



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:** 7 October 2024

**Language:** English

**Classification:** **Public**

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**Public redacted version of**

**Decision on the Bahtijari Defence request for medical examinations**

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**To be notified to:**

**Specialist Prosecutor**  
Kimberly P. West

**Counsel for Sabit Januzi**  
Jonathan Elystan Rees

**Registry**  
Fidelma Donlon

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**TRIAL PANEL I** (Panel) hereby renders this Decision on the Bahtijari Defence request for medical examinations.

## I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 1 May 2024, the Defence for Ismet Bahtijari (Mr Bahtijari and Defence) requested that the Pre-Trial Judge order four expert medical examinations of Mr Bahtijari, including pertaining to the issues of possible abuse of process in the arrest and transfer of Mr Bahtijari to The Hague, Mr Bahtijari's fitness to stand trial, and potential defences (Request).<sup>1</sup>
2. On 14 June 2024, upon order of the Pre-Trial Judge,<sup>2</sup> the Registrar filed observations on the Request.<sup>3</sup>
3. On 8 July 2024, further to an order from the Pre-Trial Judge,<sup>4</sup> the Defence made additional written submissions.<sup>5</sup>
4. On 16 July 2024, the Specialist Prosecutor's Office (SPO) filed submissions in relation to the Request, in which it challenged the Defence's argument that Mr Bahtijari is unfit to stand trial and sought the Panel to dismiss the Request.<sup>6</sup>

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<sup>1</sup> KSC-BC-2023-10, F00273, Defence, *Bahtijari Filing for Medical Reports ex parte*, 1 May 2024, strictly confidential and *ex parte*, paras 1, 5 and 25. For a comprehensive overview related to the classification of F00273, see F00468/A01, Pre-Trial Judge, *Handover Document* (Handover Document), 4 September 2024, confidential, paras 44-47.

<sup>2</sup> KSC-BC-2023-10, F00293, Pre-Trial Judge, *Order for Submissions*, 16 May 2024, confidential and *ex parte*, paras 9, 10(d); CRSPD53, *Email from Pre-Trial Judge to CMU re Reclassification Order and Instruction from the Pre-Trial Judge*, 30 May 2024, confidential.

<sup>3</sup> KSC-BC-2023-10, F00337, Registrar, *Registrar's Submissions Pursuant to F00293* ("Submissions F00337"), 14 June 2024, strictly confidential and *ex parte*.

<sup>4</sup> KSC-BC-2023-10, F00358, Pre-Trial Judge, *Second Order for Submissions*, 2 July 2024, confidential and *ex parte*.

<sup>5</sup> KSC-BC-2023-10, F00375, Defence, *Bahtijari Filing in Relation to F00358*, 8 July 2024, confidential and *ex parte*, para. 3(x)-(xi).

<sup>6</sup> KSC-BC-2023-10, F00389, Specialist Prosecutor, *Prosecution Submissions on Bahtijari Defence Request for Medical Examination*, 16 July 2024, confidential and *ex parte*, paras 2-7, 13.

5. On 4 September 2024, the Pre-Trial Judge transmitted the case file to the Panel.<sup>7</sup>
6. On 19 September 2024, the Panel issued an order instructing the Defence to make, if it wishes to do so, further submissions and provide any additional (up-to-date) information relevant to the issue of Mr Bahtijari's fitness to stand trial, including any relevant medical records, subject to Mr Bahtijari's consent (Order for Submissions).<sup>8</sup>
7. On 25 September 2024, the Defence filed its updated submissions on Mr Bahtijari's fitness to stand trial and assistance to obtain medical evidence relevant to his defence (Defence Updated Submissions).<sup>9</sup>
8. On 30 September 2024, the Registry filed the "Registrar's Submissions Related to F00480 Further to Order F00477" (Registrar's Submissions).<sup>10</sup>
9. On the same day, the SPO filed the "Prosecution Response to Bahtijari Further Submissions on Medical Requests" (SPO Response).<sup>11</sup>
10. On 3 October 2024, the Defence filed the "Bahtijari Reply to Responses to F00477" (Defence Reply).<sup>12</sup>

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<sup>7</sup> KSC-BC-2023-10, F00468, Pre-Trial Judge, *Decision Transmitting the Case File to Trial Panel I*, 4 September 2024, public, with Annex 1, confidential, and Annex 2, public. See also F00466, President of the Specialist Chambers, *Decision Assigning Trial Panel I*, 3 September 2024 (notified on 4 September 2024), public.

<sup>8</sup> KSC-BC-2023-10, F00477, Trial Panel I, *Order for Further Submissions in Relation to F00273*, 19 September 2024, confidential and *ex parte*, paras 8, 10.

<sup>9</sup> KSC-BC-2023-10, F00480, Defence, *Bahtijari Response to F00477*, 25 September 2024, strictly confidential and *ex parte*.

<sup>10</sup> KSC-BC-2023-10, F00483, Registrar, *Registrar's Submissions Related to F00480 Further to Order F00477*, 30 September 2024, strictly confidential and *ex parte*.

<sup>11</sup> KSC-BC-2023-10, F00484, Specialist Prosecutor, *Prosecution Response to Bahtijari Further Submissions on Medical Request*, 30 September 2024, strictly confidential and *ex parte*.

<sup>12</sup> KSC-BC-2023-10, F00498, Defence, *Bahtijari Reply to Responses to F00477*, 3 October 2024, strictly confidential and *ex parte*.

11. On 4 October 2024, the Defence filed an update on medical notes and contacts (Defence Supplement).<sup>13</sup>

## II. SUBMISSIONS

12. In the Defence Updated Submissions, the Defence withdraws its request for a medical report on Mr Bahtijari's fitness to stand trial (Fitness to Stand Trial Request), [REDACTED].<sup>14</sup> As a result, the Defence submits that Mr Bahtijari is "much more able to understand the charges and give instructions".<sup>15</sup>

13. Separately and in addition, the Defence renews its request regarding the Panel's assistance to obtain medical evidence for the purposes of Mr Bahtijari's defences at trial, notably with regard to his possibly diminished or lack of mental capacity and intoxication at the time of the alleged offences, as well as matters related to the alleged abuse of process at the time of his arrest and transfer to The Hague (Request for Assistance).<sup>16</sup>

14. The SPO, in response, does not address the Fitness to Stand Trial Request, in light of the Defence's withdrawal of this request.<sup>17</sup> With regard to the Request for Assistance, the SPO submits that it is unclear what medical records or other information the Defence is seeking, and why the Panel's intervention would be required or justified.<sup>18</sup> It also asserts that the Defence has been in possession of the

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<sup>13</sup> KSC-BC-2023-10, F00503, Defence, *Bahtijari Update on Medical Notes and Contacts*, 4 October 2024, strictly confidential and *ex parte*.

<sup>14</sup> Defence Updated Submissions, para. 4.

<sup>15</sup> Defence Updated Submissions, para. 4.

<sup>16</sup> Request, paras 1, 9-10; Defence Updated Submissions, paras 5, 7. *See also* KSC-BC-2023-10, F00456, Defence, *Bahtijari Further Updated Pre-Trial Brief*, 2 September 2024, paras 39-44, 46, 48, 55(d), 56, 58-61, 62(c), 73. A public redacted version was filed on 1 October 2024, F00456/RED.

<sup>17</sup> SPO Response, para. 2.

<sup>18</sup> SPO Response, para. 3.

medical records from the Detention Facilities since 31 May 2024.<sup>19</sup> To the extent that the Defence seeks medical information from the SPO, the latter submits that it has disclosed any information in its possession and that there is nothing further subject to disclosure.<sup>20</sup>

15. The Registrar makes no observations on the Fitness to Stand Trial Request, in light of the Defence's withdrawal of this request.<sup>21</sup> In relation to other matters raised by the Defence, the Registrar submits that pursuant to the Legal Aid Regulations, the Defence is allocated a dedicated budget for contracting external experts at any stage of the proceedings, including for the purposes of providing medical evidence.<sup>22</sup> The Registrar further submits that detainees under the Specialist Chambers' (SC) custody benefit from at least the same standards of health care as they are available in the Host State, and that when specialised assessments or treatments are required, detainees are referred to a specialist.<sup>23</sup> Lastly, with regard to the Defence request to obtain the contact details of [REDACTED], the Registrar submits that the Registry does not release such details other than following a specific request to this effect, which is then assessed by the Registrar. The Registrar has informed the Defence of such procedure and, to date, the Defence has not made such request.<sup>24</sup>

16. In reply, the Defence submits that the medical records still to be disclosed are contemporaneous medical records made at the time of Mr Bahtijari's arrest and transfer to The Hague and the contact details of [REDACTED], as opposed to the records mentioned by the SPO in the SPO Response.<sup>25</sup> The Defence further submits

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<sup>19</sup> SPO Response, para. 4.

<sup>20</sup> SPO Response, para. 5.

<sup>21</sup> Registrar's Submissions, para. 7.

<sup>22</sup> Registrar's Submissions, para. 8.

<sup>23</sup> Registrar's Submissions, para. 9; Submissions F00337, para. 13.

<sup>24</sup> Registrar's Submissions, para. 10.

<sup>25</sup> Defence Reply, para. 8.

that it does not have access to F00021/A03, which is an annex to the Registry's "Report on the Arrest and Transfer of Ismet Bahtjari to the Detention Facilities" (F00021 Report).<sup>26</sup> In addition, the Defence points out that it has renewed its request to the Registrar to disclose the contact details of [REDACTED].<sup>27</sup>

17. Should these matters not be resolved by 8 October 2024, the Defence requests the Panel to: (i) order the Registry to make available the annexes to the F00021 Report; (ii) order the disclosure and/or transfer to the Defence of any other documents that pertain to Mr Bahtjari's arrest, transfer and detention, which are not included in or are redacted from the F00021 Report; and (iii) assist the Defence to make contact with [REDACTED].<sup>28</sup>

### III. APPLICABLE LAW

18. The Panel notes Articles 21, 40(2) and (6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 9(5) and 69(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules).

### IV. ANALYSIS

#### A. PRELIMINARY MATTER

19. The Panel recalls that in the Order for Submissions, it instructed the Defence to file any reply to the SPO Response by Thursday, 3 October 2024, at 12:00 hours.<sup>29</sup> The

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<sup>26</sup> Defence Reply, para. 9, referring to KSC-BC-2023-10, F00021, Registrar, *Report on the Arrest and Transfer of Ismet Bahtjari to the Detention Facilities*, 9 October 2023, confidential, with Annexes 1-3, strictly confidential and *ex parte*.

<sup>27</sup> Defence Reply, para. 11.

<sup>28</sup> Defence Reply, para. 18.

<sup>29</sup> Order for Submissions, para. 10(iii).

Panel notes that the Defence Reply was submitted in the first place to the Court Management Unit at 12:17 hours, returned, and submitted again at 13:49 hours.<sup>30</sup> On 4 October 2024, the Defence filed the Supplement, without asking for an extension of time to do so.

20. Pursuant to Rule 9(5)(b) of the Rules, the Panel will, *proprio motu*, exceptionally entertain the Defence Reply, given the limited delay in filing it, but will disregard the Defence Supplement, on the basis that it was filed abundantly out of time and in the absence of any justification and request for an extension of time. In this regard, the Panel further notes that the Defence recently requested, via email, an extension of time to file submissions for the upcoming trial preparation conference.<sup>31</sup> The Panel granted the request and ordered the Defence to file such submissions, including the request for extension of time,<sup>32</sup> by 2 October 2024, whereas the Defence omitted to include the request for extension of time, as ordered.<sup>33</sup> The Panel urges the Defence to abide by the deadlines and orders set by the Panel on any given matter and to resort to the legal avenues provided under the Rules for extension of time limits, in case it is not in a position to meet the established deadlines.

#### B. FITNESS TO STAND TRIAL REQUEST

21. The Panel finds that the concept of “fitness to stand trial” is an aspect of the broader notion of fair trial which prescribes that, whenever the Accused is, for reasons

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<sup>30</sup> Email from the Panel to the Court Management Unit, 4 October 2024, at 09:12; Email from the Court Management Unit to the Panel, 4 October 2024, at 09:29 hours.

<sup>31</sup> Email from the Defence to the Panel, 30 September 2024, at 12:12 hours.

<sup>32</sup> Email from the Panel to the Defence, 30 September 2024, at 17:55 hours.

<sup>33</sup> KSC-BC-2023-10, F00494, Defence, *Bahtijari Submissions on Trial Preparation Pursuant to F00439*, 2 October 2024, confidential.

of ill health, unable to meaningfully exercise his procedural rights, the trial cannot be fair and the proceedings must be adjourned until the obstacle(s) ceases to exist.<sup>34</sup>

22. The Panel takes note of the Defence submissions on [REDACTED].<sup>35</sup> As a consequence, the Defence has withdrawn its Fitness to Stand Trial Request.<sup>36</sup> It is noted that the Defence arguments concerning the alleged unfitness to stand trial of Mr Bahtijari [REDACTED], and thus cannot have any repercussions on the conduct of the trial hearings. Accordingly, the Panel considers the Fitness to Stand Trial Request to be moot.

23. Lastly, [REDACTED], the Panel considers that the Defence should have approached the competent Panel at the earliest opportunity with information about [REDACTED], instead of waiting for the Panel to request further submissions on this issue.

### C. REQUEST FOR ASSISTANCE

24. The Panel takes note of the Defence's intention to raise certain defences at trial, as further elaborated in its updated pre-trial brief.<sup>37</sup> In this respect, the Defence contends that expert reports will assist, *inter alia*, in determining [REDACTED].<sup>38</sup>

25. The Panel stresses that it does not function as an investigating chamber, and is not tasked with assisting the Parties in gathering evidence for their respective cases on their behalf. It is the responsibility of the Parties to conduct their own investigations

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<sup>34</sup> Similarly, KSC-BC-2023-10, F00358, Pre-Trial Judge, *Second Order for Submissions*, 2 July 2024, confidential and *ex parte*, para. 11.

<sup>35</sup> [REDACTED].

<sup>36</sup> See para. 12 above.

<sup>37</sup> KSC-BC-2023-10, F00456, Bahtijari Defence, *Bahtijari Further Updated Pre-Trial Brief*, 2 September 2024, confidential, paras 39-44, 46, 48, 55(d), 56, 58-61, 62(c), 73. A public redacted version was filed on 1 October 2024, F00456/RED.

<sup>38</sup> Defence Updated Submissions, para. 11.



and gather the evidence they seek for their respective cases.<sup>39</sup> The Panel may only intervene in discrete circumstances, such as in cases of non-compliance by witnesses to testify before the Panel, as provided for under Rule 121 of the Rules, or in the context of a request for assistance under Articles 53 or 55 of the Law.

26. In relation to the specific intention of the Defence to collect medical evidence for its case, the Panel recalls that, under the framework of the Legal Aid Regulations, the Defence is allocated a budget line to contract external consultants, which may include experts.<sup>40</sup> As such, it falls within the responsibility of the Defence to gather the evidence it seeks for its case, including medical evidence to support possible lines of defences at trial.

27. Accordingly, the Request for Assistance is rejected.

#### D. OTHER MATTERS

28. In the Defence Updated Submissions, the Defence refers in passing to two further issues, in relation to which it “invites” the Panel to act. The first issue concerns the alleged refusal by the Registry to disclose the contact details of a staff member of the SC [REDACTED].<sup>41</sup> The Defence invites the Panel to seek information from the staff member in question through the Registry in this regard.<sup>42</sup> In the Defence Reply, the Defence changes its position and requests the Panel’s assistance to make contact with two Registry staff members.<sup>43</sup>

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<sup>39</sup> See for example, Article 38 of the Law; Rules 95(5), 102, 104, 121 of the Rules.

<sup>40</sup> KSC-BD-25-Rev1, Legal Aid Regulations, 22 February 2024, Annex C, p. 3. See also, Registrar’s Submissions, para. 8. See similarly, KSC-BC-2023-10, F00358, Pre-Trial Judge, *Second Order for Submissions*, 2 July 2024, confidential and *ex parte*, para. 10.

<sup>41</sup> Defence Updated Submissions, para. 12.

<sup>42</sup> Defence Updated Submissions, para. 11.

<sup>43</sup> Defence Reply, para. 18.

29. The second issue concerns the alleged refusal by the SPO to disclose the medical assessment made at the time of Mr Bahtijari's arrest and transfer to The Hague, together with the contact details of [REDACTED].<sup>44</sup> The Defence "assumes" that this disclosure will take place in response to its updated pre-trial brief and invites the Panel to assist in expediting this process.<sup>45</sup> In the Defence Reply, the Defence changes its position and requests access to the annexes of the F00021 Report and any other documents that pertain to Mr Bahtijari's arrest, transfer and detention, which are not included in or are redacted from the F00021 Report.<sup>46</sup>

30. At the outset, the Panel takes notes of the Defence's "invitations" and clarifies that it does not entertain issues raised in passing through a filing, particularly when framed as invitations or suggestions. In this respect, the Panel urges the Defence to clearly formulate the relief(s) sought at the end of its filings, and to be consistent in the presentation of its requests, if any, for the Panel to properly understand what matters it is seized of. In addition, the Panel stresses that the Parties may not make new requests in their replies, as the opposing Party does not have the opportunity to respond. Accordingly, the Panel will not entertain the requests made by the Defence in paragraph 18 of the Defence Reply.

31. As to the remark concerning the Registrar's alleged refusal to provide Registry staff members' contact details, the Panel notes that the Registrar has advised the Defence to make a specific request, which the Registrar will duly assess.<sup>47</sup> Such a request now appears to have been made by the Defence.<sup>48</sup>

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<sup>44</sup> Defence Updated Submissions, para. 17.

<sup>45</sup> Defence Updated Submissions, para. 17.

<sup>46</sup> Defence Reply, para. 18.

<sup>47</sup> Registrar's Submissions, para. 10.

<sup>48</sup> Defence Reply, para. 11.

32. As to the remark concerning disclosure of medical information by the SPO, the Panel points the Defence to the SPO submission that it has no further medical information in its possession that is subject to disclosure.<sup>49</sup> The Panel further refers the Defence to the fact that [REDACTED].<sup>50</sup>

## V. DISPOSITION

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

- (a) **DECIDES** to recognise as valid the Defence Reply, pursuant to Rule 9(5)(b) of the Rules;
- (b) **DECLINES** to entertain the requests made by the Defence at paragraph 18 of the Defence Reply;
- (c) **DISMISSES** *in limine* the Defence Supplement as filed out of time, pursuant to Rule 9(5)(b) of the Rules;
- (d) **DISMISSES** the Fitness to Stand Trial Request as moot; and
- (e) **REJECTS** the Request for Assistance.

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<sup>49</sup> SPO Response, para. 5.

<sup>50</sup> KSC-BC-2023-10, F00337, Registrar, *Registrar's Submissions Pursuant to F00293*, 14 June 2024, strictly confidential and *ex parte*, para. 14.



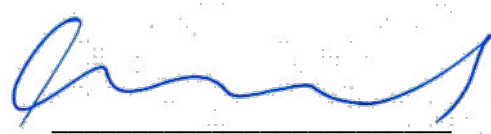
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**Judge Mappie Veldt-Foglia**  
**Presiding Judge**



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**Judge Gilbert Bitti**



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**Judge Roland Dekkers**

Dated this Monday, 7 October 2024

At The Hague, the Netherlands.