

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

Filing Participant: **Specialist Counsel for Ismet Bahtijari**

Date: 19 June 2024

Language: English

Classification: Public

Publicly redacted version BAHTIJARI PRE TRIAL BRIEF

Specialist

Prosecutor's Office

Kimberley P. West

Counsel for Sabit Januzi

Jonathan Rees KC

Huw Bowden

Counsel for Ismet Bahtijari

Felicity Gerry KC

Counsel for Haxhi Shala

Toby Cadman

I. DOCUMENT

1. Mr Ismet Bahtijari hereby files this Pre-Trial Brief, pursuant to Rule 95(5) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers and the timeline set by the pre-trial judge.

II. CLASSIFICATION

2. This document is filed as confidential at this stage given the references to the evidence but a publicly redacted version will be prepared.

III. DEFENCES

3. In general terms, the nature of Mr Bahtijari's defence is that he is not guilty of all charges. He denies criminal responsibility for committing or attempting to commit each of the crimes charged through all alleged modes of liability.
4. He accepts visiting Witness 1 on 5 April 2023. Accordingly, he does not raise alibi but he does raise the following in relation to the elements of offending:
 - a. He did not make, nor attempt to make, any threat, or engage in any other means of compulsion, nor offer a promise of a gift or any other form of benefit to Witness 1 whether as an individual or jointly with others on any mode of liability, as alleged, or at all.
 - b. He did not participate in or attempt to obstruct an official person, that is, a judge, a prosecutor, an official of a court, prosecution officer or a person authorised by the court and prosecution office, in performing official duties whether as an individual or jointly with others, on any mode of liability as alleged, or at all.
 - c. He was not and did not believe he was being consulted, directed or instructed.
 - d. He did not hold the relevant state of mind for any of the alleged offences either specifically and/or because of his poor health at the time. He had no

knowledge or awareness of any interference with any witness or process of the Court and no intention to engage in any unlawful activity.

- e. He denies any intent to undermine or obstruct an official person in performing official duties and he denies any co-perpetration with other individuals, nor was he involved in any coordination with others as alleged or at all.
- f. Accordingly, he denies any knowledge or intent for each mode of liability and crime as alleged or at all, whether by full offence or attempt, individually, jointly or in co-perpetration, again, as alleged or at all.

5. In addition, he raises the following positive defences:

- a. He suffers from health issues that may amount to diminished or lack of mental capacity for which medical evidence will be necessary.
- b. At the time he was heavily intoxicated.
- c. If the court, contrary to the above, concludes that he was being consulted or directed or instructed then the court will need to consider whether he was, or may have been, acting under a mistake.
- d. Whilst he does not allege he was acting under necessity / duress, Witness 1 has stated that Mr Bahtijari appeared to be “in fear” which appears to leave those defences open for the court’s consideration.

6. Further, subject to obtaining medial evidence, Mr Bahtijari may argue that his arrest and transfer were unlawful and his interviews with investigators are not admissible and that his health affects his fitness to be tried.

7. Insofar as the facts are in dispute, Mr Bahtijari makes the following assertions:

- a. [REDACTED]
- b. Mr Bahtijari had no knowledge that [REDACTED] was a witness until 5 April 2023. Mr Bahtijari accepts chatting with Mr Januzi in a café that day and hearing what appeared to be gossip, which he was not even sure was

true. He did not believe or understand that he was being consulted, instructed or directed to intimidate or influence [REDACTED].

- c. Mr Bahtijari was intoxicated, as was usual for him at the time. He was a regular very heavy drinker and had been for many years.
- d. Mr Bahtijari accepts he then contacted Witness 1 via social media and [REDACTED].
- e. Mr Bahtijari accepts he sat with [REDACTED] in his house and they chatted. He denies expressing any inducement to [REDACTED] to withdraw evidence or refrain from providing evidence in official proceedings before the KSC.
- f. Mr Bahtijari told [REDACTED] he had heard gossip that [REDACTED] was a witness. [REDACTED] then immediately flew into a rage. Mr Bahtijari is unable to recall exactly what was said by [REDACTED] but he does recall that [REDACTED] was ranting about threatening or attacking others, as [REDACTED] himself states.

8. In particular, Mr Bahtijari disputes the following alleged comments:

- a. He did not threaten or intimidate [REDACTED] nor did he pass on any threats or intimidation, nor did he make any statement about [REDACTED] not testifying.
- b. Mr Bahtijari did not say that he had not come for a good purpose nor did he add an Albanian phrase generally meaning that his purpose was a bad one, as he was acting as the 'mouthpiece' or 'advocate' of 'the devil.'
- c. Mr Bahtijari did not say he had been sent by anyone to deliver any message and, in particular, did not say that 'they' know that [REDACTED] .
- d. Mr Bahtijari did not say to [REDACTED] that his co-accused Mr Shala had approached him and told him to go and tell [REDACTED] that 'they' had heard that [REDACTED].

- e. Mr Bahtijari did not instruct [REDACTED] to withdraw his testimony as alleged or at all.
9. Mr Bahtijari denies his actions created any fears or concerns for [REDACTED], nor did he create any disincentive for [REDACTED] to provide information about any crimes under this Court's jurisdiction. His visit did not threaten the court or the prosecutor's ability to effectively investigate and prosecute crimes, including by obtaining and securing relevant witness evidence; and his actions did not divert any resources and time to address actual and potential consequences to [REDACTED] and his family in connection with official proceedings at the Kosovo Specialist Chambers.
10. Mr Bahtijari had a lift from a friend and afterwards phoned that same person to collect him because Mr Bahtijari does not drive. [REDACTED]
11. Mr Bahtijari does not recall any other communications and had nothing to do with the alleged "second approach" and had no knowledge about it until after his arrest and transfer to The Hague.
12. Mr Bahtijari accepts that he knows Mr Januzi as a person from his village. He did not meet or ever communicate with Mr Shala until he was in detention in the Hague. [REDACTED].
13. Mr Bahtijari was not a member of 121 Brigade of the Kosovo Liberation Army. During the conflict with which this Court is concerned, he and his family fled from their village to seek safety. He never had a military role but, after being displaced, he carried out some work as a mechanic with his late brother, in exchange for food.
14. At no stage in April 2023 did Mr Bahtijari understand or believe that he was being asked to take part in any unlawful activity. Insofar as the prosecution allege that the alleged "first approach" was unclear, this is because there was no first approach, only a visit [REDACTED] which has been misconstrued, mixed up with later events or fabricated.

15. [REDACTED]

IV. CONCLUSION

16. Accordingly, in the light of all the above, Mr Bahtijari disputes all the charges he faces and the whole of the way the prosecution put their case against him on each of the charges he faces.

17. Mr Bahtijari reserves the right to update his pre-trial brief once medical evidence is obtained and defence investigations are completed.

Word Count: 1505



Dr Felicity Gerry KC

Counsel for Mr Bahtijari

19 June 2024

At Dar es Salaam