

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: 22 January 2025

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**Publicly redacted version BAHTIJARI REPLY TO REGISTRY AND SPO
ON REVIEW OF DETENTION AND HUMANITARIAN RELEASE**

Specialist Prosecutor's Office

Kimberley P. West

Counsel for Sabit Januzi

Jonathan Rees KC

Huw Bowden

Counsel for Ismet Bahtijari

Felicity Gerry KC

Marion Carrin

Counsel for Haxhi Shala

Toby Cadman

John Cubbon

I. INTRODUCTION

1. The Defence for Mr Ismet Bahtijari ('the Defence') hereby submits this reply on limited issues to both the Registry and the Specialist Prosecutor's Office ('SPO') in relation to the request for Mr Bahtijari's review of detention and release on humanitarian grounds.

II. PROCEDURAL HISTORY

2. On 6 January 2025, the SPO requested for continued detention of Mr Bahtijari.¹
3. On 10 January 2025, the Defence filed its submissions on detention which included a request for Mr Bahtijari's release on humanitarian grounds ('Request').²
4. On 15 January 2025, the Panel ordered responses by the Registry and the SPO to the Request, noting that the Defence should have filed the Request separately.³
5. On 17 January 2025, the SPO responded to the Defence submissions on detention review.⁴
6. On 16 January 2025, the Registry responded to the [REDACTED] raised in the Defence Request.⁵
7. On 21 January 2025, the SPO responded to the request for release on humanitarian grounds.⁶

¹ F00636, Prosecution submission pertaining to periodic detention review of Ismet Bahtijari, 6 January 2025, public.

² F00637, BAHTIJARI Submissions on detention review and request for release on humanitarian grounds, 10 January 2025, confidential.

³ F00639, Order for Submissions in Relation to F00637, 15 January 2025, confidential.

⁴ F00645, Prosecution reply to Bahtijari's submissions on detention review, 17 January 2025, confidential.

⁵ F00643, Registrar's Submissions on Bahtijari Request for Release on Humanitarian Grounds (F00637), 16 January 2025, confidential.

⁶ F00649, Prosecution response to Bahtijari humanitarian release request, 21 January 2025, confidential.

8. On 17 January 2025, the Defence submitted an addendum report [REDACTED]

III. SUBMISSIONS

9. Submissions on behalf of Mr Bahtijari on review of detention and release on humanitarian grounds are maintained.
10. The SPO response on Mr Bahtijari's continued detention is disputed, in the terms previously set out.
11. The admonishment by the Panel to the Defence to file a response to the review of detention and the request for release on humanitarian grounds separately is accepted.⁷ However, it is submitted that the humanitarian issues raised should be taken into account in the review of detention: Plainly, Mr Bahtijari is not a flight risk and not going to commit further offences nor interfere with anyone.⁸ He has served over a year in prison with significant [REDACTED] consequences for himself and his family. He needs to go home.
12. The Defence for Mr Bahtijari is very grateful to the Registry for indicating it will fund [REDACTED] Whilst the standard funding is not enough, the Defence hopes to keep costs to a minimum.
13. The Defence have been engaging in the exercise of identifying further expert evidence:
 - a. Funded by the Registry, the Defence have had [REDACTED] translated into English and Albanian, with two invoices submitted and one invoice to be submitted.
 - b. The Defence has filed an addendum report [REDACTED] provided *pro bono*.

⁷ F00639, Order for Submissions in Relation to F00637, 15 January 2025, confidential, paras 5-6.

⁸ See also, Transcript of Plea Agreement Hearing, 19 December 2024, p. 575, lns 14-21 (open session) and p. 588, ln. 20 – p. 589, ln. 2 (open session); F00620/COR, Corrected Version of BAHTIJARI Submissions on Sentencing with three confidential annexures, 11 December 2024, confidential, para. 63.

Mindful of its duty to manage the Defence funding, the Defence welcomes the generosity of [REDACTED]

- c. As of the time of this filing, the Defence is awaiting [REDACTED] The Defence assumes the delay has been caused by the seasonal break.
 - d. The Defence has actively sought to identify [REDACTED] The Defence regrets the length of pre- trial [REDACTED] litigation and that the Trial Panel was left to make the decision upon the transmission of the dossier [REDACTED]. However, as soon as the decision was rendered by the Trial Panel on 7 October, the Defence acted to obtain the evidence it has thus far been able to provide.
 - e. The Defence has managed to progress the production of relevant information notwithstanding the events relating to the plea agreements since early November 2024, which, to a certain extent, have overtaken much of the Defence resources and preparation for trial.⁹
 - f. The defence has not criticised[REDACTED] save for the apparent delay from October 2023 to January 2024 [REDACTED].
 - g. Mr Bahtijari struggles to use the SEDs system and the requirements to make requests himself but we usually manage to surmount these restrictions.
 - h. A recent refusal to provide an allowance for special food for Mr Bahtijari by the Registry was disappointing but Mr Bahtijari's family have scraped together money to assist him.
14. We anticipate that the Registry is already efficiently making plans for Mr Bahtijari's release given that the two -year sentencing option on two thirds service is imminent so release arrangements on humanitarian grounds or by way

⁹ See, F00587, Joint Submission regarding Rule 94, 11 November 2024, paras 1-2.

of review of detention will be manageable within the Registrar's usual abilities.

15. The SPO seems to imply that release on humanitarian grounds has not been applied to or is inapplicable to situations unrelated the death of a family member.¹⁰ This not only places a baseless restriction on the Panel's statutory discretion but also overlooks the wealth of jurisprudence domestically and internationally to the contrary.¹¹ For instance, in *Milutinović et al.* while awaiting judgment, the Trial Chamber granted Milan Milutinović release on humanitarian grounds for him to 'attend to urgent and serious medical needs' in his home city.¹² The Chamber deviated from the typical period of three to five days and granted the requested duration as it is 'proportional to the health circumstances faced by the Accused'.¹³ Evidently, it is within the Panel's discretion to rule on the requested release on a case-by-case basis.
16. The SPO's contention that the [REDACTED]
17. This should not be construed as a comment on – let alone a criticism of – the adequacy of the Host State's healthcare standards at large.¹⁴ Indeed, medical release from the Netherlands to the defendant's home country have been granted, including extreme cases where the sufficiency of the treatment received

¹⁰ F00649, Prosecution response to Bahtijari humanitarian release request, 21 January 2025, confidential, paras 2-3.

¹¹ *Strugar*, IT-01-42-A, Decision on defence request seeking provisional release on the grounds of compassion, 2 April 2008, para. 12 ('the Appeals Chambers has concluded that special circumstances related to humane and compassionate considerations exist where there is an acute justification, such as the applicant's medical need or a memorial service for a close family member.') and the sources cited therein.

¹² *Milutinović et al.*, IT-05-87-T, Decision on Milutinović Motion for Temporary Provisional Release, 5 September 2008.

¹³ *Milutinović et al.*, IT-05-87-T, Decision on Milutinović Motion for Temporary Provisional Release, 5 September 2008, para. 21.

¹⁴ Cf. F00643, Registrar's Submissions on Bahtijari Request for Release on Humanitarian Grounds (F00637), 16 January 2025, confidential, paras 6-8; F00649, Prosecution response to Bahtijari humanitarian release request, 21 January 2025, confidential, para. 4.

at the detention facilities in The Hague is deemed irrelevant.¹⁵ Simply put, a decision to release Mr Bahtijari on humanitarian grounds is not hinged upon the superiority of Kosovan or Dutch healthcare.

IV. CONCLUSION

18. The Defence respectfully submits the above to assist the Panel and reiterates its request for Mr Bahtijari's release to Kosovo immediately. It remains at the Panel's disposal should the Panel require further information to rule on the duration and/or modality of the release.

V. CLASSIFICATION

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

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Dr Felicity Gerry KC
Counsel for Mr Bahtijari

¹⁵ *Hadžić*, IT-04-75-AR65.1, Decision on Urgent Interlocutory Appeal from Decision on Defence Urgent Request for Provisional Release, 13 April 2015, para. 16 ('the Trial Chamber failed to sufficiently address the issue at the heart of its consideration of compelling humanitarian factors, namely, whether an accused with a limited life expectancy may, as a humanitarian matter, be provisionally released to his family while his trial remains adjourned, **irrespective of the sufficiency of the treatment received at the UNDU**') (emphasis added). See also, *Šešelj*, IT-03-67-T, Order on the Provisional Release of the Accused *Proprio Motu*, 6 November 2014, p. 3 (ordering provisional release of Vojislav Šešelj to allow him 'to receive treatment in **the most suitable environment**') (emphasis added).

22 January 2025

At London, the United Kingdom