



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: **Trial Panel I**

Judge Mappie Veldt-Foglia, Presiding Judge

Judge Roland Dekkers

Judge Gilbert Bitti

Judge Vladimir Mikula, Reserve Judge

Registrar: Fidelma Donlon

Date: 13 December 2024

Language: English

Classification: **Public**

Public redacted version of

Decision Setting the Agenda for Hearings on Plea Proceedings, Requesting Submissions and on Related Matters

To be notified to:

Specialist Prosecutor
Kimberly P. West

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Jonathan Elystan Rees

Counsel for Ismet Bahtijari
Felicity Gerry

Counsel for Haxhi Shala
Toby Cadman

TRIAL PANEL I (Panel) hereby renders this decision setting the agenda for hearings on the plea proceedings, requesting submissions and on related matters.

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 13 November 2024, the Specialist Prosecutor's Office (SPO) informed the Panel that it entered into plea agreements with Haxhi Shala (Mr Shala), Sabit Januzi (Mr Januzi) and Ismet Bahtijari (Mr Bahtijari) (collectively, Accused) and disclosed said agreements to the Panel (Plea Agreements).¹ The SPO requested the Panel, on behalf of all Parties, to schedule plea proceedings as soon as practicable and indicated that it will file a public redacted version of the Plea Agreements.²

2. On 29 November 2024, the Panel issued the "Decision on Matters Related to Plea Proceedings" ordering: (i) the Parties, as applicable, to (a) submit a revised version of each plea agreement, complying with the requirements of Rule 94(2)(a)-(b), (5) and (8) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules) and (b) file written submissions addressing matters related to sentencing as well as present any information or evidence on sentencing, should they so wish; and (ii) the SPO to submit a revised indictment (Decision on Plea Proceedings).³ The Panel further granted, in part, the request of the Defence for Mr Bahtijari (Bahtijari Defence)⁴ to

¹ KSC-BC-2023-10, F00596, Specialist Prosecutor, *URGENT Prosecution notification of plea agreements*, 13 November 2024, confidential, para. 1, with Annexes 1-3, confidential. Corrected versions of the cover filing (Plea Agreements Submissions) and the annexes were filed on 14 November 2024, F00596/COR, F00596/COR/A01, F00596/COR/A02, 00596/COR/A03.

² Plea Agreements Submissions, paras 2-3.

³ KSC-BC-2023-10, F00612, Trial Panel I, *Decision on Matters Related to Plea Proceedings*, 29 November 2024, confidential, paras 20-23, 27, 34(a)-(c) with Annex 1, confidential and *ex parte*.

⁴ See KSC-BC-2023-10, F00599, Bahtijari Defence, *BAHTIJARI request on classification*, 14 November 2024, confidential, paras 1, 4-6. A public redacted version was filed on 20 November 2024, F00599/RED. See also KSC-BC-2023-10, F00603, Specialist Prosecutor, *Prosecution response to F00599*, 15 November 2024, confidential, para. 5, with Annex 1, confidential and *ex parte*; F00605, Trial Panel I, *Order for Submissions in relation to F00599*, 18 November 2024, confidential; F00606, Defence for Mr Januzi, *Januzi*

maintain, until further notice, the confidentiality of the plea agreement proceedings.⁵ Lastly, the Panel decided to convene hearings on plea proceedings on Wednesday, 18 December 2024 and, if necessary, on Thursday, 19 December 2024.⁶

3. On 6 December 2024, pursuant to the Decision on Plea Proceedings, the Defence for Mr Shala (Shala Defence),⁷ the Defence for Mr Januzi (Januzi Defence),⁸ and the Bahtijari Defence⁹ filed their respective submissions addressing matters related to sentencing and presenting relevant information and/or evidence.

4. On the same day, pursuant to the Decision on Plea Proceedings, the SPO filed: (i) its submissions on plea agreements and sentencing, including the revised versions of each plea agreement (Revised Plea Agreements);¹⁰ and (ii) the revised indictment.¹¹

5. On 9 December 2024, the SPO submitted a request seeking that the Panel reconsider the Decision on Plea Proceedings or, in the alternative, grant the SPO leave to appeal said decision (SPO Request).¹² In addition, the SPO requested the Panel's

Request for Reclassification of F00596 and Annexes 1-3 thereto, 18 November 2024, confidential; F00608, Defence for Mr Shala, *Response to F00599 Bahtijari Request on Classification* (Shala Response to Bahtijari Classification Request), 19 November 2024, confidential; F00609, Bahtijari Defence, *BAHTIJARI response to F00603 and reply to F00606 and F00608*, 20 November 2024, confidential. A public redacted version was filed on 20 November 2024, F00609/RED.

⁵ Decision on Plea Proceedings, paras 30-31, 34(f).

⁶ Decision on Plea Proceedings, paras 32-33, 34(g).

⁷ KSC-BC-2023-10, F00616, Shala Defence, *Written Submissions on Sentencing*, 6 December 2024, confidential, with Annexes 1-4, confidential.

⁸ KSC-BC-2023-10, F00617, Januzi Defence, *Januzi Submissions re Sentence pursuant to Plea Agreement* (Januzi Submissions), 6 December 2024, confidential.

⁹ KSC-BC-2023-10, F00620, Bahtijari Defence, *BAHTIJARI Submissions on Sentencing* (Bahtijari Submissions), 6 December 2024, confidential, with Annexes 1-3, confidential. A corrected version was filed on 11 December 2024, F00620/COR.

¹⁰ KSC-BC-2023-10, F00618, Specialist Prosecutor, *URGENT Prosecution submissions on plea agreements and sentencing*, 6 December 2024, confidential, with Annexes 1-3, confidential.

¹¹ KSC-BC-2023-10, F00619, Specialist Prosecutor, *URGENT Submission of revised Indictment with confidential Annex 1*, 6 December 2024, confidential, with Annex 1, confidential.

¹² KSC-BC-2023-10, F00621, Specialist Prosecutor, *Prosecution request for reconsideration and/or leave to appeal of Decision F00612*, 9 December 2024, confidential.

authorisation to file public redacted versions (or request reclassification, as applicable) of filings related to the plea proceedings (SPO Classification Request).¹³

6. On 11 December 2024, the Panel issued an order varying time limits in relation to the SPO Request.¹⁴

7. On 12 December 2024, the Shala Defence responded to the SPO Request (Shala Response), requesting that the Panel: (i) decide expeditiously on said request so as to avoid delaying the hearings on plea agreement proceedings; and (ii) reject the SPO Classification Request.¹⁵

8. On 13 December 2024, the Bahtijari Defence responded to the SPO Request (Bahtijari Response), requesting that the Panel: (i) reject the SPO Request in its entirety, claiming that it is unnecessary and will needlessly delay the hearings on plea agreement proceedings; and (ii) maintain the confidential classification of filings related to the plea proceedings until the Revised Plea Agreements are approved by the Panel.¹⁶

9. On the same day, the Januzi Defence indicated *via* email that it does not intend to file a response to the SPO Request.¹⁷

¹³ SPO Request, paras 28, 30(b).

¹⁴ KSC-BC-2023-10, F00623, Trial Panel I, *Order varying time limits in relation to the Prosecution request for reconsideration and/or leave to appeal (F00621)*, 11 December 2024, confidential.

¹⁵ KSC-BC-2023-10, F00624, Shala Defence, *Haxhi Shala Response to Prosecution Request for reconsideration and/or leave to appeal Decision F00612*, 12 December 2024, confidential, paras 10-11, 13(i).

¹⁶ KSC-BC-2023-10, F00625, Bahtijari Defence, *BAHTIJARI response to the 'Prosecution request for reconsideration and/or leave to appeal of Decision F00612'*, 13 December 2024, confidential, paras 1, 6-18, 21.

¹⁷ KSC-BC-2023-10, CRSPD105, *Email from Januzi Defence to Trial Panel re F621*, 13 December 2024, confidential.

II. APPLICABLE LAW

10. The Panel notes Article 40(2) and (4) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 82 and 94 of the Rules.

III. ANALYSIS

A. PRELIMINARY ISSUE

11. Without prejudice to any future decision of a Panel of the Court of Appeals (Appeals Panel), should the SPO request for leave to appeal be granted, the Panel concludes that, at this stage of the proceedings, the revised versions of the plea agreements entered, respectively, between the SPO and Mr Shala (Shala Revised Plea Agreement) and the SPO and Mr Januzi (Januzi Revised Plea Agreement), both comply with the requirements of Rule 94(2) of the Rules, for the reasons provided in the Decision on Plea Proceedings.¹⁸ Conversely, the Panel finds that the revised version of the plea agreement entered between the SPO and Mr Bahtijari (Bahtijari Revised Plea Agreement) still fails to comply with said requirements.¹⁹

12. The Panel further notes that the SPO challenges as erroneous a key finding in the Decision on Plea Proceedings concerning the applicability of Rule 94 of the Rules with regard to the (original) plea agreement entered between the SPO and Mr Bahtijari, [REDACTED].²⁰ Given that the same issue persists in the Bahtijari Revised Plea Agreement,²¹ the Panel cannot proceed without a decision of the Appeals Panel on the applicability of that Rule, would the SPO request for leave to appeal be granted.

¹⁸ Decision on Plea Proceedings, paras 10-21.

¹⁹ See Decision on Plea Proceedings, paras 16-17, 21; Bahtijari Plea Agreement, F00618/A03, para. 11 [REDACTED] and para. 16(a) [REDACTED]; Bahtijari Submissions, para. 70 [REDACTED].

²⁰ See SPO Request, paras 1(a), 5-10.

²¹ See *supra* footnote 19.

Therefore, the Panel will not proceed further with discussing the Bahtijari Revised Plea Agreement during the forthcoming hearing(s).

13. With regard to the plea agreements of each of the Accused, the Panel observes that the SPO is challenging some of the Panel's key findings in the Decision on Plea Proceedings, namely that a plea agreement reached between the Parties is binding on the Panel with regard to sentencing and that Rule 94(8) of the Rules excludes the Parties from pursuing appellate remedies.²² Therefore, the Panel finds that, at this stage of the proceedings, pending resolution of the matters in question by the Appeals Panel, should the SPO request for leave to appeal be granted, it cannot issue any final decision on said plea agreements. Nevertheless, in order, to the extent possible, advance with the proceedings, the Panel intends, as discussed below, to discuss during the forthcoming hearings certain issues related to the Januzi Revised Plea Agreement and the Shala Revised Plea Agreement.

B. PUBLICITY OF PROCEEDINGS

14. In the SPO Classification Request, the SPO seeks the Panel's authorisation to file public redacted versions (or request reclassification, as applicable) of filings related to the plea proceedings, averring that, according to the Decision on Plea Proceedings, the only basis for retaining confidential classification of said filings was the pending submission of the Revised Plea Agreements, which has now been completed.²³

15. In the Shala Response, the Shala Defence maintains its position that filings related to the plea proceedings should remain confidential until the Revised Plea Agreements are approved by the Panel.²⁴ The Shala Defence further incorporates by

²² SPO Request, paras 11-18.

²³ SPO Request, para. 30(b). *See supra* para. 4.

²⁴ Shala Response, paras 12, 13(ii).

reference its prior submissions that the reclassification as public of said documents prior to such a decision by the Panel may negatively impact upon the Shala Defence's ability to gather evidence and prepare its case for trial and would, as a result, breach Mr Shala's right to a fair trial and damage the integrity of the proceedings.²⁵

16. In the Bahtijari Response, the Bahtijari Defence: (i) submits that the SPO Classification Request is not properly reasoned; and (ii) requests the Panel to maintain the confidential classification of filings related to the plea proceedings until the Revised Plea Agreements are approved by the Panel.²⁶

17. At the outset, the Panel recalls the principle of publicity of proceedings under Article 40(4) of the Law. The Panel also recalls that the reason why it maintained the confidentiality of the plea agreement proceedings was in view of the pending submission of the Revised Plea Agreements.²⁷ Since the latter have now been submitted by the SPO²⁸ and the Parties have further filed their respective submissions on sentencing,²⁹ the Panel finds that it is no longer justified to maintain the confidentiality of the plea agreement proceedings. The SPO Request does not change the position of the Panel in this regard. By the same token, the Panel decides that the hearings on plea agreement proceedings, as scheduled below,³⁰ will be held in public session.

18. In this light, the Panel finds it appropriate to reclassify as public the Januzi Revised Plea Agreement and the Shala Revised Plea Agreement.³¹ As the Panel will

²⁵ See Shala Response, para. 12, referring to Shala Response to Bahtijari Classification Request, paras 6, 15-16.

²⁶ Bahtijari Response, paras 19-21.

²⁷ Decision on Plea Proceedings, paras 30-31.

²⁸ See *supra* para. 4.

²⁹ See *supra* para 3.

³⁰ See *infra* para. 21.

³¹ Annexes 1 and 2 to Revised Plea Agreements.

not proceed to discuss the Bahtijari Revised Plea Agreement during the upcoming hearings, the terms of said agreement shall remain at this stage confidential.

C. AGENDA

19. The Panel informs the Parties that the first session of the hearing scheduled on Wednesday, 18 December 2024, will be devoted to addressing various (outstanding) issues, including the issuance of any required oral orders.

20. The next two sessions of the hearing of Wednesday, 18 December 2024, will be dedicated to the discussion of the Shala Revised Plea Agreement and the Januzi Revised Plea Agreement, respectively. During their respective plea agreement sessions, the Panel will ask Mr Shala and Mr Januzi to confirm pursuant to Rule 94(5)(a)-(d) of the Rules whether: (i) their respective Specialist Counsel have discussed with them the terms of their respective plea agreements; (ii) Mr Shala and Mr Januzi understand the terms of their respective plea agreements; (iii) Mr Shala and Mr Januzi admit facts in respect of the charges contained in their respective plea agreements; (iv) Mr Shala and Mr Januzi have agreed to their respective plea agreements voluntarily, without threats or coercion; and (v) Mr Shala and Mr Januzi understand the consequences of their respective plea agreements and waive their right to be tried under the ordinary trial procedure. The Panel will also give the opportunity to the SPO, the Shala Defence and the Januzi Defence to make additional oral submissions on sentencing as well as on any other matter relevant to the plea proceedings. The Panel will further give the opportunity to Mr Shala and Mr Januzi, should they so wish, to make any statements on the plea proceedings, including on the matters of guilt and sentencing.³² In this regard, the Shala Defence and the

³² The Panel notes in this regard the Januzi Submissions according to which “[...] [Mr Januzi] has reflected upon his time in detention on remand and wishes to state that he is remorseful for his conduct in April 2023” (Januzi Submissions, para. 7).

Januzi Defence are instructed to indicate whether Mr Shala and Mr Januzi intend to make any such statements, by no later than **Tuesday, 17 December 2024, at 12:00**.

21. Based on the foregoing, and in order to facilitate the fair and expeditious conduct of the proceedings, the Panel sets the following agenda for the hearings on plea agreement proceedings:

- a) **Wednesday, 18 December 2024:**
 - i. Preliminary Matters (09:00-10:30);
 - ii. Plea hearing – Mr Shala (11:00-13:00);
 - iii. Plea hearing – Mr Januzi (14:30-16:30); and
- b) **Thursday, 19 December 2024 (reserve day).**

D. MODALITIES OF PARTICIPATION

22. Considering the nature of the upcoming hearings and the matters to be discussed therein, the Panel has decided, pursuant to Law 40(2) of the Law, to hold said hearings in the presence of Mr Shala and Mr Januzi.³³ More specifically, the Panel finds it appropriate to order Mr Shala and Mr Januzi to be present throughout the hearing of Wednesday, 18 December 2024 and, if necessary, the hearing of Thursday, 19 December 2024.

23. The participation of Mr Bahtijari and his Counsel is only required for the first session of the hearing of Wednesday, 18 December 2024. The Panel instructs the Bahtijari Defence to inform the Panel, the SPO, the Registry and the other Defence teams *via* e-mail through the Registry's Court Management Unit, whether Mr Bahtijari will attend the hearing in-person or *via* video-link at the latest by **Monday, 16 December 2024, at 10:30**.

³³ See KSC-BC-2023-10, Trial Panel I, *Decision on the conduct of the proceedings*, 11 November 2024, public, para. 15.

IV. DISPOSITION

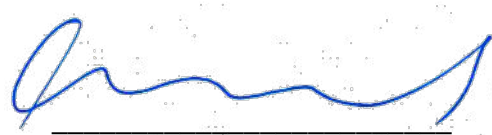
24. For the above-mentioned reasons, the Panel hereby:
- a. **INSTRUCTS** the Registrar to reclassify as public on Tuesday, 17 December 2024 the Shala Revised Plea Agreement and the Januzi Revised Plea Agreement (F00618/A01 and F00618/A02, respectively);
 - b. **INSTRUCTS** the Shala Defence and the Januzi Defence to indicate whether Mr Shala and Mr Januzi, respectively, intend to make statements as indicated in paragraph 20 of the present decision, **by Tuesday, 17 December 2024;**
 - c. **SETS** the agenda for the hearings on plea agreement proceedings as specified in paragraphs 19-21 of the present decision;
 - d. **ORDERS** Mr Shala and Mr Januzi to be present during the scheduled hearings, in accordance with paragraph 22 of the present decision; and
 - e. **INSTRUCTS** the Bahtijari Defence to inform the Panel, the SPO, the Registry and the other Defence teams whether Mr Bahtijari will attend the hearing of Wednesday, 18 December 2024 in person or *via* video link at the latest by **Monday, 16 December 2024, at 10:30.**



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Friday, 13 December 2024

At The Hague, the Netherlands.