

**In:** KSC-BC-2023-10

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

**Before:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Fidelma Donlon

**Filing Participant:** Specialist Counsel for Sabit Januzi

**Date:** 19 March 2024

**Language:** English

**Classification:** Public

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Submissions for Fifth Status Conference

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## I. INTRODUCTION

1. On 14 March 2024, the Pre-Trial Judge issued an Order Setting the Date for Status Conference and for Submissions ('Order')<sup>1</sup>.
2. The Prosecution has filed submissions pursuant to the Order ('Prosecution Submissions')<sup>2</sup>.
3. Pursuant to paragraph 16(b) of the Order, the defence submits as follows.

## II. SUBMISSIONS

### *Disclosure*

4. Paragraphs 2, 4 and 10 state that the Prosecution has not completed Rule 102(1)(b) disclosure.
5. Paragraph 6 states that the Prosecution intends to request authorization to present an additional notice pursuant to Rule 102(3).
6. Additionally, on 14 March 2024 the Prosecution provided notification of its intention to lift standard redactions to 116599-TR and has stated that it will disclose the unredacted versions 'as soon as is practicable'<sup>3</sup>. Disclosure of the

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<sup>1</sup> KSC-BC-2023-10/F00213, *Order Setting the Date for Status Conference and for Submissions*, Pre-Trial Judge, 14 March 2024, Public

<sup>2</sup> KSC-BC-2023-10/F00222, *Prosecution Submissions for Status Conference*, Prosecution, 19 March 2024, Public

<sup>3</sup> KSC-BC-2023-10/F00214, *Prosecution Notification of Lifting of Redactions*, Prosecution, 14 March 2024,

unredacted versions remains outstanding.

*SPO Investigations and Next Steps*

7. Paragraph 11 of the Prosecution Submissions states that there are significant investigations ongoing which they assert cannot be completed by 28 March 2024. No other timeframe for completion is provided by the Prosecution.

*Defence Investigations and Next Steps*

8. The Prosecution remains in a state of flux (see above).
9. A decision as to the scope of the indictment at trial remains outstanding (with the potential for further challenges thereafter pursuant to rules 90(4) and 97, depending, of course, on the decision).
10. Investigations in Kosovo and forensic expert evidence are required. However, no defence funding is in place to undertake obtaining either.
11. Legal challenges as to the administrative actions of both the Kosovo Ministry of Justice and the KSC Registry relating to the funding of defence counsel are presently intended.
12. In relation to the KSC Registry, the following disclosure has been requested with no substantive response from the Registrar:

4 March 2023 request

“Please can the Registry provide the following:

1. All communications as between the Registry, the Kosovan Ministry of Justice and/ or the SPO on defence funding issues;
2. All communications and recorded reasoning and any other evidence within the Registry / KSC more broadly relating to the changes in defence legal aid funding;
3. Reasons why those legal aid funding changes were delivered so close to the change in approach to defence funding by the Kosovan Ministry of Justice.”

6 March 2023 request

“On 22 Feb 24, both the Legal Aid Regulations and the Directive on Counsel ('Directive') were amended.

The combined effect of these amendments, together with the Kosovan Ministry of Justice's decision to all but remove support for KSC defendants in contempt cases, is to radically degrade the funding available for the defence of those individuals, to the extent that no defence can now be meaningfully resourced.

Our client, being one of four suspects or defendants in a similar position, is expected to be prosecuted under contempt charges. These amendments therefore impact upon his fair trial rights.

According to the Directive, section 3(2): 'The Registrar shall keep a record of the amendment procedure, informing those who submitted amendment proposals of the outcome. *The Registrar may, as appropriate, make public (parts of) the*

*amendment procedure.'*

The clear intention and effect of that provision is to create a spirit of transparency around the amendment process, reflective of the basic tenets of the Rule of Law.

Notwithstanding, the Defence (whose rights have been most impacted by the amendments) were not notified that amendments were being considered, were not consulted on the substantive changes those amendments introduced, have not been informed of the rationale for those changes, and were not even notified of their entering into force.

In the spirit of transparency, we would urge you to make the following public, or at the very least communicate on a confidential basis to the Defence currently acting before the KSC.

(1) Were the amendments made by the Registrar *proprio motu*, or on a proposal by a judge, the IRB or counsel, since these are the only permitted origins of an amendment to the Directive (s. 3)?

(2) In any of the above cases, when was the proposal for the amendments first considered, and with precisely what justification?

(3) The rates which were considered by the previous legal aid regulations to represent adequate resourcing were cut by 60-75% on a like-for-like comparison. What change in circumstances justified such a precipitous and sudden shift in policy towards the resourcing of the defence?

(4) What consideration was given [to] the regimes of other comparable international courts and tribunals? For example, what justification was

considered for offering between 10-30% of the resourcing offered by the ICC for Art 70 cases?

(5) What input did the Kosovan MoJ have into the amendment process? Please provide copies of all correspondence relating to the amendments between the Registrar and the MOJ. If that is not possible, confirm whether or not any such correspondence took place and with what frequency and on what dates.

(6) If the answer to question (5) above is "none", how does the Registry explain the striking coincidence of timing between the Kosovo MoJ's decision to cut funding in contempt cases, and the Registrar's decision, 20 days later, to follow suit. The combined effect of this was to leave all individuals accused of contempt crimes, by a highly experienced and well-resourced SPO, without any recourse to a meaningfully funded defence. This includes four defendants currently in custody, presumed innocent, and awaiting trial as well as any future individual accused by the SPO of such offences.

(7) Beyond the Kosovan MoJ, what consultation was conducted to ensure that what appears to be a new and alarming inequality of arms between contempt case defendants and the SPO would not in fact unduly prejudice those defendants?"

13. The defence awaits a substantive response from the Registrar to the above requests.

14. The defence envisages filing a pre-trial brief and related material under Rule 95(5) but, in these circumstances, will not be able to do so by 17 May 2024.

*Anticipated Transmission of Case-File*

15. The defence has previously submitted at the Fourth Status Conference that it cannot envisage transmission of the case file to the Trial Panel before July 2024 and trial before September 2024<sup>4</sup>.
16. No progress has since been made by the Prosecution in terms of completing Rule 102(1)(b) disclosure and updating the Rule 102(3) Notice (see above).
17. In relation to funding, not only has there been no improvement since the Fourth Status Conference, but the difficulties facing the defence have been compounded by the unprecedented attack upon legal aid that the Registrar announced, without any prior warning, on 22 February 2024. Moreover, the Registrar has since declined the invitation to seek a fair and amicable solution to the present funding crisis, leaving a legal challenge as the only potential remedy.
18. In the circumstances, the defence repeats that it cannot envisage transmission of the case file to the Trial Panel before July 2024 and trial before September 2024.

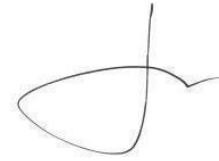
### III. CLASSIFICATION

19. This filing is classified as public.

Word count: 1216 words

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<sup>4</sup> KSC-BC-2023-10/F00169, *Written Submissions In Relation to the Fourth Status Conference on behalf of Januzi*, Januzi, 11 February 2024, Public at paragraph 16



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