

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

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

**Before:** Court of Appeals Panel

Judge Michèle Picard

Judge Emilio Gatti

Judge Nina Jørgensen

**Registrar:** Fidelma Donlon

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

**Date:** 14 January 2024

**Language:** English

**Classification:** Public

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**Public Redacted Version of Reply in Appeal Against the Decision on Interim  
Release on Behalf of Sabit Januzi**

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**Specialist Prosecutor**

Kimberly P. West

**Counsel for Sabit Januzi**

Jonathan Elystan Rees KC

Huw Bowden

**Counsel for Ismet Bahtijari**

Dr Felicity Gerry KC

## I. INTRODUCTION

1. On 09 January 2024, the Accused received notification of the Prosecution Response to the Defence Appeal Against the Decision on Interim Release on Behalf of Sabit Januzi ('Response')<sup>1</sup>.
2. The Accused replies as follows.

## II. SUBMISSIONS

3. The Response is more concerned with puffed-up pedantry than a solemn and thorough consideration of the liberty of the Accused.
4. The machinery ('Machinery to Enforce and Monitor Conditions of Non-Contact/Communication') identified at [REDACTED]<sup>2</sup> is machinery established by the Law of the Kosovo Specialist Chambers<sup>3</sup>, the Specialist Chambers and the [REDACTED]<sup>4</sup>.
5. The suggestion in the Response that the Prosecution, the Pre-Trial Judge and the Appeals Panel should pretend that the Machinery has not been established/does not exist is preposterous<sup>5</sup>.
6. Moreover, there is nothing in the Machinery referred to in footnote 10 of the Appeal which can be said to be exclusive to the case or to the applicant in KSC-SC-2023-01/CS001.

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<sup>1</sup> KSC-BC-2023-10/IA001/F00005, *Prosecution response to Defence 'Appeal Against the Decision on Interim Release on Behalf of Sabit Januzi'*, Prosecutor, 9 January 2024, Confidential

<sup>2</sup> [REDACTED]

<sup>3</sup> Law No.05/L-053, Article 53(1) and (2)

<sup>4</sup> Article 3(5) of the Law

<sup>5</sup> See the Response at paragraph 14: "there is no support for this alleged holding [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] in the Appeal"

7. Contrary to paragraph 14 of the Response, the Accused does *not* raise for the first time on appeal the argument that the machinery to enforce and monitor conditions of non-contact/communication with witnesses is in existence and can be used to enforce such conditions in the Accused's case. The Accused raised the argument before the Pre-Trial Judge – see paragraph 27 and footnote 4 of the Reply to Prosecution Response to Januzi Defence Detention Submissions<sup>6</sup>.
8. Contrary to paragraph 15 of the Response, the Pre-Trial Judge refused, however, to consider the 'Commutation Conditions' beyond simply opining that they were inapplicable or incompatible with the present stage of the proceedings and that the Accused was not seeking commutation of sentence<sup>7</sup>. Moreover, the Pre-Trial Judge did not consider the existence of the Machinery *at all*.
9. As set out in the Appeal at paragraph 12, the Pre-Trial Judge's refusal to consider this machinery lead him to hold erroneously that:
  - a. a commitment such as an order to refrain from contact with a witness can 'neither be enforced nor monitored'<sup>8</sup>; and that
  - b. there is not the capacity to implement in Kosovo corresponding measures that mitigate risks of obstruction and commission of further crimes<sup>9</sup>.

### III. CONCLUSION

10. For the reasons set out above and, in the Appeal, the Court of Appeals Panel should allow the appeal and order the interim conditional release of the Accused pending trial.

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<sup>6</sup> KSC-BC-2023-10/F00114, *Reply to Prosecution Response to Januzi Defence Detention Submissions*, Januzi, 27 November 2023, Confidential

<sup>7</sup> KSC-BC-2023-10/F00123, *Decision on Sabit Januzi's Request for Interim Release*, Pre-Trial Judge, 8 December 2023, Confidential at paragraph 67 ('Impugned Decision')

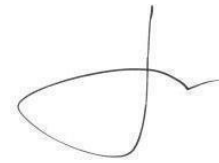
<sup>8</sup> Impugned Decision at paragraph 69

<sup>9</sup> Impugned Decision at paragraph 71

IV. CLASSIFICATION

11. This filing is confidential pursuant to Rule 82(4) of the Rules. The Accused does not object to its reclassification, and the reclassification of the Appeal, as public.

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JONATHAN ELYSTAN REES KC

Specialist Counsel for Mr Januzi

HUW BOWDEN

Specialist Co-Counsel for Mr Januzi

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Cardiff, UK