



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 8 February 2024

Language: English

Classification: Public

Order Setting the Date for Status Conference and for Submissions

Specialist Prosecutor
Kimberly P. West

Counsel for Sabit Januzi
Jonathan Elystan Rees
Huw Bowden

Counsel for Ismet Bahtijari
Felicity Gerry
James O'Keefe

Counsel for Haxhi Shala
Toby Cadman
John Cubbon

THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(1) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rule 96(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules") hereby renders this order.

I. PROCEDURAL BACKGROUND

1. On 12 October 2023, following the initial appearances of Sabit Januzi ("Mr Januzi") and Ismet Bahtijari ("Mr Bahtijari" and "Januzi & Bahtijari Case") on 9 October 2023,² the first status conference in the case took place.³
2. On 24 October 2023, the Pre-Trial Judge issued in the Januzi & Bahtijari Case the decision: (i) on the framework for the disclosure of evidence and related matters; as well as (ii) on the framework for the handling of confidential information during investigations and contact between a Party or participant and witnesses of the opposing Party or of a participant ("Januzi & Bahtijari Framework Disclosure Decision").⁴
3. On 3 November 2023, the second status conference took place in the Januzi & Bahtijari Case.⁵

¹ KSC-BC-2023-10, F00001, President, *Decision Assigning a Pre-Trial Judge*, 11 September 2023, public; KSC-BC-2023-11, F00001, President, *Decision Assigning a Pre-Trial Judge*, 20 November 2023, public.

² KSC-BC-2023-10, Transcript of Hearing, 9 October 2023, public, pp. 1-16; Transcript of Hearing, 9 October 2023, public, pp. 17-32. *See also* F00017, Pre-Trial Judge, *Decision Setting the Date for the Initial Appearances of Sabit Januzi and Ismet Bahtijari and Related Matters*, 6 October 2023, public, para. 21(a)-(b).

³ KSC-BC-2023-10, F00022, Pre-Trial Judge, *Order Setting the Date for the First Status Conference and for Submissions*, 9 October 2023, public; Transcript of Hearing, 12 October 2023, public, pp. 33-71.

⁴ KSC-BC-2023-10, F00076, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 24 October 2023, confidential, with Annex 1, public. A public redacted version of the decision was filed on the same day, F00076/RED.

⁵ KSC-BC-2023-10, F00081, Pre-Trial Judge, *Order Setting the Date for the Second Status Conference and for Submissions* ("Januzi & Bahtijari Second Status Conference Order"), 27 October 2023, public; Transcript of Hearing, 3 November 2023 ("Januzi & Bahtijari Second Status Conference Transcript"), public, pp. 72-92.

4. On 14 December 2023, the third status conference took place in the Januzi & Bahtijari Case (“Januzi & Bahtijari Third Status Conference”).⁶
5. On 15 December 2023, following the initial appearance of Haxhi Shala (“Mr Shala” and “Shala Case”) on 13 December 2023,⁷ the first status conference in the case took place (“Shala First Status Conference”).⁸
6. On 19 December 2023, the Pre-Trial Judge issued in the Shala Case the decision: (i) on the framework for the disclosure of evidence and related matters; as well as (ii) on the framework for the handling of confidential information during investigations and contact between a Party or participant and witnesses of the opposing Party or of a participant (“Shala Framework Disclosure Decision”).⁹
7. On 8 February 2024, the Pre-Trial Judge joined the Januzi & Bahtijari Case and the Shala Case.¹⁰

II. APPLICABLE LAW

8. Pursuant to Rule 96(1) of the Rules, following the first status conference after the initial appearance of the Accused, the Pre-Trial Judge shall convene subsequent status conferences as deemed necessary in order to, *inter alia*: (i) organise exchanges

⁶ KSC-BC-2023-10, F00121, Pre-Trial Judge, *Order Setting the Date for the Third Status Conference and for Submissions*, 8 December 2023, public; Transcript of Hearing, 14 December 2023, public, pp. 93-134.

⁷ KSC-BC-2023-11, Transcript of Hearing, 13 December 2023, public, pp. 1-15. *See also* F00014, Pre-Trial Judge, *Decision Setting the Date for the Initial Appearance of Haxhi Shala and Related Matters*, 12 December 2023, public, para. 22(a).

⁸ KSC-BC-2023-11, F00017, Pre-Trial Judge, *Order Setting the Date for the First Status Conference and for Submissions*, 13 December 2023, public; Transcript of Hearing, 15 December 2023 (“Shala First Status Conference Transcript”), public, pp. 16-44.

⁹ KSC-2023-11, F00023, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 19 December 2023, public, with Annex 1, public.

¹⁰ KSC-BC-2023-10, F00161, Pre-Trial Judge, *Decision on Request for Joinder and Amendment of the Indictment*, 8 February 2024, confidential. A public redacted version was filed on the same day, F00161/RED; KSC-BC-2023-11, F00041, Pre-Trial Judge, *Decision on Request for Joinder and Amendment of the Indictment*, 8 February 2024, confidential. A public redacted version was filed on the same day, F00041/RED.

between the Parties and, where applicable, Victims' Counsel so as to ensure expeditious preparation for trial; (ii) take steps to ensure that all necessary preparations are being conducted by the Parties in a timely and diligent fashion; and (iii) review the status of the case and allow the Parties the opportunity to raise issues in relation thereto.

9. Pursuant to Rule 96(2) of the Rules, with the Accused's written consent after receiving advice from Counsel, a status conference may be conducted: (i) in the Accused's presence, with Counsel participating via video-conference; (ii) in Defence Counsel's presence, with the Accused participating via video-conference; or (iii) in the Accused's absence, with Counsel present or participating via video-conference. In addition, any request to attend the status conference via video-conference, shall be made directly to the Registrar, in accordance with the Registrar's Practice Direction on Video Links (KSC-BD-23/COR), sufficiently in advance for the Registrar to take the appropriate steps, including to inform the Pre-Trial Judge.¹¹

10. Pursuant to Rule 95(4) of the Rules, the Pre-Trial Judge shall order the SPO to file, within a set time limit: (i) its Pre-Trial Brief, including any admissions by the Defence and a statement of matters which are not in dispute; (ii) a list of witnesses it intends to call to testify at trial; and (iii) a list of exhibits it intends to present at trial, including, where possible, any Defence objections to authenticity.

11. Pursuant to Rule 95(5) of the Rules, after the submission of the items mentioned in Rule 95(4) of the Rules by the SPO, the Pre-Trial Judge shall invite the Defence to file a Pre-Trial Brief within a set time limit. In addition, within a time limit set by the Pre-Trial Judge, the Defence shall notify the SPO of its intention to offer a defence of alibi or any other grounds excluding criminal

¹¹ See Januzi & Bahtijari Second Status Conference Order, para. 4 and references therein.

responsibility, including that of diminished or lack of mental capacity, intoxication, necessity, duress, and mistake of fact or law.

III. DISCUSSION

12. The Pre-Trial Judge recalls that, pursuant to the Januzi & Bahtijari Framework Disclosure Decision and Shala Framework Disclosure Decision (collectively, “Framework Disclosure Decisions”), the SPO was due to complete disclosures under Rule 102(1)(b) of the Rules, by 15 December 2023¹² and 19 January 2024,¹³ respectively, and provide the Defence in both cases with the detailed notice of evidence falling under Rule 102(3) of the Rules, by 26 January 2024.¹⁴ The Pre-Trial Judge also notes that disclosure of exculpatory material under Rule 103 of the Rules took place on 16 November 2023¹⁵ and 26 January 2024,¹⁶ respectively, and disclosure of Rule 102(1)(b) material took place on 15 December 2023¹⁷ and 19 January 2024,¹⁸ respectively. The Pre-Trial Judge further recalls that, in line with the SPO’s submissions and his oral order of 3 November 2023, the SPO was due to file its

¹² Januzi & Bahtijari Framework Disclosure Decision, paras 58, 122(d).

¹³ Shala Framework Disclosure Decision, paras 59, 111(f).

¹⁴ Januzi & Bahtijari Framework Disclosure Decision, paras 67, 122(e); Shala Framework Disclosure Decision, paras 68, 111(h). *See also* KSC-BC-2023-10, F00154, Specialist Prosecutor, *Prosecution’s Rule 102(3) Notice*, 26 January 2024, public, with Annex 1, confidential; KSC-BC-2023-11, F00036, Specialist Prosecutor, *Prosecution’s Rule 102(3) Notice*, 26 January 2024, public, with Annex 1, confidential.

¹⁵ KSC-BC-2023-10, Disclosure Package No. 4. *See also* Januzi & Bahtijari Framework Disclosure Decision, para. 122(j)-(k).

¹⁶ KSC-BC-2023-11, Disclosure Package No. 6. *See also* Shala Framework Disclosure Decision, para. 111(m)-(n).

¹⁷ KSC-BC-2023-10, Disclosure Package No. 6. *See also* Januzi & Bahtijari Framework Disclosure Decision, para. 122(d). The Pre-Trial Judge notes that further disclosures of Rule 102(1)(b) material were made on 19 December 2023, consisting of audio-video recordings of previously disclosed transcripts that were requested by the Defence for Mr Januzi and Mr Bahtijari at the Third Status Conference. *See* KSC-BC-2023-10, Disclosure Package No. 8, 19 December 2023. These same recordings were disclosed in Case 11 on 19 January 2024. *See* KSC-BC-2023-11, Disclosure Package No. 5, 19 January 2024.

¹⁸ KSC-BC-2023-11, Disclosure Package No. 5. *See also* Shala Framework Disclosure Decision, para. 111(f)-(g).

pre-trial brief in the Januzi & Bahtijari Case by 2 February 2024,¹⁹ and anticipated filing its pre-trial brief in the Shala Case by the same date.²⁰

13. In accordance with Rule 96(1) of the Rules and to ensure expeditious preparation for trial, and having joined the cases, the Pre-Trial Judge convenes a status conference for Mr Januzi, Mr Bahtijari and Mr Shala on **Tuesday, 13 February 2024, at 10:00 hours.**

14. The Pre-Trial Judge will ask the Parties to provide updates, if any, on the outstanding issues addressed at the Januzi & Bahtijari Third Status Conference and Shala First Status Conference, and the written and oral submissions in relation to those issues. Specifically, and additionally, the Pre-Trial Judge will request updates on the following issues, in the sequence set out below:

(1) Disclosure

- (a) Whether progress has been made in the disclosure of evidentiary material by the SPO, and, in particular:
- i. with respect to Rule 102(1)(b) material, whether the SPO can confirm that it has completed its disclosures within the deadline set forth in the Framework Disclosure Decisions, i.e. by 15 December 2023 and 19 January 2024, and if not, which materials remain outstanding and when such materials will be disclosed;
 - ii. with respect to Rule 102(3) material, whether (i) the Defence has or will request access through disclosure or inspection to any items listed in the SPO's detailed notice within the deadline set

¹⁹ KSC-BC-2023-10, F00084, Specialist Prosecutor, *Prosecution Submissions for Second Status Conference*, 31 October 2023, public, para. 8; Januzi & Bahtijari Second Status Conference Transcript, p. 82, line 10 to p. 82, line 15. *See also* KSC-BC-2023-10, F00159, Specialist Prosecutor, *Submission of Prosecution Pre-Trial Brief*, 2 February 2024, public, with Annex 1, confidential.

²⁰ Shala First Status Conference Transcript, p. 24, lines 8-10.

- forth in the Framework Disclosure Decisions, i.e. by 9 February 2024; relatedly, whether the SPO will challenge the materiality and how much of the Rule 102(3) material will require redactions, if any; and (ii) there are any outstanding issues;
- iii. with respect to Rule 103 material, whether the SPO will disclose additional exculpatory evidence which is in the SPO's custody, control or actual knowledge falling under Rule 103 of the Rules; relatedly, whether and how much of the Rule 103 material will require redactions, if any;
- iv. whether the SPO anticipates requests under Rule 107 of the Rules; and
- (b) Whether in light of the current stage of the SPO disclosure of evidentiary material, the SPO is facing or foresees any difficulties in meeting the disclosure calendar set in the Framework Disclosure Decision for the remainder of the disclosure process; and
- (c) Whether the Defence objects or intends to object pursuant to Rule 95(2)(e) of the Rules to the admissibility of any evidentiary material that has been disclosed on the basis of Rule 102 of the Rules; and if so whether the Defence will be able to file its objection by no later than **Friday, 22 March 2024**.

(2) Translations

- (a) Whether the SPO is facing any issues regarding the translation of evidentiary material.

(3) SPO Investigations and Next Steps

- (a) When does the SPO expect submitting an updated Pre-Trial Brief, in light of the Joinder; and

- (b) Whether the SPO has completed its outstanding investigative steps, or when any such steps will be concluded.

(4) Defence Investigations and Next Steps

- (a) Based on the SPO's updates regarding the preceding matters and the ongoing disclosure of evidence process, whether the Defence is – or when it expects to be – in a position to provide more information on:
- i. the status of its investigations;
 - ii. any intention to give notice of an alibi or grounds for excluding responsibility pursuant to Rule 95(5) of the Rules and any associated disclosure pursuant to Rule 104(1) and (2) of the Rules;
 - iii. whether the Defence envisages filing a pre-trial brief and related material under Rule 95(5) of the Rules and, if so, whether the Defence will be able to file it by **Friday, 12 April 2024**; and
 - iv. any intention to make requests concerning unique investigative opportunities, pursuant to Rule 99(1) of the Rules.

(5) Points of Agreement on Matters of Law and Fact

- (a) Have the Parties entered into discussions regarding the possibility of submitting points of agreement on law and/or facts pursuant to Rules 95(3) and 156 of the Rules; and
- (b) When do the Parties expect to be able to identify a list of issues subject to dispute and one with issues not subject to dispute.

(6) Anticipated transmission of case file pursuant to Rule 72(1) of the Rules:

- (a) Subject to outstanding disclosure by the SPO, and noting that the Defence for Mr Januzi and the Defence for Mr Bahtijari have not lodged any preliminary motions, the Parties' views on the

transmission of the case file to the Trial Panel by **Friday, 3 May 2024**, pursuant to Rule 72 of the Rules regarding expedited proceedings; and

(b) When would the Parties expect to be ready for trial.

15. The Pre-Trial Judge orders the SPO, the Defence for Mr Januzi, the Defence for Mr Bahtijari and the Defence for Mr Shala, to file written submissions, if they so wish, on any of the aforementioned matters, including the topics discussed during the Januzi & Bahtijari Third Status Conference and Shala First Status Conference, any other matter not covered in the agenda for the aforementioned status conferences, or any difficulty related to the disclosure of evidentiary material, by no later than **Monday, 12 February 2024, at 12:00 hours**.

IV. DISPOSITION

16. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a. **DECIDES** to convene a status conference in the presence of the SPO, the Defence for Mr Bahtijari, the Defence for Mr Januzi, and the Defence of Mr Shala, in line with paragraph 13 above, on **Tuesday, 13 February 2024, at 10:00 hours**; and
- b. **ORDERS** the SPO and the Defence, if they so wish, to provide written submissions on the issues listed in paragraph 14 above, by **Monday, 12 February 2024, at 12:00 hours**.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Thursday, 8 February 2024
At The Hague, the Netherlands.