



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2023-10
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: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 21 January 2025

Language: English

Classification: Confidential

Prosecution response to Bahtijari humanitarian release request

Specialist Prosecutor's Office

Kimberly P. West

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Jonathan Elystan Rees

Counsel for Ismet Bahtijari

Felicity Gerry

Counsel for Haxhi Shala

Toby Cadman

1. The Request¹ should be rejected, and Ismet Bahtijari should remain detained. The Request fails to establish compelling humanitarian grounds that might warrant provisional or temporary release.
2. The Response notes that humanitarian release is ‘often used for time-limited purposes such as after the death of a family member’, but characterises such release as a ‘flexible mechanism’ without providing any examples of it being applied in cases outside of provisional or temporary release relating to the death of a family member.²
3. In fact, Rule 56(3) is a ‘temporary release of a detained person, where compelling humanitarian grounds justify such release’. It should be granted only in exceptional circumstances, and even family tragedies are not sufficient, in and of themselves, to justify such release.³ Humanitarian release must be weighed against other factors, including the risks previously identified by the Panel.
4. In any case, Batijari makes submissions related to largely unestablished medical conditions, without the support of a feasibility assessment from the Registry, seemingly for Bahtijari’s permanent release.⁴ Nor does Bahtijari meaningfully explain how he is not receiving ‘appropriate treatment’,⁵ especially given that, as noted by the

¹ BAHTIJARI Submissions on detention review and request for release on humanitarian grounds, KSC-BC-2023-10/F00637, 10 January 2025, Confidential (‘Request’).

² See Response, KSC-BC-2023-10/F00637, p.7, para.6.

³ See ICC, *Prosecutor v. Al Hassan*, Public redacted version of ‘Decision on the urgent Defence request for a custodial visit on compassionate grounds’, ICC-01/12-01/18-1227-Red, 23 December 2020 (redacted version notified 18 January 2020), paras 8, 14.

⁴ Cf Public redacted version of Decision on the Shala Urgent Request for Temporary Release on Compelling Humanitarian Grounds, KSC-BC-2023-10/F00517/RED, 9 October 2024; *Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of Decision on Gucati Defence Request for Temporary Release on Compassionate Grounds, KSC-BC-2020-07/F00604/RED, 9 May 2022.

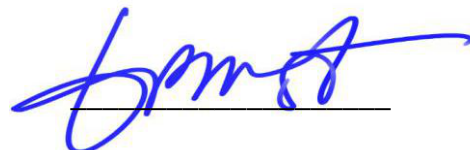
⁵ See Response, KSC-BC-2023-10/F00637, p.10, paras 46-51.

Registrar,⁶ he enjoys at least the same standards of health care as are available in the Host State,⁷ and interpretation services that enable him to communicate freely.⁸

5. The filing is confidential pursuant to Rule 82(4). The SPO has no objection to its reclassification as public.

6. For the foregoing reasons, the SPO respectfully submits that the Request be denied and Bahtijari remain detained.

Word count: 452



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Specialist Prosecutor

Tuesday, 21 January 2025

At The Hague, the Netherlands

⁶ Registrar's Submissions on Bahtijari Request for Release on Humanitarian Grounds (F00637), KSC-BC-2023-10/F00643, 16 January 2025, Confidential ('Registrar Submissions'), paras 6-8.

⁷ Rules of Detention, KSC-BD-08 KSC-BD-08-Rev1, 23 September 2020, Rule 30(2). Further, Bahtijari's submissions about deterioration of his health are contradicted in other submissions (*see e.g.* BAHTIJARI REPLY TO RESPONSES TO F00477, KSC-BC-2023-10/F00498, 3 October 2024, Strictly Confidential and *ex parte*, para.2).

⁸ Rules of Detention, KSC-BD-08 KSC-BD-08-Rev1, Rule 8(2). Bahtijari is also entitled to regular visits with his family (*see* Practice Direction on Visits and Communications, KSC-BD-09 KSC-BD-09-Rev1, 23 September 2020).