



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2023-10
Specialist Prosecutor v. Sabit Januzi and Ismet Bahtjari

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 11 September 2023

Language: English

Classification: Public

Public redacted version of 'Submission of Indictment for confirmation and related requests

with strictly confidential and *ex parte* Annexes 1-3'

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Article 38(4) of the Law¹ and Rule 86(2)-(3) of the Rules,² the Specialist Prosecutor's Office ('SPO') hereby files an indictment for confirmation against **Sabit JANUZI** and **Ismet BAHTJARI** in respect of certain offences committed between at least 5 April 2023 and 12 April 2023 ('Indictment').³ Pursuant to Articles 6(2), 15(2), and 16(3), the Kosovo Specialist Chambers ('KSC') have jurisdiction over these offences because they relate to KSC official proceedings.⁴ Articles 7-9 do not apply.⁵

2. The Indictment is submitted together with supporting material⁶ and a detailed outline demonstrating the relevance of the evidentiary material to each allegation,⁷ as well as photographs of **Sabit JANUZI** and **Ismet BAHTJARI**.⁸

3. The Indictment and supporting material demonstrate a well-grounded suspicion⁹ that **Sabit JANUZI** and **Ismet BAHTJARI** are individually criminally

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'). Unless otherwise indicated, all references to 'Rule(s)' are to the Rules.

³ See Annex 1. Pursuant to Rule 86(1), the Specialist Prosecutor notified the President, who assigned a Pre-Trial Judge in accordance with Article 33(1)(a). See Decision Assigning a Pre-Trial Judge, KSC-BC-2023-10/F00001, 11 September 2023, Confidential.

⁴ See Decision on the Confirmation of the Indictment, KSC-BC-2020-07/F00074/RED, 11 December 2020 ('Confirmation Decision'), para.21; Decision on Defence Challenges, KSC-BC-2020-07/F00057, 27 October 2020 ('Challenges Decision'), paras 22-27; Decision on Request for Arrest Warrants and Transfer Orders, KSC-BC-2020-07/F00012/RED, 24 September 2020 ('Arrest Warrants Decision'), para.17.

⁵ See Confirmation Decision, KSC-BC-2020-07/F00074, para.22; Arrest Warrants Decision, KSC-BC-2020-07/F00012/RED, para.17; Challenges Decision, KSC-BC-2020-07/F00057, para.25.

⁶ The supporting materials are being submitted as a separate package through Legal Workflow.

⁷ See Annex 2. See also Rule 86(3)(b). In Annex 2, the SPO has also cited to certain authorities interpreting and applying the elements of the relevant offences and modes of liability.

⁸ See Annex 3.

⁹ Article 38(4); Rule 86(1). See also Kosovo, Criminal No.04/L-123, Procedure Code, 2012, Article 19(1.12) ('Well-grounded suspicion – means filing an indictment. Possession of admissible evidence that would satisfy an objective observer that a criminal offence has occurred and the defendant has committed the offence').

responsible for, as specifically alleged in the Indictment: (i) Criminal Offences Against the Administration of Justice and Public Administration, punishable under Chapters II and XXXI of the KCC¹⁰ and Articles 15(2) and 16(3); and (ii) Criminal Offences Against Public Order, punishable under Chapters II and XXXII of the KCC and Articles 15(2) and 16(3).¹¹

4. The Indictment pleads the material facts in the particular circumstances of the case against **JANUZI** and **BAHTJARI** in conformity with relevant jurisprudence.¹² The SPO accordingly requests the Pre-Trial Judge to confirm the Indictment.

5. Under Article 3(8)(a), for security reasons and the proper administration of justice, the SPO hereby invokes a change of venue to the Host State in respect of this and all future stages of proceedings arising from or related to the Indictment.

6. In addition, the SPO requests the Pre-Trial Judge to (i) issue arrest warrants and orders for transfer for **JANUZI** and **BAHTJARI** to the KSC Detention Facilities in The Hague ('Detention Facilities') pursuant to Articles 35(2), 39(3), 41, 53, and 55 and Rules 48, 50, 53, 55, 200-202, and 208; [REDACTED]; and (iv) order the temporary non-disclosure of the Indictment, related documents or information to the public until further order.

II. SUBMISSIONS

¹⁰ Criminal Code of the Republic of Kosovo, Code No.06/L-074 (2019) ('KCC'). See also Challenges Decision, KSC-BC-2020-07/F00057, para.24 (finding that, while Articles 6(2) and 15(2) refer to 2012 KCC, the 2019 KCC applies to the current proceedings).

¹¹ Other possible charges under the KCC include: Obstruction of evidence or official proceedings (Article 386), Violating secrecy of proceedings (Article 392), and Contempt of Court (Article 393).

¹² See Public Redacted Version of Decision on Defence Appeals Against Decision on Motions Alleging Defects in the Form of the Indictment, KSC-BC-2020-06/IA012/F00015/RED, 22 August 2022, paras 17-20, 46-48, 51, 92, 158, 179; 188; Public Redacted Version of Decision on Defence Motions Alleging Defects in the Form of the Indictment, KSC-BC-2020-06/F00413/RED, 22 July 2021, paras 27-31, 33-34, 177; Confirmation Decision, KSC-BC-2020-07/F00074/RED, paras 26-149; Public Redacted Version of Decision on the Confirmation of the Indictment Against Salih Mustafa, KSC-BC-2020-05/F00008/RED, 5 October 2020, paras 33-39, 64-65.

A. REQUEST FOR ARREST WARRANTS AND TRANSFER ORDERS

7. The requirements under Article 41(6) for **JANUZI's** and **BAHTJARI's** arrest and detention are fulfilled. The supporting materials establish grounded suspicion¹³ that **JANUZI** and **BAHTJARI** have committed crimes within the jurisdiction of the KSC, as required under Article 41(6)(a). Further, though the satisfaction of only one of these criteria is sufficient to ground a warrant of arrest, **JANUZI** and **BAHTJARI** should be detained on the basis of all three criteria specified in Article 41(6)(b). There are 'articulable grounds to believe' that: (1) there is a risk of flight; (2) **JANUZI** and **BAHTJARI** will obstruct the progress of the criminal proceedings by influencing witnesses, victims, or accomplices; and (3) the seriousness of the crime, or the manner or circumstances in which it was committed and **JANUZI's**, and **BAHTJARI's** personal characteristics, past conduct, the environment and conditions in which they live or other personal circumstances indicate a risk that they will repeat the criminal offences or arrange for crimes of violence to be committed against those perceived to be against them. Determining the existence of one of these three risks is a matter of assessing the possibility as opposed to the unavailability that such risks materialise.¹⁴

1. Risk of flight

8. Once **JANUZI** and **BAHTJARI** learn of the charges in the Indictment, they have a strong incentive to avoid being tried and risking conviction. **JANUZI** and **BAHTJARI** have the means, motive, and opportunity to evade justice. As an initial matter, it is critical to note that, as detailed above, both men have already demonstrated a blatant disregard for the laws and rules underpinning this tribunal, including by repeatedly seeking to intimidate and influence the testimony of a

¹³ Kosovo, Criminal No.04/L-123, Procedure Code, 2012, Article 19(1.9). *See also* Arrest Warrants Decision, KSC-BC-2020-07/F00012/RED, para.18.

¹⁴ Arrest Warrants Decision, KSC-BC-2020-07/F00012/RED, para.19; ICC, *Prosecutor v. Bemba Gombo et al.*, ICC-01/05-01/13-558, Judgment on the appeal of Mr Aimé Kilolo Musamba against the decision of Pre-Trial Chamber II of 14 March 2014 entitled "Decision on the 'Demande de mise en liberté provisoire de Maître Aime Kilolo Musamba'", 11 July 2014, para.107.

protected witness. There is thus good reason to believe that **JANUZI** and **BAHTJARI** would similarly disregard orders from this court regarding pre-trial release.

9. **JANUZI** and **BAHTJARI** also have the means and opportunity to evade justice. For example, they have connections to [REDACTED], and their associated networks - who have both the motive and means to assist them. Exacerbating this concern is the fact that, although the KSC/SPO has the mandate to operate in Kosovo, there is significant risk that **JANUZI** and **BAHTJARI** might abscond from the territorial jurisdiction of the KSC/SPO. Kosovo has only a small number of extradition agreements with other countries, which is significant because this is one of the mechanisms of cooperation for the KSC.¹⁵ When combined with the number of countries which simply do not recognise Kosovo as a state, it would be all too easy for **JANUZI** and **BAHTJARI** to travel legally from Kosovo to a jurisdiction with no obligation to transfer him to the KSC. **JANUZI** and **BAHTJARI** also undoubtedly have the connections to leave Kosovo through unlawful borders, making surrender of their passports an inadequate solution.

2. Risk of obstructing the progress of criminal proceedings

10. **JANUZI**'s and **BAHTJARI** have already demonstrated the means and intent to obtain and misuse confidential, witness-related information to obstruct and interfere with KSC judicial proceedings.

11. Moreover, Co-Perpetrator 1's close coordination with **JANUZI** and **BAHTJARI** in relation to their approaches to Witness 1 suggests that such coordination would continue and risk obstructing the progress of criminal proceedings.

12. [REDACTED].

13. **JANUZI** served as a soldier in Brigade 121 [REDACTED].

¹⁵ Article 55(2); Rule 208.

14. Ultimately, **JANUZI** and **BAHTJARI** pose a continued risk of witness intimidation and obstruction of the proceedings.

- i. In coordination with Co-Perpetrator 1, **JANUZI** and **BAHTJARI** have already individually approached Witness 1 on two occasions and demonstrated persistence in their obstructive pressuring of Witness 1 to withdraw his testimony.
- ii. The underlying motive that prompted Co-Perpetrator 1, **JANUZI** and **BAHTJARI** to coordinate together and approach Witness 1—obstructing the KSC proceedings—remains relevant, and there remains the risk that **JANUZI** and **BAHTJARI** may attempt to put further pressure on Witness 1 and his family to dissuade Witness 1 from participating further as an SPO witness or may engage in efforts to intimidate other witnesses.

15. Indeed, it is highly relevant that two separate KSC trial panels have already found there to be a ‘prevalent climate of witness intimidation in Kosovo, in particular in respect of investigations/prosecutions of crimes attributed to ex-KLA members.’¹⁶ As one KSC trial panel determined:

The evidence set out above shows that there is a pervasive climate of fear and intimidation in Kosovo against witnesses or potential witnesses of the Specialist Chambers, their families and, more broadly, against those who provide evidence in investigations or prosecutions of crimes allegedly committed by former KLA members. Witnesses are stigmatised as “traitors” or “collaborators”, are unable to speak freely about the events they underwent, are subjected to threats and intimidation and live in constant fear that something will happen to them or their family. This climate has had a visible impact, albeit to different degrees, on the evidence provided by some of the witnesses who appeared before the Panel.¹⁷

3. Risk of committing further crimes

¹⁶ *Gucati & Haradinaj*, Public Redacted Version of the Trial Judgement, KSC-BC-2020-07/F00611/RED, 18 May 2022 (*Gucati & Haradinaj* Trial Judgment’), paras 576-577.

¹⁷ *The Prosecutor v. Salih Mustafa*, Further redacted version of Corrected version of Public redacted version of Trial Judgment, KSC-BC-2020-05/F00494/RED3/COR, 16 December 2022, para.57.

16. **JANUZI** and **BAHTJARI** have made repeated approaches to Witness 1, a person they believed to be a witness, to try and get him to withdraw his testimony. There is a significant risk they will continue to threaten and intimidate witnesses.

17. For the foregoing reasons, there is good cause to believe that **JANUZI** and **BAHTJARI** would ignore future orders of this court to, *inter alia*, refrain from disseminating protected information, engage in further intimidating and obstructive conduct, and/or not return for future proceedings. Ordering their detention is the only reasonable means to address this risk.

4. Transfer to the Detention Facilities of the KSC

18. In light of the SPO's invocation of a change of venue to the Host State,¹⁸ the SPO requests that the Pre-Trial Judge order the transfer of **JANUZI** and **BAHTJARI** to the Detention Facilities, pursuant to Rule 50(1)-(2).

III. [REDACTED]

19. [REDACTED].

20. [REDACTED].

21. [REDACTED].

22. [REDACTED].

23. [REDACTED].

24. [REDACTED].

25. [REDACTED].

26. [REDACTED].

¹⁸ See para.5 above.

IV. EXECUTION AND SERVICE

27. The SPO requests the Pre-Trial Judge to transmit the arrest warrants and transfer orders, [REDACTED], to the SPO for execution and service in cooperation with the Registrar. The SPO, in cooperation with the Registrar, is the best-positioned competent authority for the service and/or execution of these orders.

28. Mindful of the need to act in conformity with the fundamental rights provided for in Chapter II of the Constitution, these orders will be executed by the SPO with appropriate measures protecting the fundamental rights of **JANUZI** and **BAHTJARI** and victims/witnesses. Any interference with rights implicated by the measures will only be limited to that which is strictly necessary.¹⁹ As soon as the arrest is effectuated, **JANUZI** and **BAHTJARI** shall be informed of their rights under the Law.

29. The SPO requests authorisation to disclose, as appropriate and necessary, the orders for purposes of their execution.

V. REQUEST FOR NON-DISCLOSURE OF INDICTMENT AND RELATED INFORMATION

30. Non-disclosure of the Indictment and related information is necessary at this stage to ensure the integrity of the proceedings, and the protection of individuals, including Witness 1. As set out above, the real risk of, *inter alia*, **JANUZI**'s and **BAHTJARI**'s flight and obstruction of the progress of criminal proceedings and further crimes, pursuant to Rule 88(2), demonstrate good cause for the temporary non-disclosure of the Indictment, related documents and information to the public until further order. The SPO additionally requests the Pre-Trial Judge to order that the name and identifying information of any witness or victim identified in the Indictment

¹⁹ [REDACTED].

or supporting materials shall not be disclosed to the public until further order of the Pre-Trial Judge or after hearing the SPO.

VI. CLASSIFICATION

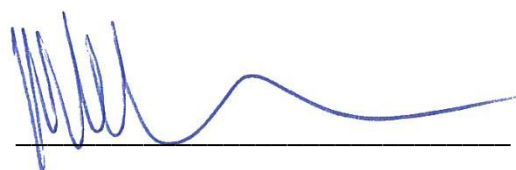
31. In accordance with Rules 85(4) and 86(2), this filing, its annexes, and supporting materials are strictly confidential and *ex parte*.

VII. RELIEF REQUESTED

32. Accordingly, the SPO requests that the Pre-Trial Judge:

- i. confirm the Indictment;
- ii. issue arrest warrants, [REDACTED], and transfer orders, in the terms requested in Sections II-III;
- iii. [REDACTED]; and
- iv. order the temporary non-disclosure of the Indictment, related documents and information as requested in Section V above.

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Ward Ferdinandusse

Acting Deputy Specialist Prosecutor

Monday, 11 September 2023

At The Hague, the Netherlands.