

In: KSC-BC-2023-10

The 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 Sabit Januzi

Date: 4 June 2024

Language: English

Classification: Confidential

Response to Bahtijari Request to Extend Time for Filing a Pre-Trial Brief

Specialist Prosecutor

Kimberly P. West

Counsel for Sabit Januzi

Jonathan Elystan Rees KC
Huw Bowden

Counsel for Ismet Bahtijari

Dr Felicity Gerry KC

Counsel for Haxhi Shala

Toby Cadman
John Cubbon

I. INTRODUCTION

1. On 31 May 2024, the Accused received notification of the application by co-accused, Bahtijari, to extend time for filing a pre-trial brief ("Request")¹.
2. On the same day, the Pre-Trial Judge instructed that the Accused was to file any response to the Request by 1200 hrs on 4 June 2024².
3. The Accused responds as follows.

II. SUBMISSIONS

4. The Accused endorses and hereby joins the Request.
5. As observed at paragraph 4(a) of the Request, there are challenges in relation to the indictment which remain outstanding. They should be resolved in full before the date for filing of a defence pre-trial brief is reached.
6. In the Accused's case, defence funding is yet to be secured in any form. There is no contractual funding in place with either the KSC Defence Office or the Kosovo Ministry of Justice. A complaint to the KSC Ombudsperson relating to the revised legal aid regulations remains outstanding.
7. Defence investigations for the Accused in Kosovo remain outstanding. An attempt by the defence on 3 May 2024 to conditionally agree funding to conduct

¹ KSC-BC-2023-10/F00310, *Bahtijari Filing to Extend Time for Filing a Pre-Trial Brief*, Bahtijari, 31 May 2024, Public

² CMU email 31/05/2024 at 12:39 hrs

those investigations subject to and pending any legal aid contract being agreed post-investigations was rejected out of hand by the Defence Office.

8. Further, disclosure requests by the Accused relating to the telephones of Witnesses W03879 and W04891 in *inter partes* correspondence as long ago as 29 April 2024 have only yesterday (3 June 2024) received a response from the Prosecution. The Accused has not been able yet to fully comprehend the consequences of the response, but in short, the requested further disclosure has been refused. No explanation has been provided as to why it has taken over a month to respond to the request. There is no suggestion in the response that the Prosecution will seize the Panel of the matter contrary to its obligation to do so under Rule 102(3) of the Rules. In the circumstances, the Accused will seek to do so. As the Pre-Trial Judge will readily understand, full disclosure in relation to the telephones of W03879 and W04891 is a matter of crucial importance to the Accused, who contemplates filing a defence pre-trial brief challenging *inter alia* (i) the fairness of any criminal proceedings in circumstances where the Prosecution has failed to retain a recording of 5 April (ii) the admissibility of 12 April recording and the circumstances in which it was obtained and (iii) the reliability of 12 April recording, which includes consideration of its forensic authenticity and integrity.
9. The Accused should not be required to file any defence pre-trial brief until the above matters are resolved.

III. CONCLUSION

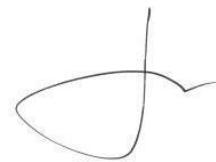
10. For the reasons set out both in the Request and above, the Request should be granted. It is further submitted if any of the accused is granted an extension of

time to file a pre-trial brief, the same extension of time should be permitted to each of the other accused, so that no single accused may be disadvantaged by a regime which requires, if any defence disclosure is to be made under Rule 95(5), successive defence disclosure.

IV. CLASSIFICATION

11. This filing is classified as public.

Word count: 549 words



JONATHAN ELYSTAN REES KC

Specialist Counsel for Mr Januzi

HUW BOWDEN

Specialist Co-Counsel for Mr Januzi

04 June 2024

Cardiff, UK