

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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Request for the Pre-Trial Judge to Convene a Status Conference

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

I. INTRODUCTION

1. The Defence for Mr. Haxhi Shala (“Haxhi Shala Defence”) will make submissions here in support of a request for a Status Conference to be convened.

II. PROCEDURAL BACKGROUND

2. On 2 October 2023, the Pre-Trial Judge confirmed the indictment against Sabit Januzi and Ismet Bahtijari¹ (“Case 10 Confirmed Indictment”).
3. On 4 December 2023, the Pre-Trial Judge confirmed the indictment against Haxhi Shala (“Accused”) (“Case 11 Confirmed Indictment”).²
4. At the first Status Conference on 15 December 2023, the Accused entered pleas of not guilty to each charge in the Indictment.³

¹ KSC-BC-2023-10, F00008, Pre-Trial Judge, Decision on the Confirmation of the Indictment (“Confirmation Decision”), 2 October 2023, strictly confidential and ex parte. A confidential redacted version and a public redacted version of the decision were filed on 12 October 2023, F00008/CONF/RED and F00008/RED. A corrected version of the public redacted version of the decision was filed on 12 October 2023, F00008/RED/COR.

² KSC-BC-2023-11, F00005, Pre-Trial Judge, Decision on the Confirmation of the Indictment, 4 December 2023, confidential. A public redacted version was filed on 30 January 2024, F00005/RED.

³ KSC-BC-2023-11, Status Conference, Transcript, 15 December 2023, p. 42.

5. On 12 January 2024, the Specialist Prosecutor's Office ("SPO") filed a Submission of Joint Indictment with Confidential Annexes 1 and 2.⁴
6. On 8 February 2024 the Pre-Trial Judge issued the Decision on Request for Joinder and Amendment of the Indictment⁵ ("Joinder Decision") in which, *inter alia*, he granted the SPO request for joinder of Cases 10 and 11,⁶ but rejected the amendments in the Joint Indictment that the SPO proposed.⁷ He also determined that the joint case would proceed at this stage on the basis of the Case 10 and Case 11 Confirmed Indictments.⁸
7. Since the Joinder Decision there have been Status Conferences on 12 February 2024 and 22 March 2024.
8. On 27 February 2024 the SPO submitted a proposed amended joint indictment of Sabit Januzi, Ismet Bahtijari and Haxhi Shala.⁹ A decision on this proposal is pending.

⁴ KSC-BC-2023-11/F00031.

⁵ KSC-BC-2023-11/F00041, confidential.

⁶ Joinder Decision, para. 58(a).

⁷ Joinder Decision, paras 7, 58.c.

⁸ Joinder Decision, para. 55.

⁹ KSC-BC-2023-10/F00189, Request to amend pursuant to Rule 90(1)(b) with confidential Annexes 1 and 2, Annex 1.

9. On 27 March 2024 the Pre-Trial Judge issued Decision Setting out the Calendar for the Remaining Procedural Steps of the Pre-Trial Phase,¹⁰ in which he decided, *inter alia*, to set the date for transmitting the case file to the Trial Panel to Friday, 21 June 2024.¹¹

III. APPLICABLE LAW

10. Rule 96(1) of the Rules of Procedure and Evidence of the Kosovo Specialist Chambers¹² (“the Rules”) provides:

“The Pre-Trial Judge shall convene a status conference as soon as possible after the initial appearance of the Accused, and thereafter as deemed necessary, in order to:

“(a) organise exchanges between the Parties and, where applicable, Victims’ Counsel so as to ensure expeditious preparation for trial;

“(b) take steps to ensure that all necessary preparations are being conducted by the Parties in a timely and diligent fashion; and

¹⁰ KSC-BC-2023-10/F00233.

¹¹ KSC-BC-2023-10/F00233, para. 30(k).

¹² KSC-BD-03/Rev3/2020.

“(c) review the status of the case and allow the Parties and, where applicable, Victims’ Counsel the opportunity to raise issues in relation thereto.”

IV. SUBMISSIONS

11. There are a number of unresolved issues that are impeding the preparation for trial. It is the submission of the Haxhi Shala Defence that they can be most effectively addressed at a Status Conference.
12. The anomalous situation whereby Cases 10 and 11 are joined but there are two separate indictments¹³ persists. There is uncertainty about whether there will be a joint indictment and, if so, what it will contain.
13. Pursuant to Article 40(1) of the Law on Specialist Chambers and Specialist Prosecutor’s Office¹⁴ (“Law”), the President of the Specialist Chambers shall constitute a Trial Panel which shall be responsible for the conduct of the trial proceedings. Article 25(1)(b) of the Law provides that Trial Panels shall be composed of three judges and one reserve judge. However, under Article 25(2) the Trial Panel may consist of a single judge for proceedings in relation

¹³ Joinder Decision, paras. 55, 58(a).

¹⁴ Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, 3 August 2015.

to crimes such as those with which the Accused is charged. Exchanges between the parties will facilitate informed submissions to the President on the question whether in the instant case the Trial Panel should consist of three judges and one reserve judge or a single judge.

14. There has not been fully effective disclosure. The Haxhi Shala Defence does not have access on Legal Workflow to all the items in Disclosure Packages 23, 24, 25, 28 and 29 in Case 10.¹⁵ On 29 April 2024 it brought this to the attention of the SPO. On 2 May 2024 the SPO replied:

“We have encountered similar issues and have raised them with the Registry/CMU, including that these issues are also affecting the Defence. Should your issue not be promptly resolved, we suggest that you contact CMU directly.”

15. The incomplete access to Disclosure Packages 23, 24, 25, 28 and 29 in Case 10 remains unaltered. Until there is full access, the Haxhi Shala Defence is limited in its capacity to progress in its preparations.

¹⁵ See also KSC-BC-2023-10/F00285, Update re Objections to Evidence and Disclosure, 13 May 2024, confidential, paras. 4-6.

16. Finally, on 13 May 2024 at the same time as the conditional assignment of Mr. Toby Cadman as Counsel to Mr. Haxhi Shala,¹⁶ appointments of the members of the team that had been supporting him were terminated with immediate effect.¹⁷ The abrupt reduction in the staffing of the team and the need to re-engage team-members will reduce the capacity of the Haxhi Shala Defence to conduct its defence of the Accused for a period of time that cannot now be predicted. This will have an impact on its ability to engage with the other parties which is becoming increasingly important the longer the pre-trial phase continues.
17. A number of factors some of which may affect the parties in different ways will determine their ability to prepare effectively for trial. The Shala Defence submits that the issues arising would be best resolved at a Status Conference so as to facilitate expeditious trial preparation.

V. CONCLUSION

18. For the foregoing reasons the Defence requests that the Pre-Trial Judge convene a Status Conference at the earliest possible opportunity prior to the

¹⁶ KSC-BC-2023-10/F00288, Notification of Conditional Assignment of Counsel, and Termination of Appointment of Co-Counsel, to Haxhi Shala with two confidential Annexes, para. 1.

¹⁷ KSC-BC-2023-10/F00288, para. 5, Annex 2.

transmission of the case file to the Trial Panel so that exchanges between the parties on the matters raised here and, if appropriate, other matters may take place.

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Toby Cadman

Specialist Counsel

Monday, 16 May 2024

At Doha, the State of Qatar