

**In:** KSC-BC-2023-10  
**The Specialist Prosecutor v Sabit Januzi and Ismet Bahtijari**

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

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Duty Counsel for Ismet Bahtijari

**Date:** 25 October 2023

**Language:** English

**Classification:** Confidential

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**Defence supplement on submission on detention on remand**

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**Specialist Prosecutor's Office**

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Bahtijari

Hendrik Sytema

## Introduction

1. Following the earlier submission on the detention on remand, the Defence hereby adds additional grounds.<sup>1</sup> What was included in the first submission should be considered here as repeated and inserted.
2. The Defence first notes that the burden of proof for the necessity of the remand rests on the Public Prosecution. To date, the SPO has only referred to general grounds with reference to the relevant provisions in the Law, without specifying them let alone substantiating them.
3. The Defence believes that such substantiation is necessary not only in the event of a longer detention on remand, but also in the initial phase when the Defence does not yet have access to the evidence or any other relevant material.
4. The absence of the specific arguments and substantiation based on this case and person alone should render the detention on remand unlawful.
5. In the following the Defence will argue the grounds for detention on remand.

## Risk of flight

6. In *Becciev v. Moldova*, the ECtHR found that the risk of flight must be “assessed in light of the factors relating to the person’s character, his morals, home, occupation, assets, family ties and all kinds of links with the country in which he is prosecuted. The expectation of heavy sentence and the weight of evidence may be relevant but is not as such decisive”.<sup>2</sup>

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<sup>1</sup> F00030 Submission on detention on remand.

<sup>2</sup> ECtHR, *Becciev v. Moldova*, no. 9190/03, 4 October 2005, para. 58.

7. The Accused is a construction worker with a very limited income, who is rooted in his residential area. He has no financial or actual ability to evade justice authorities for long periods of time. This is apart from the fact that he has turned himself in for questioning upon request. There was no evidence at all of any attempts to make himself untraceable to the authorities after the interrogation.
8. Given the suspicion, it is unlikely - if it can come to a conviction at all - that a punishment will follow that is such that years of flight from the authorities is within reason.
9. Therefore, considering the requirements for risk of flight, it must thus be determined that those requirements are not met.

### **Obstruction of proceedings**

10. In the *Abd-Al-Rahman* case, the Appeals Chamber of the International Criminal Court found that, when the Prosecutor asserts the existence of a risk of the Accused or his supporters interfering with court proceedings if the Accused is granted interim release, the Prosecutor should “provide as many concrete elements of fact as possible to the relevant chamber on a regular basis regarding the context of the accused’s detention”.<sup>3</sup> The ECtHR also held that “[t]he danger of the accused’s hindering the proper conduct of the proceedings cannot be relied upon *in abstracto*, it has to be supported by factual evidence”.<sup>4</sup>
11. During the time he has been in pre-trial detention, the Accused has no record of attempting to contact, let alone attempting to interfere any witness. There are also no indications that the Accused had any (unauthorised) contacts with

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<sup>3</sup> ICC, *The Prosecutor v. Abd-Al-Rahman*, Case No. ICC-02/05-01/20 OA10, Judgment on the appeal of Ali Muhammad Ali Abd-Al-Rahman against Trial Chamber I’s “Decision on the review of detention”, 17 December 2021, para. 28.

<sup>4</sup> *Becciev v. Moldova*, para. 59, referring to *Trzaska v. Poland*, no. 25792/94, 11 July 2000, para. 65.

the witness after April 2023. The Accused's release would therefore not endanger witnesses or victims nor lead to the obstruction of the court proceedings.

12. The Defence additionally notes that the suspicion on which the Accused is detained is relatively simple and straightforward. Given that, the Defence assumes, detailed statements have already been made about it and (digital) material has been seized. Therefore the Defence believes that there are no reasons to fear undue interference on the part of the Accused. Moreover, it has neither been stated nor shown that since the Accused's arrest such interference has taken place or is to be feared.
13. Needless to say, given the current suspicion, influencing witnesses is not at all in the interest of the Accused, if it could ever be in his interest.
14. Concluding, also this ground for detention on remand does not apply.

### **Risk of committing further crimes**

15. As to the risk of committing further crimes, the Grand Chamber of the ECtHR held that, for detention to be justified under this ground, it "must [be] show[n] convincingly that the person concerned would in all likelihood have been involved in the concrete and specific offence, had its commission not been prevented by the detention".<sup>5</sup>
16. As stated before, the mere fact that someone is a suspect does not create a risk of recurrence, especially now that the circumstances (read, the awareness of the suspicion and the investigation) have changed.
17. For that reason, there is no such ground.

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<sup>5</sup> ECtHR, *Kurt v. Austria* [GC], no. 62903/15, 15 June 2021, para. 186; *S., V. and A. v. Denmark* [GC], no. 35553/12, 36678/12 and 36711/12, 22 October 2018, paras. 89, 91.

### **Alternate measures**

18. In the event that there would be to some extent risks as described above, the Defence refers to the first submission pointing to the alternate measures which could sufficiently mitigate the risks.

### **Classification**

19. This filing is submitted as confidential in accordance with Rule 82(4).

### **Conclusion**

20. For the above reasons, the Defence respectfully requests to order the Accused's interim release or placement in house arrest at his residence or any other conditions deemed appropriate.

Respectfully submitted,

[Word count: 999]

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

Hendrik Sytema

**Duty Counsel for Ismet Bahtijari**

25/10/2023

At The Hague, the Netherlands