



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

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

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

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 15 January 2024

Language: English

Classification: Public

**Public Redacted Version of Prosecution submission pertaining to periodic detention
review of Ismet Bahtijari**

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I. INTRODUCTION

1. Pursuant to Article 41 of the Law¹ and Rule 57 of the Rules,² the Specialist Prosecutor's Office ('SPO') makes the following submissions in support of the need for the continued detention of Ismet Bahtijari. The Pre-Trial Judge has previously held that Bahtijari's detention is justified on multiple bases, that no conditions short of detention in the Kosovo Specialist Chamber's ('KSC') detention facilities would be sufficient to minimise the risks, and that the detention period—taking all relevant circumstances into account—is reasonable. Since the most recent determination of the Pre-Trial Judge on 29 November 2023,³ there has been no change in circumstances that merits deviating from that determination. Indeed, continued disclosure and the steady progression of the case continue to give Bahtijari further access to sensitive information in the case against him and reinforce the necessity and reasonableness of detention.

II. PROCEDURAL HISTORY

2. On 2 October 2023, the Pre-Trial Judge confirmed the indictment against Sabit Januzi and Bahtijari (collectively, the 'Accused').⁴ On the same day, the Pre-Trial Judge also issued arrest warrants for the Accused and ordered their transfer to the KSC detention facilities in The Hague, the Netherlands.⁵

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'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ Public Redacted Version of Decision on Ismet Bahtijari's Request for Interim Release, KSC-BC-2020-10/F00116/RED, 29 November 2023 ('Decision').

⁴ Corrected Version of Public Redacted Version of Decision on the Confirmation of the Indictment, KSC-BC-2023-10/F00008/RED, 2 October 2023, Confidential ('Confirmation Decision').

⁵ Public Redacted Version of the Decision on Request for Arrest Warrants and Transfer Orders, KSC-BC-2023-10/F00009/RED, 2 October 2023.

3. On 29 November 2023, the Pre-Trial Judge issued his Decision⁶ denying Bahtijari's request for interim release.
4. On 15 December 2023, Bahtijari received Disclosure Package 6, which contained, *inter alia*, an audio recording of Co-Accused Januzi implicating Bahtijari in the charged crimes, and [REDACTED].
5. On 8 January 2024, Bahtijari declined to file submissions on this review of detention.

III. SUBMISSIONS

6. The Pre-Trial Judge has noted the law applicable to deciding such matters as set out in Article 41 of the Law, and Rules 56 and 57.⁷
7. Since the most recent detention decision, there have been no developments that diminish the factors supporting the need and reasonableness of detention. Indeed, the continued progression of the case and attendant disclosure of sensitive information in the case against Bahtijari augment the necessity of detention.
8. Bahtijari is now aware of [REDACTED].
9. Bahtijari is also now aware of significant additional incriminating evidence against him in the form of the audio recording of Co-Accused Januzi [REDACTED]. In the recording, Januzi, *inter alia*, confirms that KSC-BC-2023-11 ('Case 11') Accused and co-perpetrator Haxhi Shala had sent him to follow up from Bahtijari's meeting with Witness 1.⁸

⁶ Decision, KSC-BC-2023-10/F00116/RED.

⁷ Decision, KSC-BC-2023-10/F00116/RED, paras 10-14.

⁸ 116623-01-TR-AT-ET, pp.4-10.

A. GROUNDED SUSPICION

10. Article 41(6)(a) requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the KSC.⁹ There remains a grounded suspicion that Bahtijari has done so.¹⁰ In the Confirmation Decision, the Pre-Trial Judge determined that there is a suspicion that Batijari is liable for intimidation during criminal proceedings and obstructing official persons in performing official duties within the meaning of Articles 387 and 401(1), (2) and (5) of the 2019 Kosovo Criminal Code, Code No. 06/L-074 and Articles 15(2) and 16(3) of the Law,¹¹ to a standard that exceeds that required for detention based on 'grounded suspicion.'¹² Nothing has occurred since the Confirmation Decision was filed that would detract from the Pre-Trial Judge's determination. Indeed, it has only been reinforced that there remains a well-grounded suspicion that Bahtijari has committed crimes within the KSC's jurisdiction.¹³

B. DETENTION IS JUSTIFIED UNDER ALL ARTICLE 41(6)(B) FACTORS

i. Risk of Flight (Article 41(6)(b)(i))

11. The Pre-Trial Judge has previously concluded that Bahtijari presents a moderate risk of flight.¹⁴ Bahtijari is aware of the serious confirmed charges against him, the possible lengthy prison sentence that may result therefrom, and—through the ongoing disclosure process—he is gaining more and more knowledge about the evidence to be presented

⁹ Decision, KSC-BC-2023-10/F00116/RED, para.17.

¹⁰ Decision, KSC-BC-2023-10/F00116/RED, paras 18-21.

¹¹ Confirmation Decision, KSC-BC-2023-10/F00008/RED/COR, paras 95, 11, 123, 126, 131, 135, 149, 144.

¹² Decision, KSC-BC-2023-10/F00116/RED, para.18.

¹³ Decision, KSC-BC-2023-10/F00116/RED, paras 18-21.

¹⁴ Decision, KSC-BC-2023-10/F00116/RED, para.33.

against him in relation to those crimes.¹⁵ In particular, since the last review of detention, Bahtijari is now aware of significant additional incriminating evidence against him in the form of the audio recording of Co-Accused Januzi [REDACTED]. Further, the Pre-Trial Judge has also noted that Bahtijari would have both the means and opportunity to flee if released.¹⁶ The revelation of additional incriminating evidence against him in combination with the steady progression of the case further elevates Bahtijari's risk of flight.

ii. Risk of Obstruction of Proceedings (Article 41(6)(b)(ii))

12. Bahtijari continues to present a risk of obstructing the proceedings. The Pre-Trial Judge has previously concluded that the risk that Bahtijari will obstruct the progress of KSC proceedings continues to exist.¹⁷

13. The Pre-Trial judge found that Bahtijari has both the motive and the means to obtain and misuse witness-related information to obstruct and interfere with KSC proceedings.¹⁸ The Pre-Trial Judge also noted the close coordination between Bahtijari and his co-perpetrators Shala and Januzi, finding it to be indicative of the Bahtijari's predisposition to following directions from more senior individuals in the KLA hierarchy, and his persistence in carrying out intimidation and obstruction efforts in the context of KSC proceedings.¹⁹

¹⁵ See Decision, KSC-BC-2023-10/F00116/RED, para.28; see also *See Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Rexhep Selimi's Application for Interim Release, KSC-BC-2020-06/F00179/RED, 22 January 2021, para.31.

¹⁶ Decision, KSC-BC-2023-10/F00116/RED, paras 29-31.

¹⁷ Decision, KSC-BC-2023-10/F00116/RED, para.41.

¹⁸ Decision, KSC-BC-2023-10/F00116/RED, para.37.

¹⁹ Decision, KSC-BC-2023-10/F00116/RED, para.38.

14. The Pre-Trial Judge assessed the above factors against the backdrop of the pervasive climate of fear and intimidation in Kosovo against witnesses and potential witnesses of the KSC,²⁰ which the Court of Appeals has agreed is a relevant 'contextual consideration.'²¹ Similar findings were made in the *Mustafa* Trial Judgment²² and the *Gucati and Haradinaj* Appeal Judgment.²³ The Trial Panel in Case 07 considered that 'witness protection has continued to be a live and critical issue in Kosovo,'²⁴ and credited the testimony of Defence Expert Robert Reid, who remarked that, in over 20 years in the field, he had never seen witness intimidation on the level that exists in Kosovo.²⁵

15. Moreover, Bahtijari has now received highly sensitive information in the form of, *inter alia*, [REDACTED], and the risk of obstruction only further increases with continued disclosure.

16. In this regard, Trial Panel II in Case 06 has consistently held that the disclosure of such highly sensitive information to the Defence necessarily results in it becoming known to a broader range of persons, including the relevant accused, which continues to amplify the risk of sensitive information pertaining to witnesses becoming known to members of

²⁰ Decision, KSC-BC-2023-10/F00116/RED, para.39.

²¹ *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA017/F00011/RED, 5 April 2022, paras 41-48; *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA014/F00008/RED, 31 March 2022, para.50; *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA015/F00005/RED, 25 March 2022, para.43.

²² *Specialist Prosecutor v. Mustafa*, Further Redacted Version of Corrected Version of Public Redacted Version of Trial Judgment, KSC-BC-2020-05/F00494/RED3/COR, 16 December 2022 ('*Mustafa* Trial Judgment'), para.57.

²³ *Specialist Prosecutor v. Gucati and Haradinaj*, Appeal Judgment, KSC-CA-2022-01/F00114, 2 February 2023 (*Gucati and Haradinaj* Appeal Judgment), para.438 (*quoting* KSC-BC-2020-07, Transcript, 18 May 2022, pp.3858-3859).

²⁴ *Specialist Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2022-01/F00611/RED, 18 May 2022 ('Case 7 Judgment'), para.579.

²⁵ Case 7 Judgment, KSC-BC-2020-07/F00611/RED, para.577.

the public before the witnesses in question give evidence.²⁶ In the context of the release of an accused, this would not be conducive to the effective protection of witnesses who have yet to testify.²⁷ Accordingly, there remains a risk that Bahtijari would interfere with the proceedings.

17. In this regard, the SPO notes that, as held by the Trial Panel in Case 07, 'the mere fact that the Accused is entitled to disclosure of relevant material does not mean that the Panel ought to ignore the risks that come with such disclosure, especially in the context of conditional release.'²⁸

iii. Risk of Criminal Offences (Article 41(6)(b)(iii))

18. In previously finding that Bahtijari may commit further crimes, the Pre-Trial Judge concluded that the relevant factors to be considered are the same as those with respect to

²⁶ See e.g. *Specialist Prosecutor v. Thaçi et al.*, Decision on Periodic Review of Detention of Kadri Veseli, KSC BC-2020-06/F02011, 15 December 2023 ('Veseli Decision'), para.25; *Specialist Prosecutor v. Thaçi et al.*, Decision on Periodic Review of Detention of Hashim Thaçi, KSC BC-2020-06/F02012, 15 December 2023 ('Thaçi Decision'), para.21.

²⁷ See Veseli Decision, KSC BC-2020-06/F02011, para.25; Thaçi Decision, KSC BC-2020-06/F02012, para.21.

²⁸ *Specialist Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00507/RED, 21 December 2021, para.36.

the obstruction of proceedings.²⁹ In particular, the Pre-Trial Judge found that there exists a risk that Bahtijari will repeat the offences that he has been alleged to have committed.³⁰

19. Additionally, Trial Panel II in Case 06 has held that especially once information regarding sensitive witnesses has been disclosed to the Defence, any risk of the further commission of crimes must be avoided.³¹

20. Therefore, and especially in light of continuing disclosure, the unacceptable risk for the commission of further crimes mandates Bahtijari's continued detention.

C. NO MODALITIES OF CONDITIONAL RELEASE ARE ABLE TO SUFFICIENTLY MITIGATE THE RISKS

21. As the Pre-Trial Judge has previously concluded, the relevant risks can only be effectively managed at the KSC's detention facilities.³²

22. The Pre-Trial judge found that none of the Defence's proposed conditions for release, nor any additional measures foreseen in Article 41(12), could sufficiently mitigate the existing risks.³³

23. Further, the Pre-Trial Judge recognized that the measures in place at the KSC detention facilities, viewed as a whole, provide robust assurances against unmonitored visits and communications with family members and pre-approved visitors with a view to minimising the risks of obstruction and commission of further crimes.³⁴ In this regard,

²⁹ Decision, KSC-BC-2023-10/F00116/RED, para.38.

³⁰ Decision, KSC-BC-2023-10/F00116/RED, para.38.

³¹ See e.g., Veseli Decision, KSC BC-2020-06/F02011, para.31; Thaçi Decision, KSC BC-2020-06/F02012, para.28.

³² Decision, KSC-BC-2023-10/F00116/RED, paras 53-55.

³³ Decision, KSC-BC-2023-10/F00116/RED, paras 52-54.

³⁴ Decision, KSC-BC-2023-10/F00116/RED, para.53.

the Pre-Trial Judge and the Registrar, who have unrestricted access to confidential information concerning witnesses and victims, may take action more promptly than other authorities acting under a distinct framework.³⁵

24. The Pre-Trial Judge further recalled that (i) previous rulings in Case 06 have found that the Kosovo Police do not have the capacity to implement corresponding measures that sufficiently mitigate the existing risks; (ii) the very reason for establishing the KSC was that criminal proceedings against former KLA members could not be conducted in Kosovo; and (iii) the procedural framework and operational practice of the KSC have been specifically designed to ensure, to the maximum extent possible, the protection of witnesses, victims as well as others at risk with a view to implementing the mandate of the KSC.³⁶

25. Nothing has occurred since the Pre-Trial Judge's previous determination warranting a different assessment on conditions, either generally or for a discrete period of time; rather, the progression of the case and attendant further disclosures render the underlying risks higher than ever.

D. DETENTION IS PROPORTIONAL

26. Detention remains proportional. At the last detention review, the Pre-Trial Judge found that Bahtijari's detention has not become unreasonable within the meaning of Rule 56(2).³⁷

27. The Pre-Trial Judge noted that (i) the SPO had already discharged its disclosure obligations under Rules 102(1)(a) and 103 of the Rules, (ii) additional disclosure

³⁵ Decision, KSC-BC-2023-10/F00116/RED, para.53.

³⁶ Decision, KSC-BC-2023-10/F00116/RED, para.53.

³⁷ Decision, KSC-BC-2023-10/F00116/RED, para.58.

obligations were due to be completed shortly; (iii) two status conferences had been held, and a third status conference would be convened before the winter court recess; (iv) the proceedings were thus moving forward expeditiously; and (v) Bahtijari's detention would be reviewed every two months.³⁸

28. The proceedings continue to move forward expeditiously. The third status conference was convened and a fourth status conference has been provisionally scheduled for 5 February 2024. Additionally, the SPO has now discharged its disclosure obligations pursuant to Rule 102(1)(b) and will soon be providing detailed notice of Rule 102(3) materials.

29. Given all of the above, detention remains both reasonable and proportional at this time.

IV. CLASSIFICATION

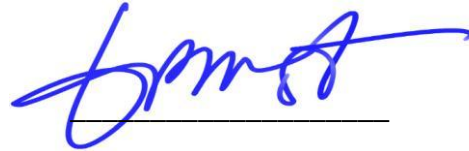
30. This filing is submitted confidentially pursuant to Rule 82(4). A public redacted version will be filed.

V. CONCLUSION

31. For the foregoing reasons, the SPO respectfully submits that Bahtijari should continue to be detained.

³⁸ Decision, KSC-BC-2023-10/F00116/RED, para.57.

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Monday, 15 January 2024

At The Hague, the Netherlands