

**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:** 13 December 2023

**Language:** English

**Classification:** Public

---

**Public Redacted Version of Submissions for the Third Status Conference on  
Behalf of Sabit Januzi**

---

**Specialist Prosecutor**

Kimberly P. West

**Counsel for Sabit Januzi**

Jonathan Elystan Rees KC  
Huw Bowden

**Counsel for Ismet Bahtijari**

Hendrik Sytema

## I. INTRODUCTION

1. Pursuant to the Order<sup>1</sup>, the Defence on behalf of Sabit Januzi hereby provides written submissions on the agenda items identified by the Pre-Trial Judge.

## II. SUBMISSIONS

### A. DISCLOSURE

2. The first batch of material disclosed on 6 December 2023 under Rule 102(1)(b) of the Rules is in an unreadable form and requires expert assistance to access. The material said to consist of forensic images of three telephones obtained in May 2023 from Mr Januzi, Mr Bahtjari and Mr Shala, has been provided on a hard drive. In the absence of expert assistance, the Defence cannot assist as to the volume or nature of the material thereon.
3. The defence have been informed by the SPO that on 15 December 2023, further disclosure will be made of the call data records as defined in paragraphs 43(a) and (b)(i) to (xi), 45 and 47 of F00052<sup>2</sup> in relation to Mr Januzi, Mr Bahtjari, Mr Shala and [REDACTED]. As this disclosure will post-date the Third Status Conference, the Defence cannot assist as to the volume or nature of the material therein.
4. Since the Second Status Conference, as recently as 6 December 2023 the SPO has confirmed that it has not requested call data records for [REDACTED]. This is

---

<sup>1</sup> KSC-BC-2023-10/F00121, *Order Setting the date for the Third Status Conference and for Submissions*, Pre-Trial Judge, 8 December 2023, Public

<sup>2</sup> KSC-B-2023-10/F00052/CONF/RED, *Confidential Redacted Version of 'Prosecution Request for Records' with confidential Annex 1*, Prosecution, 23 June 2023, Confidential

despite the Pre-Trial Judge inviting the SPO 'to take any measure to preserve [this<sup>3</sup>] evidence in any case so that this evidence can or could be disclosed at a later stage if it considers necessary or if I make a ruling on that matter'<sup>4</sup>. The SPO should request the call data records for [REDACTED] in the same terms as defined in paragraphs 43(a) and (b)(i) to (xi), 45 and 47 of F00052<sup>5</sup>.

5. On 5 November 2023 via *inter partes* correspondence, in addition to being reminded in writing that the Pre-Trial Judge had requested steps to be taken to secure all communication devices used by [REDACTED] (including telephone, text message, WhatsApp, Viber, email, and Facebook messenger) in the period before and after the indictment period, the SPO were also requested to provide copies of the following materials at their earliest convenience:

(a) A copy of the audio recorded witness interview with Witness 1 dated 20 April 2023 (transcript at 112906-TR-ET Parts 1-4);

(b) A copy of the audio recorded witness interview with [REDACTED] dated 20 April 2023 (transcript at 112909-TR-ET Part 1);

(c) A copy of any recordings of the phone/video calls with Witness 1 on 5 April 2023 (Official Note at 112768), 6 April 2023 (Official Note at 112769), 4 May 2023 (Official Note at 113181), 21 May 2023 (Official Note at 113354), 23 May 2023 (Official Note at 113356) and 26 May 2023 (Official Note at 113434);

---

<sup>3</sup> Transcript of Second Status Conference at page 87 lines 10-14

<sup>4</sup> Transcript of Second Status Conference at page 89 lines 21-24

<sup>5</sup> KSC-B-2023-10/F00052/CONF/RED, *Confidential Redacted Version of 'Prosecution Request for Records' with confidential Annex 1*, Prosecution, 23 June 2023, Confidential

- (d) Copies of all contemporaneous records of contact with Witness 1 on 5 April 2023, 6 April 2023, 20 April 2023, 4 May 2023, 21 May 2023, 23 May 2023, and 26 May 2023;
  - (e) Copies of any recorded witness interviews with Witness 1 on a date other than 20 April 2023;
  - (f) A transcript of the evidence given by Witness 1 in any trial before the KSC; and
  - (g) Antecedents for Witness 1, including details of any convictions or cautions recorded against him in Kosovo or any other jurisdiction plus any police reports made by him/in relation to him (whether or not they resulted in conviction/caution).
6. Other than an acknowledgement of the email which stated that a reply on the substance would be forthcoming 'as soon as possible', no reply (and none of the material requested, save in relation to police reports about Witness 1) has been received.
7. In relation to requests for confirmation that (i) Mr Januzi has no criminal convictions or cautions, and (ii) that Witness 1 has now given evidence at trial before the Kosovo Specialist Chambers in case KSC-BC-2020-06, the SPO has simply responded that they 'are not in a position to confirm for the time being' and that any relevant disclosure 'will be provided at the appropriate time'. No further explanation for the refusal to provide said confirmation has been forthcoming.

8. In relation to the Rule 102(3) Notice and requests for disclosure in relation thereto, as provision of the Notice will post-date the Third Status Conference, the Defence cannot assist as to the volume or nature of the material referred to on the Notice or requested thereafter.
9. Of matters which the Defence are aware, there are two presently outstanding matters of litigation the obtaining of a telephone and surveillance<sup>6</sup> which may or may not lead to further disclosure. As any such disclosure will post-date the Third Status Conference, the Defence cannot assist as to the volume or nature of the material therein.
10. According to the SPO's submissions for the Third Status Conference<sup>7</sup>, the SPO will no longer aim to complete its investigations by the end of December 2023. The Defence cannot assist as to the extent and nature of the SPO's continuing investigations.
11. Further, the arrest of Mr Shala and confirmation of the indictment KSC-BC-2023-11 will lead to further disclosure issues (whether or not joinder of cases 10 and 11 is requested, as the SPO indicates it will request, and ordered).
12. For example, in the indictment against Mr Shala<sup>8</sup>, it is particularised that Witness 1 told Mr Januzi that he would withdraw his testimony in exchange for 200,000 euros. As this particular is supportive of Mr Januzi's position but is not confirmed by the account of Witness 1 at ERN 112906-TR-ET Part 1, the Prosecution evidence which underpins that particular in Indictment 11 must be disclosed to

---

<sup>6</sup> KSC-BC-2023-10/F00106 and F00115 (collectively the 'Defence Submissions' re F00013 Prosecution Request for Retention of Evidence); and KSC-BC-2023-10/F00032 ('Prosecution Request for an order') ad related filings

<sup>7</sup> KSC-BC-2023-10/F00126, *Prosecution Submissions for Third Status Conference with strictly confidential and ex parte Annex 1*, Prosecution, 12 December 2023, Confidential at paragraph 9

<sup>8</sup> KSC-BC-2023-11/F00013/A01, *Annex 1 to Submission of public redacted version of confirmed Indictment*, Prosecution, 12 December 2023, Public at paragraph 14

the Defence immediately pursuant to Rule 103 of the Rules.

13. In relation to the Prosecution's stated intention to request joinder of Cases 10 and 11, the Prosecution will need to apply under Rules 89 and 90 for leave to amend having submitted a proposed joinder indictment. In the event that any such request is received, the Defence will consider and respond thereto in accordance with Rule 76. It is further noted at this stage that the rights to file preliminary motions and appeals against decisions on preliminary motions under Rule 97 apply to a joinder indictment under Rules 89 and 90.

#### B. DEFENCE INVESTIGATIONS AND NEXT STEPS

14. In light of the above uncertainties, the Defence is not in a position to provide more information on the matters in paragraph 8(4) of the Order. The Defence does envisage filing a pre-trial brief and related material under Rule 95(5) of the Rules but will not be able to do so by Friday 1 March 2024.

#### C. POINTS OF AGREEMENT ON MATTERS OF LAW AND FACT

15. The Defence await the SPO initiating any such discussion.

#### D. TRANSMISSION OF THE CASE FILE AND TRIAL READINESS

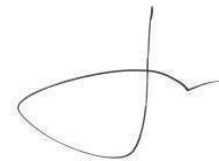
16. The Defence cannot presently envisage the transmission of the case file to the Trial Panel before May 2024 and trial before July 2024. Consideration of Rule 72(1) of the Rules is premature when the SPO has indicated its intention to request joinder.

#### E. ANY OTHER BUSINESS

17. The Defence will raise the following at the end of the Third Status Conference:

- (a) The expiry of the KSC DMU subscription to Zoom for the purposes of remote consultations;
- (b) [REDACTED]; and
- (c) The non-provision of computer facilities to Mr Januzi for the preparation of his defence.

Word count: 1390 words



JONATHAN ELYSTAN REES KC

Specialist Counsel for Mr Januzi

HUW BOWDEN

Specialist Co-Counsel for Mr Januzi

13 December 2023

Cardiff, UK