

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

Filing Participant: Specialist Counsel for Haxhi Shala

Date: 12 February 2024

Language: English

Classification: Public

Submissions on Behalf of Haxhi Shala for Status Conference

Specialist Prosecutor

Kimberly P. West

Counsel for Sabit Januzi

Jonathan Elystan Rees KC

Huw Bowden

Counsel for Ismet Bahtijari

Dr. Felicity Gerry KC

James O'Keefe

Counsel for Haxhi Shala

Toby Cadman

John Cubbon

I. INTRODUCTION

1. In the Order Setting the Date for Status Conference and for Submissions (“Order”) the Pre-Trial Judge decided to convene a status conference on Tuesday, 13 February 2024, at 10:00 hours and ordered the SPO and the Defence, if they so wished, to provide written submissions on issues listed in paragraph 14 of the Order.¹

II. SUBMISSIONS

2. The Defence for Mr. Haxhi Shala (“Defence”) provides below submissions where applicable on the issues specified. The Defence submissions are in bold.

(1) Disclosure

(a) Whether progress has been made in the disclosure of evidentiary material by the PO, 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

¹ The Special Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala, KSC-BC-2023-10/F00163, 8 February 2024, para. 16.

December 2023 and 19 January 2024, and if not, which materials remain outstanding and when such materials will be disclosed;

Not applicable.

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 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;

On 8 February 2024 the Shala Defence submitted a request for access through disclosure to items listed in the SPO's detailed notice.

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;

Not applicable.

iv. whether the SPO anticipates requests under Rule 107 of the Rules;

Not applicable.

(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

Not applicable.

(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.**

The Shala Defence does intend to object to the admissibility of some evidentiary material and would be able to file its objection by Friday 22 March 2024 provided that there will be no further disclosures of Rule 102 material.

(2) Translations

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

Notwithstanding any submissions the SPO seeks to advance at the Status Conference and any response thereto, the Shala Defence raises as a general concern the translation of material. Irrespective of the decision on the working language of the proceedings, there is an obligation, as a domestic institution within the Kosovan criminal justice system, to provide all material to the Accused in a language which he understands. If the Pre-Trial Judge takes the position, as in previous cases, that according to the Law and the Rules, only key documents need be translated, the Shala Defence reminds the Court that this is not an international tribunal, this is an institution of the Republic of Kosovo, the Accused is a citizen of the Republic of Kosovo, and these are charges that relate to offences allegedly committed on the territory of the Republic of Kosovo pursuant to the laws of the Republic of Kosovo. The Accused is therefore entitled to have *all* case material in a language which he understands, namely Albanian.

(3) SPO Investigations and Next Steps

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

Not applicable.

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

Not applicable.

(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;

This is ongoing and is subject to funding being guaranteed by the Ministry of Justice.

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;

The Shala Defence does not intend to give notice of an alibi or grounds for excluding responsibility pursuant to Rule 95(5) 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

The Shala Defence does envisage filing a pre-trial brief and related material under Rule 95(5) of the Rules, but it is not in a position to provide information on when it will be able to do so since it has not received the Specialist Prosecutor's Pre-Trial Brief and related material under Rule 95(4) of the Rules. Also, the matter is complicated by the fact that joinder has taken place but there remain two separate operative indictments and no date has been specified for the filing of a joint indictment.²

iv. any intention to make requests concerning unique investigative opportunities, pursuant to Rule 99(1) of the Rules.

² The Specialist Prosecutor v. Sabit Januzi and Ismet Bahtijari, The Specialist Prosecutor v. Haxhi Shala, KSC-BC-2023-10/F00041, Decision on Request for Joinder and Amendment of the Indictment, 8 February 2024, paras. 55, 58.

The Shala Defence is not in a position to provide precise information since several matters remain unclear or unresolved at this time.

(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

The Parties have not 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. The Shala Defence submits that it would be premature to do so before all Pre-Trial Briefs and associated material have been filed.

(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.

In light of the stage reached in the proceedings it is not possible for the Parties to say when they expect to be able to identify lists of issues subject to dispute and issues not subject to dispute. Such lists can only be produced after all Pre-Trial Briefs and associated material have been filed.

(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

The Shala Defence submits that in view of the high degree of complexity of the case it would not be in the interests of justice to transmit the case file to a Trial Panel pursuant to Rule 72 of the Rules. The case file should only be transmitted to the Trial Panel after the Pre-Trial Judge has received all the filings from the Specialist Prosecutor and the Defence pursuant to Rule 95(4) and (5).

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

It would be premature to give a date when the Shala Defence would expect to be ready for trial because definite dates are not yet available for the completion of certain critical pre-trial actions. Furthermore, issues such as the indictment upon which the Accused will be tried, confirmation of prosecution witnesses to be called at trial, a confirmed list of exhibits, and issues of funding remain outstanding. The Accused instructs that whilst he wants to ensure the trial starts

without undue delay, there are numerous matters that need to be resolved.

3. The Defence reserves the right to make further submissions as appropriate on the issues specified at the Status Conference to be held on 13 February 2024.

III. CLASSIFICATION

4. The Classification of this filing is public.

Word Count: [1,467 words]



Toby Cadman

Specialist Counsel

12 February 2024

At Sarajevo, Bosnia and Herzegovina