



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA 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: 27 March 2024

Language: English

Classification: Public

Decision Setting out the Calendar for the Remaining Procedural Steps of the Pre-Trial Phase

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THE PRE-TRIAL JUDGE,¹ pursuant to Articles 21(4)(d) and (e), 34(7) and 39(1), (3), (13) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 72 and 95(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby issues the following decision.

I. PROCEDURAL BACKGROUND

1. On 4 October 2023, the Specialist Prosecutor's Office ("SPO") filed the indictment against Sabit Januzi ("Mr Januzi") and Ismet Bahtijari ("Mr Bahtijari"),² as confirmed by the Pre-Trial Judge on 2 October 2023.³
2. On 5 October 2023, Mr Bahtijari and Mr Januzi were arrested⁴ and transferred on the following day to the Detention Facilities of the Specialist Chambers ("SC").⁵

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, F00010, Specialist Prosecutor, *Submission of Confirmed Indictment*, 4 October 2023, strictly confidential and *ex parte*, with Annex 1, strictly confidential. A public redacted version of the submission and of the annex were filed on 6 October 2023, F00016 and F00016/A01.

³ KSC-BC-2023-10, F00008, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 2 October 2023, strictly confidential and *ex parte*. A confidential redacted version and a public redacted version of the decision were filed on 12 October 2023, F00008/CONF/RED and F00008/RED. A corrected version of the public redacted version of the decision was filed on 12 October 2023, F00008/RED/COR.

⁴ KSC-BC-2023-10, F00011, Registrar, *Notification of Arrest of Ismet Bahtijari Pursuant to Rule 55(4)*, 5 October 2023, public; F00012, Registrar, *Notification of Arrest of Sabit Januzi Pursuant to Rule 55(4)*, 5 October 2023, public.

⁵ KSC-BC-2023-10, F00014, Registrar, *Notification of the Reception of Ismet Bahtijari in the Detention Facilities of the Specialist Chambers*, 6 October 2023, public, with Annex 1, strictly confidential and *ex parte*; F00015, Registrar, *Notification of the Reception of Sabit Januzi in the Detention Facilities of the Specialist Chambers*, 6 October 2023, public, with Annex 1, strictly confidential and *ex parte*.

3. On 6 December 2023, the SPO filed the indictment against Haxhi Shala ("Mr Shala") in KSC-BC-2023-11 ("Case 11"),⁶ as confirmed by the Pre-Trial Judge on 4 December 2024.⁷
4. On 11 December 2023, Mr Shala was arrested⁸ and transferred on the following day to the SC Detention Facilities.⁹
5. On 13 December 2023, the SPO filed a request to join the case against Mr Januzi and Mr Bahtijari ("Case 10") with the case against Mr Shala (Case 11).¹⁰ On 8 February 2024, the Pre-Trial Judge granted the request.¹¹
6. On 16 February 2024, the SPO submitted an amended indictment against Mr Januzi and Mr Bahtijari.¹² On the same day, the SPO submitted its Pre-Trial Brief and accompanying materials.¹³

⁶ KSC-BC-2023-11, F00007, Specialist Prosecutor, *Submission of Confirmed Indictment*, 6 December 2023, strictly confidential and *ex parte*, with Annex 1, confidential. A public redacted version of the submission and of the annex were filed on 12 December 2023, F00013 and F00013/A01.

⁷ KSC-BC-2023-11, F00005, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 4 December 2023, confidential. A public redacted version of the decision was filed on 30 January 2024, F00005/RED.

⁸ KSC-BC-2023-11, F00008, Registrar, *Notification of Arrest of Haxhi Shala Pursuant to Rule 55(4)*, 11 December 2023, public.

⁹ KSC-BC-2023-11, F00011, Registrar, *Notification of Reception of Haxhi Shala in the Detention Facilities of the Specialist Chambers*, 12 December 2023, public, with Annex 1, strictly confidential and *ex parte*.

¹⁰ KSC-BC-2023-10, F00132, Specialist Prosecutor, *Prosecution Request for Joinder*, 13 December 2023, public; KSC-BC-2023-11, F00016, Specialist Prosecutor, *Prosecution Request for Joinder*, 13 December 2023, public.

¹¹ 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 of the decision 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 of the decision was filed on the same day, F00041/RED.

¹² KSC-BC-2023-10, F00176, Specialist Prosecutor, *Submission of Amended Indictment*, 16 February 2024, public, with Annex 1, confidential, and Annex 2, public.

¹³ 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, public, with Annexes 1-4, confidential.

7. On 13 February 2024 and 22 March 2024, the fourth and fifth status conferences took place.¹⁴ In their respective scheduling orders, the Pre-Trial Judge ordered the SPO and the Defence, if they so wished, to provide written submissions on the anticipated next steps and schedule for the remainder of the pre-trial phase.¹⁵

II. APPLICABLE LAW

8. Pursuant to Article 21(4)(d) and (e) of the Law, the accused shall be entitled to be tried within a reasonable time, and to have Specialist Counsel assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it.

9. Pursuant to Article 39(13) of the Law and Rule 95(2) of the Rules, the Pre-Trial Judge shall ensure the pre-trial proceedings are not unduly delayed and shall take all necessary measures for the expeditious preparation of the case for trial.

10. Pursuant to Rule 95(2)(a), (b), and (j) of the Rules, the Pre-Trial Judge shall:
(i) set out a calendar and a working plan for any pre-trial obligation of the Parties;
(ii) set time limits for disclosure of evidence, take any measure to ensure timely disclosure, and prepare a disclosure report for the Trial Panel; and (iii) set a target date for the readiness of the case for trial.

11. Pursuant to Rule 95(5) of the Rules, after submission of the items under Rule 95(4) of the Rules, the Pre-Trial Judge shall invite the Defence to file a

¹⁴ KSC-BC-2023-10, Transcript of Hearing, 13 February 2024, public; Transcript of Hearing (“22 March 2024 Transcript”), 22 March 2024, confidential.

¹⁵ KSC-BC-2023-10, F00163, Pre-Trial Judge, *Order Setting the Date for Status Conference and for Submissions*, 8 February 2024, public; F00213, Pre-Trial Judge, *Order Setting the Date for Status Conference and for Submissions*, 14 March 2024, public.

pre-trial brief within a set time limit. Moreover, 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.

12. Pursuant to Regulation 6(1) and (2) of the Registry Practice Direction on Legal Aid Regulations (“Legal Aid Regulations”),¹⁶ a suspect or accused claiming indigence or partial indigence and seeking legal aid pursuant to Article 34(7) of the Law shall complete, sign and submit: (i) to the Registrar, a request for the assignment of Counsel; and (ii) to the Defence Office, a Legal Aid Request Form together with a Declaration of Means Form.

13. Pursuant to Regulations 7(3) and 8 of the Legal Aid Regulations, in order to determine whether the suspect or accused is indigent or partially indigent, the Registrar shall conduct an Indigence Assessment.

III. DISCUSSION

A. LEGAL AID REQUESTS

14. With a view to ensuring the rights of the three Accused and preparing expeditiously the case properly before transmission to trial, the Pre-Trial Judge considers that the funding situation of the Defence teams of Mr Januzi, Mr Bahtijari and Mr Shala (jointly, “Defence” or “Defence Teams”) needs to be resolved. The Pre-Trial Judge has received extensive (oral and written) submissions from the Defence and four updates from the Registry about the funding situation.¹⁷ The Pre-Trial Judge notes that two Defence teams are in the

¹⁶ KSC-BD-25-Rev1, Registrar, *Registry Practice Direction – Legal Aid Regulations*, 22 February 2024, public, with Annexes A-C, public.

¹⁷ KSC-BC-2023-10, F00193, Registrar, *Registrar’s Update on Defence Team Funding*, 1 March 2024, confidential, with Annex 1, confidential; F00200, Registrar, *Registrar’s Update on Defence Team Funding*,

process of submitting or will submit requests for legal aid to the SC.¹⁸ In order to reach clarity and resolve the issue for the benefit of the Accused as expeditiously as possible, the Pre-Trial Judge instructs the Defence Teams, should they (still) intend to request legal aid from the SC, to submit the required forms and any necessary supporting documentation to the Registry, and inform the Pre-Trial Judge thereof by Friday, 12 April 2024.

15. In this regard, the Pre-Trial Judge acknowledges receipt of Mr Shala's request for urgent funding,¹⁹ and instructs the Defence for Mr Shala to submit a proper request for legal aid in accordance with the previous paragraph.

16. Should any of the Defence Teams encounter any obstacle that impedes them from filling out the required forms or submitting any supporting documentation within the prescribed time limit, they are instructed to file written submissions before the Pre-Trial Judge without delay. These submissions shall indicate the reasons why the entire forms, or which specific information in the forms, cannot be filled. The expeditious and complete submission of the required forms, including supporting documentation, will enable the Registry to process the applications for legal aid timely.

17. That being said, the Pre-Trial Judge urges the Registry to process any applications for legal aid on an urgent basis.

8 March 2024, confidential, with Annexes ¼, confidential and *ex parte*; F00218, Registrar, *Registrar's Update on Defence Team Funding*, 15 March 2024, confidential, with Annexes 1-6, confidential and *ex parte*; F00228, Registrar, *Registrar's Update on Defence Team Funding and Additional Submissions*, 21 March 2024, confidential, with Annexes 1-5, confidential and *ex parte*.

¹⁸ 22 March 2024 Transcript, p. 220, lines 12-15, and p. 230, lines 17-18.

¹⁹ KSC-BC-2023-10, F00223, Defence for Haxhi Shala, *Haxhi Shala Urgent Request for Interim Funding*, 19 March 2024, confidential.

B. HEALTH SITUATION OF THE ACCUSED

18. The Pre-Trial Judge recalls his invitation to the Defence, shall it deem it necessary, to file a written *ex parte* request before him seeking an expert medical assessment of the Accused.²⁰ In this regard, the Pre-Trial Judge instructs the Defence to file such request as early as possible, detailing (i) the type of health issues that the Accused is facing, in order to identify and appoint an expert with the appropriate medical qualifications; and (ii) the type of assessment requested, notably if the assessment is to be made for the situation of the Accused since their transfer to the SC Detention Facilities, at the time of the alleged offences, or both.

C. CALENDAR FOR THE REMAINING PRE-TRIAL PROCEEDINGS

19. The Pre-Trial Judge recalls that, in the order convening the status conference of 22 March 2024, he announced that, in the absence of a proposed time line for the completion of the Parties' pre-trial obligations, the Pre-Trial Judge shall set a calendar for the remaining phase of the pre-trial proceedings, on the basis of Rule 95(2)(a) of the Rules.²¹

20. In this regard, the Pre-Trial Judge notes that the SPO anticipates to complete its pre-trial disclosure obligations, as well as its ongoing investigation and the processing of any relevant evidentiary material, by Friday, 12 April 2024.²²

21. The Pre-Trial Judge considers that, despite the passage of a significant period of time and notwithstanding the progress achieved, a number of discrete pre-trial

²⁰ 22 March 2024 Transcript, p. 201, line 24, to p. 202, line 7.

²¹ KSC-BC-2023-10, F00213, Pre-Trial Judge, *Order Setting the Date for Status Conference and for Submissions*, 14 March 2024, public, para. 12.

²² KSC-BC-2023-10, F00222, Specialist Prosecutor, *Prosecution Submissions for Status Conference* ("SPO Submissions"), 19 March 2024, public, para. 10; 22 March 2024 Transcript, p. 249, lines 9-18.

obligations and issues remain outstanding. In this regard, the Pre-Trial Judge notes, in particular, that:²³

- a) The Defence Teams claim that they are not able to make substantial progress with the pre-trial proceedings given their lack of funding, and are yet to file (or complete) their respective applications for legal aid before the SC;
- b) The Defence continues to express concerns about the disclosure of the items listed in the SPO's Rule 102(3) notice;
- c) The SPO continues to conduct investigations, and anticipates to disclose further relevant evidentiary material;
- d) The Defence has either commenced or is prevented from conducting investigations for the following reasons:
 - The Defence for Mr Bahtijari submits that it has not commenced its investigation, in light of the lack of funding to do so;
 - The Defence for Mr Shala submits that it has commenced its investigations, but claims progress is subject to funding being guaranteed by the Kosovo Ministry of Justice;
 - The Defence for Mr Januzi avers that investigations are required, but it lacks funding to undertake them;
- e) The Defence for Mr Shala is yet to indicate whether it will make any request concerning unique investigative opportunities pursuant to Rule 99(1) of the Rules;

²³ See, generally, KSC-BC-2023-10, F00219, Defence for Ismet Bahtijari, *Bahtijari Filing for Status Conference*, 18 March 2024, public; SPO Submissions; F00224, Defence for Haxhi Shala, *Haxhi Shala Submissions for Status Conference on 22 March 2024*, 19 March 2024, public; F00225, Defence for Sabit Januzi, *Submissions for Fifth Status Conference*, 19 March 2024, public; 22 March 2024 Transcript.

- f) The Defence for Mr Januzi has yet to indicate whether it will provide notice of an alibi and/or any other grounds excluding criminal responsibility;
- g) The Defence for Mr Shala and the Defence for Mr Januzi confirm their intention to file a pre-trial brief in due course, but reiterate that at present it is impossible to provide an indication as to when they will be in a position to do so, while the Defence for Mr Bahtijari is unable to indicate whether it will file a pre-trial brief pending an assessment of Mr Bahtijari's fitness to stand trial; and
- h) The Parties have yet to conduct *inter partes* discussions regarding how to most efficiently proceed in relation to points of agreement on matters of law and fact.

22. In these circumstances, and having regard to the fact that the Defence has not specified a time line for completing its pre-trial obligations, the Pre-Trial Judge finds it appropriate to order a concrete time line for the remaining pre-trial proceedings. Based on his powers set forth in Article 39(3) and (13) of the Law and Rule 95 of the Rules, the Pre-Trial Judge proceeds in order to safeguard the Accused's right to be tried within a reasonable time, as foreseen in Article 21(4)(d) of the Law.

23. First, the Pre-Trial Judge orders the SPO to submit any outstanding requests pertaining to the disclosure process by no later than Friday, 5 April 2024. Furthermore, the Pre-Trial Judge orders the Defence Teams to submit any such requests, in particular requests regarding issues they have identified in connection with the disclosure of Rule 102(3) material and any objections pursuant to Rule 95(2)(e) of the Rules, by no later than Friday, 19 April 2024.

24. Second, the Pre-Trial Judge orders the SPO to provide a detailed description of the target date for completing its investigations by no later than Friday, 12 April 2024.

25. Third, the Pre-Trial Judge orders the SPO to complete all its pre-trial disclosure obligations, with the exception of any material requiring judicial authorisation, by no later than Friday, 19 April 2024. The Pre-Trial Judge further orders the SPO to submit a notice in the record of the present case providing a detailed overview of the entire disclosure process by the same date.

26. Fourth, the Pre-Trial Judge orders the Parties to finalise their *inter partes* discussions and submit their points of agreement on matters of law and fact by no later than Friday, 17 May 2024, in a joint filing on the record of the case.

27. Fifth, the Pre-Trial Judge orders the Defence Teams to submit a Pre-Trial Brief, if any, by no later than Friday, 7 June 2024.

28. Sixth, the Pre-Trial Judge orders the Defence Teams, should they not be able to respect the procedural calendar set out in the present decision, to file written requests justifying an amendment of the timeline.

29. Lastly, the Pre-Trial Judge sets the date for transmitting the case file to the Trial Panel to Friday, 21 June 2024, pursuant to Rule 72 of the Rules regarding expedited proceedings. Any request for postponement shall be justified on compelling circumstances by way of written filing.

IV. DISPOSITION

30. The Pre-Trial Judge hereby:

- a) **ORDERS** the Defence, should they intend to request legal aid before the Registry, to fill out and submit the required forms, including supporting documentation, and inform the Pre-Trial Judge by **Friday, 12 April 2024**;

- b) **ORDERS** the Defence, if it encounters any obstacle that impedes them from filling out the required forms or supporting documentation within the prescribed time limit, to file written submissions before the Pre-Trial Judge without delay, indicating the reasons why the entire forms, or which specific information in the forms, cannot be filled;
- c) **REQUESTS** the Registry to process any applications for legal aid on an urgent basis;
- d) **INSTRUCTS** the Defence, shall it deem it necessary, to file a written *ex parte* request before him seeking an expert medical assessment of the Accused, in accordance with paragraph 18.
- e) **ORDERS** the SPO to submit any outstanding requests pertaining to the disclosure process, by **Friday, 5 April 2024**; and orders the Defence to submit any related requests by **Friday, 19 April 2024**;
- f) **ORDERS** the SPO to provide a detailed description of the target date for completing its investigations by **Friday, 12 April 2024**;
- g) **ORDERS** the SPO to complete all its pre-trial disclosure obligations, with the exception of any material requiring judicial authorisation, and to submit a notice in the record of the present case providing a detailed overview of the entire disclosure process, by **Friday, 19 April 2024**;
- h) **ORDERS** the Parties to finalise their *inter partes* discussions and submit their points of agreement on matters of law and fact in a joint filing on the record of the case by **Friday, 17 May 2024**; and
- i) **ORDERS** the Defence to submit a Pre-Trial Brief, if any, by **Friday, 7 June 2024**;

- j) **ORDERS** the Defence, should it not be able to respect the procedural calendar set out in the present decision, to file written requests justifying an amendment of the timeline; and
- k) **DECIDES** to set the date for transmitting the case file to the Trial Panel to **Friday, 21 June 2024**.



Judge Nicolas Guillou

Pre-Trial Judge

Dated this Wednesday, 27 March 2024

At The Hague, the Netherlands.