

**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:** Dr Fidelma Donlon

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

**Date:** 17 January 2025

**Language:** English

**Classification:** Public

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**Publicly redacted version BAHTIJARI Request to submit further report  
with one confidential annex**

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**Specialist Prosecutor's Office**

Kimberley P. West

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Jonathan Rees KC

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## I. INTRODUCTION

1. Pursuant to Article 44 of the Law on Specialist Chambers and Specialist Prosecutor's Office ('the *Law*') and Rule 162 of the Rules of Procedure and Evidence ('the *Rules*'), the Defence for Ismet Bahtijari ('the Defence') hereby respectfully requests that Trial Panel I ('the Panel') take into consideration the additional report [REDACTED] when determining an appropriate sentence for Mr Bahtijari.
2. It relates to a very short issue on the prosecution suggestion [REDACTED] to support the conclusion that Mr Bahtijari has a disease and his drinking is not voluntary.
3. We note that the plea agreement agrees a maximum of 2 years imprisonment and, if two thirds time is applicable, then Mr Bahtijari is due for release on 5 February 2025 so we respectfully request a very short timetable for responses and replies.

## II. PROCEDURAL HISTORY

4. On 5 October 2023, Mr Bahtijari was arrested in Kosovo and transferred to the KSC Detention Unit on 6 October 2023.<sup>1</sup>
5. On 13 November 2024, Mr Bahtijari signed the first plea agreement.<sup>2</sup>
6. On 29 November 2024, the Panel ordered, inter alia, the Parties to present any information or evidence on sentencing.<sup>3</sup>

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<sup>1</sup> F00021, *Report on the Arrest and Transfer of Ismet Bahtijari to the Detention Facilities*, 9 October 2023 (confidential). Public redacted version (F00021/RED) filed on the same day.

<sup>2</sup> F00596/COR, *Annex 3 to Corrected version of 'URGENT Prosecution notification of plea agreements*, 14 November 2024, confidential.

<sup>3</sup> F00612, *Decision on Matters Related to Plea Proceedings*, 29 November 2024, confidential, para. 27.

7. On 4 December 2024, Mr Bahtijari signed the amended plea agreement.<sup>4</sup>
8. On 6 December 2024, the Defence filed its written submissions on sentencing together with the relevant information,<sup>5</sup> [REDACTED]
9. On 16 December 2024, Mr Bahtijari signed the further amended plea agreement.<sup>6</sup>
10. On 19 December 2024, the Defence made additional oral submissions on sentencing.<sup>7</sup>
11. On the same day, the Panel clarified that it is not in a position to rule on plea agreements or sentencing until it receives the report on victim participation due 20 January 2025 and the Parties' observations due 27 January 2025.<sup>8</sup>
12. On 8 January 2025, the Defence received from Professor Henry 'Harry' Kennedy a supplementary psychiatric report on Mr Bahtijari dated 7 January 2025.

### III. SUBMISSIONS

The Report may assist the Panel.

13. The Report is a short and limited supplement to the original report. It clarifies whether Mr Bahtijari's [REDACTED]
14. This information is relevant to the determination of Mr Bahtijari's degree of culpability. It is the Defence's position that his [REDACTED]

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<sup>4</sup> F00596/COR, *Annex 3 to Corrected version of 'URGENT Prosecution notification of plea agreements*, 14 November 2024, confidential. F00379/A01, *Confirmed Amended Indictment*, 10 July 2024, confidential. Public redacted version filed as F00379/A03.

<sup>5</sup> F00620/COR, *Corrected Version of BAHTIJARI Submissions on Sentencing with three confidential annexures*, 6 December 2024, confidential. Public redacted version (F00620/RED) filed on 18 December 2024.

<sup>6</sup> F00628/A01, *Annex 1 to URGENT Joint Submissions on Plea Agreement with confidential annex 1*, 16 December 2024, confidential.

<sup>7</sup> Transcript of Plea Agreement Hearing, 19 December 2024, confidential, pp. 566-574 (private session), 575-579 (open session), 587-588 (private session), 588-589 (open session).

<sup>8</sup> Transcript of Plea Agreement Hearing, 19 December 2024, public, p. 603, lns 18-24.

15. [REDACTED]
16. In the Report, [REDACTED]
17. This, in turn, confirms that it is treatment, not imprisonment, that is needed for Mr Bahtijari's rehabilitation.<sup>9</sup> A lenient sentence would be the one in keeping with the purpose of punishment.<sup>10</sup>

The Panel has the discretion to consider the Report

18. Mr Bahtijari agreed to admit guilt pursuant to Rule 94 of the *Rules*. Within the statutory framework of the Specialist Chambers, the procedural timeline for sentencing based on a Rule 94 plea is not specifically regulated. Whereas the *Rules* 'do not preclude the Parties from presenting information or evidence that will assist the Panel in determining the appropriate sentence' within the proposed range in the Rule 94 plea agreement,<sup>11</sup> the management of this process falls under the Panel's broad discretion to ensure a fair and expeditious conduct of the proceedings.<sup>12</sup>
19. The rules on submission of information for sentencing in other conviction scenarios offer a helpful yardstick that could assist with the Panel's exercise of its discretion.
20. Pursuant to Rule 162(1), the Defence may submit any relevant information that may assist the Panel in determining an appropriate sentence 'within fifteen (15)

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<sup>9</sup> See, *Australia, R v. Fernando* [1992] 76 A CRIM R 58 at 62-63 (Judge Wood emphasising the need to consider 'more subtle remedies' than imprisonment such as rehabilitation orders due to the recognition of alcohol abuse and offending). See also, F00620/COR, *Corrected Version of BAHTIJARI Submissions on Sentencing with three confidential annexures*, 6 December 2024, confidential, para. 64.

<sup>10</sup> *Criminal Code of the Republic of Kosovo 2019* (Code No. 06/L-074), Articles 38(1) (providing that the punishment should serve the purpose of rehabilitation, deterrence, retribution and protection of society) and 71(1.2) (providing that the court may impose a punish below the statutory limit when particular mitigating circumstances indicate that the purpose of punishment can be achieved by imposing a lesser punishment), applied pursuant to the *Law*, Article 44(4).

<sup>11</sup> F00612, *Decision on Matters Related to Plea Proceedings*, 29 November 2024, confidential, para. 26.

<sup>12</sup> Article 40(2).

days of the Trial Judgment'. This timeline applies *mutatis mutandis* to admission of guilt under Rule 93.<sup>13</sup> After the last submission on sentencing from the Parties, the Panel has thirty days to deliberate and pronounce the sentencing judgment.<sup>14</sup> Where the circumstance requires, this can be extended by up to thirty days.<sup>15</sup>

21. The Defence is seeking the submission of the Report at the earliest practicable moment after taking instructions from Mr Bahtijari. There is time for the Panel to consider both the Report and any observations the SPO may supply. Given the brevity and the supplementary nature of the Report, the present request, if granted, would not jeopardise the expeditiousness of the proceedings.
22. On the other hand, it is crucial for the Panel to benefit from [REDACTED] It would contribute meaningfully to the fairness of the proceedings and the fairness of the sentence that the Panel may impose.

#### IV. RELIEF SOUGHT

23. In light of the above, the Defence respectfully requests that the Panel accept the submission of the [REDACTED] and take it into account in the sentencing of Mr Bahtijari.

#### V. CLASSIFICATION

24. This document is filed as confidential at this stage. A publicly redacted version will be filed forthwith.

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<sup>13</sup> Rule 162(3).

<sup>14</sup> Rule 164(1).

<sup>15</sup> Rule 164(1).

Word count: 1517

A handwritten signature in black ink, appearing to read 'Felicity Gerry', with a long, sweeping underline that extends to the right.

**Dr Felicity Gerry KC**  
**Counsel for Mr Bahtijari**

17 January 2025

At London, the United Kingdom