

1 Friday, 12 July 2024
2 [Open session]
3 [Further Appearance]
4 [The Accused Bahtijari and Januzi entered the
5 courtroom]
6 --- Upon commencing at 9.30 a.m.

7 JUDGE MASSELOT: Good morning and welcome, everyone.
8 Before we start, I kindly invite the photographer to enter the
9 courtroom and take photographs for one minute and a half.

10 Is the photographer -- yes.

11 Madam Photographer, you may take pictures of the courtroom and
12 the participants.

13 Thank you, Madam Photographer.

14 Madam Court Officer, could you please call the case.

15 THE COURT OFFICER: Good morning, Your Honour. This is file
16 KSC-BC-2023-10, The Specialist Prosecutor versus Sabit Januzi,
17 Ismet Bahtijari, and Haxhi Shala.

18 JUDGE MASSELOT: Thank you, Court Officer.

19 Before asking those present in the courtroom to introduce
20 themselves, let me remind everyone of a few important rules to be
21 observed during the hearing.

22 Please make sure you activate your microphone before speaking
23 and you switch it off as soon as you finish. Talk slowly and clearly
24 as we have interpretation from and into Albanian and Serbian. Wait
25 five seconds before responding to me or a party or participant in

1 order to allow the interpreters to finish.

2 Now, I would kindly ask the parties to introduce themselves,
3 starting with the Specialist Prosecutor's Office.

4 MS. SHAHABUDDIN: Good morning, Your Honour. For the Specialist
5 Prosecutor's Office, present we have Specialist Prosecutor
6 Kimberly West; Line Pedersen, Case Manager; Joshua Hafetz,
7 Prosecutor; and myself, Tazneen Shahabuddin, Prosecutor.

8 JUDGE MASSELOT: Thank you, Madam Prosecutor.

9 Now the Defence, please, starting with the Defence for
10 Mr. Januzi.

11 Counsel, may I ask you to also introduce your client, please.

12 MR. BOWDEN: Thank you, Your Honour. My name is Huw Bowden,
13 co-counsel. Mr. Jonathan Rees, King's Counsel, is
14 Specialist Counsel. And present in court is Mr. Sabit Januzi.

15 JUDGE MASSELOT: Thank you.

16 Now for the Defence of Mr. Bahtijari.

17 Counsel, could you please likewise introduce yourself and your
18 client.

19 MS. GERRY: [via videolink] Good morning, Your Honour, and to
20 everyone in and outside this courtroom. My name is Felicity Gerry.
21 I'm here online as Specialist Counsel for Mr. Bahtijari, and
22 Mr. Bahtijari is with you in court.

23 JUDGE MASSELOT: Thank you, counsel.

24 I finally turn to the Registry.

25 MR. NILSSON: Good morning, Your Honour. Good morning,

1 colleagues. Jonas Nilsson, Deputy Registrar. I'm here together with
2 legal counsel Whitney Price, representing Registry today. Thank you.

3 JUDGE MASSELOT: And last, for the record, I'm
4 Marjorie Masselot, Pre-Trial Judge for this case.

5 Before we begin, allow me to recall the most important and
6 relevant procedural steps in this case that have brought us to the
7 courtroom today.

8 On 4 October 2023, the Specialist Prosecutor's Office filed the
9 indictment against Messrs. Januzi and Bahtijari, as confirmed by the
10 Pre-Trial Judge, namely, the Case 10 Confirmed Indictment.

11 On 6 November 2023, the Specialist Prosecutor's Office filed the
12 indictment against Haxhi Shala, as confirmed by the Pre-Trial Judge,
13 namely, the Case 11 Confirmed Indictment.

14 On 8 February 2024, the Pre-Trial Judge granted the request of
15 the Specialist Prosecutor's Office to join the case of the
16 Specialist Prosecutor versus Messrs. Januzi and Bahtijari, Case 10,
17 with the case of the Specialist Prosecutor versus Mr. Shala, Case 11.
18 The Pre-Trial Judge also decided that the joint case would proceed on
19 the basis of the Case 10 Confirmed Indictment and Case 11 Confirmed
20 Indictment pending a request to amend the charge of intimidation,
21 under Count 3 of the Case 10 Confirmed Indictment against
22 Messrs. Januzi and Bahtijari.

23 On 27 February 2024, the Specialist Prosecutor's Office filed a
24 request to amend Case 10 Confirmed Indictment. Therein, the
25 Specialist Prosecutor's Office sought an amendment consisting of

1 adding for both, Messrs. Januzi and Bahtijari, "the promise of a gift
2 or any other form of benefit" limb of intimidation during criminal
3 proceedings under Article 387 of the 2019 Criminal Code of Kosovo,
4 and the factual allegations in support thereof.

5 On 17 May 2024, the Pre-Trial Judge decided that the amendment
6 sought by the Specialist Prosecutor's Office amounted to a new charge
7 and noted that it only concerned Mr. Januzi and Mr. Bahtijari, since
8 the same charge had already been confirmed against Mr. Shala. The
9 Pre-Trial Judge thus invited the Defence of Messrs. Januzi and
10 Bahtijari to make submissions on the amendment.

11 On 8 July 2024, following assignment of this case, I issued the
12 "Decision on the Confirmation of Amendments to the Indictment and
13 Related Matters," in which I confirmed the amendment.

14 Moreover, I ordered the Specialist Prosecutor's Office to file,
15 by 10 July 2024, a joint indictment against the three co-accused in
16 this case.

17 Last but not least, I convened the present further appearances
18 for both Messrs. Januzi and Bahtijari in accordance with Rules 93 and
19 92 of the rules.

20 On 10 July 2024, the Specialist Prosecutor's Office filed a
21 joint indictment.

22 As regards today's further appearances, allow me to recall their
23 purpose for the benefit of Messrs. Januzi and Bahtijari.

24 Today's hearing, as you know, is not a trial. As such, evidence
25 will neither be presented nor debated. I also stress that the guilt

1 or innocence of the accused will not be discussed or decided. The
2 very purpose of this further appearance is regulated by Article 39 of
3 the Law and Rules 90 and 92 of the rules, according to which I shall,
4 in relation to each accused: Have the new charge in the joint
5 indictment read to the accused; confirm that the accused understands
6 the new charge; satisfy myself that the rights of the accused are
7 respected; and inform the accused that, within 30 days of today's
8 hearing, they will be called upon to admit guilt or plead not guilty
9 on the new charge set out in the joint indictment. However, if any
10 of the accused wishes to do so, he may immediately admit guilt or
11 plead not guilty.

12 Messrs. Januzi and Bahtijari, before the Court Officer reads the
13 respective new confirmed charges against each of you, I wish to
14 remind you that this is not the time to contest this new charge, but
15 simply to acknowledge your respective understanding thereof. You
16 will have the opportunity to challenge this new charge with the
17 assistance of your respective counsel.

18 Mr. Januzi, now may I ask you to confirm that you have received
19 the joint indictment, dated 10 July 2024, in a language that you
20 understand and speak, namely Albanian? And I kindly ask you to stand
21 up before you respond.

22 THE ACCUSED JANUZI: [Interpretation] Yes, Your Honour. I have
23 received it. I received it yesterday.

24 JUDGE MASSELOT: Thank you.

25 I will now ask the Court Officer to read out the new charge

1 against you contained in the joint indictment as foreseen in
2 Article 39 of the Law and Rule 92.

3 THE COURT OFFICER: Thank you, Your Honour.

4 In the joint indictment, the Specialist Prosecutor adds the
5 following charge against Mr. Sabit Januzi.

6 Count 3: Intimidation during criminal proceedings by way of a
7 promise of a gift or any other form of benefit, namely, by offering
8 to help to Witness 1 if he agreed to withdraw his testimony in
9 ongoing proceedings before the Specialist Chambers, punishable under
10 Article 387 of the 2019 Kosovo Criminal Code and Article 15(2) of the
11 Law.

12 This offence was committed between 5 and 12 April 2023.

13 In relation to this offence, there is a well-grounded suspicion
14 that Mr. Sabit Januzi is criminally responsible pursuant to
15 Article 16(3) of the Law for:

16 a. Committing this offence under Count 3, pursuant to
17 Article 17 of the 2019 Kosovo Criminal Code;

18 b. Co-perpetrating with Mr. Ismet Bahtijari and Mr. Haxhi Shala
19 this offence under Count 3, pursuant to Article 31 of the 2019 Kosovo
20 Criminal Code.

21 c. Assisting in the commission of this offence under Count 3,
22 pursuant to Article 33 of the 2019 Kosovo Criminal Code; and/or

23 d. Agreeing to commit with Mr. Ismet Bahtijari and
24 Mr. Haxhi Shala this offence under Count 3, pursuant to Article 35 of
25 the 2019 Kosovo Criminal Code.

1 Thank you, Your Honour.

2 JUDGE MASSELOT: Thank you, Madam Court Officer.

3 Mr. Januzi, do you understand the new charge against you
4 contained in the joint indictment as just read out to you by
5 Madam Court Officer?

6 THE ACCUSED JANUZI: [Interpretation] Yes, I do understand that.

7 JUDGE MASSELOT: Thank you, Mr. Januzi. You may be seated.
8 Mr. Bahtijari, I will now turn --

9 MS. GERRY: [via videolink] Your Honour, I'm sorry, I have my
10 hand up. I wonder if I might make a small submission before you
11 speak to Mr. Bahtijari, please.

12 JUDGE MASSELOT: Maybe we should first read the charges to your
13 client, and then you can make a submission.

14 MS. GERRY: [via videolink] It's relevant before you read it. If
15 I might just explain, I'd be very grateful.

16 JUDGE MASSELOT: I give you the floor, counsel.

17 MS. GERRY: [via videolink] I'm very grateful. Thank you.

18 He has not received the indictment in physical form because he
19 has difficulty with the said system, but he has had the amendment
20 explained to him by me. So when you ask the question "have you
21 received the indictment," he has not received it physically but he
22 has heard the indictment in his own language.

23 I hope that's helpful.

24 JUDGE MASSELOT: All right. Thank you, counsel.

25 Does the Registry wish to make observation?

1 MR. NILSSON: Thank you, Your Honour.

2 Mr. Bahtijari received the indictment yesterday, yesterday
3 afternoon, late, or maybe after counsel has spoken to him. So that
4 may be the explanation. Thank you.

5 MS. GERRY: [via videolink] Very grateful. Thank you.

6 JUDGE MASSELOT: All right. Thank you, Mr. Deputy Registrar.

7 Mr. Bahtijari, so could you confirm that you have received the
8 new charge?

9 THE ACCUSED BAHTIJARI: [Interpretation] Yes, Your Honour. Yes,
10 I have received it.

11 JUDGE MASSELOT: In a language that you understand and speak,
12 namely Albanian?

13 THE ACCUSED BAHTIJARI: [Interpretation] Yes, true. I have
14 received that in Albanian.

15 JUDGE MASSELOT: Thank you, Mr. Bahtijari.

16 I will now also ask the Court Officer to read out this new
17 charge against you as foreseen in Article 39 of the Law and Rule 92.

18 THE COURT OFFICER: In the joint indictment, the
19 Specialist Prosecutor adds the following charge against
20 Mr. Ismet Bahtijari.

21 Count 3: Intimidation during criminal proceedings by way of a
22 promise of a gift or any other form of benefit, namely, by offering
23 help to Witness 1 if he agreed to withdraw his testimony in ongoing
24 proceedings before the Specialist Chambers, punishable under
25 Article 387 of the 2019 Kosovo Criminal Code and Article 15(2) of the

1 Law.

2 This offence was committed between 5 and 12 April 2023.

3 In relation to this offence, there is a well-grounded suspicion
4 that Mr. Ismet Bahtijari is criminally responsible pursuant to
5 Article 16(3) of the Law for:

6 a. Co-perpetrating with Mr. Sabit Januzi and Mr. Haxhi Shala
7 this offence under Count 3, pursuant to Article 31 of the 2019 Kosovo
8 Criminal Code.

9 b. Assisting in the commission of this offence under Count 3,
10 pursuant to Article 33 of the 2019 Kosovo Criminal Code; and/or

11 c. Agreeing to commit with Mr. Sabit Januzi and Mr. Haxhi Shala
12 this offence under Count 3, pursuant to Article 35 of the 2019 Kosovo
13 Criminal Code.

14 Thank you, Your Honour.

15 JUDGE MASSELOT: Thank you, Madam Court Officer.

16 Mr. Bahtijari, do you understand this new charge as read out to
17 you by the Court Officer?

18 THE ACCUSED BAHTIJARI: [Interpretation] Yes, I do.

19 JUDGE MASSELOT: Thank you, Mr. Bahtijari. You may be seated.

20 Messrs. Januzi and Bahtijari, your main rights before this
21 Court, as guaranteed by the Law on the Specialist Chambers and the
22 Rules of Procedure and Evidence, have been read to you during your
23 respective Initial Appearance on 9 October 2023. Still, let me
24 recall some of them.

25 First, you shall be presumed innocent until proven guilty beyond

1 reasonable doubt.

2 In the determination of the charges against you, you are
3 entitled to a fair and public hearing, subject to any measures
4 ordered for the protection of victims and witnesses.

5 You may have the right to be informed promptly and in detail, in
6 a language which you understand, of the nature and cause of the
7 charges against you.

8 You have the right to have adequate time and facilities for the
9 preparation of your defence and to communicate with a counsel of your
10 own choosing.

11 You have the right to be tried within a reasonable time.

12 You have the right to be tried in your presence and to defend
13 yourself through your counsel. And I take note that you are
14 respectively represented by counsel, and I'm thus satisfied that both
15 accused are presently represented by counsel.

16 You have the right to have the free assistance of an interpreter
17 if you cannot understand or speak the language used in the court.

18 You have the right not to be compelled to testify against
19 yourself or to admit guilt.

20 You have the right to remain silent and no adverse inference
21 shall be drawn from your silence.

22 You have the right to lodge preliminary motions in relation to
23 new charge contained in the joint indictment.

24 You have the right to receive the supporting material to the
25 amended indictment submitted for confirmation.

1 You have the right not to be detained for an unreasonable period
2 prior to opening of the case, to request review of decisions on your
3 detention, and to appeal such decisions directly before the Court of
4 Appeal.

5 And you have the right to appeal, either directly or through the
6 certification process, as provided for under the rules.

7 I will now turn to the possibility of the accused to enter a
8 plea, if any, in accordance with Rule 92.

9 Mr. Januzi, I first turn to you. Could you please stand up.

10 Within 30 days from today, you will be called upon to admit
11 guilt or plead not guilty on this new charge in the joint indictment.
12 If you wish to do so, you may choose to immediately admit guilt or
13 plead not guilty.

14 I would therefore like to ask you, Mr. Januzi, if you have had
15 the opportunity to discuss this new charge with your counsel, and if
16 you are prepared to enter a plea at this time?

17 THE ACCUSED JANUZI: [Interpretation] Well, I have discussed this
18 over with my counsel, and I wish to express myself right now about
19 it.

20 JUDGE MASSELOT: You have the floor.

21 THE ACCUSED JANUZI: [Interpretation] As I have already stated in
22 the first hearing that I am not guilty for any of the counts of the
23 indictment, I again wish to say that I plead not guilty for every
24 count in the amended indictment.

25 JUDGE MASSELOT: Thank you, Mr. Januzi. This is on the record.

1 You may be seated.

2 MS. GERRY: [via videolink] Again, Your Honour, may I briefly
3 interrupt before you turn to Mr. Bahtijari, please.

4 JUDGE MASSELOT: You have the floor, counsel.

5 MS. GERRY: [via videolink] Very grateful.

6 Mr. Bahtijari, I anticipate, will give the same response. He
7 will wish to say not guilty. He sometimes needs support in the
8 process of the Court, so I'm interrupting just out of an excess of
9 caution to make sure he knows this is the moment at which he is going
10 to say he is not guilty of this charge. Thank you.

11 JUDGE MASSELOT: Thank you, counsel.

12 I will indeed now turn to you, Mr. Bahtijari. Could you please
13 stand up.

14 So you also have the possibility to enter a plea, if any, in
15 accordance with Rule 92. Within 30 days from today, you will be
16 called upon to admit guilt or plead not guilty on this new charge.
17 If you wish to do so, you may choose to immediately admit guilt or
18 plead not guilty.

19 I would therefore like to ask you, Mr. Bahtijari, if you have
20 had the opportunity to discuss the new charge with your counsel, and
21 if you are prepared to enter a plea at this time. And you heard what
22 your counsel just shared, so I guess you had a discussion previously,
23 but I give you the floor to respond to that question, and you have
24 the floor.

25 THE ACCUSED BAHTIJARI: [Interpretation] I plead not guilty for

1 any of the charges in the indictment.

2 JUDGE MASSELOT: Thank you, Mr. Bahtijari. You may be seated.

3 So at this point, I would like to ask the parties whether they
4 have any other issues strictly related to today's further appearance
5 of Messrs. Januzi and Bahtijari that they would like to raise?

6 Counsel, please.

7 MR. BOWDEN: Your Honour, really only in relation to the
8 follow-on timetable from the amended and shortened timetable
9 regarding preliminary motions, whether Your Honour wishes to address
10 the pre-trial brief date or whether that is something that
11 Your Honour will deal with in due course.

12 JUDGE MASSELOT: The pre-trial brief?

13 MR. BOWDEN: Yes.

14 JUDGE MASSELOT: You want to make some observation on that
15 matter?

16 MR. BOWDEN: It was previously set, and thereafter amended by
17 Your Honour, with regard to the decision that was pending and, of
18 course, has now been given. That thereafter follows that there will
19 be a potential challenge to that indictment. It would be submitted
20 that it would be sensible, therefore, for any pre-trial brief to be
21 perhaps seven days after any final determination following on from
22 the preliminary motions.

23 JUDGE MASSELOT: Right. I mean, indeed, the deadline was set to
24 15 July --

25 MR. BOWDEN: Correct, Your Honour.

1 JUDGE MASSELOT: -- as you just mentioned, seven days after the
2 notification of the amendment decision. May I also recall that this
3 deadline was actually ordered upon a request of --

4 MR. BOWDEN: It was.

5 JUDGE MASSELOT: -- Mr. Januzi. So, concretely, would you like
6 to -- what is your --

7 MR. BOWDEN: Well, that --

8 JUDGE MASSELOT: -- this request?

9 MR. BOWDEN: -- followed the observation that, of course, we
10 didn't know what the final indictment would be. And Your Honour
11 agreed, pending Your Honour's decision.

12 Of course, there will be preliminary -- there are dates for
13 preliminary motions to be --

14 JUDGE MASSELOT: Yeah.

15 MR. BOWDEN: -- timetabled, and they have been timetabled by
16 Your Honour, which may affect ultimately, of course, what the trial
17 indictment will be. And until that trial indictment is finally
18 known, as a result of any decisions that will be given, should
19 preliminary motions be made, and considered, it's submitted that it
20 would only be -- follow logical sense for the pre-trial brief to
21 await those final decisions of Your Honour.

22 JUDGE MASSELOT: But, I mean, concretely, are you requesting an
23 extension of time for such submissions?

24 MR. BOWDEN: Yes.

25 JUDGE MASSELOT: Okay. So let's put it straight.

1 MR. BOWDEN: Sorry, yes. Yeah. So the pre-trial brief, it will
2 be submitted, should be following the timetable that's been set,
3 following any final decision or final determination that's been made
4 in respect of those preliminary motions, and it would be suggested
5 that seven days thereafter, from that final determination, will be a
6 sensible date for the pre-trial brief.

7 It would not appear that this will set back any ultimate
8 timetabling of trial or transmission of case, bearing in mind where
9 we are, and bearing in mind the forthcoming recess, of course. It
10 would be, if it follows the timetable, depending upon any decisions
11 of Your Honour, that a pre-trial brief would probably be set back by
12 28 days.

13 JUDGE MASSELOT: Well, I would -- Counsel Gerry, do you wish to
14 make any observation on this --

15 MS. GERRY: [via videolink] Sorry, no. I'm just waiting my turn
16 for once you've finished with Mr. Bowden.

17 JUDGE MASSELOT: All right.

18 For the Prosecutor's Office, would you have any observation on
19 that request?

20 MS. SHAHABUDDIN: No, Your Honour, I don't think that the
21 Specialist Prosecutor's Office takes a position as to this request.

22 JUDGE MASSELOT: All right.

23 Well, then, I would simply suggest -- or invite you, rather, to
24 make a written filing on this issue, and a decision will be issued in
25 due course.

1 MR. BOWDEN: Of course, Your Honour.

2 JUDGE MASSELOT: Counsel Gerry, I understood that you also had
3 some observations.

4 MS. GERRY: [via videolink] Simply to say that, as Your Honour
5 knows, Mr. Bahtijari has a family meeting today when he meets his new
6 grandchild, so we're rather keen to go. So if we -- we hope that we
7 can make any submissions in writing, in a way that you've just
8 indicated to Mr. Bowden. Nothing else to add.

9 JUDGE MASSELOT: All right.

10 Any other observation from any other party? No.

11 So before we conclude today's hearing, let me thus, indeed,
12 record the date of -- for the filing for the preliminary motions in
13 relation to the new charge contained in the joint indictment, which
14 was set for Friday, 19 July 2024.

15 And I would like to ask the Defence for Mr. Januzi and
16 Mr. Bahtijari whether they are already in a position to state whether
17 they intend to file preliminary motions in relation to this new
18 charge.

19 MR. BOWDEN: On behalf of Mr. Januzi, yes.

20 JUDGE MASSELOT: Well noted.

21 MS. GERRY: [via videolink] On behalf of Mr. Bahtijari, we're --
22 we haven't made a final decision yet. We perhaps would like to see
23 the submissions on behalf Mr. Januzi first.

24 JUDGE MASSELOT: All right. Well, as this information you just
25 provided may have an impact on the date of the transmission of the

1 case, a decision on the remaining calendar of the case will be issued
2 in due course.

3 This concludes this hearing. I wish to thank the parties and
4 the Registry for their attendance. I also wish to thank the
5 interpreters, stenographers, audio-visual technicians, and security
6 personnel for their assistance.

7 The hearing is now adjourned. Thank you.

8 --- Whereupon the Further Appearance adjourned
9 at 9.59 a.m.

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