



**In:** **KSC-BC-2023-10**

**The Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala**

**Before:** **Trial Panel I**

Judge Mappie Veldt-Foglia, Presiding Judge

Judge Roland Dekkers

Judge Gilbert Bitti

Judge Vladimir Mikula, Reserve Judge

**Registrar:** Fidelma Donlon

**Date:** 5 November 2024

**Language:** English

**Classification:** **Public**

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**Decision on the Specialist Prosecutor's motion for admission of evidence of Witness 1 and W04891 pursuant to Rule 154**

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**To be notified to:**

**Specialist Prosecutor**  
Kimberly P. West

**Counsel for Sabit Januzi**  
Jonathan Elystan Rees

**Counsel for Ismet Bahtijari**  
Felicity Gerry

**Counsel for Haxhi Shala**  
Toby Cadman

**TRIAL PANEL I** (Panel) hereby renders this decision on the Specialist Prosecutor's motion for admission of evidence of Witness 1 and W04891 pursuant to Rule 154.

## I. PROCEDURAL BACKGROUND

1. On 8 October 2024, the Panel rendered an oral order instructing the Specialist Prosecutor's Office (SPO) to submit any requests for the admission of non-oral evidence, including the items that are subject to admissibility challenges by the Defence teams for Sabit Januzi, Ismet Bahtijari and Haxhi Shala (collectively, Defence), no later than Tuesday, 15 October 2024. The Panel also ordered the Defence to file any responses no later than Tuesday, 22 October 2024, and the SPO to file any reply no later than Friday, 25 October 2024.<sup>1</sup>

2. On 18 October 2024, the SPO filed a request for admission of the evidence of Witness 1 and W04891 pursuant to Rule 154 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules and Request, respectively).<sup>2</sup>

3. On 23 October 2024, in view of the SPO's late filing of the Request, the Panel further instructed the Defence to file their responses, if any, by Monday, 28 October 2024, at 16:00 hours, and the SPO to file any reply by Wednesday, 30 October 2024, at 16:00 hours.<sup>3</sup>

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<sup>1</sup> KSC-BC-2023-10, Transcript of Hearing, 8 October 2024, public, p. 370, lines 11-22.

<sup>2</sup> KSC-BC-2023-10, F00540, Specialist Prosecutor, *Prosecution motion for admission of evidence of Witness 1 and W04891 pursuant to Rule 154*, 18 October 2024, confidential, with confidential Annexes 1-2. A public redacted version was filed on 23 October 2024, F00540/RED.

<sup>3</sup> KSC-BC-2023-10, CRSPD92, *E-mail from CMU to Parties re. Order shortening time limits re F00540*, sent on 23 October 2024, at 14:07, confidential.

4. On 24 October 2024, the Defence for Ismet Bahtijari (Bahtijari Defence) responded to the Request.<sup>4</sup>
5. On 24 October 2024, the SPO filed an addendum to its Request (Addendum).<sup>5</sup>
6. On 27 October 2024, the Defence for Sabit Januzi (Januzi Defence) responded to the Request (Januzi Defence Response).<sup>6</sup>
7. The Defence for Haxhi Shala did not respond.
8. On 30 October 2024, the SPO filed its reply to the Januzi Defence Response (Reply).<sup>7</sup>

## II. SUBMISSIONS

### A. SPO REQUEST

9. The SPO requests the admission pursuant to Rule 154 of the Rules of:
  - (i) transcripts of the statements of Witness 1, together with one associated exhibit;<sup>8</sup> and
  - (ii) transcripts of the statements of W04891 (collectively, Proposed Evidence).<sup>9</sup>

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<sup>4</sup> KSC-BC-2023-10, F00556, Bahtijari Defence, *BAHTIJARI response to F00540* (Bahtijari Defence Response), 24 October 2024, confidential. A public redacted version was filed on the same day, F00556/RED.

<sup>5</sup> KSC-BC-2023-10, F00558, Specialist Prosecutor, *Addendum to 'Prosecution motion for admission of evidence of Witness 1 and W04891 pursuant to Rule 154'*, 24 October 2024, confidential. A public redacted version was filed on 28 October 2024, F00558/RED.

<sup>6</sup> KSC-BC-2023-10, F00564, Januzi Defence, *Response to Prosecution F00540 Request to Admit Transcripts of Witness Interviews of Witness 1 and W04891 pursuant to Rule 154*, 27 October 2024, confidential.

<sup>7</sup> KSC-BC-2023-10, F00570, Specialist Prosecutor, *Prosecution reply to Januzi Response F00564*, 30 October 2024, confidential. A public redacted version was filed on 4 November 2024, F00570/RED.

<sup>8</sup> See Request, paras 1, 29 and Annex 1 to the Request; see also Addendum, para. 2, where the SPO makes a correction to Annex 1 in relation to one of the items listed therein.

<sup>9</sup> See Request, paras 1, 29 and Annex 2 to the Request.

10. The SPO submits that the Proposed Evidence is relevant,<sup>10</sup> *prima facie* authentic and reliable,<sup>11</sup> and has probative value which is not outweighed by any prejudice.<sup>12</sup> The SPO further argues that the Proposed Evidence meets the requirements of and is suitable for admission under Rule 154 of the Rules.<sup>13</sup>

#### B. DEFENCE RESPONSES

11. The Bahtijari Defence does not object to the admission of the Proposed Evidence pursuant to Rule 154 of the Rules.<sup>14</sup>

12. The Januzi Defence responds that the Panel should reject the Request, as the requirements under Rule 154 of the Rules are not met.<sup>15</sup> The Januzi Defence further argues that, even if the Proposed Evidence met such requirements, the Panel should nonetheless exercise its discretion and hear the evidence of Witness 1 and W04891 orally, considering, *inter alia*, their crucial importance to the SPO's case.<sup>16</sup> In the alternative, the Januzi Defence requests that, should the Panel grant the Request, the video-recordings of Witness 1's and W04891's SPO interviews are played before the Panel in the course of the trial.<sup>17</sup>

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<sup>10</sup> Request, paras 2, 7-16, 20-25.

<sup>11</sup> Request, paras 2, 17, 26.

<sup>12</sup> Request, para. 2.

<sup>13</sup> Request, paras 2, 19, 27.

<sup>14</sup> Bahtijari Defence Response, para. 2.

<sup>15</sup> Januzi Defence Response, paras 3(a), 7-13.

<sup>16</sup> Januzi Defence Response, paras 3(b), 14-15.

<sup>17</sup> Januzi Defence Response, paras 3(c), 16-17.

### C. SPO REPLY

13. The SPO replies that the Januzi Defence Response ignores the plain language and intent of Rule 154 of the Rules, as well as relevant jurisprudence and practices of the Kosovo Specialist Chambers and other courts and tribunals, since the written statement or transcript of a witness, as referred to in Rules 153-154 of the Rules encompasses transcripts of audio-video recorded SPO interviews.<sup>18</sup> Moreover, the SPO avers that playing the video-recordings of Witness 1's and W04891's SPO interviews in the courtroom would defeat the purpose of Rule 154 of the Rules of expediting the proceedings.<sup>19</sup>

### III. APPLICABLE LAW

14. The Panel notes Article 40(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, Rules 9(5)(b) and 116(1) of the Rules and Article 16(3) of the Registry Practice Direction on Files and Filings before the Kosovo Specialist Chambers (Practice Direction on Files and Filings).<sup>20</sup>

### IV. ANALYSIS

15. 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 a time limit.

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<sup>18</sup> Reply, paras 1-5.

<sup>19</sup> Reply, para. 4.

<sup>20</sup> KSC-BC-15, Registrar, *Registry Practice Direction on Files and Filings before the Kosovo Specialist Chamber*, 17 May 2019, public.

16. The Panel notes that the Request was filed on 18 October 2024, after the deadline of 15 October 2024 set by the Panel for any requests for the admission of non-oral evidence.<sup>21</sup> Requests under Rule 154 of the Rules fall under this category, as they concern the admission of written statements or transcripts in lieu of direct examination, constituting a partial exception to the principle of orality.<sup>22</sup> The Panel further observes that the SPO: (i) had not previously requested an extension of time; and (ii) did not make, in the Request, Addendum, or Reply, any submissions on the lateness of the Request. The Panel is therefore of the view that the SPO failed to show any good cause justifying the filing of the Request outside of the time limit set by the Panel. In view of the above, the Panel dismisses the Request as being out of time and will not consider it further.

## V. CLASSIFICATION

17. Having taken note of the Januzi Defence's submissions with regard to the classification of its filing,<sup>23</sup> the Panel orders the Januzi Defence to file a public redacted version of the Januzi Defence Response, or request reclassification thereof, by **Tuesday, 12 November 2024**.

## VI. DISPOSITION

18. For the above-mentioned reasons, the Panel hereby:

- a. **DISMISSES** the Request; and

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<sup>21</sup> See above, para. 1.

<sup>22</sup> KSC-BC-2020-04, F00461, Trial Panel I, [Decision on the submission and admissibility of non-oral evidence](#), public, paras 32, 34.

<sup>23</sup> Januzi Defence Response, para. 18.

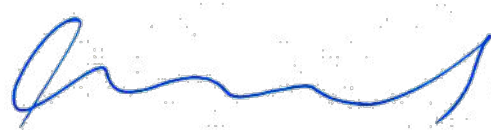
- b. **ORDERS** the Januzi Defence to file a public redacted version of the Januzi Defence Response, or request reclassification thereof, by **Tuesday, 12 November 2024.**



**Judge Mappie Veldt-Foglia**  
**Presiding Judge**



**Judge Gilbert Bitti**



**Judge Roland Dekkers**

Dated this Tuesday, 5 November 2024

At The Hague, the Netherlands.