

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: 19 March 2024

Language: English

Classification: Public

Haxhi Shala Submissions for Status Conference on 22 March 2024

Specialist Prosecutor

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I. INTRODUCTION

1. In the Order Setting the Date for Status Conference and for Submissions¹ (“Order”) the Pre-Trial Judge decided to convene a status conference on Friday, 22 March 2024, at 14:30 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.²

II. SUBMISSIONS

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

(1) Disclosure

Not applicable.

(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

¹ KSC-BC-2023-10/F00213, 14 March 2024.

² Order, para. 16.

testify at trial pursuant to the Januzi & Bahtijari Framework Disclosure Decision and Shala Framework Disclosure Decision.

The Shala Defence takes this opportunity to reassert its general concern about translation. Irrespective of the decision on the working language, there is an obligation for the Kosovo Specialist Chambers, as a domestic institution within the Kosovan criminal justice system, to provide all material to the Accused in a language which he understands. The Kosovo Specialist Chambers is not an international tribunal, but an institution of the Republic of Kosovo and the Accused is a citizen of the Republic of Kosovo. The Accused should therefore receive all case material in a language which he understands, namely Albanian.³

(3) SPO Investigations and Next Steps

Not applicable.

(4) Defence Investigations and Next Steps

³ KSC-BC-2023-10/F00168, Submissions on Behalf of Haxhi Shala for Status Conference, 12 February 2024 (“12 February Submissions”), para. 2(2)(a); Status Conference of 13 February 2024 (“Case 10 First Status Case Conference”) Transcript, p. 191, line 19-192 line 18; p. 195, lines 6-17.

(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;

The position remains as it was stated to be in the Submissions for the Status Conference on 13 February 2024: investigations are ongoing, but they are subject to funding being guaranteed by the Ministry of Justice.⁴

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;

As stated in the 12 February Submissions, 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.⁵

⁴ 12 February Submissions, para. 2(4)(a)(i).

⁵ 12 February Submissions, para. 2(4)(a)(ii).

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; and

The Shala Defence does envisage filing a pre-trial brief and related material under Rule 95(5) of the Rules.⁶ In view of the ongoing issues regarding funding it is not possible to specify a date by which the pre-trial brief will be filed, but it is anticipated that this will be done within a reasonable time frame with a view to ensuring that the transfer of the case to the Trial Panel and the commencement of the trial is not unduly delayed.

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

The position remains unaltered since the 12 February Submissions, the Shala Defence is not in a position to provide precise information since several matters remain unclear or unresolved at this time.⁷

⁶ 12 February Submissions, para. 2(4)(a)(iii).

⁷ 12 February Submissions, para. 2(4)(a)(iv).

(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, if not, do the Parties expect to be in a position to finalise their discussions by **Thursday 28 March 2024**.

The Shala Defence notes the proposed agreed facts that the SPO circulated in an email of 5 February. A comprehensive response can only be given after the Shala Defence has completed its Pre-Trial Brief. It is therefore not possible to provide a date by which the Parties expect to be in a position to finalise their discussions. However, as Specialist Counsel for Mr. Shala stated at the Case 10 First Status Case Conference, the Shala Defence will happily engage but the process is subject to certain matters that remain outstanding.⁸

(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 currently pending before the Pre-Trial Judge, can the Parties provide updates on their views on the transmission of the case file to the Trial Panel by

⁸ Case 10 First Status Case Conference, p. 187, lines 4-6.

Friday, 31 May 2024, pursuant to Rule 72 of the Rules regarding expedited proceedings; and

The position of the Shala Defence has not changed in essence. 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 prematurely 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 Defence pursuant to Rule 95(5).⁹ It is too early to identify a date by which this can be completed, but as stated earlier it is anticipated that this will be done within a reasonable time frame with a view to ensuring that the transfer of the case to the Trial Panel and the commencement of the trial is not unduly delayed.

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

It would be premature to say 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, and issues of funding remain outstanding. As stated in the 12 February Submissions, the

⁹ 12 February Submissions, para. 2(6)(a)

Accused's instructions are that whilst he wants to ensure the trial starts without undue delay particularly in light of his detention, there remain numerous matters that need to be resolved.¹⁰

3. In terms of the application for the Status Conference to commence earlier than the planned 14:30 start on 22 March 2024 due to present location of Specialist Counsel for Mr. Ismet Bahtijari, the Shala Defence have no objection to the commencement of the status conference at 13:30 on 22 March 2024.
4. The Shala Defence wishes to raise a point of general concern. There appears to be a real risk, due to matters remaining unresolved, matters that are largely outside the control of the defence, that proceedings will be prevented from properly moving forward with the start of the trial being some way off. It is the position of the Shala Defence, as made clear at the first joint Status Conference, that it remains in the interest of the Accused that these matters are dealt with fairly and expeditiously and not unreasonably delayed
5. The Defence reserves the right to make further submissions as appropriate on the issues specified and on other issues at the Status Conference to be held on **22 March 2024**.

¹⁰ 12 February Submissions, para. 2(6)(b).

III. CLASSIFICATION

6. The Classification of this filing is public.

Word Count: [1,268 words]



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19 March 2024

At Doha, the State of Qatar