

**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 Ismet Bahtijari**

**Date:** 21 March 2024

**Language:** English

**Classification:** Public

---

**BAHTIJARI FILING TO RECLASSIFY F00219 AND ON MATTERS OF  
DISCLOSURE AND INVESTIGATION**

---

**Specialist Prosecutor's Office**

Kimberly P. West

**Counsel for Sabit Januzi**

Jonathan Rees KC

Huw Bowden

**Counsel for Ismet Bahtijari**

Felicity Gerry KC

James O'Keeffe

**Counsel for Haxhi Shala**

Toby Cadman

## I. APPLICATION

1. This is an application to reclassify filing F00219 as public pursuant to Rule 82(5). It also deals with some matters of disclosure to assist the pre-trial judge and a request to consider whether the current situation can be treated as a unique investigative opportunity.

## II. RECLASSIFICATION

2. On the 18<sup>th</sup> of March 2024 a filing was approved of submissions on behalf of Mr Bahtijari for the status of conference on 22 March.
3. This filing was accidentally classified as confidential. It was intended to be public.
4. On 20 March 2024 the error was noticed when the court asked for a publicly redacted version.
5. A public version was filed on 20 March 2024. This was aborted by the system and counsel was requested to file an application to reclassify. This is that application.
6. Since the filing was filed as confidential in error by counsel, it is submitted there is no prejudice to any party.
7. Counsel apologises profusely for the error and respectfully requests reclassification of F00219 as public, pursuant to Rule 82(5).

## III. PROSECUTION DISCLOSURE

8. In addition to previous submissions for the status conference on 22 March 2024, the following is provided to assist and in response to the prosecution assertions on disclosure:
9. The Prosecution suggest their investigations are not complete.
10. The prosecution has been asked by counsel for Mr Bahtijari for disclosure of any evidence to support the witness assertion that Mr Bahtijari was frightened of him and others. This is awaited.
11. It is not accepted that this is a straight forward case. Aside from the health and funding issues, the prosecution case raises hierarchy in the past and conduct in the past by the

witness and others for which disclosure is obviously relevant. There is some disclosure about the witness background but this does not appear to be complete.

12. It is concerning that the prosecution asserts it is ready to transmit this case for trial in the absence of defence investigations on witnesses, locations, phones, health/ expert evidence and the funding challenges.

#### IV. UNIQUE INVESTIGATIVE OPPORTUNITY

13. The pre- trial judge has the discretion to order a unique investigative opportunity pursuant to Rule 99(1). This has been considered and rejected in case 6 (see F01125) in very different circumstances. It is anticipated that a case by case approach will be taken.
14. This is a request to take such measures as are necessary to ensure the preservation of evidence and, unusually in the absence of MOJ or legal aid or duty or emergency funding, as follows:
  - a. To fund counsel and a suitable team to investigate and obtain the material needed to complete the legal aid forms. Whilst a passport number and personal number may be discoverable from the papers served, this does not assist on information such as bank numbers or mortgage numbers of other financial and family information required by the 28 -page declaration of means form for legal aid funding. Without this information any application for legal aid is likely to be rejected by the Registry. It is submitted that it is unique to have an accused person who cannot supply the information needed for the legal aid forms. As set out in funding updates to the MOJ and the Registry, significant efforts taken to address these issues, thus far, have not been successful.
  - b. To fund counsel and a suitable team to identify and instruct experts and a support person on Mr Bahtijari's health issue,s as outlined in Defence Filing F00219 (status conference submissions). It is submitted that it is unique to have someone accused who has hearing, sight, dental, thyroid, heart and potential cognitive function issues without independent experts assessments, who may have been transferred on a warrant to the KSC without a suitable medical assessment and without his health issues being before the court before warrants were issued. Obtaining these urgently would keep a potential trial date on track and would enable the court to make a proper assessment of whether the SPO has complied with Rule 103 on exculpatory evidence.

- c. To fund counsel and a suitable team to investigate and obtain witness and location evidence in Kosovo before that evidence is lost. Notably these allegations now go back to April 2023 but some of the disclosures are decades earlier. Such evidence to include his alcohol consumption, his means of travel, his general health, his past conduct and his character and any issue that might give rise to fear, as alleged or at all, and also to analyse the phone data, to include phone location data.
  - d. To fund counsel and a suitable legal assistant to research novel legal arguments on voluntariness and on the applicability of defences in Article 15 matters where there is or may be a nexus with a past or ongoing conflict.
  - e. All of the above with the assistance of a Kosovan speaking assistant.
15. The above would fund the pre- trial phase and, once legal aid forms are complete to the Registry satisfaction, could lapse.
16. Ultimately, in the history of this court, accused persons have had their defence funded by the Ministry of Justice, such support being withdrawn for Mr Bahtijari unexpectedly. In addition, the legal aid system is also not functioning in a way that accommodates his needs. The practical reality is that there would be no greater expense than necessary for a fair trial process and the transmission for trial could be sooner than if funding issues create any further delays.
17. It is respectfully submitted that, in the unusual circumstances of Mr Bahtijari's case, this would be a fair and equitable and sensible solution that would enable defence preparation and assist the case to progress. It is an opportunity, and indeed a solution, that is urged upon the court.

**Word Count: 969**



---

**Dr Felicity Gerry KC**

**Counsel for Mr Bahtijari**

21 March 2024

At Melbourne, Australia