



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

**In:** KSC-BC-2023-10/IA001

**Before:** Court of Appeals Panel  
Judge Michèle Picard  
Judge Emilio Gatti  
Judge Nina Jørgensen

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor

**Date:** 9 January 2024

**Language:** English

**Classification:** Confidential

---

**Prosecution response to Defence 'Appeal Against the Decision on Interim Release  
on Behalf of Sabit Januzi'**

---

**Specialist Prosecutor's Office**

Kimberly P. West

**Counsel for Sabit Januzi**

Jonathan Elystan Rees

**Counsel for Ismet Bahtijari**

Felicity Gerry

## I. INTRODUCTION

1. Pursuant to Article 45(2) of the Law<sup>1</sup> and Rules 58(1)-(2), 77(2) and 170(2) of the Rules,<sup>2</sup> the Specialist Prosecutor's Office ('SPO') hereby responds to Sabit Januzi's Appeal<sup>3</sup> of the Decision<sup>4</sup> ordering his continued detention. The Court of Appeals Panel ('Panel') should deny the Appeal in its entirety. As set out below, the Appeal fails to demonstrate any error in the Decision. To the contrary, Januzi improperly seeks to recast his disagreement with the Pre-Trial Judge's evaluation of a relevant consideration as a failure to address that consideration. Further, the Appeal's core assertion regarding the KSC's capacity to enforce and monitor conditions of non-contact and communication is unsupported save for a seemingly unauthorised disclosure of information from a confidential *ex parte* filing, rendering the Appeal subject to summary dismissal.

## II. PROCEDURAL HISTORY

2. On 8 December 2023, the Pre-Trial Judge issued the Decision ordering Januzi's continued detention.
3. On 20 December 2023, Januzi filed the Appeal challenging the Pre-Trial Judge's Decision.<sup>5</sup>

---

<sup>1</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' herein refer to articles of the Law unless otherwise noted.

<sup>2</sup> KSC-BD-03/Rev3/2020, Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules unless otherwise noted.

<sup>3</sup> Appeal Against the Decision on Interim Release on Behalf of Sabit Januzi, KSC-BC-2023-10/IA001/F00001, 20 December 2023, Confidential ('Appeal').

<sup>4</sup> Public Redacted Version of Decision on Sabit Januzi's Request for Interim Release, KSC-BC-2023-10/F00123/RED, 8 December 2023 ('Decision').

<sup>5</sup> Appeal, KSC-BC-2023-10/IA001/F00001 (notified on 21 December 2023).

4. On 28 December 2023, the SPO requested an extension of one week, until 9 January 2024, for the filing of its response,<sup>6</sup> which was granted.<sup>7</sup>

### III. STANDARD OF REVIEW & APPLICABLE LAW

5. Articles 41(1) and (6) of the Law provide:

1. No one shall be deprived of his or her liberty by or on behalf of the Specialist Chambers or Specialist Prosecutor, save in such circumstances and in accordance with such proceedings as are prescribed by this Law and the protections enshrined in Article 29 of the Constitution.

[...]

6. The Specialist Chambers or the Specialist Prosecutor shall only order the arrest and detention of a person when:

a. there is a grounded suspicion that he or she has committed a crime within the jurisdiction of the Specialist Chambers; and

b. there are articulable grounds to believe that:

i. there is a risk of flight;

ii. he or she will destroy, hide, change or forge evidence of a crime or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses, victims or accomplices; or

iii. the seriousness of the crime, or the manner or circumstances in which it was committed and his or her personal characteristics, past conduct, the environment and conditions in which he or she lives or other personal circumstances indicate a risk that he or she will repeat the criminal offence, complete an attempted crime or commit a crime which he or she has threatened to commit.

6. The standard of review applied to interlocutory appeals is the same as that for appeals against judgements: errors on a question of law must be shown to invalidate the judgement.<sup>8</sup> Thus, a party alleging an error of law must identify the alleged error,

---

<sup>6</sup> Prosecution request for extension of time to respond to 'Appeal Against the Decision on Interim Release on Behalf of Sabit Januzi,' KSC-BC-2023-10/IA001/F00002, 27 December 2023, Confidential and *Ex Parte*.

<sup>7</sup> Decision on Specialist Prosecutor's Office's Request for Extension of Time, KSC-BC-2023-10/IA001/F00004, 28 December 2023, Confidential.

<sup>8</sup> See *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA004/F00005/RED, 30 April 2021, paras 4-7.

present arguments in support of the allegation, and explain how the error invalidates the decision. An allegation of an error of law that has no chance of changing the outcome of a decision may be rejected on that ground.<sup>9</sup>

7. Where a discretionary decision – such as one on pre-trial detention or provisional release<sup>10</sup> - is appealed, the appellant ‘must demonstrate that the lower level panel has committed a discernible error in that the decision is: (i) based on an incorrect interpretation of governing law; (ii) based on a patently incorrect conclusion of fact; or (iii) so unfair or unreasonable as to constitute an abuse of the lower level panel's discretion.’<sup>11</sup> The Appeals Panel will also consider whether the lower level panel has given weight to extraneous or irrelevant considerations or has failed to give weight or sufficient weight to relevant considerations in reaching its decision.<sup>12</sup>

8. Finally, as the Appeals Chamber has previously held, ‘[a]n appellant’s mere disagreement with the conclusions that the first instance Panel drew from the available facts or the weight it accorded to particular factors is not enough to establish a clear error.’<sup>13</sup> Indeed, because of the fact-specific nature of provisional release decisions, the lower level panel is better placed to assess these factors.<sup>14</sup> Accordingly, an Appeals Panel must not intervene unless the appellant demonstrates the existence of a discernible error in that the lower level panel’s decision was based on an error of law, error of fact, or abuse of discretion.<sup>15</sup>

---

<sup>9</sup> *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on Hysni Gucati’s Appeal on Matters Related to Arrest and Detention, KSC-BC-2020-07/IA001/F00005, 9 December 2020 (‘Gucati Detention Appeal Decision’), para.12.

<sup>10</sup> Gucati Detention Appeal Decision, KSC-BC-2020-07/IA001/F00005, para.44.

<sup>11</sup> Gucati Detention Appeal Decision, KSC-BC-2020-07/IA001/F00005, para.14.

<sup>12</sup> Gucati Detention Appeal Decision, KSC-BC-2020-07/IA001/F00005, para.14.

<sup>13</sup> Gucati Detention Appeal Decision, KSC-BC-2020-07/IA001/F00005, para.64.

<sup>14</sup> Gucati Detention Appeal Decision, KSC-BC-2020-07/IA001/F00005, para.49.

<sup>15</sup> Gucati Detention Appeal Decision, KSC-BC-2020-07/IA001/F00005, paras 14, 49. *See Specialist Prosecutor v. Gucati and Haradinaj*, Decision on Nasim Haradinaj’s Appeal on Decision Reviewing Detention, KSC-BC-2020-07/IA002/F00005, 9 February 2021, Public (‘Haradinaj Appeals Decision’), para.14.

#### IV. SUBMISSIONS

9. The Decision complies with all applicable law. Januzi has not – and indeed cannot – meet the legal requirements to successfully challenge the Pre-Trial Judge’s decision to continue detention on remand.

##### A. THE APPEAL SHOULD BE SUMMARILY DISMISSED

10. A party is expected to present its case clearly, logically and exhaustively in order for the Appeals Panel to assess its arguments on appeal.<sup>16</sup> The Panel may dismiss submissions as unfounded without further reasoning, if a party’s submissions are ‘obscure, contradictory, vague or suffer from other formal and obvious insufficiencies.’<sup>17</sup> In particular, the Panel has identified ‘mere assertions unsupported by any evidence, undeveloped assertions, or failures to articulate errors’ as warranting summary dismissal.<sup>18</sup>

11. The Appeal suffers from a key formal insufficiency, which alone justifies summary dismissal. Specifically, Januzi’s core submission in the Appeal, summarised at paragraph 9, relies upon certain contents of a confidential and *ex parte* annex<sup>19</sup> filed in another KSC case. In that other case, the President specifically ordered that this annex should remain confidential and *ex parte*.<sup>20</sup> Accordingly, the Appeal is in violation of Rule 82 and Article 37 of the Practice Direction on Files and Filings before the Kosovo Specialist Chambers.<sup>21</sup> Moreover, neither the Panel nor the SPO can access the confidential and *ex parte* annex in order to assess Januzi’s submission or provide a

---

<sup>16</sup> *Specialist Prosecutor v. Shala*, Public Redacted Version of Decision on Pjetër Shala’s Appeal Against Decision on Provisional Release, KSC-BC-2020-04/IA001/F00005/RED, 20 August 2021 (‘Shala Detention Appeal Decision’), para.7.

<sup>17</sup> Shala Detention Appeal Decision, KSC-BC-2020-04/IA001/F00005/RED, para.7.

<sup>18</sup> Shala Detention Appeal Decision, KSC-BC-2020-04/IA001/F00005/RED, para.8.

<sup>19</sup> KSC-SC-2023-01/CS001/F00002/A01 cited in Appeal, KSC-BC-2023-10/IA001/F00001, fn.10.

<sup>20</sup> *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on Commutation, Modification, or Alteration of Sentence with Confidential and Ex Parte Annexes, KSC-SC-2023-01/CS001/F00002, 12 October 2023 (‘Commutation Decision’), para.72.

<sup>21</sup> Practice Direction on Files and Filings before the Kosovo Specialist Chambers, KSC-BD-15, 17 May 2019.

response. This formal deficiency was raised by the SPO to the Januzi Defence in an *inter partes* email dated 28 December 2023. It alone justifies summary dismissal.

12. In addition, footnote 10 provides the sole support for the core assertion of the Appeal, specifically, that it ‘was a relevant consideration that the President of the Kosovo Specialist Chambers had recently held that orders as to non-contact/communication with witnesses can be both enforced and monitored, with the machinery to enforce and monitor conditions of non-contact/communication to be established.’<sup>22</sup> Without the support of the confidential and *ex parte* annex cited in footnote 10, the only support for this assertion remaining in footnote 10 is a reference to a set of conditions for the post-conviction release of Hysni Gucati that the President notes will give Gucati ‘an opportunity to demonstrate that he continues on his path towards full rehabilitation and that he will abide by any orders issued by the [KSC] in the future.’<sup>23</sup> Without the support for its core assertion provided by the confidential and *ex parte* annex, the Appeal is independently subject to summary dismissal.<sup>24</sup>

13. Finally, summary dismissal of the Appeal is further warranted on the basis that it misrepresents and oversimplifies the Decision as having failed to address a relevant consideration.<sup>25</sup> That the Pre-Trial Judge properly entertained the consideration identified by Januzi, specifically, addressing the Commutation Conditions<sup>26</sup> related to Gucati, is demonstrated below.

---

<sup>22</sup> Appeal, KSC-BC-2023-10/IA001/F00001, para.9.

<sup>23</sup> See Commutation Decision, KSC-SC-2023-01/CS001/F00002, paras 67-68, 72.

<sup>24</sup> Shala Detention Appeal Decision, KSC-BC-2020-04/IA001/F00005/RED, para.8.

<sup>25</sup> See *Specialist Prosecutor v. Thaçi et al.*, Decision on Applications for Leave to Appeal “Decision on Motions Challenging the Legality of the SC and SPO and Alleging Violations of Certain Constitutional Rights of the Accused”, KSC-BC-2020-06/F00546, 25 October 2021, paras 37,57; *Specialist Prosecutor v. Thaçi et al.*, Decision on the Thaçi Defence Application for Leave to Appeal, KSC-BC-2020-06/F00172, 11 January 2021, para.23; *Specialist Prosecutor v. Shala*, Decision on Request for Leave to Appeal the Decision Concerning Prior Statements Given by Pjetër Shala, KSC-BC-2020-04/F00401, 24 January 2023, para.40.

<sup>26</sup> As defined in Decision, KSC-BC-2023-10/F00123/RED. Para.64.

## B. THE PRE-TRIAL JUDGE PROPERLY CONSIDERED THE COMMUTATION DECISION

14. Januzi incorrectly asserts that the Pre-Trial Judge ‘erred in law and fact’ when he ‘refused to consider’ the ‘relevant consideration that the President of the Kosovo Specialist Chambers has recently held that orders as to non-contact/communication with witnesses can be both enforced and monitored, with the machinery to enforce and monitor conditions of non-contact/communication to be established.’<sup>27</sup> As noted above, there is no support for this alleged holding in the Appeal. Further, despite the apparent importance of this alleged holding to the Appeal, it was never presented in Januzi’s detention submissions to the Pre-Trial Judge. Januzi’s Corrected Second Defence Submission<sup>28</sup> notes only that the President ‘has recently imposed’ a set of conditions ‘on early release’ and invites the Pre-Trial Judge to ‘consider the same.’<sup>29</sup> Januzi’s Detention Reply<sup>30</sup> merely lists certain conditions and asserts them to be both practicable and enforceable on the basis of the same confidential and *ex parte* annex. Thus, Januzi makes this specific argument for the first time on Appeal.

15. In any case, it could not be more clear from the Decision that the Pre-Trial Judge indeed considered the Commutation Conditions.<sup>31</sup> More specifically, the Pre-Trial Judge reasonably determined that the Commutation Conditions ‘are either inapplicable or incompatible with the present stage of the proceedings’ and that ‘Januzi is not in the same position as when the President contemplated the Commutation Conditions.’<sup>32</sup> This conclusion was in line with the submissions by the SPO that Gucati’s circumstances at the time of the Commutation Decision were quite

---

<sup>27</sup> Appeal, KSC-BC-2023-10/IA001/F00001, paras 8-9.

<sup>28</sup> As defined in Public redacted version of ‘Prosecution response to Januzi Defence detention submissions,’ KSC-BC-2023-10/F00107/RED, 17 November 2023, para.11.

<sup>29</sup> Public Redacted Version of Corrigendum Submissions on Detention on behalf of Sabit Januzi, KSC-BC-2023-10/F00100/RED, 10 November 2023, para.44.

<sup>30</sup> Public Redacted of Reply to Prosecution Response to Januzi Defence Detention Submissions, KSC-BC-2023-10/F00114/RED, 27 November 2023 (‘Detention Reply’), paras 23, 26-27.

<sup>31</sup> Decision, KSC-BC-2023-10/F00123/RED, para.67.

<sup>32</sup> Decision, KSC-BC-2023-10/F00123/RED, para.67.

different from those during the entirety of the instant proceedings leading up to that point, during which the necessity of detention was repeatedly affirmed under factual circumstances resembling those of the instant case.<sup>33</sup>

16. Januzi misleadingly oversimplifies and misrepresents this analysis as a refusal to consider the Commutation Conditions ‘on the basis that the factual circumstances with respect to the President’s decision were different.’<sup>34</sup> In fact, the Pre-Trial Judge clearly considered the Commutation Conditions, including assessing their applicability to Januzi and the present stage of the proceedings, before moving on to the consideration of other factors.<sup>35</sup> That the Pre-Trial Judge gave more weight to other ‘different’ factual circumstances, such as those related to ‘Case 06,’<sup>36</sup> is entirely within the court’s prerogative. As the Appeals Chamber has previously held, ‘[a]n appellant’s mere disagreement with the conclusions that the first instance Panel drew from the available facts or the weight it accorded to particular factors is not enough to establish a clear error.’<sup>37</sup>

17. The remainder of the Appeal makes speculative claims to suggest that relying on the Commutation Conditions to the exclusion of all other factors might change the outcome of the Decision.<sup>38</sup> As such, these claims must be dismissed.

18. In summary, the Pre-Trial Judge appropriately considered the Commutation Conditions and did not err in finding that Januzi’s continued detention is necessary.

---

<sup>33</sup> Public Redacted Version of ‘Prosecution response to Januzi Defence detention submissions,’ KSC-BC-2023-10/F00107/RED, 17 November 2023, para.43.

<sup>34</sup> Appeal, KSC-BC-2023-10/IA001/F00001, para.10.

<sup>35</sup> Decision, KSC-BC-2023-10/F00123/RED, para.67.

<sup>36</sup> Appeal, KSC-BC-2023-10/IA001/F00001, para.10.

<sup>37</sup> Gucati Detention Appeal Decision, KSC-BC-2020-07/IA001/F00005, para.64.

<sup>38</sup> Appeal, KSC-BC-2023-10/IA001/F00001, paras 12-18.



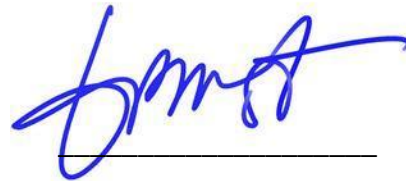
## V. CLASSIFICATION

19. This filing is confidential pursuant to Rule 82(4) of the Rules. The SPO does not object to its reclassification as public.

## VI. RELIEF REQUESTED

20. For the foregoing reasons, the SPO respectfully requests that the Appeals Panel dismiss the Appeal in its entirety.

**Word count: 2,240**



---

**Kimberly P. West**

**Specialist Prosecutor**

Tuesday, 9 January 2024

At The Hague, the Netherlands.