

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: Duty Counsel for Ismet Bahtjari

Date: 11 October 2023

Language: English

Classification: Public

Submission on detention on remand

Specialist Prosecutor's Office

Ward Ferdinandusse

(Duty) Counsel for Sabit Januzi

Thomas Gillis

(Duty) Counsel for Ismet Bahtjari

Hendrik Sytema

Introduction

1. Pursuant to the arrest warrant and actual detention on remand the Defence for Mr Ismet Bahtjari hereby files its submissions regarding the detention of the Accused.
2. On 5 October 2023, the Accused was arrested and – after transfer to the Netherlands – brought to the KSC Detention Facility in The Hague. On 9 October 2023, he pleaded not guilty to all charges set out in the Indictment.

Procedural Background

3. The relevant procedural background is set out in the Decisions setting the date for the Initial Appearance of Sabit Januzi and Ismet Bahtjari and Related Matters dated 6 October 2023 (paragraphs 1 to 6).

Submission

4. The Defence disputes that Mr Bahtjari's detention can be considered necessary or proportionate.
5. Considering the principal of the presumption of innocence, the mere existence of a suspicion of having committed crimes under the KSC jurisdiction is insufficient.

6. Apart from the fact that the strength of the suspicion cannot now be tested by the Defence, it does not appear, at least not sufficiently, that the requirements for applying detention on remand are met.
7. The test to be applied requires that the existence of the Article 41(6) risks be shown as well as that such risks cannot be mitigated by the imposition of appropriate conditions.
8. Mr Bahtjari's interim release is warranted as it is not demonstrated that, if released, he will abscond, obstruct the proceedings, or commit further crimes. In that case the requirements of Article 41(6)(b) of Law No. 05/L-053 on the Specialist Chambers and Specialist Prosecutor's Office ("KSC Law") have not been met.
9. The Defence also points out that it does not show that there are no alternatives to pre-trial detention.
10. Being interrogated voluntarily, approximately 5 months after the alleged facts as described in the Indictment, there is no ground to believe that there is a risk of flight, that he would interfere with the criminal procedures or that there is a fear for repetition.

11. The Defence believes that suitable measures alternative to detention exist and must be considered. For instance, requiring the Mr Bahtjari to remain in-house arrest at his residence can sufficiently mitigate any potential risk.
12. Mr Bahtjari is willing to remain at his home, not change his place of residence, surrender his passport and other travel documents, report daily to the police or other relevant authorities, be subject to close monitoring by the authorities, and appear in court whenever ordered to do so, and/or be subject to any other conditions deemed appropriate and ordered by the KSC.

Conclusion

13. For the above reasons, the Defence respectfully requests to bring an end to Mr Bahtjari's detention and order his interim release or placement in house arrest at his residence subject to any conditions that are deemed appropriate.

[Word count: 560]

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'H. Sytema', with a large, sweeping flourish at the end.

Hendrik Sytema

Duty Counsel for Ismet Bahtjari

11/10/2023

At The Hague, the Netherlands