

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

Date: 31 May 2024

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Reply to Prosecution Response to F00292

Specialist Prosecutor

Kimberly P. West

Counsel for Sabit Januzi

Jonathan Elystan Rees

Counsel for Ismet Bahtijari

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Counsel for Haxhi Shala

Toby Cadman

I. INTRODUCTION

1. The Defence for Mr. Haxhi Shala (“Defence”) hereby replies to Prosecution response to F00292 (“Response”).¹

II. SUBMISSIONS

2. In Request for the Pre-Trial Judge to Convene a Status Conference² (“Request”) the Defence requested that the Pre-Trial Judge convene a Status Conference at the earliest possible opportunity prior to the transmission of the case file to the Trial Panel so that exchanges between the parties on the matters raised in the Request and, if appropriate, other matters, may take place.³
3. The Defence acknowledges that a Single-Judge Trial Panel is not an available option for the reasons given in the Response⁴ and can report that the difficulties with Legal Workflow⁵ have now been resolved.

¹ KSC-BC-2023-10/F00300, 25 May 2024.

² KSC-BC-2023-10/F00292, 16 May 2024.

³ Request, para. 18.

⁴ Response, para. 3.

⁵ Response, para. 4.

4. The Specialist Prosecutor's Office ("SPO") asserts that its request for leave to amend the indictment has already been ruled on.⁶ However, the indictment is being challenged following a request that the Pre-Trial Judge made. On 17 May 2024, the Pre-Trial Judge granted the Prosecution leave to amend the indictment but at the same time he requested the Defences of Sabit Januzi and Ismet Bahtijari, if they so wished, to provide submissions on whether a well-grounded suspicion in relation to the amendments had been established pursuant to Rule 86(4) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers⁷ ("Rules").⁸ On 27 May 2024 Sabit Januzi sought a dismissal of a charge resulting from the amendment⁹ and sought leave to appeal the Decision of the Pre-Trial Judge through certification.¹⁰ The SPO's assertion in this regard is therefore factually inaccurate.
5. Further, as a consequence of the conditional assignment of Counsel under the legal aid framework on 13 May 2024,¹¹ appointments of the other members of

⁶ Response, para. 2.

⁷ KSC-BD-03/Rev3/2020.

⁸ KSC-BC-2023-10/F00294, Decision on Prosecution Request to Amend the Indictment, confidential, para. 46.

⁹ KSC-BC-2023-10/F00304, confidential.

¹⁰ KSC-BC-2023-10/F00307, Application for Leave to Appeal through Certification from Decision KSC-BC-2023-10/F00294 pursuant to Article 45(2) and Rule 77(1), confidential.

¹¹ 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.

the Defence team were terminated with immediate effect.¹² On 16 May, when the Request was filed, it was anticipated that the abrupt reduction in the staffing of the team and the need to re-engage team-members would reduce the capacity of the Defence to conduct its defence of the Accused for a period of time that could not be predicted.¹³ Since then, there has indeed been a reduction in its capacity to do this in part because of the time needed to seek approval for prospective team members.

6. In addition, owing to the level of Legal Aid funding available, it has been necessary to reduce the size of the team from seven to five persons.
7. The Pre-Trial Judge has set the date for transmitting the case file to the Trial Panel to Friday, 21 June 2024;¹⁴ however a considerable amount of preparation for trial is still needed in addition to what the Defence will be required to do in the remainder of the pre-trial phase.
8. Recent developments reinforce the Defence submission that a number of factors, some of which may affect the parties in different ways, will determine their ability to prepare effectively for trial and that the issues arising would be

¹² KSC-BC-2023-10/F00288, para. 5, Annex 2.

¹³ Request, para. 16.

¹⁴ KSC-BC-2023-10/F00233, Decision Setting out the Calendar for the Remaining Procedural Steps of the Pre-Trial Phase, 27 March 2024, para. 30(k).

best resolved at a Status Conference so as to facilitate expeditious trial preparation.¹⁵

III. CONCLUSION

9. The Haxhi Shala Defence reaffirms the conclusion of the Request that a Status Conference be convened.¹⁶

Word Count: [629 words]



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¹⁵ Request, para. 17.

¹⁶ Request, para. 18.