



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: 20 December 2024

Language: English

Classification: Public

**Public redacted version of Decision on various requests for reclassification of
filings and the submission of further public redacted versions of filings**

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TRIAL PANEL I (Panel) hereby renders this decision on various requests for reclassification of filings and the submission of further public redacted versions of filings.

I. PROCEDURAL BACKGROUND

1. On 11 October 2024, following the Specialist Prosecutor's Office (SPO)'s application for the temporary reclassification of the Defence for Ismet Bahtijari (Bahtijari Defence)'s filing F00456/RED and the Defence for Sabit Januzi (Januzi Defence)'s filing F00460/RED as confidential pending the submission of a written request,¹ and pursuant to an oral order of the Panel (8 October 2024 Oral Order),² the SPO filed a request seeking that: (i) said filings remain classified as confidential; and (ii) the Bahtijari Defence and the Januzi Defence submit further public redacted versions (PRV or PRVs) of their respective filings (SPO Request).³

2. On the same day, the Court Management Unit (CMU) referred to the Panel the Bahtijari Defence's "Public Redacted Version of BAHTIJARI PRE TRIAL BRIEF" (PRV of filing F00343) for further review of the redactions applied in said filing before processing and distributing it.⁴

¹ KSC-BC-2023-10, CRSPD102, *Email from the SPO to the CMU re Request for reclassification of KSC-BC-2023-10/F00460/RED and KSC-BC-2023-10/F00456/RED*, 6 October 2024, confidential.

² KSC-BC-2023-10, Transcript of Hearing, 8 October 2024, confidential, p. 365, lines 14-22.

³ KSC-BC-2023-10, F00523, Specialist Prosecutor, *Prosecution submissions on reclassification*, 11 October 2024, confidential. A public redacted version was filed on 14 October 2024, F00523/RED.

⁴ KSC-BC-2023-10, CRSPD103, *Email from the CMU to the Panel re [Case 10] - Re F00343/RED - Publicly redacted version BAHTIJARI PRE TRIAL BRIEF*, 11 October 2024, confidential.

3. On 14 October 2024, pursuant to the 8 October 2024 Oral Order, the Bahtijari Defence submitted a response to the SPO Request (Bahtijari Response).⁵ The Januzi Defence did not submit a response.
4. On 21 October 2024, the Bahtijari Defence filed a request to reclassify the Bahtijari Response as public (Bahtijari Request).⁶
5. On the same day, the Defence for Haxhi Shala (Shala Defence) filed a request seeking clarifications as to the redactions to be applied to its filing F00263/RED2 (Shala Request).⁷
6. On 15 November 2024, the Januzi Defence filed a request to reclassify its filing F00564 as public (Januzi Request).⁸
7. On 18 November 2024, the Panel, *via* email, instructed the CMU not to process, until further order, a further PRV of F00460 filed by the Januzi Defence on 15 November 2024, pending the Panel's decision on the SPO Request (18 November Instructions).⁹

II. APPLICABLE LAW

8. The Panel notes Articles 21(2), 23(1), 40(2), (4), and (6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 80(1)

⁵ KSC-BC-2023-10, F00526, Bahtijari Defence, *Bahtijari Response to F00523 Prosecution Submissions on Reclassification*, 14 October 2024, confidential.

⁶ KSC-BC-2023-10, F00542, Bahtijari Defence, *Bahtijari filing to reclassify F00526*, 21 October 2024, public.

⁷ KSC-BC-2023-10, F00547, Shala Defence, *Request for Clarification regarding redactions of F00263*, 21 October 2024, confidential.

⁸ KSC-BC-2023-10, F00602, Januzi Defence, *Januzi Request for Reclassification of F00564*, 15 November 2024, public.

⁹ KSC-BC-2023-10, CRSPD88, *Email from the Panel to the CMU re A filing has been sent for approval: F0460RED2 in the case KSC-BC-2023-10*, 18 November 2024, confidential.

and 82(5), of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules).

III. DISCUSSION

9. The Panel recalls at the outset its responsibility to ensure that any given filing in the case file bears the appropriate classification and that it may, according to Rule 82(5) of the Rules, reclassify any filing *proprio motu* or upon request, should the basis for the current classification no longer exist. Furthermore, the Panel bears in mind that, in considering the appropriate classification of a given filing and/or any redaction to be applied thereto, and in accordance with Article 23(1) of the Law and Rule 80(1) of the Rules, it also has a duty to provide for the protection of victims and witnesses, as well as the rights of the Accused.

10. Bearing this in mind, the Panel will rule on pending requests for reclassification as well as address some requests/issues pertaining to the submission of PRVs of certain filings.

A. SPO REQUEST

11. The SPO submits that filings F00456/RED and F00460/RED reveal confidential information, namely [REDACTED].¹⁰ The SPO maintains, as a result, that filings F00456/RED and F00460/RED must remain classified as confidential and the Bahtijari Defence and the Januzi Defence must file further PRVs of their respective filings with the appropriate redactions.¹¹ The SPO submits in this regard that the Januzi Defence and the SPO have engaged in *inter partes* discussion and

¹⁰ SPO Request, para. 2.

¹¹ SPO Request, paras 1, 3.

the Januzi Defence has indicated its willingness to file a further PRV of its filing with the requested redactions.¹²

12. The Bahtijari Defence indicates that it does not oppose the submission of a further PRV of its filing with redactions as requested by the SPO.¹³

13. The Panel also recalls that it instructed the CMU not to process, until further order, a further PRV of filing F00460 submitted for filing by the Januzi Defence on 15 November 2024, pending the Panel's present decision.¹⁴

14. Having considered the Parties' submissions, the Panel finds that filings F00456/RED and F00460/RED shall remain classified as confidential. The Panel also finds it appropriate to order the Januzi Defence to confirm *via* email, by **Wednesday, 15 January 2025**, that the public redacted version of filing F00460 currently before the CMU follows consultation with the SPO and contains the redactions as requested by the SPO.¹⁵ If said filing does not comply with these conditions, the Januzi Defence is ordered: (i) to consult with the SPO in order to apply any necessary redactions to the further PRV of filing F00460;¹⁶ and, following such consultation; (ii) to submit said PRV, by no later than **Friday, 17, January 2025**.

15. The Panel further finds it appropriate to order the Bahtijari Defence: (i) to consult with the SPO in order to apply any necessary redactions to the further PRV of filing F00456;¹⁷ and, following such consultation; (ii) to submit said PRV, by no later than **Friday, 17 January 2025**.

¹² SPO Request, para. 4.

¹³ Bahtijari Response, para. 2.

¹⁴ *See supra* para. 7.

¹⁵ SPO Request, paras 2-3.

¹⁶ SPO Request, paras 2-3.

¹⁷ SPO Request, paras 2-3.

16. Furthermore, as regards the Bahtijari Request, considering that the Bahtijari Response does not contain confidential information, the Panel finds it appropriate to order the Registrar to reclassify said filing as public.¹⁸

B. SHALA REQUEST

17. The Shala Defence submits that its filing F00263/RED2¹⁹ contains redactions in accordance with the Pre-Trial Judge's order of 4 September 2024 for the application of further redactions to its filing F00263/RED (Redactions Order),²⁰ and therefore requests clarification as to the further redactions that need to be applied to filing F00263/RED2.²¹

18. The Panel clarifies that it ordered the reclassification of filing F00263/RED2 as confidential,²² because said filing [REDACTED]. The Panel stresses that, although this information has been disclosed to the Defence, it is still subject to protective measures vis-à-vis the public and thus cannot be disclosed in a public filing.²³

19. In fact, the Panel observes that, while the Shala Defence correctly redacted said information in the prior PRV of filing F00263 (i.e. F00263/RED),²⁴ the Shala

¹⁸ KSC-BC-2023-10, F00526, Bahtijari Defence, *Bahtijari Response to F00523 Prosecution Submissions on Reclassification*, 14 October 2024, confidential.

¹⁹ KSC-BC-2023-10, F00263/RED2, Shala Defence, *Public Redacted Version of Haxhi Shala Request for Disclosure of Audio-Visual Recordings*, 1 October 2024, confidential.

²⁰ See KSC-BC-2023-10, F00467, Pre-Trial Judge, *Order on Reclassification of Filings, Submissions of Public Redacted Versions of Filings and Further Reclassification Matters*, 4 September 2024, public, paras 33-34, 58(b), (g).

²¹ Shala Request, paras 3-5.

²² See KSC-BC-2023-10, CRSPD87, *Email from the Panel to the CMU re [KSC-BC-2023-10] - Reclassification Order*, 8 October 2024, confidential.

²³ KSC-BC-2023-10, F00131, Pre-Trial Judge, *Decision on Prosecution Request for Protective Measures for Rule 102(1)(b) Material*, 13 December 2023, confidential, paras 17-20, 32(b).

²⁴ See KSC-BC-2023-10, F00263/RED, Shala Defence, *Public Redacted Version of Haxhi Shala Request for Disclosure of Audio-Visual Recordings*, 3 July 2024, confidential, para. 1.

Defence left it unredacted in filing F00263/RED2, which was submitted pursuant to the Redactions Order for *further* redactions.²⁵

20. Therefore, the Panel finds it appropriate to order the Shala Defence to file a new PRV of filing F00263, with the below specific redaction applied, *in addition* to the redactions ordered in the Redactions Order and applied in filing F00263/RED2, by no later than **Friday, 17 January 2025**:

- KSC-BC-2023-10/F00263, currently classified as confidential, redact: para. 1, line 3, all the words between “with” and the parenthesis.

21. Furthermore, considering that the Shala Request does not contain confidential information, the Panel finds it appropriate to order the Registrar to reclassify said filing as public.

C. JANUZI REQUEST

22. The Januzi Defence requests the reclassification as public of its filing F00564, arguing that there is no substantive reason for said filing to be confidential.²⁶

23. Having reviewed filing F00564, the Panel finds that said filing cannot be reclassified as public because it [REDACTED]²⁷ [REDACTED]²⁸ [REDACTED]. Consequently, the Panel orders the Januzi Defence to file a PRV of filing F00564, with the below specific redactions applied, by no later than **Friday, 17 January 2025**:

- KSC-BC-2023-10/F00564, currently classified as confidential, redact:

²⁵ See Redactions Order, paras 33-34, 58(b), (g); KSC-BC-2023-10, F00263/RED2, Shala Defence, *Public Redacted Version of Haxhi Shala Request for Disclosure of Audio-Visual Recordings*, 1 October 2024, confidential, para. 1.

²⁶ Januzi Request, para. 1.

²⁷ [REDACTED]. [REDACTED].

²⁸ [REDACTED].

- para. 9, lines 2-3, all the words from “Office” to the end of the paragraph;
- para. 12(c), line 2, all the words between “if” and “examined”;
- para. 14(f)(i), lines 1 and 5, all the words from “interview” to the comma;
- para. 14(f)(ii), line 1, all the words between “interview” and “W04891” and all the words between “that” and “was”; line 3, all the words from “interview” to the comma; line 4, all the words between “claimed” and “was; line 5, all the words between “that” and “would”; and
- para. 16, line 8, all words from “witness” until the end of the line.

D. PRV OF FILING F00343

24. Having reviewed the PRV of filing F00343, the Panel notes that the redactions applied in said filing do not fully comply with the Redactions Order.²⁹ The Panel thus finds it appropriate to order: (i) the CMU not to process the PRV of filing F00343 currently before it; and (ii) the Bahtijari Defence to file a new version of the PRV of filing F00343 with the below specific redactions, *in addition to* those redactions already implemented in the PRV of filing F00343 and subject to the further instructions at paragraph 25 of this decision:

- KSC-BC-2023-10/F00343, currently classified as confidential, redact:
 - para. 7(d), lines 2-5; and
 - para. 14, line 4, all the words between “visit” and “which”.

25. The Panel also notes that certain information which the Bahtijari Defence redacted in the PRV of filing F00343 can be disclosed to the public. Accordingly, the

²⁹ Redactions Order, para. 48. *Compare* Redactions Order, para. 48 with PRV of F00343, paras 7(a), 7(d), 12, 14, 15.

Bahtijari Defence is instructed not to redact, in the new version of the PRV of filing F00343 to be submitted, the following:

- para. 4, line 1, “visiting Witness 1 on 5 April 2023”;
- para. 4(a), line 3, “Witness 1”;
- para. 5(d), line 1 “Witness 1”;
- para. 6;
- para. 7(d), line 1 “witness 1”; and
- para. 12, line 1, “Mr Januzi”, line 2, “Mr Shala until he was in detention in the Hague.”

E. F00367/A01

26. The Panel notes that the PRV of the SPO’s Pre-Trial Brief, i.e. filing F00367/A01, [REDACTED],³⁰ [REDACTED]. As a result, the Panel finds it appropriate to order: (i) the Registrar to reclassify as confidential filing F00367/A01; and (ii) the SPO to file a new PRV of its Pre-Trial Brief (F00177/A01) and redact the aforementioned information, *in addition to* the redactions previously implemented.

IV. DISPOSITION

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

- a) **GRANTS** the SPO Request;
- b) **ORDERS** the Januzi Defence to confirm *via* email that the public version of filing F00460 currently before the CMU follows consultation with the

³⁰ KSC-BC-2023-10, F00367/A01, Specialist Prosecutor, *Public redacted version of ‘ANNEX 1 to Submission of Prosecution Pre-Trial Brief, witness and exhibit lists, and Rule 109(c) chart’, 3 July 2024, public, [REDACTED].*


SPO and contains the redactions as requested by the latter, by no later than **Friday, 17 January 2025**;

- c) **ORDERS** the Januzi Defence, in case the above filing does not comply with the aforementioned conditions to: (i) consult with the SPO in order to apply any necessary redactions to filing F00460; and (ii) submit a further PRV of filing F00460, in accordance with paragraph 14 of the present decision, by no later than **Friday, 17 January 2025**;
- d) **ORDERS** the Bahtijari Defence to: (i) consult with the SPO in order to apply any necessary redactions to filing F00456; and (ii) submit a further PRV of F00456, in accordance with paragraph 15 of the present decision, by no later than **Friday, 17 January 2025**;
- e) **GRANTS** the Bahtijari Request;
- f) **INSTRUCTS** the Registrar to reclassify as public the Bahtijari Response (F00526);
- g) **ORDERS** the Shala Defence to file a new PRV of filing F00263, in accordance with paragraph 20 of the present decision, by no later than **Friday, 17 January 2025**;
- h) **ORDERS** the Registrar to reclassify as public the Shala Request (F00547);
- i) **REJECTS** the Januzi Request;
- j) **ORDERS** the Januzi Defence to file a PRV of filing F00564, in accordance with paragraph 23 of the present decision, by no later than **Friday, 17 January 2025**;

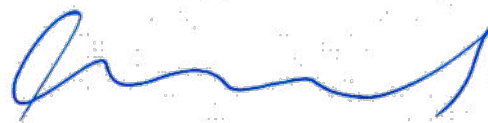
- k) **ORDERS** the Bahtijari Defence to file a PRV of fling F00343 in accordance with paragraphs 24-25 of the present decision, by no later than **Friday, 17 January 2025**;
- l) **ORDERS** the Registrar to reclassify as confidential filing F00367/A01;
- m) **ORDERS** the SPO to file a PRV of its Pre-Trial Brief (F00177/A01) in accordance with paragraph 26 of the present decision, by no later than **Friday, 17 January 2025**; and
- n) **INSTRUCTS** the CMU to liaise with the Panel should any issues arise in the implementation of this order.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Friday, 20 December 2024

At The Hague, the Netherlands.