

In:

KSC-BC-2023-10

The Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala

Before:

The President of the Specialist Chambers

Judge Ekaterina Trendafilova

Registrar:

Dr Fidelma Donlon

Filing Participant:

Specialist Counsel for Ismet Bahtijari

Date:

7 February 2025

Language:

English

Classification:

Public

(Publicly redacted version) BAHTIJARI Request to the President to depart from the deadlines specified in the Practice Direction on Commutation of Sentence

Specialist Prosecutor’s Office

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## I. INTRODUCTION

1. Pursuant to Article 12 of 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 depart from the deadlines originally specified in the Practice Direction for the purpose of issuing a decision on the commutation or modification or alteration of Mr Bahtijari's sentence, for reasons pertaining to the convicted person and his relatives' health and well-being.
2. Mr Bahtijari is eligible to serve two thirds of his sentence which ended on 5 February 2025. The defence have been requesting his immediate release since 6 December 2024.

## II. PROCEDURAL HISTORY

3. On 5 October 2023, Mr Bahtijari was arrested in Kosovo and transferred to the KSC Detention Unit on 6 October 2023.<sup>1</sup>
4. On 13 November 2024, Mr Bahtijari entered the Plea Agreement.<sup>2</sup>
5. On 3 December 2024, Mr Bahtijari signed an amended Plea Agreement that was filed on 6 December 2024.<sup>3</sup>
6. On 6 December 2024, the Defence filed submissions on sentencing with three confidential annexes.<sup>4</sup>

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<sup>1</sup> 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.

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

<sup>3</sup> 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.

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

7. On 16 December 2024, a further amended Plea Agreement was jointly filed.<sup>5</sup>
8. On 19 December 2024, the Defence presented oral submissions on sentencing.<sup>6</sup>
9. 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.<sup>7</sup>
10. 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.<sup>8</sup>
11. 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.
12. Therefore, on 4 and 6 February 2025, the Defence filed the 'Request for Mr Bahtijari's early release'.<sup>9</sup>
13. On 5 February 2025, the very day he ought to be released, the Defence received from the Registry the notice of eligibility for commutation of sentence related to Mr Bahtijari with a timetable that could take over a month.<sup>10</sup> It is not clear why the President, knowing the content of the plea agreements, in advance of the hearing on 4 February 2025 did not order arrangements to be made for Mr Bahtijari to be returned home on 5 February 2025.

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

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

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

<sup>8</sup> *Ibid.*, p. 618, lns 15-18.

<sup>9</sup>

<sup>10</sup> Email from the Immediate Office of the Registrar to the Specialist Counsel, 5 February 2025, at 13:22.

## I. APPLICABLE LAW

14. Pursuant to Article 12 of the Practice Direction:

‘The President adopts this Practice Direction and my amend it *proprio motu*’<sup>11</sup>

15. 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 therefore. 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.’

16. 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.

17. 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

18. On 5 February 2025, the Defence received the notification of eligibility for commutation of sentence of Mr Bahtijari from the Registry.

19. The Defence is mindful of the deadlines enshrined in the Practice Direction, especially at Articles 5 and 6 of the said Practice Direction. However, the

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<sup>11</sup> Emphasis added.

Defence submits that the circumstances of the present case warrant that the President of the Specialist Chambers depart from the specified deadlines and adopt a shortened timetable based on the fact that Mr Bahtijari and his family have been severely affected by his arrest and detention.

A. Mr Bahtijari suffers psychological consequences from genocidal attacks

20. The Defence reiterates that Mr Bahtijari is a survivor of genocidal attacks. He has been through extraordinary traumas during the invasion of Kosovo in the period of time covered by the temporal jurisdiction of the Kosovo Specialist Chambers.

21. Mr Bahtijari had to evacuate his hometown with his family at least twice, under fire and with no perspective of relocation other than to hide out in the mountains with very small children. Returning to his house, he found his dog slaughtered and his environment destroyed. He had to search for mines by hand. The family had to sleep in the cowshed until the house was liveable.

22. For the foregoing reasons, Mr Bahtijari meets all the criteria for [REDACTED]. He is a victim of war and further detention is totally contrary to any principle of restorative justice.

B. Mr Bahtijari suffers from acute health conditions that immediately threaten his life

23. Since his arrest and transfer to the seat of the KSC, Mr Bahtijari has been diagnosed with [REDACTED] for which he had to undergo preventive and curative treatments. The Defence has recalled these [REDACTED] and treatments on numerous occasions and indeed notified the pre-trial Panel and

the Trial Panel of the absence of treatment to January 2024 and significant treatment since:

- [REDACTED]

24. All of the health conditions he suffers from or may suffer from are detailed in [REDACTED] report. It is remarkable that he remains detained past 5 February given the additional hardship he has suffered from incarceration.

C. Mr Bahtijari's family tremendously suffers from his detention

25. Mr Bahtijari's family has been relying on him for years and the shock caused by his arrest and transfer to the KSC has entailed disastrous consequences. His wife and daughter have [REDACTED] due to the stress of his arrest, detention and uncertainty as to the perspective of his release. As submitted by the Defence during the Plea Agreement Hearing on 19 December 2024, *'he is needed home'*, as a family figure and provider.

26. For the fore going reasons, the Defence urgently requests the President of the KSC to apply Article 12 of the Practice Direction to shorten the deadlines stemming from Articles 5 and 6 of the Practice Direction in order to enable Mr Bahtijari and his family to receive, as soon as possible, a decision on the commutation or modification or alteration of his sentence.

27. The Defence being ready to file its written submissions pursuant to Article 5(3) of the Practice Direction, it submits that the information to be provided from the Registry and the consultation with Trial Panel I's Judges should be terminated by 13 February 2025, so that the President of the Specialist Chambers would have all the necessary elements to make a decision.

### III. CONCLUSION

28. For the foregoing reasons, pursuant to Article 51(2) of the Law on the Specialist Chambers and the Specialist Prosecutor, Rule 196(3) of the Rules of Procedure and Evidence, and Articles 3(4), 4, 5, 6 and 12 of the Practice Direction, the Defence hereby requests the President of the KSC to:

- **DEPART** from the deadlines specified in the Practice Direction and to order Mr Bahtijari's immediate release;
- **Alternatively, INSTRUCT the Registrar to provide** the relevant information to the President by complying with Article 1(a) to (f) of the Practice Direction **by 13 February 2025** and **INSTRUCT** Trial Panel I's Judges to provide their views on Mr Bahtijari's commutation of sentence **by 16 February 2025** 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: 1530



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7 February 2025

At London, UK