



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: 29 November 2024

Language: English

Classification: Public

Public redacted version of

Decision on Matters Related to Plea Proceedings

with one confidential and *ex parte* annex

To be notified to:

Specialist Prosecutor
Kimberly P. West

Counsel for Sabit Januzi
Jonathan Elystan Rees

Counsel for Ismet Bahtijari
Felicity Gerry

Counsel for Haxhi Shala
Toby Cadman

TRIAL PANEL I (Panel) hereby renders this decision on matters related to plea proceedings.

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) 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 14 November 2024, the Defence for Mr Bahtijari (Bahtijari Defence) filed a request seeking that the Plea Agreements remain confidential for the brief period of time until the next hearing and "unless and until witness statements are signed [REDACTED]" (Bahtijari Classification Request).³ In the alternative, the Bahtijari Defence requests that only Mr Bahtijari's guilty plea agreement remains confidential.⁴

3. On 15 November 2024, the SPO responded to the Bahtijari Classification Request, asking the Panel to reject the request and authorise the SPO to immediately file a public redacted version of the cover filing to the Plea Agreements (SPO Response to Bahtijari Classification Request).⁵ The SPO argues that the Bahtijari Defence's claim

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. A corrected version was filed on 14 November 2024, F00596/COR.

² Plea Agreements, paras 2-3.

³ 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.

⁴ Bahtijari Classification Request, paras 5-7.

⁵ KSC-BC-2023-10, F00603, Specialist Prosecutor, *Prosecution response to F00599*, 15 November 2024, confidential, para. 5, with Annex 1, confidential and *ex parte*.

that public disclosure of the Plea Agreements [REDACTED] is unsupported and speculative, and that said assertion does not justify a departure from the well-established presumption of the publicity of proceedings.⁶ According to the SPO, keeping the Plea Agreements confidential for an unspecified period of time is not an appropriate or proportionate course.⁷

4. On the same day, the Bahtijari Defence requested the Panel to shorten the deadlines applicable to the sentencing procedure and to schedule a sentencing hearing on 10 December 2024 (Bahtijari Request for Expedited Proceedings).⁸ Additionally, it indicated that it will present written submissions and evidence for the purpose of sentencing.⁹

5. On 18 and 19 November 2024, following an order by the Panel,¹⁰ the Defence for Mr Januzi (Januzi Defence)¹¹ and the Defence for Mr Shala (Shala Defence)¹² responded to the Bahtijari Classification Request (Januzi Response to Bahtijari Classification Request and Shala Response to Bahtijari Classification Request, respectively). The Januzi Defence submits that the Plea Agreements, including their cover filing, can be made public and that there is no substantive reason for them to remain confidential.¹³ The Shala Defence submits that the Plea Agreements shall remain confidential until and unless a final decision approving the agreements is

⁶ SPO Response to Bahtijari Classification Request, paras 3-4.

⁷ SPO Response to Bahtijari Classification Request, para. 4.

⁸ KSC-BC-2023-10, F00604, Bahtijari Defence, *BAHTIJARI application for short timetable for sentencing*, 15 November 2024, confidential, paras 1, 8, 15-16. A public redacted version was filed on 21 November 2024, F00604/RED.

⁹ Bahtijari Request for Expedited Proceedings, paras 11-14.

¹⁰ KSC-BC-2023-10, F00605, Trial Panel I, *Order for Submissions in relation to F00599*, 18 November 2024, confidential.

¹¹ KSC-BC-2023-10, F00606, Januzi Defence, *Januzi Request for Reclassification of F00596 and Annexes 1-3 thereto*, 18 November 2024, confidential.

¹² KSC-BC-2023-10, F00608, Shala Defence, *Response to F00599 Bahtijari Request on Classification*, 19 November 2024, confidential.

¹³ Januzi Response to Bahtijari Classification Request, para. 1.

taken by the Trial Panel.¹⁴ According to the Shala Defence, the re-classification as public of the Plea Agreements prior to such a decision may negatively impact upon the Defence's ability to gather evidence and prepare its case for trial and would, as a result, breach the Accused's right to a fair trial.¹⁵

6. On 19 November 2024, the SPO responded to the Bahtijari Request for Expedited Proceedings, submitting that: (i) it supports the request of the Bahtijari Defence for expedited proceedings; (ii) it confirms its availability and readiness to participate in any necessary hearings, including in December 2024; and (iii) it supports sentencing being addressed by way of written submissions, including with expedited timelines, as the Panel deems appropriate (SPO Response to Bahtijari Request for Expedited Proceedings).¹⁶

7. On 20 November 2024, the Bahtijari Defence filed its reply to the submissions of the SPO, the Januzi Defence and the Shala Defence on the classification of the Plea Agreements, maintaining its request for said agreements to remain confidential (Bahtijari Reply on Classification Request).¹⁷ In particular, the Bahtijari Defence submits that, contrary to the SPO's submissions, it is in the interests of justice that the Plea Agreements remain confidential pending their acceptance by the Panel and that only such acceptance will bring a resolution to the proceedings.¹⁸ In addition, the Bahtijari Defence reiterates its assertion that making the Plea Agreements public may impact the finalisation of its evidence collection, which it aims to complete by

¹⁴ Shala Response to Bahtijari Classification Request, paras 6, 8.

¹⁵ Shala Response to Bahtijari Classification Request, para. 15.

¹⁶ KSC-BC-2023-10, F00607, Specialist Prosecutor, *Prosecution response to filing F00604*, 19 November 2024, confidential, paras 1-2.

¹⁷ KSC-BC-2023-10, 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.

¹⁸ Bahtijari Reply on Classification Request, paras 9-10.

28 November 2024.¹⁹ Accordingly, the Bahtijari Defence requests that the Plea Agreements remain confidential until 2 December 2024.²⁰

8. On 25 November 2024, the Shala Defence responded to the Bahtijari Request for Expedited Proceedings (Shala Response to Bahtijari Request for Expedited Proceedings).²¹ The Shala Defence submits that it concurs with shortening the deadlines for the sentencing procedure and agrees with providing written submissions on sentencing.²² Additionally, the Shala Defence invites the Panel to rule on the procedure and the deadlines for submissions on sentencing expeditiously to allow the Defence adequate time to prepare.²³

II. APPLICABLE LAW

9. The Panel notes Articles 40(2) and 44(5) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 82, 91(3), 92-94 and 163 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules).

III. ANALYSIS

A. ADMISSION OF GUILT AND PLEA AGREEMENTS

10. Bearing in mind that the Parties refer in the Plea Agreements and related filings to Rules 92-94 of the Rules, and noting that this is the first time said Rules are applied

¹⁹ Bahtijari Reply on Classification Request, paras 11, 13-16.

²⁰ Bahtijari Reply on Classification Request, paras 12, 17.

²¹ KSC-BC-2023-10, F00610, Shala Defence, *Response to F00604 Bahtijari Application on Timetable for Sentencing*, 25 November 2024, confidential.

²² Shala Response to Bahtijari Request for Expedited Proceedings, paras 4-5.

²³ Shala Response to Bahtijari Request for Expedited Proceedings, paras 6-7.

at the Specialist Chambers (SC), the Panel finds it necessary to give its interpretation of the applicable legal framework on this issue.

11. At the outset, the Panel notes that Rules 92-94 of the Rules provide for two distinct abbreviated trial proceedings.

12. On the one hand, Rules 92(2)(c)-(d) and 93 of the Rules provide that an accused person may admit guilt in respect to all or some of the charges brought by the SPO at his or her initial appearance before the Pre-Trial Judge or within 30 days thereof (Admission of Guilt Proceedings).²⁴ Rule 124(3) of the Rules further affords the accused the opportunity to confirm his or her initial plea at the opening of the case. Under Rule 93 of the Rules, if the accused admits guilt, upon transmission of the case to the Trial Panel, (i) the SPO may amend or withdraw the charge(s), propose a specific sentence or sentencing range, or not oppose the specific sentence or sentencing range proposed by the defence (Rule 93(2) of the Rules); and subsequently, (ii) the Trial Panel may pronounce a finding of guilt and set a date for the sentencing hearing, as soon as practicable, if, after hearing the accused, it is satisfied that the criteria set forth in Rule 93(3)(a)-(e) of the Rules are met.²⁵ Where the Trial Panel is not satisfied that the conditions set out in Rule 93(3) of the Rules are met, it shall consider the admission of guilt as not having been made and shall order that the proceedings be continued under the ordinary procedure provided by the Law and the Rules.²⁶

13. On the other hand, under Rule 94 of the Rules, the SPO and the defence may, at any time before the closing of the case, and preferably before the opening of the case,

²⁴ See also Article 39(5) of the Law.

²⁵ Rule 93(3) of the Rules reads: "The Trial Panel assigned by the President may pronounce a finding of guilt and set a date for the sentencing hearing, as soon as practicable, if, after hearing the Accused, it is satisfied that: (a) the admission of guilt is voluntarily made; (b) the Accused understands the nature and the consequences of the admission of guilt; (c) the admission of guilt is unequivocal; (d) there is sufficient factual basis establishing the essential facts that are required to prove the crime and the participation of the Accused; and (e) the interests of justice are duly taken into account".

²⁶ Rule 93(5) of the Rules.

reach a written plea agreement regarding: (i) the charges, including the accused's participation in the crime(s) charged and mode(s) of liability; (ii) a specific sentence or sentencing range, as appropriate; and (iii) reparations (Plea Agreement Proceedings). Notably, Rule 94(2) of the Rules makes clear that these elements are part and parcel of an agreement between *both* Parties. The assigned Trial Panel may approve the plea agreement if it is satisfied that the criteria set out in Rule 94(5) of the Rules are met.²⁷ The Trial Panel may also propose amendments for consideration to the Parties in accordance with Rule 94(6) of the Rules. Where the Trial Panel is not satisfied that the conditions of Rule 94(5) of the Rules are met, it shall consider the plea agreement as not having been made and order that the proceedings be continued under the ordinary procedure provided by the Law and the Rules.²⁸ Rule 94(8) of the Rules further stipulates that the Trial Panel's decision approving the plea agreement shall have the force and effect of a final judgment and shall only be subject to the reopening of criminal proceedings pursuant to Article 48 of the Law and Rule 187 of the Rules.

14. Comparing the wording of Rules 92-93 and Rule 94 of the Rules, it is clear that the two proceedings bear significant differences, such as the stage of the proceedings in which the accused can enter a guilty plea or a plea agreement, the role of the Parties, the function of the Trial Panel, the procedure to be followed as well as the legal effect of the Trial Panel's decision.

15. More specifically, under Rules 92(2)(c)-(d) and 93 of the Rules, the accused person may admit guilt at the initial appearance or thirty (30) days after the initial

²⁷ Rule 94(5) of the Rules reads: "The Trial Panel may approve the plea agreement, if it is satisfied that: (a) Specialist Counsel has discussed the terms of the plea agreement with the Accused; (b) the Accused understands the terms of the plea agreement; (c) the Accused admits facts in respect of the charges contained in the plea agreement and has agreed to the plea agreement voluntarily, without threats or coercion; (d) the Accused understands the consequences of the plea agreement and waives his or her right to be tried under the ordinary trial procedure; (e) there is sufficient factual basis establishing the essential facts that are required to prove the crime and the participation of the Accused; and (f) the interests of justice are duly taken into account".

²⁸ Rule 94(7) of the Rules.

appearance before the Pre-Trial Judge. In the view of the Panel, Rule 124(3) of the Rules affords the accused a last opportunity to confirm his or her initial plea at the opening of the case. Accordingly, an accused person could, at the latest at the opening of the case, admit guilt. In that case, Rule 93 of the Rules would apply. Conversely, a plea agreement between the Parties under Rule 94 of the Rules may be presented at any time before the closing of the case, thus well into the trial stage.

16. In addition, Rules 92(2)(c)-(d) and 93 of the Rules provide an accused person with the possibility to admit unilaterally his or her guilt without any prior discussion or agreement with the SPO. Conversely, a plea agreement under Rule 94 of the Rules requires the explicit and comprehensive agreement of the SPO and the accused person on the charges, a specific sentence or sentencing range, and on reparations (“the plea agreement *shall* contain”).²⁹

17. Moreover, under Rule 93(2)-(3) of the Rules, in case the Trial Panel enters a finding of guilt, it shall set a date for a sentencing hearing in order to determine the appropriate sentence to be imposed on the accused.³⁰ While the SPO or the defence may propose a specific sentence or sentencing range, they are not obliged to do so. Importantly, under Rule 93 of the Rules, the Parties may or may not reach an agreement on a specific sentence or sentencing range, but such agreement is in any case not binding on the Trial Panel. Thus, under Rule 93 of the Rules, the initial sentencing proposal is not the product of negotiation between the Parties, but of the initiative from either side. Conversely, Rule 94 of the Rules, which foresees the sentencing as part of the plea agreement, does not provide for a sentencing hearing. Most importantly, given that under Rule 94 of the Rules the Trial Panel can either approve, reject or propose amendments to the plea agreement, the Trial Panel cannot in the context of Plea Agreement Proceedings impose on the accused a sentence

²⁹ See Rule 94(2) of the Rules (emphasis added).

³⁰ Regarding the sentencing procedure under Rule 93 of the Rules, see also Rule 162(3) of the Rules.

different than the one agreed to by the Parties or one falling outside the agreed sentencing range.

18. Furthermore, while Rule 93 of the Rules, read together with Rules 162 and 164 of the Rules, obliges the Panel to issue a Sentencing Judgment which can be appealed in accordance with Articles 46-47 of the Law, Rule 94 of the Rules excludes the accused and the SPO from appealing the Trial Panel's decision under Articles 46-47 of the Law.

19. In the present case, the Panel observes that, throughout the Plea Agreements and related filings, the Parties make reference to Rules 92, 93 and 94 of the Rules, conflating elements of the Admission of Guilt Proceedings and Plea Agreement Proceedings.³¹

20. In order for the Panel to properly conduct its assessment under Rule 94 of the Rules, it orders the Parties, as applicable, to submit a revised version of each plea agreement, complying with the requirements of Rule 94(2)(a)-(b), (5) and (8) of the Rules, as discussed above. In particular, the Parties shall: (i) refer to the proper legal basis for plea agreements; and (ii) comply with Rule 94(8) of the Rules which excludes the Parties from pursuing appellate remedies.

21. As regards in particular the plea agreement of Mr Bahtijari, the Panel clarifies that an agreement on "the imposition of a sentence of imprisonment within what is statutorily available under the [SC] framework"³² does not meet the criteria set forth in Rule 94(2)(b) of the Rules. Accordingly, in addition to the above, the Panel orders the SPO and Bahtijari Defence to include in the revised plea agreement of Mr Bahtijari a specific sentence or sentencing range in compliance with Rule 94(2)(b) of the Rules.

22. The Parties shall submit the revised versions of the Plea Agreements **by no later than Friday, 6 December 2024, at 16:00**. The Parties shall inform the Panel by the same

³¹ See for example Annexes 1-3 to the Plea Agreements, paras 1, 3, 12; Annexes 1-2 to the Plea Agreements, para. 19(f); Annex 3 to the Plea Agreements, para. 19(c).

³² See Annex 3 to the Plea Agreements, para. 11.

deadline in case they were not in a position to reach an agreement for each of the Accused. In such a case, the remaining deadlines prescribed in the present decision will not apply.

23. In addition, the Panel has taken note of the SPO's agreement with the Accused to dismiss, at the time of acceptance of the Plea Agreements by the Panel, the remaining charges against the three Accused.³³ However, the Panel underlines that under Rule 91(3) of the Rules the SPO may withdraw charges *as part of* a plea agreement (emphasis added). Accordingly, the Panel orders the SPO to submit a revised indictment, withdrawing Count 1 as well as the relevant facts and allegations, taking into account the terms of the revised plea agreements. The SPO shall file said indictment by no later than **Friday, 6 December 2024, at 16:00**. The submission of a revised indictment is without prejudice to the SPO's right to reinstate the withdrawn charges, in the event the Panel does not approve one or more of the revised plea agreements.

B. SUBMISSIONS ON SENTENCING

24. The Panel notes that, contrary to Rule 93 of the Rules,³⁴ Rule 94 of the Rules does not foresee a separate procedure on sentencing. In the Panel's view, the Rules militate in favour of pronouncing the sentence at the same time as the Panel's decision under Rule 94(8) of the Rules in case the Panel approves any plea agreement(s), rather than having a separate procedure after said decision.

25. In light of the foregoing, in the event that the Panel approves any plea agreement(s), the Panel will determine the appropriate sentence with the pronouncement of the Panel's decision under Rule 94(5) and (8) of the Rules.

³³ See Annexes 1-2 to the Plea Agreements, para. 18(c); Annex 3 to the Plea Agreements, para. 17(b).

³⁴ See further Rule 162(3) of the Rules.

26. That being said, the Rules do not preclude the Parties from presenting information or evidence that will assist the Panel in determining the appropriate sentence within the range eventually proposed by the Parties. In this respect, the Panel notes that the SPO, the Bahtijari Defence and the Shala Defence have indicated that they are in favour of proceeding with submitting observations on sentencing expeditiously.³⁵

27. Accordingly, the Panel instructs the Parties, should they wish to do so, to file written submissions addressing matters related to sentencing and to present any related information or evidence on sentencing, by no later than **Friday, 6 December 2024, at 16:00**. Such information or evidence, if any, are to be attached as annex(es) to the written submissions. The Parties' submissions and evidence should address the following matters: (i) any mitigating and aggravating circumstances, as set out in Article 44(5) of the Law and Rule 163(1) of the Rules; and (ii) any other relevant information that may assist the Panel in determining an appropriate sentence.

C. OTHER SUBMISSIONS

28. The Panel instructs the Parties, should they wish to do so, to file written submissions with regard to any issue they deem relevant as set out in Rule 94(5) of the Rules by no later than **Friday, 6 December 2024, at 16:00**.

29. In addition, the SPO is instructed to provide, by the same deadline, submissions on the matters specified in the Annex attached to the present decision.

³⁵ Bahtijari Request for Expedited Proceedings, paras 8, 12-16; SPO Response to Bahtijari Request for Expedited Proceedings, para. 2; Shala Response to Bahtijari Request for Expedited Proceedings, paras 5-6.

D. CLASSIFICATION OF PLEA AGREEMENTS

30. In view of the Panel's request to the Parties to submit a revised version of each plea agreement in compliance with the requirements of Rule 94 of the Rules, the Panel finds it appropriate to maintain at this stage the confidentiality of the plea agreement proceedings.

31. Accordingly, the Panel grants, in part, the Bahtijari Classification Request.

E. SCHEDULING OF PLEA HEARINGS

32. The Panel decides to convene hearings on plea proceedings starting on **Wednesday, 18 December 2024, at 09:30**. The hearings will continue on **Thursday, 19 December 2024**, if need be.

33. The Panel will provide further directions on the agenda of said hearings in due course, including on whether an additional (fourth) session (16:30-18:00) will be organised.

IV. DISPOSITION

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

- a. **ORDERS** the Parties, as applicable, to submit **by no later than Friday, 6 December 2024, at 16:00**, a revised version of each plea agreement, in accordance with the Panel's instructions in paragraphs 20-22;
- b. **ORDERS** the SPO to file a revised indictment **by no later than Friday, 6 December 2024, at 16:00**, in accordance with paragraph 23;
- c. **INSTRUCTS** the Parties, should they wish to do so, to file written submissions addressing matters related to sentencing and to present any

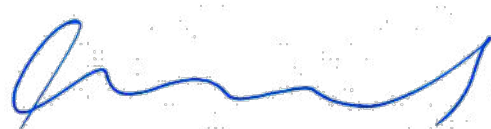
- information or evidence on sentencing by no later than **Friday, 6 December 2024, at 16:00**, in accordance with the Panel's instructions in paragraph 27;
- d. **INSTRUCTS** the Parties, should they wish to do so, to file written submissions with regard to any issue they deem relevant as set out in Rule 94(5) of the Rules **by no later than Friday, 6 December 2024, at 16:00**;
- e. **INSTRUCTS** the SPO to provide submissions on the matters specified in the Annex attached to the present decision **by no later than Friday, 6 December 2024, at 16:00**;
- f. **GRANTS** the Bahtijari Classification Request, in part, and **DECIDES** to maintain the confidentiality of the plea agreement proceedings, until further notice; and
- g. **DECIDES** to convene hearings on plea proceedings starting on **Wednesday, 18 December 2024, at 09:30** and that the hearings will continue, if need be, on **Thursday, 19 December 2024**.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Friday, 29 November 2024

At The Hague, the Netherlands.