

In: KSC-BC-2023-10

Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala

Before: Pre-Trial Judge

Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Haxhi Shala

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Language: English

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Reply to the Prosecution Submission Pertaining to Periodic Detention Review of Haxhi Shala

Specialist Prosecutor

Kimberly P. West

Counsel for Sabit Januzi

Jonathan Elystan Rees

Huw Bowden

Counsel for Ismet Bahtijari

Dr. Felicity Gerry

James O'Keefe

Counsel for Haxhi Shala

Toby Cadman

John Cubbon

I. INTRODUCTION

1. The Defence for Mr. Haxhi Shala (“Defence”) hereby replies to the Prosecution’s submission pertaining to periodic detention review of Haxhi Shala (“Accused”) as filed on 21 March 2024.¹
2. In its submission, the Prosecution argued that the Defence’s submission was “premature and entirely speculative”, considering the following: that the Accused is in the process of applying for legal aid, that the timing of applications for funding is a matter which was within the control of the Defence, and that transfer of the case file to the Trial Panel was set to be addressed at the 22 March 2024 status conference (“Status Conference”).² The Status Conference took place on 22 March 2024 as planned.

II. SUBMISSIONS

3. The Defence submit that the Accused is being detained for an unreasonable period prior to the opening of the case for two main reasons. Firstly, although the timing of applications for funding is a matter within the control of the Defence, the process of consideration of the applications by the Registry is not

¹ Prosecution submission pertaining to periodic detention review of Haxhi Shala, KSC-BC-2023-10/F00227, Confidential, 21 March 2024.

² Ibid., paragraph 27.

within the Defence's control. As the Deputy Registrar highlighted at the Status Conference,³ a decision on legal aid will follow an indigency assessment, and this may take some time.

4. Secondly, the timeframe for the pre-trial period appears to have been extended. In his Decision on Review of Detention on 9 February 2024,⁴ the Pre-Trial Judge found that all required procedural steps relating to the pre-trial phase of the present case have been, are being, or will be completed with a view to transmitting the case for trial by Friday, 3 May 2024. However, in his Order Setting the Date for Status Conference dated 14 March 2024,⁵ the Pre-Trial Judge requested that the Parties to provide updates on their views on the transmission of the case file to the Trial Panel by Friday, 31 May 2024.⁶
5. The written submissions of Sabit Januzi⁷ and Ismet Bahtijari⁸ indicate that they do not consider that this can be achieved, a position which they reiterated at

³ Transcript of Status Conference (Open Session) on 22 March 2024, KSC-BC-2023-10, 22 March 2024.

⁴ Decision on Review of Detention of Haxhi Shala, KSC-BC-2023-10/F00165, Confidential, 9 February 2024.

⁵ Order Setting the Date for Status Conference and for Submissions, KSC-BC-2023-10/F00213, Public, 14 March 2024.

⁶ Ibid., paragraph 14(6)(b).

⁷ Sabit Januzi's Submissions for Fifth Status Conference, KSC-BC-2023-10/F00225, Public, 19 March 2024.

⁸ Ismet Bahtijari's Submissions for Fifth Status Conference, KSC-BC-2023-10/F00219, Public, 18 March 2024.

the Status Conference.⁹ The prospect of transmitting the case file to the Trial Judge by 31 May 2024 is therefore far from certain.

6. Accordingly, the Defence submit that, to ensure that the Accused is not detained for an unreasonable period prior to the opening of the case, the Accused should be released pursuant to Article 56(2) of the Rules.

III. CLASSIFICATION

7. This filing is submitted confidentially pursuant to Rule 82(4) of the Rules.

IV. CONCLUSION

8. For the foregoing reasons the Defence requests that:
- (i) The unconditional release of the Accused from detention be ordered, or, in the alternative;
 - (ii) His release be ordered subject to one or more of the conditions to which he would consent.¹⁰

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⁹ Transcript of Status Conference (Open Session) on 22 March 2024, KSC-BC-2023-10, 22 March 2024, at paragraphs 4-13 and 25 of page 253; paragraph 1 of page 254.

¹⁰ KSC-BC-2023-11/F00039, Response to Prosecution Submission Pertaining to Periodic Detention of Haxhi Shala, 4 February 2024, confidential, para. 70.



Toby Cadman

Specialist Counsel

Tuesday, 26 March 2024

At London, United Kingdom