



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: 3 September 2024

Language: English

Classification: Public

Decision on Shala Request for Order on Translations

Specialist Prosecutor

Kimberly P. West

Counsel for Sabit Januzi

Jonathan Elystan Rees

Registrar

Fidelma Donlon

Counsel for Ismet Bahtijari

Felicity Gerry

Counsel for Haxhi Shala

Toby Cadman

THE PRE-TRIAL JUDGE,¹ pursuant to Articles 20 and 21(4)(a), (d) and (g) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 8(1), (3)(a) and (4) and 102(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 29 July 2024, the Defence for Haxhi Shala ("Mr Shala" or "Accused", and "Shala Defence") filed a request seeking the Pre-Trial Judge to order the provision of translations of all documents in the case file into Albanian ("Request").²
2. On 31 July 2024, the Defence for Ismet Bahtijari ("Bahtijari Defence") filed a response to the Request.³
3. On 5 August 2024, the Registrar made submissions concerning the Request.⁴
4. On 8 August 2024, the Specialist Prosecutor's Office ("SPO") filed a response to the Request ("SPO Response").⁵
5. On 16 August 2024, the Shala Defence replied to the SPO.⁶

II. SUBMISSIONS

6. The Shala Defence submits that the Accused should have access to all the documents (filings and evidentiary items) in the present proceedings in Albanian, one of the two official languages of the Republic of Kosovo ("Kosovo"), that he speaks and

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

² KSC-BC-2023-10, F00413, Defence for Haxhi Shala, *Request for Order on Translation into Albanian*, 28 July 2024, public (the filing was notified on 30 July 2024).

³ KSC-BC-2023-10, F00417, Defence for Ismet Bahtijari, *Bahtijari Response to Shala Request for Translation* ("Bahtijari Response"), 31 July 2024, public.

⁴ KSC-BC-2023-10, F00425, Registrar, *Registrar's Submissions on Translations* ("Registrar Submissions"), 5 August 2024, public.

⁵ KSC-BC-2023-10, F00430, Specialist Prosecutor, *Prosecution Response to F00413*, 8 August 2024, public.

⁶ KSC-BC-2023-10, F00437, Defence for Haxhi Shala, *Reply to F00430* ("Shala Reply"), 16 August 2024, public.

understands, considering that he is a citizen of Kosovo charged with offences allegedly committed in Kosovo, pursuant to domestic laws.⁷ The Shala Defence further submits that: (i) there is no provision prohibiting the Accused from receiving all documents in one of the official languages of Kosovo;⁸ (ii) denying the Request undermines the status of Albanian as an official language of Kosovo and prevents Mr Shala from effectively participating in proceedings;⁹ and (iii) English is adopted as the language of the proceedings for the convenience of the judges and prosecutors, and should thus not be used as a basis for removing a fundamental right of the Accused.¹⁰

7. Concerning filings, the Shala Defence claims that: (i) only a small percentage of items in the case file have been translated into Albanian;¹¹ and (ii) translating all filings would conform to the priorities set in Section 7 of the Policy on Translation and Interpretation.¹² Accordingly, the Shala Defence requests the Pre-Trial Judge to order the Registrar to: (i) translate all filings in the case file into Albanian as soon as possible;¹³ (ii) submit a plan for the translation exercise within two weeks of such order, and thereafter regular updates on the progress made prior to commencing the trial;¹⁴ and (iii) within 48 hours of notification of each future filing, submit either an Albanian translation or a motion requesting additional time for translation.¹⁵

8. Concerning evidence, the Shala Defence concedes that only few pieces of evidence exist in English for which no Albanian translation is available.¹⁶

⁷ Request, para. 16.

⁸ Request, paras 17, 21.

⁹ Request, para. 17.

¹⁰ Request, para. 18.

¹¹ Request, paras 19-20.

¹² Request, para. 21, *referring to* KSC-BD-13, Registry Practice Direction: Policy on Translation and Interpretation ("Policy on Translation and Interpretation"), 14 May 2019, public.

¹³ Request, paras 1, 15, 28(ii)(a).

¹⁴ Request, paras 22, 28(ii)(b).

¹⁵ Request, para. 28(ii)(c).

¹⁶ Request, para. 25.

Nevertheless, it requests the Pre-Trial Judge to order the SPO to: (i) arrange for all items of evidence already adduced under Rule 102(1)(a)-(b) of the Rules to be translated into Albanian as soon as possible;¹⁷ (ii) submit a plan for the translation exercise within two weeks of such order, and thereafter monthly updates on the progress made;¹⁸ and (iii) in the future, when disclosing any item of evidence in another language, attach an Albanian translation.¹⁹

9. Lastly, the Shala Defence requests the Pre-Trial Judge to declare that all future filings should be made available in Albanian promptly after being filed.²⁰

10. In response, the Bahtijari Defence adopts and supports the Request.²¹ It further submits that (i) the Registry should prepare a list of filings pending translation, to be updated as the case progresses;²² and (ii) given the limited funds, client meetings should not be used to translate documents that ought to be translated by the Registry.²³

11. The Registrar submits that: (i) Counsel can request the prioritisation of translation of certain filings, which it has not done to date;²⁴ (ii) the Registry has fulfilled and continues to fulfil its legal obligations as regards translations;²⁵ and (iii) the interpretation and translation allotments available to Counsel under the legal aid policy cover all costs for interpretation and translation of documents, excluding documents to be submitted as evidence and those to be provided to the Accused in a language he/she understands pursuant to the Law.²⁶

¹⁷ Request, paras 1, 15, 25-26, 28(iii)(a).

¹⁸ Request, para. 28(iii)(b).

¹⁹ Request, paras 26, 28(iii)(c).

²⁰ Request, para. 28(i).

²¹ Bahtijari Response, para. 2.

²² Bahtijari Response, para. 3.

²³ Bahtijari Response, para. 4.

²⁴ Registrar Submissions, paras 13-14, 17.

²⁵ Registrar Submissions, paras 14, 17.

²⁶ Registrar Submissions, paras 15-17.

12. The SPO responds that the Request should be rejected,²⁷ because it: (i) is untimely;²⁸ (ii) seeks reconsideration of the Framework Decision on Disclosure of Evidence and Related Matters (“Framework Decision”) without meeting the relevant test;²⁹ (iii) lacks legal basis;³⁰ and (iv) seeks unnecessary and disproportionate relief.³¹

13. In reply to the SPO Response, the Shala Defence submits that the Request: (i) is not untimely, since it is not fettered to any specific filing or stage of the proceedings;³² (ii) is not in conflict with the Framework Decision;³³ (iii) has a legal basis on Rule 8(4) of the Rules concerning the personal rights of the Accused;³⁴ and (iv) does not concern the SPO’s translation obligations, the ability of the Accused from effectively participating in the proceedings with the current translation arrangements, or the lack of sufficient linguistic assistance available to the Accused.³⁵ Furthermore, the Shala Defence contends that the SPO fails to directly address the central point in contention, namely that the conduct of domestic criminal proceedings where an accused does not receive all documents in an official language of that same country which they speak and understand, is a gross anomaly contrary to the fundamental principles of natural justice.³⁶

²⁷ SPO Response, paras 1, 5, 8, 13, 21.

²⁸ SPO Response, paras 1-5.

²⁹ SPO Response, paras 1, 6-8, *referring to* KSC-BC-2023-11, F00023, Specialist Prosecutor, *Framework Decision on Disclosure of Evidence and Related Matters* (“Case 11 Framework Decision”), 19 December 2023, public, with Annex 1, public. *See also*, KSC-BC-2023-10, F00076, Specialist Prosecutor, *Framework Decision on Disclosure of Evidence and Related Matters* (“Case 10 Framework Decision”), 24 October 2023, confidential, with Annex 1, public. A public redacted version of the decision was issued on the same day, F00076/RED.

³⁰ SPO Response, paras 1, 9-13.

³¹ SPO Response, paras 1, 14-20.

³² Shala Reply, para. 10.

³³ Shala Reply, para. 11.

³⁴ Shala Reply, paras 12-14.

³⁵ Shala Reply, para. 16.

³⁶ Shala Reply, para. 17.

III. APPLICABLE LAW

14. Pursuant to Article 20 of the Law and Rule 8(1) and (3)(a) of the Rules, the official languages of the Specialist Chambers ("SC") and the SPO are Albanian, Serbian and English, and the Panel, after hearing the Parties, shall decide on the working language(s) to be used in the proceedings.

15. Pursuant to Article 21(4)(a), (d) and (g) of the Law, the Accused are entitled to be informed promptly and in detail in a language which they understand of the nature and cause of the charge(s) against them, to be tried within a reasonable time, and to have the free assistance of an interpreter if they cannot understand or speak the language used in the SC.

16. Pursuant to Rule 8(4) of the Rules, it is the responsibility of the Registrar to make the necessary arrangements for interpretation and translation into and from the working language(s) and a language used by the Accused, as provided in the Rules or ordered by the Panel.

17. Pursuant to Rule 102(1) of the Rules, the statements of all witnesses who the Specialist Prosecutor intends to call to testify at trial shall be made available in a language the Accused understands and speaks.

IV. DISCUSSION

18. The Pre-Trial Judge recalls that the Decision on Working Language ("Language Decision")³⁷ set English as the working language for the present proceedings, pursuant to Articles 20 and 39(7) of the Law and Rule 8(3)(a) of the Rules.³⁸ Such determination was made following consultation with the Parties, including the Shala

³⁷ KSC-BC-2023-11, F00019, Pre-Trial Judge, *Decision on Working Language* ("Case 11 Language Decision"), 14 December 2023, public. *See also*, KSC-BC-2023-10, F00033, Pre-Trial Judge, *Decision on Working Language* ("Case 10 Language Decision"), 12 October 2023, public.

³⁸ Language Decision, para. 28(a). *See also*, Case 11 Language Decision, para. 28(a).

Defence and the Bahtijari Defence, who confirmed their preference for the use of English as working language.³⁹

19. The Pre-Trial Judge also recalls that, pursuant to the Language Decision, all filings shall be submitted in English. If annexes, supporting material or other evidence upon which the Parties rely are, in whole or in part, in a language other than English, a translation into English must be provided.⁴⁰ It is noted that all filings in the present case have been submitted in English, including from the Shala Defence and the Bahtijari Defence, and that they are translated into Albanian progressively, as explained by the Registrar.⁴¹

20. As to the Accused's request that all filings and evidence be translated into *Albanian* as a matter of principle, the Pre-Trial Judge recalls that, pursuant to Article 21(4)(a) of the Law, Mr Shala and Mr Bahtijari have the right to be informed of the nature and cause of the charges in a language they understand – in the present case, Albanian.⁴² Similarly, Rule 102(1) of the Rules stipulates that all statements of witness whom the Specialist Prosecutor intends to call to testify at trial must be provided to the Accused in the language they understand and speak, namely Albanian. As set out in the Framework Decision,⁴³ this does not, however, equate to an unfettered and absolute right to receive all filings, documents and evidence in that language, as this right must be balanced against the Accused's right to be tried within a reasonable time (Article 21(4)(d) of the Law).⁴⁴

³⁹ KSC-BC-2023-10, T. 9 October 2023, public, p. 12, line 18 to p. 13, line 7, p. 27, line 22 to p. 28, line 10; KSC-BC-2023-11, T. 13 December 2023, public, p. 12, lines 8-22.

⁴⁰ Case 11 Language Decision, para. 10; Case 10 Language Decision, para. 10.

⁴¹ Registrar Submissions, paras 12-14. The Registrar explained that the Court Management Unit automatically requests the translation of all court filings into Albanian. *See* Policy on Translation and Interpretation, sections 5(1)(a)-(b), 7; KSC-BD-14, Registry Instruction on Requesting Translation, Interpretation and Verification Services, 14 May 2019, public, section 2(5).

⁴² KSC-BC-2023-11, Transcript of Hearing, 13 December 2023, public, p. 4, lines 10-14; KSC-BC-2023-10, Transcript of Hearing, 9 October 2023, public, p. 5, lines 4-7.

⁴³ Case 11 Framework Decision, paras 81-84; Case 10 Framework Decision, paras 78-81.

⁴⁴ Case 11 Framework Decision, para. 82, with further references; Case 10 Framework Decision, para. 79, with further references.

21. As regards filings, the Pre-Trial Judge recalls that the Accused must be furnished with those documents *which are necessary* for them to understand the charges, in order to have the benefit of a fair trial.⁴⁵ In other words, as a matter of law, the Accused are entitled to be provided with those documents which are essential for their proper preparation to face the charges presented by the Specialist Prosecutor.⁴⁶ Accordingly, as confirmed by the SPO,⁴⁷ the confirmed joint (amended) indictment was provided to the Accused in the language they understand and speak, namely Albanian.⁴⁸ While the legal framework of the SC does not provide the right to have all (other) documents translated into the Accused's language, in practice, the Accused do progressively receive translations of filings as they are being prepared by the Registry.⁴⁹ Accordingly, the Pre-Trial Judge is satisfied that the Accused have sufficient methods at their disposal to understand the documents in the case record. The current framework does not prejudice the Accused and ensures the fairness and expeditiousness of proceedings, in particular the right of the Accused to be tried

⁴⁵ See, for example, European Court of Human Rights, *Hermi v Italy*, no. 18114/02, Judgment, 18 October 2006, paras 69-70; *Lagerblom v Sweden*, no. 26891/95, Judgment, 14 January 2003, para. 61; *Kamasinski v Austria*, no. 9783/82, Judgment, 19 December 1989, para. 74; *Luedicke, Belkacem and Koç v Germany*, nos. 6210/73, 6877/75, 7132/75, Judgment, 28 November 1978, para. 48. Similarly, International Criminal Court ("ICC"), *Prosecutor v Lubanga*, ICC-01/04-01/06-268, Pre-Trial Chamber I, *Decision on the Requests of the Defence of 3 and 4 July 2006*, 4 August 2006, pp. 5-6; *Prosecutor v Katanga and Ngudjolo*, ICC-01/04-01/07-477, Pre-Trial Chamber I, *Decision on the Defence for Mathieu Ngudjolo Chui's Request Concerning Translation of Documents*, 15 May 2008, p. 3; *Prosecutor v Bemba*, ICC-01/05-01/08-307, Pre-Trial Chamber III, *Decision on the Defence's Request Related to Language Issues in the Proceedings*, 4 December 2008, para. 14; *Prosecutor v Ongwen*, ICC-02/04-01/15-203, Pre-Trial Chamber II, *Decision Setting the Regime for Evidence Disclosure and Other Related Matters*, 27 February 2015, para. 31; *Prosecutor v Yekatom*, ICC-01/14-01/18-56-Red, Pre-Trial Chamber II, *Public Redacted Version of "Decision on Language Proficiency of Alfred Yekatom for the Purposes of the Proceedings"*, 11 January 2019, para. 14; International Criminal Tribunal for the former Yugoslavia, *Prosecutor v Delalić et al.*, IT-96-21, Trial Chamber, *Decision on the Defence Application for Forwarding the Documents in the Language of the Accused*, 25 September 1996, para. 8; *Prosecutor v Naletilić and Martinović*, IT-98-34-T, Trial Chamber, *Decision on Defence's Motion Concerning Translation of All Documents*, 18 October 2001, p. 3.

⁴⁶ Similarly, ICC, *Prosecutor v Bemba*, ICC-01/05-01/08-307, Pre-Trial Chamber III, *Decision on the Defence's Request Related to Language Issues in the Proceedings*, 4 December 2008, para. 12.

⁴⁷ SPO Response, para. 16.

⁴⁸ KSC-BC-2023-10, F00379, Specialist Prosecutor, *Prosecution Submission of Confirmed Amended Indictment*, 10 July 2024, public, with Annexes 1-2, confidential, and Annexes 3-4, public. An Albanian translation of the confidential indictment was filed on 11 July 2024, F00379/A01/sqi.

⁴⁹ Registrar Submissions, paras 13-14, 17.

within a reasonable time. As a result, the Pre-Trial Judge does not consider it necessary to (a) give a declaration that all future filings be made available to the Accused in Albanian; and (b) order the Registry (i) to arrange that all filings be translated; and (ii) to submit a working plan and provide related updates.

22. As regards evidence, the Pre-Trial Judge notes that, according to the SPO,⁵⁰ all indictment supporting material under Rule 102(1)(a) of the Rules and all witness statements under Rule 102(1)(b) of the Rules have been provided to the Accused in the language they understand and speak, namely Albanian. As held in the Framework Decision, all evidence *other* than statements of witnesses whom the SPO intends to call to testify at trial shall be submitted in English, in accordance with the Language Decision, unless otherwise ordered.⁵¹ In addition, the Framework Decision acknowledges the right of the Accused to have the free assistance of an interpreter who, together with Counsel's professional advice, as provided for in Article 21(4)(c) and (g) of the Law, will assist the Accused in understanding the evidence (and related filings) that are not in Albanian. Moreover, in the Framework Decision the Pre-Trial Judge also ruled that the Accused may make *inter partes* requests for translation of specific evidence, or parts thereof, *other* than statements of witnesses whom the SPO intends to call to testify at trial.⁵² No arguments have been advanced by the Shala Defence or the Bahtijari Defence that show that the Accused are unable to appreciate the content of evidence with the assistance of an interpreter and Counsel's advice, or that *inter partes* requests have not been acceded to. As the Accused fail to demonstrate that the existing regime is inadequate, the Pre-Trial Judge does not consider it necessary to order the SPO to (i) arrange for the translation of evidence; and (ii) submit a working plan and related updates.

⁵⁰ SPO Response, paras 14, 16.

⁵¹ Case 11 Framework Decision, para. 83; Case 10 Framework Decision, para. 80.

⁵² Case 11 Framework Decision, para. 84; Case 10 Framework Decision, para. 81.

23. In light of the foregoing, the Pre-Trial Judge finds that the Request is, contrary to the arguments of the Shala Defence and the Bahtijari Defence, inconsistent with the wording and spirit of the Framework Decision. In fact, granting the Request would delay the transfer of the case to trial for reasons not required by either the Law or the Rules. In any event, the Pre-Trial Judge observes that the Shala Defence and the Bahtijari Defence have not sought leave to appeal or requested reconsideration of the Framework Decision within the relevant time limit, as applicable. As such, it remains fully applicable until further determination.

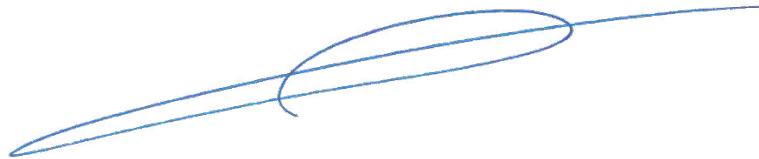
24. As to the Bahtijari Defence's proposal that the Registry set out a list of what has been translated, the Pre-Trial Judge directs Counsel to the list available in Legal Workflow. As to the Bahtijari Defence's argument that its limited funds for interpretation should not be used to translate documents that ought to be translated by the Registry, the Pre-Trial Judge finds the claim to be generic and without substantiation. The Pre-Trial Judge observes that there are interpretation and translation allotments available to the Accused through the legal aid system.⁵³ Any question of inadequate funding, availability of free assistance of an interpreter, or the translation of filings, shall be directed first to the Registry.

⁵³ Registrar Submissions, paras 15-17.

V. DISPOSITION

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

a. **REJECTS** the Request.



Judge Marjorie Masselot

Pre-Trial Judge

Dated this Tuesday, 3 September 2024

At The Hague, the Netherlands.