



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA 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: 4 September 2024

Language: English

Classification: **Public**

Decision Transmitting the Case File to Trial Panel I

Trial Panel I

Judge Roland Dekkers

Judge Mappie Veldt-Foglia

Judge Gilbert Bitti

Judge Vladimir Mikula (reserve)

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 Rule 98(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby issues this decision.

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 4 October 2023, further to a decision of the Pre-Trial Judge,² the Specialist Prosecutor’s Office (“SPO”) filed a Confirmed Indictment against Sabit Januzi (“Mr Januzi”) and Ismet Bahtijari (“Mr Bahtijari”).³

2. On 5 October 2023, Mr Januzi and Mr Bahtijari were arrested in Kosovo,⁴ pursuant to arrest warrants issued by the Pre-Trial Judge.⁵ On the next day, Mr Januzi and Mr Bahtijari were transferred to the Specialist Chambers (“SC”) Detention Facilities, as ordered by the Pre-Trial Judge.⁶

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

² KSC-BC-2023-10, F00008, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 2 October 2023, strictly confidential and *ex parte*. A confidential redacted version and a public redacted version of the decision were filed on 12 October 2023, F00008/CONF/RED and F00008/RED. A corrected version of the public redacted version of the decision was filed on 12 October 2023, F00008/RED/COR.

³ KSC-BC-2023-10, F00010, Specialist Prosecutor, *Submission of Confirmed Indictment*, 4 October 2023, strictly confidential and *ex parte*, with Annex 1, strictly confidential. A public redacted version of the submission and of the Annex were filed on 6 October 2023, F00016 and F00016/A01.

⁴ KSC-BC-2023-10, F00011, Registrar, *Notification of Arrest of Ismet Bahtijari Pursuant to Rule 55(4)*, 5 October 2023, public; F00012, Registrar, *Notification of Arrest of Sabit Januzi Pursuant to Rule 55(4)*, 5 October 2023, public.

⁵ KSC-BC-2023-10, F00009, Pre-Trial Judge, *Decision on Request for Arrest Warrants and Transfer Orders*, 2 October 2023, confidential, with Annexes 1-4, confidential. A public redacted version of the decision was filed on 12 October 2023, F00009/RED. A lesser redacted public redacted version of the decision was issued on 3 September 2024, F0009/RED/2.

⁶ KSC-BC-2023-10, F00014, Registrar, *Notification of the Reception of Ismet Bahtijari in the Detention Facilities of the Specialist Chambers*, 6 October 2023, public, with Annex 1, strictly confidential and *ex parte*; F00015, Registrar, *Notification of the Reception of Sabit Januzi in the Detention Facilities of the Specialist Chambers*, 6 October 2023, public, with Annex 1, strictly confidential and *ex parte*.

3. On 6 December 2023, further to a decision of the Pre-Trial Judge,⁷ the SPO filed a Confirmed Indictment against Haxhi Shala (“Mr Shala”).⁸
4. On 11 December 2023, Mr Shala was arrested in Kosovo,⁹ pursuant to an arrest warrant issued by the Pre-Trial Judge.¹⁰ On the next day, Mr Shala was transferred to the SC Detention Facilities.¹¹
5. On 8 February 2024, the Pre-Trial Judge joined the case against Mr Januzi and Mr Bahtijari, with the case against Mr Shala (altogether “Accused”) (“Joinder Decision”).¹²
6. On 9 February 2024, in light of the Joinder Decision, and further to a previous version submitted on 2 February 2024,¹³ the SPO filed an updated pre-trial brief.¹⁴
7. On 8 July 2024, following a request from the SPO, the Pre-Trial Judge issued the decision amending the charge of intimidation against Mr Januzi and Mr Bahtijari, and, *inter alia*, ordered the SPO to submit a new amended joint

⁷ KSC-BC-2023-11, F00005, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 4 December 2023, confidential. A public redacted version of the decision was filed on 30 January 2024, F00005/RED.

⁸ KSC-BC-2023-11, F00007, Specialist Prosecutor, *Submission of Confirmed Indictment*, 6 December 2023, public, with Annex 1, confidential. A public redacted version of the submission and of the Annex were filed on 12 December 2023, F00013 and F00013/A01.

⁹ KSC-BC-2023-11, F00008, Registrar, *Notification of Arrest of Haxhi Shala Pursuant to Rule 55(4)*, 11 December 2023, public.

¹⁰ KSC-BC-2023-11, F00006, Pre-Trial Judge, *Decision on Request for Warrant of Arrest and Transfer Order*, 4 December 2023, confidential, with Annexes 1-2, strictly confidential. A public redacted version of the submission and of the Annexes were filed on 28 February 2024, F00006/RED, F00006/A01/RED and F00006/A02/RED.

¹¹ KSC-BC-2023-11, F00011, Registrar, *Notification of Reception of Haxhi Shala in the Detention Facilities of the Specialist Chambers*, 12 December 2023, public, with Annex 1, strictly confidential and *ex parte*.

¹² KSC-BC-2023-10, F00161, Pre-Trial Judge, *Decision on Request for Joinder and Amendment of the Indictment*, 8 February 2024, confidential, para. 58(a). A public redacted version of the decision was issued on the same day, F00161/RED. KSC-BC-2023-11, F00041, Pre-Trial Judge, *Decision on Request for Joinder and Amendment of the Indictment*, 8 February 2024, confidential, para. 58(a). A public redacted version of the decision was issued on the same day, F00041/RED.

¹³ KSC-BC-2023-10, F00159, Specialist Prosecutor, *Submission of Prosecution Pre-Trial Brief*, 2 February 2024, public, with Annex 1, confidential.

¹⁴ KSC-BC-2023-10, F00177, Specialist Prosecutor, *Submission of Prosecution Pre-Trial Brief, Witness and Exhibit Lists, and Rule 109(c) Chart*, 16 February 2024, public, with Annexes 1- 4, confidential.

indictment (“Joint Indictment”).¹⁵ The SPO submitted the Joint Indictment on 10 July 2024.¹⁶

8. On 23 July 2024, the Pre-Trial Judge issued the “Decision on Various Defence Requests” in which she, *inter alia*, set the date for the submission of the Defence pre-trial briefs, to: (i) five (5) days after the Pre-Trial Judge’s determinations on the preliminary motion(s) on the Joint Indictment, if any, have become final; and/or (ii) five (5) days following the decision(s) of the Court of Appeal Panel’s on any appeal review sought by the Parties thereof.¹⁷ The Pre-Trial Judge also informed the Parties that the transmission of the case file to the Trial Panel was anticipated to take place two (2) days following the submission of the Defence’s pre-trial brief(s), if any, or the expiry of the corresponding time limit.¹⁸

9. On 12 August 2024, the Pre-Trial Judge issued a decision rejecting the preliminary motions of both the Defence for Mr Januzi (“Januzi Defence”) and the Bahtijari Defence on the Joint Indictment (“Preliminary Motions Decision”).¹⁹

10. On 19 August 2024, further to an initial version submitted on 19 June 2024,²⁰ the Defence for Mr Bahtijari (“Bahtijari Defence”) filed an updated pre-trial brief.²¹

¹⁵ KSC-BC-2023-10, F00377, Pre-Trial Judge, *Decision on the Confirmation of Amendments to the Indictment and Related Matters*, 8 July 2024, confidential, paras 79(a)-(c), (g). A public redacted version was issued on 9 July 2024, F00377/RED.

¹⁶ 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.

¹⁷ KSC-BC-2023-10, F00406, Pre-Trial Judge, *Decision on Various Defence Requests* (“Decision Setting Timelines”), 23 July 2024, public, paras 37(a)-(b), and 50(b)-(c).

¹⁸ Decision Setting Timelines, paras 45, and 50 (e).

¹⁹ KSC-BC-2023-10, F00433, Pre-Trial Judge, *Decision on Preliminary Motions and Related Requests*, 12 August 2024, confidential. A public redacted version was issued on the same day, F00433/RED. See also, F00399, Bahtijari Defence, *Bahtijari Filing on Motion Regarding Indictment*, 19 July 2024, public; F00402, Januzi Defence, *Januzi Preliminary Motion*, 19 July 2024, confidential. A public redacted version was issued on 23 August 2024, F00402/RED.

²⁰ KSC-BC-2023-10, F00343, Bahtijari Defence, *Bahtijari Pre-Trial Brief*, 19 June 2024, confidential.

²¹ KSC-BC-2023-10, F00439, Bahtijari Defence, *Bahtijari Updated Pre-Trial Brief*, 19 August 2024, confidential.

11. On 23 August 2024, the Pre-Trial Judge issued a decision dismissing a request for certification to appeal the Preliminary Motions Decision filed by the Januzi Defence (“Appeal Certification Decision”).²²

12. On 26 August 2024, the Pre-Trial Judge rejected: (i) an urgent request for reconsideration of the Appeal Certification Decision filed by the Januzi Defence;²³ and (ii) an application for extension of the time limitations for the submission of the pre-trial brief filed by the Bahtijari Defence.²⁴

13. On 2 September 2024, the Defence for Mr Shala (“Shala Defence”) and the Januzi Defence filed their pre-trial briefs,²⁵ and the Bahtijari Defence filed its further updated pre-trial brief.²⁶

14. On 3 September 2024, pursuant to Rule 98(3) of the Rules, the Pre-Trial Judge notified the President that the case will be ready for transmission to the Trial Panel on Wednesday, 4 September 2024.²⁷ On the same day, the President issued a decision assigning Trial Panel I.²⁸

²² KSC-BC-2023-10, F00444, Pre-Trial Judge, *Decision Dismissing Application for Leave to Appeal F00433*, 23 August 2024, public. *See, also*, F00442, *Application for Leave to Appeal through Certification from Decision KSC-BC-2023-10-F00433 pursuant to Article 45(2) and Rule 77(1)*, 20 August 2024, public.

²³ KSC-BC-2023-10, F00451, Pre-Trial Judge, *Decision on Request for Reconsideration of F00444*, 27 August 2024, public.

²⁴ KSC-BC-2023-10, F00453, Pre-Trial Judge, *Decision Concerning Timeframe for Filing of Defence Pre-Trial Briefs*, 27 August 2024, public. A corrected version was issued on the same day, F00453/COR.

²⁵ KSC-BC-2023-10, F00457, Shala Defence, *Submission of Haxhi Shala Pre-Trial Brief*, 2 September 2024, public, with Annexes 1-2, confidential; F00460, Januzi Defence, *Januzi Pre-Trial Brief*, 2 September 2024, confidential.

²⁶ KSC-BC-2023-10, F00456, Bahtijari Defence, *Bahtijari Further Updated Pre-Trial Brief*, 2 September 2024, confidential.

²⁷ KSC-BC-2023-10, F00464, Pre-Trial Judge, *Notification Pursuant to Rule 98(3) of the Rules of Procedure and Evidence*, 3 September 2024, public.

²⁸ KSC-BC-2023-10, F00466, President, *Decision Assigning Trial Panel I*, 3 September 2024, public.

II. APPLICABLE LAW

15. Pursuant to Rule 98(1) of the Rules, after receiving the SPO and the Defence respective Pre-Trial Briefs, lists of witnesses and lists of exhibits, as stipulated in Rule 95(4) and (5) of the Rules, the Pre-Trial Judge shall transmit to the Trial Panel a complete case file consisting of:

- (a) The indictment as confirmed;
- (b) All filings and material submitted through the electronic court management system;
- (c) Any evidentiary material received not subject to paragraph (1)(b);
- (d) Any other correspondence with respect to the case not filed with the Court Management Unit;
- (e) A Handover Document summarising:
 - (i) the arguments of the Parties and, where applicable, Victims' Counsel on the facts and the applicable law;
 - (ii) the points of agreement;
 - (iii) a list of the orders and decisions rendered by the Pre-Trial Judge;
 - (iv) the evidentiary material produced by each Party;
 - (v) suggestions as to the number and relevance of the witnesses to be called;
 - (vi) the questions of fact and law that are in dispute;
 - (vii) the state of advancement of the disclosure process;
 - (viii) all meetings with the Parties; and
 - (ix) any other matter that remained unresolved;
- (f) Any application and decision concerning disclosure; and

(g) Any other material relevant to the case.

16. Pursuant to Rule 98(2) of the Rules, the transmission of the case file shall be completed by means of electronic access.

III. DISCUSSION

17. At the outset, the Pre-Trial Judge recalls that all necessary procedural steps have been taken in order to consider case file KSC-BC-2023-10 complete and, therefore, ready to be transmitted to Trial Panel I ("Panel"), in accordance with Rule 98 of the Rules. The Pre-Trial Judge has also prepared a Handover Document, containing the information prescribed by Rule 98(1)(e) of the Rules, for the benefit of the Panel and the Parties.

18. In this regard, the Pre-Trial Judge underlines that the following matters remain unresolved at this stage: (i) a pending request from the Shala Defence and the Januzi Defence for a ruling on admissibility of certain material disclosed under Rule 102 of the Rules;²⁹ (ii) a pending request from the Januzi Defence for the issuance of a witness summons;³⁰ (iii) a pending request from the Bahtijari Defence for the medical assessment of Mr Bahtijari;³¹ and (iv) a pending request from the Bahtijari Defence for extension of the time limits for the filing of its witness list.³² Due to their nature, the Pre-Trial Judge considers that these matters are best addressed by the Panel and, therefore, they are placed before it.

²⁹ KSC-BC-2023-10, F00287, Shala Defence, *Request for a Finding of Inadmissibility of Items Disclosed Under Rule 102 of the Rules*, 13 May 2024, confidential. A public redacted version was made available on 3 July 2024, F00287/RED; F00270, Januzi Defence, *Reply to Prosecution Filing F00266*, confidential; F00285, Januzi Defence, *Update re Objections to Evidence and Disclosure*, 13 May 2024, confidential.

³⁰ KSC-BC-2023-10, F00298, Januzi Defence, *Application for a Witness Summons by Januzi*, 21 May 2024, strictly confidential.

³¹ KSC-BC-2023-10, F00273, Bahtijari Defence, *Bahtijari Filing for Medical Reports Ex Parte*, 1 May 2024, strictly confidential and *ex parte*.

³² KSC-BC-2023-10, F00461, Bahtijari Defence, *Bahtijari Extension of Time for Witness List*, 2 September 2024, confidential.

19. Conversely, in light of the developments in the case, the following requests are considered moot: (i) the requests from the Januzi Defence for an intervention by the Pre-Trial Judge in relation to the contractual process for legal aid concerning Mr Januzi contained in the (a) “Addendum to Januzi Reply to Registrar’s Response to the Januzi Update on Funding following notification of F00421”, (b) “Further Addendum to Januzi Reply to Registrar’s Response to the Januzi Update on Funding following Notification of F00431”, and (c) “Januzi Further Update re Funding”³³ (“Januzi Requests”) and (ii) the requests from the Shala Defence for urgent interim funding³⁴ as well as for disclosure of audio-visual recordings of interviews and other communications with Witness 1 and W04891 contained in the (a) “Haxhi Shala Request for Disclosure of Audio-Visual Recordings”, and (b) “Clarification of Haxhi Shala Request for Disclosure of Audio-Visual Recordings”(altogether “Shala Requests”).³⁵

³³ KSC-BC-2023-10, F00429, Januzi Defence, *Addendum to Januzi Reply to Registrar’s Response to the Januzi Update on Funding following notification of F00421*, 8 August 2024, public, para. 13; F00434, Januzi Defence, *Further Addendum to Januzi Reply to Registrar’s Response to the Januzi Update on Funding following Notification of F00431*, 9 August 2024, public, paras 9-10; F00435, Januzi Defence, *Januzi Further Update re Funding*, 14 August 2024, confidential, para. 2, with Annex 1, confidential. On 30 August 2024, the Registrar informed the Pre-Trial Judge that Mr Jonathan Rees signed the contract for legal aid before the SC and, thus, has been conditionally assigned as Counsel for Mr Januzi, *see*, F00454, Registrar, *Notification of Conditional Assignment of Counsel and Approval of Co-Counsel for Sabit Januzi*, 30 August 2024, public, para.5.

³⁴ KSC-BC-2023-10, F00223, Shala Defence, *Haxhi Shala Urgent Request for Interim Funding*, 19 March 2024, public. The Pre-Trial Judge recalls in that context that the Shala Defence was instructed on 27 March 2024 to submit a proper request for legal aid which it subsequently did and was as a result conditionally assigned as Counsel to Mr Shala (*see* 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, para. 15; F00297, Registrar, *Registrar’s Update on Defence Team Funding*, 17 May 2024, public, paras 3, 5, with Annexes 1-5, confidential and *ex parte*).

³⁵ KSC-BC-2023-10, F00263, Shala Defence, *Haxhi Shala Request for Disclosure of Audio-Visual Recordings*, 24 April 2024, confidential; F00276, Shala Defence, *Clarification of Haxhi Shala Request for Disclosure of Audio-Visual Recordings*, 1 May 2024, confidential. The SPO responded on 7 May 2024, indicating that the material was disclosed to the Defence, *see*, KSC-BC-2023-10, F00281, *Prosecution Response to F00263 and F00276*, 7 May 2024, public.

20. The Pre-Trial Judge specifies that, due to the non-public information contained therein, the Handover Document has a confidential and a public redacted version. The Handover Document is annexed to this decision.

IV. DISPOSITION

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

- (i) **DECLARES** the Januzi Requests and the Shala Requests referred to in paragraph 19 above as moot; and
- (ii) **TRANSMITS** case file KSC-BC-2023-10 to Trial Panel I, including the Handover Document annexed to the present decision.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Wednesday, 4 September 2024
At The Hague, the Netherlands.