



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 Marjorie Masselot

Registrar: Dr Fidelma Donlon

Date: 17 July 2024

Language: English

Classification: Confidential and *Ex Parte*

Decision on Defence for Sabit Januzi Request for a Hearing

Registry

Fidelma Donlon

Counsel for Sabit Januzi

Jonathan Elystan Rees

THE PRE-TRIAL JUDGE,¹ pursuant to Articles 34(7) and 39(1) of the of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 9(5)(b) and 23(6) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”) hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 2 July 2024, the Defence for Sabit Januzi (“Januzi Defence” and “Mr Januzi”) filed an urgent request seeking that the Pre-Trial Judge convene a hearing pursuant to Rule 96(1)(c) of the Rules to discuss issues concerning its request for legal aid before the Specialist Chambers (“SC”) (“Request”).²

2. On 4 July 2024, pursuant to an order of the Pre-Trial Judge (“Order”),³ the Registrar filed submissions on the Request (“Submissions”).⁴

3. On 8 July 2024, pursuant to the Order, the Januzi Defence replied to the Submissions (“Reply”).⁵

II. SUBMISSIONS

4. In the Request, the Januzi Defence contends that the four-year contract for legal aid offered by the Defence Office provides a funding cap in the form of a “total contract value”, which does not appear in the Registry Practice Direction – Legal Aid Regulations (“Legal Aid Regulations”).⁶ The Januzi Defence complains that the

¹ KSC-BC-2023-10, F00327, President, *Decision Assigning a Pre-Trial Judge*, 6 June 2024, public.

² KSC-BC-2023-10, F00356, Januzi Defence, *Januzi Urgent Request for an Oral Hearing*, 2 July 2024, confidential and *ex parte*.

³ KSC-BC-2023-10, F00359, Pre-Trial Judge, *Order for Submissions from the Registrar and Varying the Time Limits to Respond to F00356*, 3 July 2024, confidential and *ex parte*.

⁴ KSC-BC-2023-10, F00371, Registrar, *Registrar’s Submissions Pursuant to Order F00359*, 4 July 2024, confidential and *ex parte*, with Annexes 1-2, confidential and *ex parte*.

⁵ KSC-BC-2023-10, F00376, Januzi Defence, *Reply re Januzi Urgent Request for an Oral Hearing*, 8 July 2024, with Annexes 1-3, confidential and *ex parte*.

⁶ KSC-BD-024-Rev1, Registrar, [Registry Practice Direction – Legal Aid Regulations](#), 22 February 2024, public.

Defence Office has refused to explain the calculation of said cap.⁷ The Januzi Defence further submits that the Defence Office seeks to make a reduction in the legal aid fee to reflect a decision on a request made on behalf of Mr Januzi for funding under Law No. 05/L-054 on Legal Protection and Financial Support for Potential Accused Persons in Trials before the Specialist Chambers.⁸ The Januzi Defence asserts however that the Defence Office has accepted that it does not have a copy of said decision from the Ministry of Justice of Kosovo (“Ministry of Justice”) and that the Ministry of Justice has refused to provide Mr Januzi with a copy of any such decision.⁹ The Januzi Defence submits that, pending resolution of the aforementioned matters, it cannot sign the contract for legal aid offered by the Defence Office.¹⁰

5. In her Submissions, the Registrar contends that the issues raised by the Januzi Defence have been fully covered in extensive communications with the Januzi Defence as well as in her Submissions.¹¹ The Registrar contends that the only remaining step to finalise the conditional assignment of Johnathan Rees (“Mr Rees”) as Counsel for Mr Januzi and the provision of legal aid to Mr Januzi is for the Januzi Defence to submit the necessary documents to conclude the contracting process.¹²

6. In the Reply, the Januzi Defence essentially reiterates its request for a hearing and sets out a list of seven matters to be discussed, including an order to the Ministry of Justice.¹³

⁷ Request, para. 2.

⁸ Kosovo, Ministry of Justice, [*Law No. 05/L-054 on Legal Protection and Financial Support for Potential Accused Persons in Trials before the Specialist Chambers*](#), 31 August 2015.

⁹ Request, para. 3.

¹⁰ Request, para. 4.

¹¹ Submissions, para. 34. *See also* Submissions paras 3-33.

¹² Submissions, para. 34.

¹³ *See* Reply, paras 3-39.

III. APPLICABLE LAW

7. Pursuant to Article 34(7) of the Law and Rule 23(6) of the Rules, the Registry shall include within it a Defence Office, which will administer, on behalf of the Registrar, a system of legal aid for representation of indigent or partially indigent accused before the Specialist Chamber.

8. Pursuant to Rule 9(5)(b) of the Rules, the Panel may, *proprio motu* or upon showing of good cause recognise as valid any act carried out after the expiration of the time limit.

IV. DISCUSSION

A. PRELIMINARY MATTER

9. The Registrar requests the Pre-Trial Judge to accept her Submissions, which she submitted after the time limit set in the Order, i.e. no later than 4 July 2024 at 16:00 hours, as validly filed under Rule 9(5)(b) of the Rules.¹⁴ The Pre-Trial Judge pays heed to the Registrar's explanation that she was unable to file her Submissions on time due to an unexpected personal emergency.¹⁵ The Pre-Trial Judge also takes note of the limited delay occasioned, since the Registrar filed her Submissions a few hours after the expiration of the time limit, namely at 20:09 hours. The Pre-Trial Judge is further satisfied that said tardiness did not cause a prejudice to the Januzi Defence. As a result, the Pre-Trial Judge finds that the Registrar has shown good cause and, therefore, recognises the Submissions as validly submitted under Rule 9(5)(b) of the Rules.

B. MERITS

10. The Pre-Trial Judge notes at the outset that the administration of the legal aid system falls under the purview of the Registrar pursuant to Article 34(7) of the Law

¹⁴ Submissions, para. 36. *See* Order, para. 7(a).

¹⁵ Submissions, para. 36.

and Rule 23(6) of the Rules. The Pre-Trial Judge also notes that the Legal Aid Regulations set forth, *inter alia*, the requirements and the procedure for the assignment of Counsel as well as the administration of the system of legal aid for indigent or partially indigent persons before the SC.¹⁶ The Pre-Trial Judge further notes that intervention of a Panel in this context is solely contemplated under specific circumstances, such as pursuant to Regulations 11(4) and 18(7) of the Legal Aid Regulations.¹⁷

11. Further, the Pre-Trial Judge notes that in the Request the Januzi Defence does not seize the Pre-Trial Judge to review a decision on conditional assignment and legal aid, but requests a hearing to receive information on the matters laid down in its Request, as further concretised in its Reply.

12. In this regard, the Pre-Trial Judge takes note of the extensive correspondence between Mr Rees and the Registry from February 2024 to the present.¹⁸ According to the material before the Pre-Trial Judge, the Registrar issued the “Decision on the Conditional Assignment of Mr Rees as Counsel for Mr Januzi and Legal Aid Fee” on 24 June 2024 (KSC/REG/IOR/7070) (“24 June 2024 Decision”).¹⁹ In paragraph 55 of the 24 June 2024 Decision, Counsel Rees is requested to sign the contract so that a letter of conditional assignment can be issued. Likewise, in paragraph 56 of the 24 June 2024 Decision, Counsel Rees is requested to submit a Plan of Activities,²⁰ subsequent to which the complexity of the case is determined.²¹ According to the material available,

¹⁶ See Regulation 1 of the Legal Aid Regulations.

¹⁷ The Pre-Trial Judge notes that, according to Regulations 11(3), 18(1)-(2), (6) and (7) of the Legal Aid Regulations, after Counsel is conditionally assigned and contracted pursuant to Regulations 11(1) and (3) and 22 of the Legal Aid Regulations and Section 14(3) of the Registry Practice Direction – Directive on Counsel, should Assigned Counsel consider that the legal aid fee is insufficient, (conditionally) Assigned Counsel may request the Registrar to amend the legal aid fee and, thereafter, if deemed necessary, seek judicial review before the Competent Panel.

¹⁸ See Annex 2 to Submissions.

¹⁹ See Annex 2 to Submissions, Item 37, p. 163.

²⁰ See Regulation 13(2) of the Legal Aid Regulations.

²¹ See Regulation 16(1) of the Legal Aid Regulations.

the Pre-Trial Judge notes that the contracting process in order to finalise Mr Rees's conditional assignment as Counsel for Mr Januzi has not yet been concluded.²²

13. The Pre-Trial Judge observes that some of the matters the Januzi Defence wishes to discuss at the hearing²³ are either unrelated to Counsel Rees's conditional assignment and the award of legal aid,²⁴ or are explained in the Legal Aid Regulations.²⁵ Other matters the Januzi Defence proposes to discuss are only remotely relevant to the conditional assignment of counsel and provisional legal aid fee set forth in the 24 June 2024 Decision, namely the functioning of an Independent Representative Body²⁶ and the views of the ADC-ICT on the revised SC Legal Aid Regulations.²⁷ Lastly, with respect to the Januzi Defence's proposal to discuss a possible order to the Kosovo Ministry to provide the Januzi Defence with a copy of its decision to fund Counsel Rees with 1,000 EUR/month for representing Mr Januzi,²⁸ the Pre-Trial Judge observes that Counsel Rees confirms to the Registry in emails that he has been informed directly by the Ministry of Justice of its decision to fund him.²⁹ As the Legal Aid Regulations do not prescribe a particular form for the information of third party funding (in this case, the Ministry of Justice's decision), the Pre-Trial Judge considers that no hearing is necessary to discuss this matter.

14. Thus, in the Pre-Trial Judge's view, convening a hearing, as requested by the Januzi Defence, would not assist in resolving the issues raised in the Request/Reply

²² See Submissions, para. 34; Annex 2 to Submissions, Item 39, p. 179.

²³ Reply, para. 39(a)-(d).

²⁴ The Pre-Trial Judge stresses that the legal aid that Mr Januzi is entitled to is governed by the Legal Aid Regulations and the 24 June 2024 Decision on the conditional assignment and the provisional legal aid fee. See Submissions, para. 20.

²⁵ See Regulation 16 of the Legal Aid Regulations.

²⁶ See Press Release "Specialist Counsel Establish Independent Representative Body", 9 December 2019, available at: <https://www.scp-ks.org/en/specialist-counsel-establish-independent-representative-body> (last accessed 17 July 2024).

²⁷ Reply, para. 39(e)-(f).

²⁸ Reply, para. 39(g).

²⁹ See Annex 2 to Submissions, Item 29, p. 125 (email dated 5 June 2024), p. 128, (email dated 31 May 2024); Item 31, p. 135 (email dated 20 June 2024).

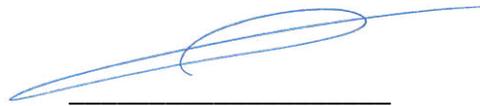
and would not advance the proceedings. Accordingly, the Pre-Trial Judge rejects the Request.

15. Finally, it is clear from the material before the Pre-Trial Judge and the Request/Reply that Counsel Rees does not contest, as such, his conditional assignment and the specific amount of the provisional legal aid fee, as set forth in the 24 June 2024 Decision.³⁰ Mindful that his conduct impacts directly the rights of his client, Mr Januzi, the Pre-Trial Judge urges Counsel Rees to take immediately the necessary steps to finalise the contracting process. The Registry is ordered to include related developments in its upcoming report to the Pre-Trial Judge.

V. DISPOSITION

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

REJECTS the Request.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Wednesday, 17 July 2024

At The Hague, the Netherlands.

³⁰ See Annex 2 to Submissions, Item 37, p. 173 (paragraph 54). That being said, the Pre-Trial Judge acknowledges that Counsel Rees disagrees with the decision of the Ministry of Justice to award only 1,000 EUR/month.