



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

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

Date: 5 June 2024

Language: English

Classification: **Public**

Decision on Bahtijari Request for Extension of Time

Specialist Prosecutor
Kimberly P. West

Counsel for Sabit Januzi
Jonathan Elystan Rees

Counsel for Ismet Bahtijari
Felicity Gerry

Counsel for Haxhi Shala
Toby Cadman

THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(1) and (13) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 9(5)(a) and 76 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules") hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 27 March 2024, the Pre-Trial Judge issued the "Decision Setting out the Calendar for the Remaining Procedural Steps of the Pre-Trial Phase" ("Pre-Trial Calendar Decision") in which he, *inter alia*, ordered the Defence for Sabit Januzi ("Januzi Defence"), the Defence for Ismet Bahtijari ("Mr Bahtijari" and "Bahtijari Defence") and the Defence for Haxhi Shala ("Shala Defence") (together "Defence Teams" or "Accused") to submit a Pre-Trial Brief, if any, by no later than Friday, 7 June 2024.²
2. On 31 May 2024, the Bahtijari Defence filed an application seeking an extension of the time limit set by the Pre-Trial Judge for the filing of its Pre-Trial Brief, to Thursday, 20 June 2024 ("Request").³
3. On 2 June 2024, the Shala Defence responded to the Request.⁴
4. On 3 June 2024, the Specialist Prosecutor's Office ("SPO") responded to the Request.⁵

¹ KSC-BC-2023-10, F00001, President, *Decision Assigning a Pre-Trial Judge*, 11 September 2023, public. KSC-BC-2023-11, F00001, President, *Decision Assigning a Pre-Trial Judge*, 20 November 2023, public.

² KSC-BC-2023-10, F00233, Pre-Trial Judge, *Decision Setting Out the Calendar for the Remaining Procedural Steps of the Pre-Trial Phase*, 27 March 2024, public, paras 27, 30(i).

³ KSC-BC-2023-10, F00310, Defence for Mr Bahtijari, *Bahtijari Filing to Extend Time for Filing a Pre-Trial Brief*, 31 May 2024, public.

⁴ KSC-BC-2023-10, F00317, Defence for Mr Shala, *Response to Bahtijari Filing to Extend Time for Filing a Pre-Trial Brief* ("Shala Response"), 2 June 2024, public.

⁵ KSC-BC-2023-10, F00318, Specialist Prosecutor, *Prosecution Response to F00310* ("SPO Response"), 3 June 2024, public.

5. On 4 June 2024, the Januzi Defence responded to the Request.⁶

II. SUBMISSIONS

6. The Bahtijari Defence submits that it is unable to comply with the deadline of 7 June 2024 set by the Pre-Trial Judge for the filing of its Pre-Trial Brief due to several unresolved matters, including: (i) a pending challenge to the amendment of the indictment; (ii) a lack of funds, pending receipt of legal aid payment and due to delays in the payment of funds from the Ministry of Justice of Kosovo; (iii) lack of staff support and delays in approval procedures for the appointment of team members; (iv) the need to conduct investigations in Kosovo by appointed co-counsel, whose assignment is still pending; (v) the need to obtain medical records and reports that may be relevant to potential defences; and (vi) difficulties in communicating with Mr Bahtijari.⁷ On this basis, the Bahtijari Defence requests an extension of time to file its Pre-Trial Brief, until 20 June 2024.⁸

7. The Shala Defence responds that the grounds raised by the Bahtijari Defence in support of the Request, with the exception of considerations regarding Mr Bahtijari's state of health, are matters that affect all Defence Teams and continue to present challenges to the effective and efficient progress of the case.⁹ Nonetheless, the Shala Defence submits that, out of concern that the matter progress to trial within a reasonable time, it intends to file its Pre-Trial Brief by the date set in the Pre-Trial Calendar Decision, but remains neutral on the extension of time requested by the Bahtijari Defence.¹⁰

⁶ KSC-BC-2023-10, F00319, Defence for Mr Januzi, *Response to Bahtijari Request to Extend Time for Filing a Pre-Trial Brief* ("Januzi Response"), 4 June 2024, public.

⁷ Request, paras 1, 4(a)-(h).

⁸ Request, paras 1, 3.

⁹ Shala Response, para. 7.

¹⁰ Shala Response, paras 7-9.

8. The SPO responds that the Bahtijari Defence has not demonstrated good cause for the Request.¹¹ Nonetheless, the SPO submits that it defers to the Pre-Trial Judge as to whether a reasonable, limited extension of the deadline for the filing of Mr Bahtijari's Pre-Trial Brief is justified, provided that any such extension should not prevent the timely transmission of the case file to the Trial Panel by 21 June 2024.¹²

9. The Januzi Defence responds that, as noted by the Bahtijari Defence, several matters remain outstanding that should first be resolved before requiring the Defence Teams to file a Pre-Trial Brief,¹³ including challenges in relation to the indictment, the absence of funding, and outstanding Defence investigations.¹⁴ Furthermore, the Januzi Defence submits that it only received a response on 3 June 2024 to its disclosure request made on 29 April 2024 relating to the telephones of W03879 and W04891, which the SPO has refused without explanation.¹⁵ In this respect, the Januzi Defence submits that (i) it will seek to seize the Pre-Trial Judge of the matter, as the requested disclosure is of crucial importance to the Accused; and (ii) it intends to raise in its Pre-Trial Brief challenges relating to the admissibility and reliability of the 12 April 2023 recordings retrieved from the telephones of these witnesses, as well as the impact on the fairness of the proceedings resulting from the SPO's failure to retain the 5 April 2023 recording.¹⁶ On this basis, the Januzi Defence both endorses and joins the Request.¹⁷

¹¹ SPO Response, para. 3.

¹² SPO Response, para. 3.

¹³ Januzi Response, para. 9.

¹⁴ Januzi Response, paras 5-7.

¹⁵ Januzi Response, para. 8.

¹⁶ Januzi Response, para. 8.

¹⁷ Januzi Response, para. 4.

III. APPLICABLE LAW

10. Pursuant to Article 39(1) of the Law, the Pre-Trial Judge shall have the power to make any necessary orders or decisions to ensure the case is prepared properly and expeditiously for trial.

11. Pursuant to Article 39(13) of the Law and Rule 95(2) of the Rules, the Pre-Trial Judge shall ensure the pre-trial proceedings are not unduly delayed and shall take all necessary measures for the expeditious preparation of the case for trial.

12. Pursuant to Rule 9(5)(a) of the Rules, the Panel may, *proprio motu*, or upon showing of good cause, extend or reduce any time limit prescribed by the Rules or set by the Panel.

13. Pursuant to Rule 76 of the Rules, applications for extension of time shall be filed sufficiently in advance to enable the Single Judge to rule on the application before the expiry of the relevant time limit.

14. Pursuant to Rule 95(5) of the Rules, after submission of the items under Rule 95(4) of the Rules, the Pre-Trial Judge shall invite the Defence to file a pre-trial brief within a set time limit.

15. Pursuant to Rule 95(2)(j) of the Rules, the Pre-Trial Judge shall set a target date for the readiness of the case for trial.

IV. DISCUSSION

16. At the outset, the Pre-Trial Judge finds that the Request was submitted sufficiently in advance, in accordance with Rule 76 of the Rules.

17. As regards the showing of good cause, the Pre-Trial Judge pays heed to the fact that: (i) Mr Bahtijari intends to file a Pre-Trial Brief; (ii) a determination on whether a well-grounded suspicion has been established in relation to the

amendments to the indictment against Mr Bahtijari and Mr Januzi requested by the SPO pursuant to Rule 86(4) of the Rules is still forthcoming;¹⁸ and (iii) Mr Bahtijari finds such determination necessary to enable him to respond to the charges in his Pre-Trial Brief. The Pre-Trial Judge further pays heed to the fact that neither the Shala Defence nor the SPO oppose the Request,¹⁹ and that the Januzi Defence endorses the Request.²⁰ Accordingly, the Pre-Trial Judge finds that good cause has been shown, warranting an extension of time.

18. The Pre-Trial Judge further finds that the above considerations should apply equally to all Defence Teams, and accordingly extends the deadline for the filing of the Pre-Trial Brief, if any, for all Defence Teams, to **Thursday, 20 June 2024**.

19. Furthermore, having regard to the above and considering the substantive nature of the pending matter, the Pre-Trial Judge decides to postpone the date for the transmission of the case file to the Trial Panel, which was set to be Friday, 21 June 2024.²¹ In this regard, the Pre-Trial Judge finds that a postponement of two weeks is reasonable and justified under the circumstances, and accordingly sets the new tentative date for transmitting the case file to the Trial Panel to **Friday, 5 July 2024**.

¹⁸ See KSC-BC-2023-10, KSC-BC-2023-10, F00189, Specialist Prosecutor, *Request to Amend Pursuant to Rule 90(1)(b)*, 27 February 2024, confidential, with Annexes 1-2, confidential; F00294, Pre-Trial Judge, *Decision on Prosecution Request to Amend the Indictment*, 17 May 2024, confidential, paras 45-46.

¹⁹ See *supra* paras 7-8.

²⁰ See *supra* para. 9.

²¹ See Pre-Trial Calendar Decision, paras 29, 30(k).

V. DISPOSITION

20. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a) **GRANTS** the Request;
- b) **ORDERS** the Defence Teams to submit a Pre-Trial Brief, if any, by **Thursday, 20 June 2024**; and
- c) **SETS** the new tentative date for transmitting the case file to the Trial Panel to **Friday, 5 July 2024**.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Wednesday, 5 June 2024
At The Hague, the Netherlands.