. In *Maassen v. The Netherlands*,¹ the European Court of Human Rights reiterated the principles governing “reasonable time” of detention pending trial under Article 5 § 3, and noted the following:

- (i) the persistence of a reasonable suspicion is a condition *sine qua non* for the validity of pre-trial detention but after a certain lapse of time- that is to say as from the first judicial decision ordering detention on remand, it no longer suffices;
- (ii) where other grounds are cited by the judicial authorities, they must continue to justify the deprivation of liberty and be both “relevant” and “sufficient” while the national authorities must display “special diligence” in the conduct of the proceedings. The assessment of the relevant and sufficient reasons for pre-trial detention cannot be separated from the actual duration thereof;
- (iii) until conviction, an accused must be presumed innocent and the purpose of Article 5 § 3 is essentially to require his or her provisional release once his or her continuing detention ceases to be reasonable. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities;

¹ ECtHR, *Maassen v. The Netherlands*, no. 10982/15, 9 February 2021, paras. 53-56, 62, 63 and jurisprudence cited therein.

- (iv) the question of whether a period of time spent in pre-trial detention is reasonable cannot be assessed in the abstract, arguments for and against release must not be “general and abstract” but need to contain specific references to specific facts and the personal circumstances justifying detention; continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention. Detention will continue to be legitimate only if public order remains actually threatened; its continuation cannot be used to anticipate a custodial sentence. More generally, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the seriousness of the offence. Article 5 § 3 of the Convention cannot be seen as allowing pre-trial detention unconditionally provided that it lasts no longer than a certain period. The longer pre-trial detention lasts, the more substantiation is required for convincingly demonstrating the alleged risk or risks in case of the suspect’s release from pre-trial detention.
7. Article 41.12 of The Law gives a clear list of possible alternatives to detention on remand. The Accused can be released on bail with consent to attend proceedings by VTC, he can be released with the obligation to not leave his house or residence in Kosovo with consent to attend proceedings by VTC. Additionally he can be released on the condition not to have contact or approach places or persons, or he can be released under the condition to present himself at a police station or other venue in Kosovo if he consents to attend proceedings by VTC. Of course the Accused could be released on bail and consent to attend in person the proceedings in The Hague, as he clearly stated at the end of the initial appearance before Pre-Trial Judge on 9 October 2023.

8. The Accused has simply presented himself in Kosovo to be interrogated on October 4th 2023 in the morning, came back in the afternoon, was questioned by the SPO - and thus confronted with elements the SPO sees as evidence against him- and just went home to his family (three adult sons and a daughter, his wife has passed away ten years ago). In the morning of 5 October 2023 he has opened the door on demand of the police, signed the documents hand over to him and went along with the law enforcement. Article 41.6.b.i of The Law states that the arrest or detention of a person only shall be ordered when there are articulable grounds to believe there is a risk of flight. In the case of the Accused lies the clear proof that there is no articulable ground to believe there is a risk of flight in his acts the days before his arrest and of course in his attitude the morning of his arrest. Bearing in mind that the Arrest Warrant itself was already signed and issued on 2 October 2023 by the Pre-Trial Judge, one cannot argue there is any articulable ground to believe the is a risk of flight of the Accused.
9. Article 41.6.b.ii of The Law states there should be articulable grounds the Accused will destroy, hide, change or forge evidence of a crime or specific circumstances indicate that the Accused will obstruct the progress of the criminal proceedings. In current case there are no concrete elements that could present such articulable grounds. The ECHR is clear in stating multiple times that no general or abstract arguments should be used when determining the absolute necessity of detention on remand (eg ECHR Lakatos v Hungary, 26 June 2018, margin number 55). There are in the current case of the Accused no concrete articulable grounds to meet the requirements of Article 41.6.b.ii of The Law.
10. Article 41.6.b.iii of The Law states there should be articulable grounds to believe that the Accused will repeat the criminal offence, complete an attempted crime or a crime which he or she has threatened to commit. The Accused entered a clear not guilty plea during the initial hearing before the Pre-Trial Judge on 9 October 2023. The presumption of innocence is set forth in Article 21.3 of The Law as above mentioned. The risk of reoffending or completing an attempted or threatened crime is in current case not supported by any concrete evidence. The sole interdiction to have contact or approach Witness 1 as mentioned in the arrest Warrant, condition already in The Law Article 41.12.f., could satisfy any concerns I that sense.

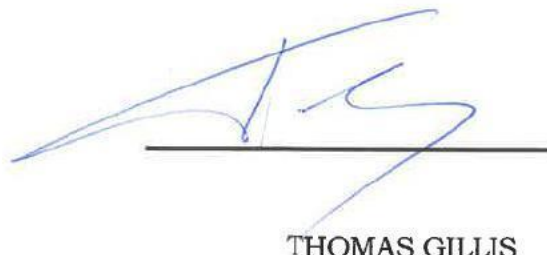
IV. CONCLUSION

11. The Defence respectfully requests to bring an end to the Accused's detention on remand, with or without any conditions that are deemed appropriate.
12. Mr Sabit Januzi will comply with any conditions imposed.

V. CLASSIFICATION

13. This filing is classified as confidential pursuant to Rule 82(3) and 82(4) of The Rules of Procedure and Evidence before The Kosovo Specialist Chambers.

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At The Hague, the Netherlands.