



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: 14 March 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
Dr 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 that 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 15 December 2023, following the initial appearance of Haxhi Shala ("Mr Shala" and "Shala Case") on 13 December 2023,⁵ the first status conference in that case took place.⁶

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-2023-11, 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).

4. 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”).⁷
5. On 8 February 2024, the Pre-Trial Judge joined the Januzi & Bahtijari Case and the Shala Case (“Case 10” and “Decision on Joinder”).⁸
6. On 8 February 2024, the first joint status conference took place in Case 10 (“Case 10 First Joint Status Conference”).⁹ At that status conference, the Pre-Trial Judge, *inter alia*, ordered the Defence for Mr Januzi, the Defence for Mr Bahtijari, and the Defence for Mr Shala (“Defence”) to file any objections to the admissibility of evidentiary material disclosed under Rule 102 of the Rules, by Monday, 22 April 2024.¹⁰
7. On 16 February 2024, following the Decision on Joinder, the Specialist Prosecutor’s Office (“SPO”) filed an updated pre-trial brief.¹¹

⁶ 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, public, pp. 16-44.

⁷ KSC-BC-2023-11, F00023, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 19 December 2023, public, with Annex 1, public.

⁸ 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.

⁹ KSC-BC-2023-10, F00163, Pre-Trial Judge, *Order Setting the Date for Status Conference and for Submissions*, 8 February 2024, public; Transcript of Hearing, 13 February 2024, public, pp. 135-198.

¹⁰ Case 10 First Joint Status Conference, p. 197, lines 16-19.

¹¹ KSC-BC-2023-10, F00177, Specialist Prosecutor, *Submission of Prosecution Pre-Trial Brief, Witness and Exhibit Lists, and Rule 109(c) Chart*, 16 February 2024, with Annexes 1-4, confidential. *See also* Case 10 First Joint Status Conference, p. 180, line 22 to p. 181, line 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 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.¹²

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.

¹² See KSC-BC-2023-10, F00081, Pre-Trial Judge, *Order Setting the Date for the Second Status Conference and for Submissions*, 27 October 2023, public, para. 4 and references therein.

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

III. DISCUSSION

12. Before all else, the Pre-Trial Judge recalls that the SPO submitted the indictment for confirmation in the Januzi & Bahtijari Case and in the Shala Case on 11 September 2023 and 20 November 2023, respectively, around sixth and four months ago.¹³ According to the Law and the Rules, the Pre-Trial Judge shall ensure that the proceedings are not unduly delayed. The Parties shall, therefore, discharge their obligations pertaining to the pre-trial phase of the present case in an expeditious manner and, in the absence of a proposed time line for the completion of such obligations by the Parties, the Pre-Trial Judge will set a calendar to this end on the basis of Rule 95(2)(a) of the Rules.

13. In accordance with Rule 96(1) of the Rules and to ensure expeditious preparation for trial, the Pre-Trial Judge convenes a status conference for Mr Januzi, Mr Bahtijari, and Mr Shala on **Friday, 22 March 2024, at 14:30 hours.**

¹³ See KSC-BC-2023-10, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Requests*, 11 September 2023, strictly confidential and *ex parte*, with Annexes 1 and 3, strictly confidential and *ex parte*, and Annex 2, confidential. Confidential and public redacted versions of the submission were filed on 12 October 2023, F00002/CONF/RED and F00002/RED; KSC-BC-2023-11, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Requests*, 20 November 2020, strictly confidential and *ex parte*, with Annexes 1 and 3, strictly confidential and *ex parte*, and Annex 2, confidential. Confidential and public redacted versions of the submission were filed on 14 December 2023, F00002/CONF/RED and F00002/RED.

14. The Pre-Trial Judge will ask the Parties to provide updates, if any, on the outstanding issues addressed at the Case 10 First Joint 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) Can the SPO confirm that it has fully completed its disclosure pursuant to Rule 102(1)(b) of the Rules – if not, can the SPO specify which materials remain outstanding and when such materials will be disclosed;¹⁴
- (b) Can the SPO confirm that it has disclosed all materials requested by the Defence pursuant to Rule 102(3) of the Rules, with the exception of the materials subject to its request under Rule 102(3) of the Rules¹⁵ – if not, can the SPO specify which materials remain outstanding and when such materials will be disclosed;
- (c) Does the SPO intend to file a request for authorisation to present an additional notice pursuant to Rule 102(3) of the Rules;¹⁶
- (d) Does there remain any exculpatory evidence in the SPO's custody, control or actual knowledge that must be disclosed to the Defence

¹⁴ See Case 10 First Joint Status Conference, p. 169, line 2 to p. 170, line 20, p. 179, line 24 to p. 180, line 2.

¹⁵ See KSC-BC-2023-10, F00186/CONF/RED, Specialist Prosecutor, *Confidential Redacted Version of 'Prosecution Challenge to Disclosure of Items in Rule 102(3) Notice and Related Request with Strictly Confidential and Ex Parte Annex'*, 23 February 2024, confidential; F00196, Defence for Mr Shala, *Response to Prosecution Challenge to Disclosure of Items in Rule 102(3) Notice*, 4 March 2024, confidential; F00198, Defence for Mr Januzi, *Response to Prosecution Challenge to Disclosure of Items in Rules 102(3) Notice on behalf of Januzi*, 7 March 2024, confidential; F00201, Specialist Prosecutor, *Prosecution Consolidated Reply to Defence Responses to Prosecution Challenge to Disclosure of Items in Rule 102(3) Notice and Related Request*, 11 March 2024, confidential.

¹⁶ See Case 10 First Joint Status Conference, p. 170, line 25 to p. 176, line 4.

pursuant to Rule 103 of the Rules (besides the aforementioned materials arising from the SPO's review of the notice pursuant to Rule 102(3) of the Rules); does the SPO intend to submit a request for protective measures for such material and, if so, when is such a request forthcoming;

- (e) Does the SPO anticipate requests under Rule 107 of the Rules; and
- (f) Can the SPO indicate whether it is on track to complete all its pre-trial disclosure obligations by no later than **Friday, 12 April 2024**, with the exception of any material subject to any requests regarding protective measures.

(2) Translations

- (a) Have the Parties and the Registrar reached an agreement as to the translation of specific filings or evidentiary materials, or parts thereof, other than statements of witnesses whom the SPO intends to call to testify at trial pursuant to the Januzi & Bahtijari Framework Disclosure Decision and Shala Framework Disclosure Decision.¹⁷

(3) SPO Investigations and Next Steps

- (a) Can the SPO provide further information as to any additional investigative steps, including whether any such steps can be completed by **Thursday, 28 March 2024**.¹⁸

¹⁷ Januzi & Bahtijari Framework Disclosure Decision, paras 78-81; Shala Framework Disclosure Decision, paras 81-84. *See* Case 10 First Joint Status Conference, p. 191, line 19 to p. 192, line 15, p. 193, line 20 to p. 194, line 23; KSC-BC-2023-10, F00168, Defence for Mr Shala, *Submissions on Behalf of Haxhi Shala for Status Conference*, 12 February 2024, p. 4.

¹⁸ *See* Case 10 First Joint Status Conference, p. 181, lines 7-8.

(4) Defence Investigations and Next Steps

- (a) Based on the SPO's updates regarding the preceding matters and the ongoing disclosure of evidence process, can the Defence provide 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, 17 May 2024**;¹⁹ 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 finalised their discussions regarding the possibility of submitting points of agreement on law and/or fact pursuant to Rules 95(3) and 156 of the Rules and, if not, do the Parties expect to be in a position to finalise their discussions by **Thursday, 28 March 2024**.²⁰

(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 Mr Shala's preliminary motion pursuant to Rule 97 of the Rules is

¹⁹ See Case 10 First Joint Status Conference, p. 182, line 17 to p. 185, line 18.

²⁰ See Case 10 First Joint Status Conference, p. 186, line 23 to p. 188, line 1.

currently pending before the Pre-Trial Judge,²¹ can the Parties provide updates on their views on the transmission of the case file to the Trial Panel by **Friday, 31 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 Case 10 Joint First Status Conference, any other matter not covered in the agenda for the aforementioned status conference, or any difficulty related to the disclosure of evidentiary material, by no later than **Tuesday, 19 March 2024, at 16:00 hours** (SPO) and **Wednesday, 20 March 2024, at 16h00 hours** (Defence).

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 **Friday, 22 March 2024, at 14:30 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

²¹ KSC-BC-2023-10, F00166, Defence, *Defence Preliminary Motions on Behalf of Haxhi Shala*, 9 February 2024, confidential, public; F00182, Specialist Prosecutor, *Prosecution Response to 'Defence Preliminary Motions on Behalf of Haxhi Shala'*, 22 February 2024, public; F00190, Defence, *Reply to Prosecution Response to 'Defence Preliminary Motions on Behalf of Haxhi Shala'*, 27 February 2024, public.

**Tuesday, 19 March 2024, at 16:00 hours (SPO) and Wednesday,
20 March 2024, at 16h00 hours (Defence).**



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Thursday, 14 March 2024
At The Hague, the Netherlands.