

In: KSC-BC-2023-10
The Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala

Before: **The President of the Kosovo Specialist Chambers**
Judge Ekaterina Trendafilova

Registrar: Dr Fidelma Donlon

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

Date: 6 February 2025

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**(Publicly redacted version)BAHTIJARI REQUEST TO THE PRESIDENT FOR
EARLY RELEASE**

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Article 51(2) of the Law on the Law on the Specialist Chambers and Special Prosecutor's Office ('the *Law*'), Rule 196(2) of the Rules of Procedure and Evidence ('the *Rules*') and Article 3(4) on the Practice Direction on Commutation of Sentences ('the *Practice Direction*'), the Defence for Ismet Bahtijari ('the Defence') hereby requests the President of the Specialist Chambers to commute Mr Bahtijari's sentence of 2 years imprisonment, two thirds of the said sentence having been served on 5 February 2025.
2. This is also a request to shorten the timetable to enable his release immediately.
3. This request was made on 4 February 2025 and has been resubmitted today at the Panel request.

II. PROCEDURAL HISTORY

4. On 5 October 2023, Mr Bahtijari was arrested in Kosovo and transferred to the KSC Detention Unit on 6 October 2023.¹
5. On 13 November 2024, Mr Bahtijari entered the Plea Agreement.²
6. On 3 December 2024, Mr Bahtijari signed an amended Plea Agreement that was filed on 6 December 2024.³

¹ KSC-BC-2023-10, 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.

² KSC-BC-2023-10, F00596/COR, *Annex 3 to Corrected version of 'URGENT Prosecution notification of plea agreements*, 14 November 2024, confidential.

³ KSC-BC-2023-10, F00618, *URGENT Prosecution submissions on plea agreements and sentencing with confidential annexes 1-3*, 6 December 2024, confidential, with Annex 3.

7. On 6 December 2024, the Defence filed submissions on sentencing with three confidential annexes.⁴
8. On 16 December 2024, a further amended Plea Agreement was jointly filed.⁵
9. On 19 December 2024, the Defence presented oral submissions on sentencing requesting immediate release.⁶
10. On 4 February 2025, Trial Panel I ('the Panel') delivered its oral ruling on the Plea Agreement and the sentencing of Mr Bahtijari. Mr Bahtijari was declared guilty of Counts 1 and 2 of the charges as expressed in the revised indictment and was consequently sentenced to 2 years imprisonment.⁷
11. During the same hearing, the Panel recalled Rule 196(2) of the Rules, authorising commutation of a sentence after the imprisoned person has served two thirds (2/3) of the sentence.⁸
12. Mr Bahtijari has been detained for 14 months since his arrest on 5 October 2023. Having been sentenced to 2 years imprisonment, he has therefore served two thirds of the sentence.

I. APPLICABLE LAW

A. Legal Basis

13. Pursuant to Article 51(2) of the Law:

⁴ KSC-BC-2023-10, F00620, Bahtijari Defence, *Bahtijari Submissions on Sentencing with three confidential annexures*, 6 December 2024, confidential.

⁵ KSC-BC-2023-10, F00628, *Urgent Joint Submission of Plea Agreement with confidential Annex 1*, 16 December 2024, confidential ('F00628').

⁶ KSC-BC-2023-10, *Transcript of Plea Agreement Hearing*, 19 December 2024.

⁷ KSC-BC-2023-10, *Decision on Plea Agreements Hearing*, Transcript, 4 February 2025, pp. 611-619.

⁸ *Ibid.*, p. 618, lns 15-18.

‘The length of sentence may only be modified, altered or commuted by the Specialist Chambers or Agreed Arrangement if in place for that purpose in accordance with Article 60 (Residual Mechanism). The Specialist Chambers, or Agreed Arrangement accordingly, shall request notification from the State concerned if, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for commutation of sentence. There shall only be commutation of sentence if the President of the Specialist Chambers, in consultation with the Specialist Chambers Judges, so decides **on the basis of the interests of justice and the general principles of law.**⁹

14. Pursuant to Rule 196(1) of the Rules, *‘the President shall have the right to commute any sentence, and shall decide on the matter after having heard the imprisoned person and upon consultation with the Judges.’*

15. Besides, Rule 196(2) of the Rules specifies that:

‘After the imprisoned person has served two thirds (2/3) of the sentence, [...] the President shall review the sentence to determine whether it should be commuted.’

16. Rule 196(3) sets out 11 factors that the President shall take into account when reviewing a sentence pursuant to Article 8 of the Practice Direction.

17. Finally, pursuant to Article 10 of the Practice Direction, the President may modify or alter a sentence, in accordance with Article 51(2) of the Law, if he or she finds that a commutation of sentence is not appropriate.

⁹ Emphasis added.

B. Procedure

18. Pursuant to Article 3(4) of the Practice Direction:

‘A Convicted Person may file a request for the commutation of sentence, where he or she believes to be eligible therefor. In such a case, the Specialist Chambers shall request the State of Enforcement to notify the Specialist Chambers whether the convicted person is eligible for commutation of sentence under the domestic laws of the State concerned.’

19. Articles 4 to 6 of the Practice Directions provide the steps to be taken in the review of a sentence in terms of information of the President and the convicted person and consultation with the Judges.

20. Finally, Article 11(1) of the Practice Direction sets out a list of conditions that the President may impose when modifying or altering a sentence.

II. SUBMISSIONS

21. The Defence submits that Mr Bahtijari, having served two thirds of his sentence of imprisonment, is eligible for commutation of sentence, or if not appropriate, modification or alteration of sentence. The review of the factors enshrined in Rule 196(3) the Rules demonstrates that, as a result, Mr Bahtijari should be released immediately and without delay.

A. The examination of the criteria set out by Rule 196(3) of the Rules demonstrates that Mr Bahtijari needs immediate release

i. *Mr Bahtijari's conduct while in detention shows a genuine dissociation from the crime he has been sentenced for*¹⁰

22. Mr Bahtijari has displayed perfectly satisfactory behaviour while in detention, a fact that has never been opposed by the SPO. Moreover, Mr Bahtijari cooperated with the Prosecution and their investigators during and after his arrest. He has not wasted court time: he did not at any stage seek to suggest he had an alibi and signed the first plea agreement prior to the commencement of trial.¹¹ Credit should be given, not only to the very admission of guilt, but also to its timely intervention prior to the beginning of the trial and the testimony of witnesses, which demonstrates Mr Bahtijari's commitment to cooperate.

23. Besides, Mr Bahtijari has expressed genuine remorse during the hearing on plea agreement on 19 December 2024.¹²

24. Therefore, Mr Bahtijari's conduct while in detention shows his genuine dissociation from the crime he was convicted of.

ii. *Mr Bahtijari demonstrates rehabilitation*¹³

25. The Defence incorporates by reference its previous submissions and evidence of Mr Bahtijari's good character, integrity and care for other people.¹⁴ The

¹⁰ As set out in Rule 196(3)(a) of the Rules.

¹¹ KSC-BC-2023-10, F00596/A03, *Annex 3 to URGENT Prosecution notification of plea agreements*, 13 November 2024, confidential.

¹² KSC-BC-2023-10, *Transcript of Plea Agreement Hearing*, 19 December 2024, Open Session, pp. 590-591, lns 19-12.

¹³ As set out in Rule 196(3)(b) of the Rules.

¹⁴ KSC-BC-2023-10, F00620, *BAHTIJARI Submissions on Sentencing with three confidential annexures*, 6 December 2024, confidential, paras 29-31, with Annex 2, *Statement of Endrit Bahtijari*, 28 November 2024;

Defence also recalls the strength of Mr Bahtijari's ties with his family and community and a well-known and respectable figure of his hometown.

26. These circumstances demonstrate that Mr Bahtijari has real prospects for rehabilitation. Indeed, it is open to the Panel to conclude he is rehabilitated.

ii. *Mr Bahtijari shows serious prospect of resocialization and successful resettlement*¹⁵

27. The same above-mentioned factors and evidence equally militates for Mr Bahtijari's serious prospect of resocialization and successful resettlement. Mr Bahtijari, while in detention, has benefitted from the constant moral support of his family.

iii. *The crime Mr Bahtijari is guilty of does not show a gravity that would warrant his continued detention*¹⁶

28. The Defence recalls its submissions related to the gravity of the crime.¹⁷ The crimes under Counts 1 and 2 of the Revised Indictment are classified as offences against public order and the administration of justice. In assessing the danger or injury to the protected value, the Panel may consider the seriousness and permanence of the consequence. The offences in the present case did not have permanent or serious consequences for public order or the administration of justice: Mr Bahtijari's actions implicated a singular witness who later testified

Annex 2, *Statement of Lirim Bahtijari*, 29 November 2024; Annex 3, *Statement of Nazmi Bahtijari*, 29 November 2024; Annex 2, *Statement of Zurifete Bahtijari*, 29 November 2024; Annex 3, *Statement of Burim Zogu*, 29 November 2024; Annex 3, *Statement of Rrahim Imer Rexha*, 26 November 2024.

¹⁵ As set out in Rule 196(3)(c) of the Rules.

¹⁶ As set out in Rule 196(3)(d) of the Rules.

¹⁷ F00620, paras 26-27.

as intended. The course of justice was not diverted. Mr Bahtijari was no threat to safety and the functions of the Court were not interfered with.

29. Mr Bahtijari neither threatened nor harmed Witness 1, the basis of the Plea Agreement makes it clear that this was an offer of a benefit or gift. Apart from the 5 April visit, Mr Bahtijari had no other interaction with Witness in the context of the offences. Accepting the timing given to the whole of the group conduct, Mr Bahtijari's remaining misconduct is limited to a few phone contacts with Witness 1 and Mr Januzi, which occurred within the span of one week.

*iv. The treatment of similarly-situated prisoners militates for the early release of Mr Bahtijari*¹⁸

30. Considering the lesser role played by Mr Bahtijari in the commission of the crime, comparable cases of greater seriousness and with aggravating circumstances show that sentences tend to be shorter than 2 years.¹⁹ For example, in *Nzabonimpa and al.*,²⁰ defendants who bore lesser culpability to crimes of much graver significance were sentenced to time served, which did not exceed eleven months. The relevance being that parity could be achieved by immediate release, especially given what the Panel knows and has seen in relation to Mr Bahtijari's health and circumstances.

¹⁸ As set out in Rule 196(3)(e) of the Rules.

¹⁹ F00620, paras 55-57. *See also The Prosecutor v. Jean-Pierre Bemba and al.*, Trial Chamber VII, ICC-01/05-01/13-1989-Red, Judgment pursuant to Article 74 of the Statute, 19 October 2016, pp. 455-457; *Independent Counsel v. Hassan Papa Bangura and al*, Trial Chamber II, SCSL-11-02-0066, Judgment in Contempt Proceedings, 25 September 2012 paras. 70-101; *Independent Counsel v. Hassan Papa Bangura and al*, Trial Chamber II, SCSL-11-02-0071, Sentencing Judgment in Contempt Proceedings, 16 October 2012, paras. 92, 160, 678; *Prosecutor v. Yelena Rašić*, Written Reasons for Oral Sentencing Judgment, IT-98-32/1-R77.2, 6 March 2012, paras. 18, 31.

²⁰ *Nzabonimpa* Judgment, paras. 400.

*v. The release of Mr Bahtijari will not give rise to social instability*²¹

31. Mr Bahtijari is a private person of humble condition with no political involvement. His release will not affect the social situation and the public order in Kosovo. He will return to the life he previously lived, prior to his arrest and transfer, in his hometown, with his family and his community.

*vi. Mr Bahtijari has substantially cooperated with the SPO throughout his detention*²²

32. The Defence incorporates by reference the submissions made in Section IV(A)(i) of the present Request related to Mr Bahtijari's behaviour in detention and cooperation with the Prosecution during and after his arrest and transfer.

*vii. Mr Bahtijari has been exempted from compensating the victim given his lesser role in the offence*²³

33. Mr Bahtijari has not been in a position to assist in enabling the enforcement of the judgments and orders of the Specialist Chambers in other cases yet. However, it is worth noting that pursuant to the Oral Judgment delivered on 4 February 2025 by the Panel, Mr Bahtijari is the only convicted person who does not have to make any payments regarding reparation.²⁴ This position was supported by all the parties to the case.

²¹ As set out in Rule 196(3)(f) of the Rules.

²² As set out in Rule 196(3)(g) of the Rules.

²³ As set out in Rule 196(3)(h) of the Rules.

²⁴ KSC-BC-2023-10, *Decision on Plea Agreements Hearing*, Transcript, 4 February 2025, p. 617, lns 21-24.

viii. *There is currently no significant action to be taken by Mr Bahtijari for the benefit of the victim, nor is there any impact on the victim and his family as a result of the commutation of sentence*²⁵

34. Mr Bahtijari is ready to commit to not contact the victim in the case as the only action to be taken for the benefit of the said victim.

ix. *The individual circumstances of Mr Bahtijari, i.e. his worsening state of physical and mental health, render his immediate release necessary and urgent*²⁶

35. On numerous occasions, the Defence has elaborated on Mr Bahtijari's individual circumstances warranting immediate release from detention. If these individual circumstances have not enabled him to be released on humanitarian grounds, they still prevail and warrant the commutation of his final sentence.

36. Mr Bahtijari is the survivor of genocidal attacks that induced trauma and likely contributed to his [REDACTED].²⁷ Due to these traumatic experiences, Mr Bahtijari meets the diagnostic criteria for [REDACTED].

37. Even the SPO acknowledged that it was impossible not to be sympathetic with the medical conditions endured by Mr Bahtijari.²⁸

²⁵ As set out in Rule 196(3)(i) of the Rules.

²⁶ As set out in Rule 196(3)(j) of the Rules.

²⁷ KSC-BC-2023-10, F00620, *BAHTIJARI Submissions on Sentencing with three confidential annexures*, 6 December 2024, confidential, paras 32-35, with Annex 1, *Professor Kennedy's Report*, pp. 9-12, 42 and Annex 2, *Statement of Zurifete Bahtijari*, 29 November 2024, *Statement of Edona Tasholli*, 29 November 2024. KSC-BC-2023-10, *Transcript of Plea Agreement Hearing*, 19 December 2024, pp. 577-579; KSC-BC-2023-10, F00637, *BAHTIJARI Submissions on detention review and request for release on humanitarian grounds*, Confidential, 10 January 2025, paras 32-38. See also Sudie Back & Jennifer Jones, 'Alcohol Use Disorder and PTSD: An Introduction' (2018) 42(5) *Alcoholism Clinical & Experimental Research* 836, 836-838. See also Nathan Smith & Linda Cottler, 'The Epidemiology of Post-Traumatic Stress Disorder and Alcohol Use Disorder' (2018) 39(2) *Alcohol Research* 113.

²⁸ KSC-BC-2023-10, *Transcript of Plea Agreement Hearing*, 19 December 2024, p. 581, lns 21-22.

38. Besides, Mr Bahtijari suffers from acute health conditions that necessitate appropriate medical treatment. The Defence incorporates by reference the numerous submissions made on these health conditions impairing Mr Bahtijari's life and well-being.²⁹

39. Mr Bahtijari's age and health conditions, such as [REDACTED]. In this regard, he has already been required to undergo preventative treatments whilst in detention.³⁰

40. All of the medical examinations he would have to undergo in the future and the medical treatments he would have to take would be better administered, monitored and supported if Mr Bahtijari could be reunited with his family.

x. *The effects of Mr Bahtijari's detention on his family and their health conditions are additional factors establishing a clear and significant change of circumstances sufficient to justify the commutation of sentence*³¹

41. Mr Bahtijari's family has been increasingly suffering since his arrest and transfer in October 2023. His wife and daughters have [REDACTED] due to the stress of his arrest, detention and on-going uncertainty as to the perspective of his release.³² As submitted by the Defence during the Plea Agreement Hearing on 19 December 2024, 'he is needed home'.

²⁹ KSC-BC-2023-10, F00620, *BAHTIJARI Submissions on Sentencing with three confidential annexures*, 6 December 2024, confidential, paras 36-54; KSC-BC-2023-10, *Transcript of Plea Agreement Hearing*, 19 December 2024, pp. 570-575; KSC-BC-2023-10, F00637, *BAHTIJARI Submissions on detention review and request for release on humanitarian grounds*, Confidential, 10 January 2025, paras 39-51.

³⁰ Annex 1 to F00620, *Kennedy Report*, paras 49.1; 51.4; 57; 61; 67.7, 67.8, 88.1.

³¹ As set out in Rule 196(3)(k) of the Rules.

³² KSC-BC-2023-10, *Transcript of Plea Agreement Hearing*, 19 December 2024, pp. 567-570; KSC-BC-2023-10, F00637, *BAHTIJARI Submissions on detention review and request for release on humanitarian grounds*, Confidential, 10 January 2025, paras 52-59.

B. If the President deemed necessary to impose conditions on release, Mr Bahtijari would abide to any conditions imposed

42. Pursuant to Article 11 of the Practice Direction, when the President decides to modify or alter the sentence of a convicted person, conditions may be imposed. Such conditions may include the ones set out from Article 11(1)(a) to (h).

43. Although such conditions are not necessary in the present case, Mr Bahtijari would commit to respect them if the President considered necessary to attach them to the release.

C. The Decision on Mr Bahtijari's commutation of sentence should be rendered on an urgent basis

44. Given Mr Bahtijari's current fragile state of physical and mental health and given his family's desperate need for his return, the Defence submits that there are circumstances warranting an urgent decision from the President on the commutation of Mr Bahtijari's sentence.

45. For the foregoing reasons, the Defence submits that a shortened timetable is needed and should be adopted to receive:

- The notification of eligibility from the State of Enforcement pursuant to Article 3(4) of the Practice Direction;
- The information to be provided by the Registrar pursuant to Article 5(1) of the Practice Direction;
- The written submissions of Mr Bahtijari pursuant to Article 5(3) of the Practice Direction;

- The views of Trial Panel I Judges pursuant to Article 6 of the Practice Direction.

III. CONCLUSION

46. For the foregoing reasons, pursuant to Article 51(2) of the Law, Rule 196(3) of the Rules, and Articles 3(4), 4, 5 and 6 of the Practice Direction, the Defence hereby urgently requests the President of the KSC to:

- **REQUEST** the State of Kosovo, as the State of Enforcement, to notify the KSC whether Mr Bahtijari is eligible for commutation of sentence under the domestic laws of the State concerned;
- **REQUEST** the Registrar to inform Mr Bahtijari that he has become eligible for commutation of sentence and ensure that he has been provided with a copy of Practice Direction in a language he understands, and inform him about the steps taken in this regard;
- **REQUEST** the Registrar to submit within less than the usual 21 days, and **on an urgent basis**, the relevant information to the President by complying with Article 1(a) to (f) of the Practice Direction;
- **SET** the earliest possible date to receive further written submissions from Mr Bahtijari pursuant to Article 5(3) of the Practice Direction;
- **SET** the earliest possible date to receive Trial Panel I Judges' views on the commutation of sentence pursuant to Article 6(2) of the Practice Direction.

IV. CLASSIFICATION

The present submissions are filed confidentially pursuant to Article 7(1) of the Practice Direction.

Word count: 3133

A handwritten signature in dark ink, appearing to read 'Felicity Gerry', with a long, sweeping horizontal stroke underneath.

Dr Felicity Gerry KC

Counsel for Mr Bahtijari

6 February 2025

At London, UK