



**SPECIALIST PROSECUTOR'S OFFICE**  
**ZYRA E PROKURORIT TË SPECIALIZUAR**  
**SPECIJALIZOVANO TUŽILAŠTVO**

**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 Prosecutor's Office

**Date:** 25 April 2024

**Language:** English

**Classification:** Public

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**Public redacted version of 'Prosecution response to F00252'**

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**Specialist Prosecutor's Office**

Kimberly P. West

**Counsel for Sabit Januzi**

Jonathan Elystan Rees

**Counsel for Ismet Bahtijari**

Felicity Gerry

**Counsel for Haxhi Shala**

Toby Cadman

1. The Submissions<sup>1</sup> ignore the plain direction given by the Pre-Trial Judge in the Decision.<sup>2</sup> This direction intended to ensure the rights of the Accused, including Sabit Januzi, such as their rights to be tried within a reasonable time and to be continuously represented by counsel, regardless of their ability to fund their defence. In line with these aims, and to ensure the orderly conduct of the proceedings, the SPO requests that the Pre-Trial Judge enforce the Decision by ordering Januzi to make responsive submissions to paragraph 30(a) and (b) of the Decision.

#### A. PROCEDURAL HISTORY

2. On 27 March 2024, the Pre-Trial Judge issued his Decision, noting, *inter alia*, that: '[w]ith a view to ensuring the rights of the three accused and preparing expeditiously the case properly before transmission to trial the Pre-Trial Judge considers that the funding situation of the Defence teams of Mr Januzi, [Ismet] Bahtijari and [Haxhi] Shala (jointly, "Defence" or "Defence Teams") needs to be resolved.'<sup>3</sup>

3. Accordingly, the Pre-Trial Judge issued the following order: '**ORDERS** the Defence, should they intend to request legal aid before the Registry, to fill out and submit the required forms, including supporting documentation, and inform the Pre-Trial Judge by Friday, 12 April 2024.'<sup>4</sup> The Defence were further ordered to inform the Pre-Trial Judge, without delay, of any obstacles impeding them from completing the required forms, or submitting supporting documentation, within the prescribed time limit.<sup>5</sup>

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<sup>1</sup> Written Submissions in relation to Paragraph 30(a) and (b) of F00233, KSC-BC-2023-10/F00252, 12 April 2024 ('Submissions').

<sup>2</sup> Decision Setting out the Calendar for the Remaining Procedural Steps of the Pre-Trial Phase, KSC-BC-2023-10/F00233, 27 March 2024 ('Decision'), paras 30(a)-(b).

<sup>3</sup> Decision, KSC-BC-2023-10/F00233, para.14.

<sup>4</sup> Decision, KSC-BC-2023-10/F00233, para.30(a).

<sup>5</sup> Decision, KSC-BC-2023-10/F00233, para.30(b).

4. On 12 April 2024, Januzi filed the Submissions, indicating that he is not in a position to apply for legal aid on the basis of having made a pending referral to the Specialist Chamber of the Constitutional Court ('Constitutional Court') in relation to the lawfulness of certain revised Legal Aid Regulations adopted by the Registrar of the Kosovo Specialist Chambers ('KSC'), KSC-BD-25/Rev11.<sup>6</sup> The referral referenced by Januzi was filed jointly by all three Accused, on 2 April 2024.<sup>7</sup>

5. [REDACTED],<sup>8</sup> [REDACTED].<sup>9</sup> In addition, Bahtijari filed detailed written submissions before the Pre-Trial Judge, consistent with the Decision,<sup>10</sup> requesting additional time to complete his legal aid application,<sup>11</sup> which requests have been granted.<sup>12</sup>

#### B. SUBMISSIONS

6. In the Submissions, Januzi represents that he is not in a position to apply for legal aid until the Constitutional Court 'referral is determined.'<sup>13</sup> He provided no explanation for how the referral impeded his ability to complete the necessary forms to make a legal aid application with the Registry. This deficiency is especially striking in light of the fact that the interim measures the Accused requested in their referral – that KSC-BD-25/Rev1 be suspended pending the outcome of the referral and an order that funding is made available to the Accused *subject to eligibility* – would still require Januzi to complete the forms to make a complete legal aid application such that the

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<sup>6</sup> Submissions, KSC-BC-2023-10/F00252, para.1.

<sup>7</sup> Referral by 1) Sabit JANUZI, 2) Ismet BAHTIJARI and 3) Haxhi SHALA to the Specialist Chamber of the Constitutional Court Concerning the Constitutional Validity of KSC-BD-25/Rev1 (Revised Legal Aid Regulations), KSC-CC-2024-10/F00233, 2 April 2024.

<sup>8</sup> [REDACTED].

<sup>9</sup> [REDACTED].

<sup>10</sup> Decision, KSC-BC-2023-10/F00233, para.14.

<sup>11</sup> See BAHTIJARI FILING FOR LEGAL AID EXTENSION, KSC-BC-2023-10/F00250, 12 April 2024; BAHTIJARI AMENDED FILING FOR FURTHER EXTENSION FOR LEGAL AID, KSC-BC-2023-10/F00256, 19 April 2024.

<sup>12</sup> See Decision on Request for Extension of Time, KSC-BC-2023-10/F00253, 15 April 2024; Decision on Second Request for Extension of Time, KSC-BC-2023-10/F00259, 19 April 2024.

<sup>13</sup> Submissions, KSC-BC-2023-10/F00252, para.2.

Registrar can make a decision as to his eligibility for legal aid. Indeed, each of Januzi's co-Accused are in the process of completing the relevant applications, in line with the Decision.

7. Januzi has effectively simply disregarded the Single Judge's orders, failing to submit the required forms by the specified deadline, and failing to specify any coherent reasons for not doing so.<sup>14</sup>

8. At any rate, the pendency of the referral need no longer present an impediment to Januzi filing the required forms for legal aid: the Constitutional Court has reached a decision and found the referral to be inadmissible.<sup>15</sup> Significantly, that decision noted that an individual may only make a referral to the Constitutional Court after exhaustion of all effective remedies, which, in this case, would include a request for legal aid, a determination on indigency, and a challenge through the legal aid regulations to any determination made by the Registrar in relation to the disbursement of legal aid.<sup>16</sup>

9. While failing to comply with orders of the Pre-Trial Judge which were expressly directed towards ensuring Januzi's rights, Counsel for Januzi has simultaneously invoked a lack of funding as justification for not being able to undertake certain tasks necessary to preparation for trial.<sup>17</sup> The continuing uncertainty, arising from Januzi's failure to abide by the orders of the court, risks causing unnecessary delay to the proceedings.

10. Thus, the SPO requests that the Pre-Trial Judge, pursuant to Article 39(13) and Rule 95(2), order Counsel for Januzi (i) to complete and submit the required legal aid forms by a date certain in the near future; and (ii) to provide assurances to the court

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<sup>14</sup> See Decision, KSC-BC-2023-10/F00233, para.16.

<sup>15</sup> Decision on the Referral of Sabit Januzi, Ismet Bahtijari and Haxhi Shala to the Constitutional Court Panel Concerning the Constitutional Validity of the Legal Aid Regulations of the Specialist Chambers, KSC-CC-2024-23/F00006, 24 April 2024 ('Legal Aid Decision'), para.21.

<sup>16</sup> Legal Aid Decision, KSC-CC-2024-23/F00006, para.16.

<sup>17</sup> See, e.g., Written Submissions In Relation to the Fourth Status Conference on behalf of Januzi, KSC-BC-2023-10/F00169, 11 February 2024, paras 8(b), 12, 13; Submissions for Fifth Status Conference, KSC-BC-2023-10/F00225, 19 March 2024, para.10.

regarding the continuity of Januzi's representation and Januzi's readiness for the transfer of the case; or, if he is not in a position to do so (iii) to withdraw as Counsel.

C. CLASSIFICATION

11. This filing is classified as confidential because it refers to information contained in confidential filings. A public redacted version of the filing will be filed.

**Word count: 1,067**



**Kimberly P. West**

**Specialist Prosecutor**

Thursday, 25 April 2024

At The Hague, the Netherlands.