

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

**The Prosecutor v. Sabit Januzi and Ismet Bahtijari**

**Before:** Pre-Trial Judge

Judge Nicolas Guillou

**Registrar:** Fidelma Donlon

**Filing Participant:** Specialist Counsel for Sabit Januzi

**Date:** 27 November 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of Reply to Prosecution Response to Januzi Defence  
Detention Submissions**

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## I. INTRODUCTION

1. On 10 November 2023, the Defence filed submissions on behalf of Sabit Januzi ('Accused') requesting that the Panel (a) release the Accused pending trial without conditions; or otherwise (b) release the Accused pending trial on such conditions as are appropriate; or otherwise (c) order house detention of the Accused in Kosovo pursuant to Article 41(12)(d) ('Request')<sup>1</sup>.
2. On 20 November 2023, the Defence received notification of the Prosecution response to the Request ('Response')<sup>2</sup>.
3. The Defence hereby replies to the Response as follows.

## II. SUBMISSIONS

### A. GROUNDED SUSPICION (paras.17-21 of the Response)

4. The Pre-Trial Judge is required to make a decision as to whether or not there is a grounded suspicion under Article 41(6)(a) of the Law *de novo*. Any earlier consideration by the Pre-Trial Judge of this issue was made *ex parte* and without the benefit of any submissions on behalf of the Accused.
5. The interview of the Accused, held by the SPO on 4 October 2023, was conducted in circumstances in which the SPO misled the Accused as to his present status. The SPO deliberately withheld from the Accused the fact that he already faced a

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<sup>1</sup> KSC-BC-2023-10/F00100, *Corrigendum Submissions on Detention on Behalf of Sabit Januzi*, Januzi, 10 November 2023, Confidential

<sup>2</sup> KSC-BC-2023-10/F00107, *Prosecution Response to Januzi Defence Detention Submissions*, Prosecution, 17 November 2023, Confidential

confirmed Indictment and had the status of an Accused. Any 'consent' given to that interview is vitiated by that misrepresentation and any alleged inculpatory information obtained by the SPO as a result should be disregarded for these purposes.

6. The Prosecution does not challenge the submission that there is no evidence that the Accused was aware of the death threat that was allegedly made by Bahtjari. Instead, the Prosecution dismisses the point as irrelevant. That assertion is absurd (that is, that the absence of evidence of knowledge on the part of the Accused that Witness 1 was subjected to a threat is irrelevant). On the contrary, the issue of the extent of the Accused's knowledge as to the use of threat goes directly to the heart of the issue, namely, the Accused's *mens rea*. Awareness of the use of the serious threat is an essential element of each of the offences as charged.
7. For the reasons set out above, and in the Request, it is maintained that there is no grounded suspicion that the Accused committed the crimes alleged.

#### B. RISK OF FLIGHT

8. The Prosecution does not challenge the assessment that the Accused's personal financial means are modest.
9. Instead, the Prosecution continues to rely only upon the same 'general and abstract' arguments relating to alleged connections to former Kosovo Liberation Army ("KLA") commanders and the latter's associated networks which lead the Pre-Trial Judge to previously assess the risk of flight as 'moderate' only.
10. As set out in the Request, the Accused has deep and strong personal and family ties to his community which *ipso facto* root the Accused to his place of residence (he has never lived anywhere else; he resides with three generations of his family, including his six grandchildren who are between the ages of 2 and 11).

11. He is not 'retired' but his poor health means that he is unable to work regularly.  
If the Accused were to leave the family home and unit, he would be unable to sustain himself financially through work.
12. The Accused holds no position of authority or influence, whether politically or within the war veterans association.
13. Moreover, the cases of Hysni Gucati and Nasim Haradinaj, who did hold such positions, are clearly distinguishable from the present allegations, in role, scale and scope; and the sentences therein imposed do not provide any useful guidance to the assessment of any likely sentence in the present case.
14. For the reasons set out above and in the Request, it is maintained that there is no risk of flight, or that in the alternative, any residual risk can be addressed by conditional release (see the Request for proposed conditions).

#### C. RISK OF OBSTRUCTION OF PROCEEDINGS

15. Although the Prosecution assert that 'Januzi's arguments that he has abstained from further obstruction and/or destruction of evidence are flatly contradicted by available evidence' and that 'available evidence shows concerted efforts of Januzi consistent with destroying incriminating records related to his crimes', the *only* evidence that the Prosecution refer to in support of the above assertions relates to the alleged deletion of phone data relating to 5 April, 6 April and 9 April 2023 from the Accused's phone, showing contact with Bahtjari and Shala.
16. It is not accepted that the inference that the Prosecution seeks to draw (of deliberate deletion of incriminating data) is reliable:

- a. The call log on the Accused's phone does record contact with Bahtjari on 5 April (ERN SPOE00339037);

- b. The call log at ERN SPOE00339037 has a column headed 'deleted' with the word 'yes' entered into the row corresponding to contact with Bahtjari – the significance of that entry is not explained;
- c. The call log at ERN SPOE00339016 does not have a column headed 'deleted' with yes or no entries – the absence of such a column is unexplained;
- d. The chat log at ERN SPOE339038 does record contact with Bahtjari on 5 April;
- e. The chat log at ERN SPOE00339038 has a column headed 'deleted - chat' with the word 'yes' entered into the rows corresponding to contact with Bahtjari – the significance of those entries is not explained;
- f. The chat log at ERN SPOE00339017 does not have a column headed 'deleted - chat' with yes or no entries – the absence of such a column is unexplained;
- g. The chat log at ERN SPOE00339032 (relating to contact between the Accused and Shala) does record contact between the Accused and Shala on 5 and 6 April;
- h. The chat log at ERN SPOE339032 does not have a column headed 'deleted - chat' with yes or no entries – the absence of such a column is unexplained;
- i. There is no call log at all within the report ERNSPOE00339028-00339032 – the absence of such a call log is unexplained;

- j. The chat logs at ERNSPOE00339012 (from Shala's phone) and ERNSPOE00339032 (from the Accused's phone) are mutually consistent, and do not support any inference of an attempt to delete allegedly incriminating evidence of contact between the Accused and Shala; and
- k. The call log at ERNSPOE00339021 and the chat log at ERNSPOE00339022 (both relating to contact between the Accused and [REDACTED]) record phone and text contact between the Accused and [REDACTED], including a request made by the Accused to arrange a meeting with [REDACTED] – they do not support any inference of an attempt to destroy allegedly incriminating evidence (on the contrary, these records are inconsistent with any such inference).

17. In relation to paragraph 38 of the Response, whilst the Prosecution states that 'arguments about the status and/or timing of arrests of Januzi and/or Co-Perpetrator 1 ignore investigative and operational considerations', the Prosecution does not set out what investigative and operational considerations, if any, they suggest should be taken into account.

18. The fact remains that the SPO chose to delay execution of the arrest warrant in relation to the Accused, even though the Accused had attended at the EULEX compound, where the SPO have the greatest control over the conditions of safety and communications of any location within Kosovo, and was in the company of SPO officers for some hours; and Co-Perpetrator 1 remains at liberty.

19. Such "close co-ordination" between Co-Perpetrator 1, the Accused and Bahtjari in relation to approaches to Witness 1, which the Pre-Trial Judge found for the purposes of issuing the arrest warrant "was indicative of the Accused's persistence in intimidation and obstruction efforts in the context of SC proceedings", did not require the SPO to execute the warrant without delay, nor

require the detention of Shala at all – and it does not require the detention of the Accused at this stage either.

20. For the reasons set out above and in the Request, it is maintained that there is no risk of obstructing proceedings, or that in the alternative, any residual risk can be addressed by conditional release (see the Request for proposed conditions).

#### D. FURTHER OFFENDING

21. To the extent that the completion by Witness 1 of his evidence in case KSC-BC-2020-06 has not *eliminated* the risk of further offences being committed by the Accused, any such residual risk can be addressed by conditional release (see the Request for proposed conditions).

#### E. CONDITIONAL RELEASE

22. There is no question that the Pre-Trial Judge may fail to understand how the conditions proposed by the Accused at paragraph 30 of the Request address risk of flight – similar conditions have been accepted by the Pre-Trial Judge before as so addressing<sup>3</sup>.

23. The panel of other conditions proposed in the Request each *ipso facto* address any residual risk of further obstruction of proceedings/further offences in the present case:

- a. Not to contact directly or indirectly Witness 1 (alleged target of the charged offences and any further obstruction/further offences), Ismet Bahtjari (co-Accused) and Haxhi Shala (Co-Perpetrator 1);

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<sup>3</sup> *Decision on Application for Bail*, KSC-BC-2020-07, Single Judge, 27 October 2020, Public at paragraphs 14 and 15

- b. Refraining from any contact or communication with (potential) witnesses or victims before the Specialist Chambers and SPO;
  - c. Refraining from making any direct or indirect public statements about the Specialist Chambers and SPO;
  - d. Abiding by any decision or order of the Specialist Chambers; and
  - e. Refraining from making negative, violent, intimidating, threatening or coercive comments towards or about (potential) 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.
24. Such conditions leave no room for any further obstruction of proceedings/further offences.
25. The Accused, if released with a requirement to abide with the above conditions, would know that any breach, however minor, of any of the above conditions would lead to his immediate return to custody, providing a real incentive to abide by the same.
26. The above conditions are both practicable and enforceable, as demonstrated by the employment of them by the President in KSC-SC-2023-01/CS001/F00002.
27. The machinery is already in place to monitor and enforce such conditions<sup>4</sup>.

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<sup>4</sup> *Decision on Commutation, Modification or Alteration of Sentence with Confidential and Ex Parte Annexes*, KSC-SC-2023-01/CS001/F00002, President, Confidential at paragraph 72, 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Orders; and *Annex 1 to Decision on Commutation, Modification or Alteration of Sentence*, KSC-SC-2023-



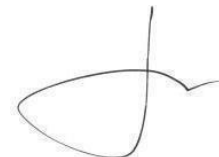
## F. PROPORTIONALITY

28. The burden lies upon the Prosecution to demonstrate that detention in Scheveningen Prison in the Netherlands is proportionate. It is not incumbent upon the detained person to demonstrate the existence of reasons warranting his release or otherwise more lenient measures.

29. The submissions made by the Accused in relation to the degree of harm alleged are not 'premature...at this early stage of the proceedings' but are made properly upon the evidence as disclosed.

30. If the Prosecution wish the Pre-Trial Judge to consider detention on the basis of a greater degree of harm then they can only do so by setting out an evidential basis for the same. They have not done so.

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