

1 Monday, 9 October 2023

2 [Initial Appearance of Ismet Bahtjari]

3 [Open session]

4 [The accused entered the courtroom]

5 --- Upon commencing at 2.00 p.m.

6 JUDGE GUILLOU: Good afternoon, everyone. And welcome inside  
7 and outside the courtroom.

8 Before we start, in my decision to set the date for this Initial  
9 Appearance, I had anticipated some pictures by a photographer, but I  
10 think, counsel, that you have some reservations with picture of your  
11 client. Is that the case?

12 MR. SYTEMA: Yes, Your Honour. I have advised my client not to  
13 have his picture taken. Is it --

14 JUDGE GUILLOU: Yes, it works.

15 MR. SYTEMA: Your Honour, I've advised my client not to have his  
16 picture taken. He is not a publicly known figure, and I guess his  
17 privacy is endangered too much by his photo wandering around the  
18 internet in connection with this case. So I think his privacy should  
19 be considered in this matter.

20 JUDGE GUILLOU: Counsel, would you agree if we were to take  
21 group settings; i.e., not a close-up on your client? Because this  
22 hearing is broadcasted on the internet anyway, because we have  
23 publicity of proceedings. But we have pictures of the whole  
24 courtroom and not a specific close-up on your client. Would this be  
25 agreeable to you?

1 MR. SYTEMA: That would be agreeable. Thank you.

2 JUDGE GUILLOU: Thank you, counsel.

3 I will ask the photographers to make pictures of the courtroom  
4 itself and no close-ups on the accused, please. You have one minute  
5 and a half.

6 Thank you, Madam Photographer. You may now leave the courtroom.

7 Madam Court Officer, can you please call the case.

8 THE COURT OFFICER: Your Honour, this is file KSC-BC-2023-10,  
9 The Specialist Prosecutor versus Sabit Januzi and Ismet Bahtjari.

10 JUDGE GUILLOU: Thank you, Madam Court Officer.

11 Before asking those present in the courtroom to introduce  
12 themselves, I would like to remind everyone of a few rules that must  
13 be observed at all times in order to make courtroom proceedings  
14 smooth.

15 Please make sure that you activate your microphone before  
16 speaking and that you switch it off as soon as you're finished. Talk  
17 slowly and clearly as we have interpretation from and into Albanian  
18 and Serbian. And wait five seconds before responding to me or a  
19 party or participant in order to allow the interpreters to finish the  
20 interpretation.

21 What is said in this hearing is transcribed in realtime and will  
22 be reflected in a transcript available to the parties and to the  
23 public after this hearing.

24 I would also like to remind the parties that certain information  
25 in this case is subject to protective measures and confidentiality

1 orders. Confidential information shall not be disclosed in open  
2 session. If any party or participant must go into private session  
3 and refer to any confidential information, please indicate the  
4 reason.

5 And I would like to ask the parties and participants to  
6 introduce themselves, starting with the Specialist Prosecutor's  
7 Office.

8 Mr. Prosecutor.

9 MR. HAFETZ: Good afternoon, Your Honour. On behalf of the  
10 Specialist Prosecutor's Office, Joshua Hafetz, Tazneen Shahabuddin,  
11 Dirk Jan Laman, John Devaney, and behind me Fabian Unser-Nad.

12 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

13 Now I turn to the Defence, please.

14 MR. SYTEMA: Thank you, Your Honour. My name is Hendrik Sytema.  
15 I'm a member of The Hague bar, and I'm here in my capacity as  
16 Duty Counsel for Mr. Bahtjari.

17 JUDGE GUILLOU: Thank you, Mr. Sytema.

18 And now let me turn to the Registry, please.

19 MR. NILSSON: Good afternoon, Your Honour. Jonas Nilsson,  
20 Deputy Registrar. I am representing Registry today together with  
21 head of unit and staff of the Court Management Unit. Thank you.

22 JUDGE GUILLOU: Thank you, Mr. Nilsson.

23 And for the record, I note that Mr. Bahtjari is also present in  
24 the courtroom.

25 And for the record again, I am Nicolas Guillou Pre-Trial Judge

1 for this case.

2 The accused is appearing today for the first time before the  
3 Specialist Chambers following the indictment confirmed against him.

4 Mr. Bahtjari, will you please rise.

5 Could you please tell us your full name.

6 THE ACCUSED BAHTJARI: [Interpretation] Ismet Bahtjari.

7 JUDGE GUILLOU: What is your date and place of birth?

8 THE ACCUSED BAHTJARI: [Interpretation] 27 February 1963,  
9 Fushtice e Poshtme.

10 JUDGE GUILLOU: What is your citizenship or what are your  
11 citizenships?

12 THE ACCUSED BAHTJARI: [Interpretation] Albanian.

13 JUDGE GUILLOU: What is your current profession?

14 THE ACCUSED BAHTJARI: [Interpretation] I am a builder. I am an  
15 electrician.

16 JUDGE GUILLOU: Thank you, Mr. Bahtjari. You may be seated.

17 Let me now move to the procedural history of the case.

18 On 2 October 2023, in my capacity as Pre-Trial Judge, I  
19 confirmed the indictment submitted by the Specialist Prosecutor  
20 against Mr. Bahtjari charging him with the offences of: Count 1,  
21 attempt to construct official persons in performing official duties  
22 by serious threats; Count 2, attempt to obstruct official persons in  
23 performing official duties by participating in the common action of a  
24 group; and Count 3, intimidation during criminal proceedings.

25 On 5 October 2023, the SPO arrested Mr. Bahtjari in Kosovo, at

1 which point he was served with the Confirmed Indictment.

2 Mr. Bahtjari was transferred to the detention facilities of the  
3 Kosovo Specialist Chambers in The Hague on 6 October 2023.

4 Mr. Bahtjari, before we proceed any further, I have to make sure  
5 that you can follow the proceedings in a language that you understand  
6 and speak. Can you confirm that you understand and speak Albanian?

7 THE ACCUSED BAHTJARI: [Interpretation] I confirm. I do confirm.

8 JUDGE GUILLOU: Thank you, Mr. Bahtjari. By this, I am  
9 satisfied that you can follow the proceedings in Albanian, a language  
10 that you understand and speak, in accordance with Rule 92 of the  
11 Rules of Procedure and Evidence.

12 If at any moment you do not understand or you are not receiving  
13 interpretation, please draw my attention to it immediately.

14 THE ACCUSED BAHTJARI: [Interpretation] It's all fine. I shall  
15 do so.

16 JUDGE GUILLOU: Thank you.

17 Now, let me explain the specific purpose of the Initial  
18 Appearance for the benefit of the accused and those joining us in the  
19 public gallery and to follow the proceedings online.

20 Today's hearing is not a trial. No evidence will be presented  
21 or debated. And the guilt or innocence of the accused will not be  
22 discussed or decided. The purpose of this Initial Appearance is  
23 regulated by Article 39 of the Law and Rule 92 of the rules.

24 According to these provisions, I shall have the charges in the  
25 Confirmed Indictment read to the accused in a language he understands

1 and speaks; confirm that the accused understands the indictment;  
2 satisfy myself that the rights of the accused, in particular, his  
3 right to counsel, are respected; inform the accused that within 30  
4 days of today's hearing he will be called upon to admit guilt or  
5 plead not guilty on each charge set out in the indictment.

6 If the accused wishes to do so, he may immediately admit guilt  
7 or plead not guilty.

8 And, finally, I shall also set other dates, as appropriate, in  
9 performing my functions as Pre-Trial Judge. I expect the parties to  
10 adhere to these matters, which I will address in turn.

11 Should either party wish to discuss any other matter not  
12 expressly foreseen in the context of this Initial Appearance, they  
13 are invited to do so in writing by making a filing before me.

14 First, Mr. Bahtjari, may I ask you to confirm that you received  
15 the Confirmed Indictment in a language that you understand and speak?

16 THE ACCUSED BAHTJARI: [Interpretation] Yes, I do confirm.

17 JUDGE GUILLOU: Thank you, Mr. Bahtjari.

18 I will now ask Madam Court Officer to read out the charges in  
19 the Confirmed Indictment as foreseen in Article 39 of the Law and  
20 Rule 92.

21 THE COURT OFFICER: Thank you, Your Honour.

22 In the Confirmed Indictment, the Specialist Prosecutor charges  
23 Mr. Ismet Bahtjari with:

24 Count 1: Attempting to obstruct official persons in performing  
25 official duties by serious threat punishable under Article 401(1) and

1 (5) of the 2019 Kosovo Criminal Code and Article 15(2) of the Law;

2 Count 2: Attempting to obstruct official persons in performing  
3 official duties by participating in the common action of a group  
4 punishable under Article 401(2) and (5) of the 2019 Kosovo Criminal  
5 Code and Article 15(2) of the Law;

6 And Count 3: Intimidation during criminal proceedings  
7 punishable under Article 387 of the 2019 Kosovo Criminal Code and  
8 Article 15(2) of the Law;

9 2. These offences were committed between at least 5 and  
10 12 April 2023.

11 3. In relation to these offences, there is a well-grounded  
12 suspicion that Mr. Ismet Bahtjari is criminally responsible pursuant  
13 to Article 16(3) of the Law for:

14 (a) committing the offence under Count 3, pursuant to Article 17  
15 of the 2019 Kosovo Criminal Code;

16 (b) co-perpetrating with Mr. Sabit Januzi the offences under  
17 Counts 1 to 3, pursuant to Article 31 of the 2019 Kosovo Criminal  
18 Code;

19 (c) assisting in the commission of the offences under Counts 1  
20 to 3, pursuant to Article 33 of the 2019 Kosovo Criminal Code;

21 (d) agreeing to commit with Mr. Sabit Januzi the offences under  
22 Counts 1 to 3, pursuant to Article 35 of the 2019 Kosovo Criminal  
23 Code; and/or

24 (e) attempting to committing the offences under Counts 1 to 2,  
25 pursuant to Article 28 of the 2019 Kosovo Criminal Code.

1 Thank you.

2 JUDGE GUILLOU: Thank you, Madam Court Officer.

3 Mr. Bahtjari, I wish to remind you that it is not time to  
4 contest the charges but simply to acknowledge your understanding of  
5 the charges. You will have ample opportunity to challenge the  
6 charges with the assistance of your counsel.

7 Mr. Bahtjari, did you understand the charges contained in the  
8 Confirmed Indictment as read by Madam Court Officer?

9 THE ACCUSED BAHTJARI: [Interpretation] Yes.

10 JUDGE GUILLOU: Thank you, Mr. Bahtjari. You may be seated.

11 Now, let me inform you about your rights before this Court.

12 The Law on the Specialist Chambers and the Rules of Procedure  
13 and Evidence guarantee you a number of rights, and I will read out  
14 the most important ones.

15 First, you shall be presumed innocent until proven guilty beyond  
16 reasonable doubt. In the determination of the charges against you,  
17 you are entitled to a fair and public hearing, subject to any  
18 measures ordered for the protection of victims and witnesses.

19 You have the right to be informed promptly and in detail in a  
20 language which you understand of the nature and the cause of the  
21 charges against you.

22 You have the right to adequate time and facilities for the  
23 preparation of your defence and to communicate with the counsel of  
24 your own choosing.

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



1           You have the right to be tried in the presence of your counsel  
2 and in your presence.

3           You have the right to have counsel assigned to you and without  
4 payment if you do not have sufficient means to pay for it.

5           You have the right to examine or have examined the witnesses  
6 against you and to obtain the attendance and examination of witnesses  
7 on your behalf.

8           You have the right to have the free assistance of an interpreter  
9 if you cannot understand or speak the language used in the Court.

10          You have the right not to be compelled to testify against  
11 yourself or to admit guilt.

12          You have the right to remain silent, and no adverse inference  
13 shall be drawn from your silence.

14          You also have the right to make unsworn statements relevant to  
15 the case, and you may appear as a witness under oath.

16          You have the right to lodge preliminary motions to challenge the  
17 jurisdiction of the Specialist Chambers, to allege defects in the  
18 form of the indictment, and to seek the severance of the indictment.

19          You have the right to receive, within 30 days of today's  
20 hearing, the supporting material to the indictment submitted for  
21 confirmation.

22          You have the right to receive all statements of witnesses whom  
23 the Specialist Prosecutor intends to call to testify at trial in the  
24 language you understand and speak, namely, Albanian.

25          You have the right to receive immediately any information which

1 may reasonably suggest your innocence or mitigate your guilt, or  
2 affect the credibility or the reliability of the  
3 Specialist Prosecutor's evidence, as soon as the information is in  
4 his custody, control, or actual knowledge.

5 You have the right that all material and relevant evidence or  
6 facts in possession of the Specialist Prosecutor be made available to  
7 you before the beginning of and during the proceedings. This right  
8 is only subject to restrictions which are strictly necessary and when  
9 any counterbalancing protections are applied.

10 You have the right not to be detained for an unreasonable period  
11 prior to the opening of the case, to request review of decisions on  
12 your detention, and to appeal such decisions directly before the  
13 Court of Appeal.

14 You have the right to appeal directly before the Court of Appeal  
15 a decision on preliminary motion challenging the jurisdiction of the  
16 Specialist Chambers, and you have the right to seek leave to appeal  
17 other decisions.

18 Mr. Bahtjari, you have heard the most important rights that you  
19 enjoy in accordance with the applicable legal framework of the  
20 Specialist Chambers. Do you understand these rights, Mr. Bahtjari?

21 THE ACCUSED BAHTJARI: [Interpretation] Yes, I do understand.

22 JUDGE GUILLOU: Thank you, Mr. Bahtjari. You may be seated.

23 I wish to inform that, according to Article 21(5) of the Law,  
24 you may not represent yourself because you are currently in  
25 detention. Representation by a Specialist Counsel is, therefore,

1 mandatory. It is my duty, as Pre-Trial Judge, to ensure that your  
2 right to counsel is respected.

3 To this end, I have noted the Registrar's filing informing me of  
4 the assignment of Duty Counsel. I also understand from the  
5 Registrar's filing that pending the appointment or assignment of  
6 counsel, you have been assigned Mr. Hendrik Sytema as Duty Counsel in  
7 accordance with Section 17(2) of the Directive on Counsel and  
8 Regulation 21 of the Legal Aid Regulations.

9 Mr. Bahtjari, can you confirm that Mr. Sytema has been assigned  
10 as Duty Counsel?

11 THE ACCUSED BAHTJARI: [Interpretation] Yes.

12 JUDGE GUILLOU: Thank you, Mr. Bahtjari. You may be seated.

13 It follows that the accused is presently represented by  
14 Specialist Counsel.

15 Counsel, do you wish to add anything specific on the  
16 representation of the accused?

17 MR. SYTEMA: Thank you, Your Honour. Not at this moment.

18 JUDGE GUILLOU: Thank you, counsel.

19 I will now turn to the possibility for the accused to enter a  
20 plea, if any, in accordance with Rule 92.

21 Mr. Bahtjari, within 30 days from today, you will be called upon  
22 to admit guilt or plead not guilty on each charge in the Confirmed  
23 Indictment. If you wish to do so, you may choose to immediately  
24 admit guilty or plead not guilty.

25 I would, therefore, like to ask you, Mr. Bahtjari, if you have

1 had the opportunity to discuss the charges in the Confirmed  
2 Indictment with your counsel and if you are prepared to enter a plea  
3 at this time. And if this is the case, I invite you to stand up  
4 while you plead.

5 Mr. Bahtjari.

6 THE ACCUSED BAHTJARI: [Interpretation] Not guilty.

7 JUDGE GUILLOU: You make a plea of not guilty today; correct?

8 THE ACCUSED BAHTJARI: [Interpretation] Not only today. I'm not  
9 guilty all the time.

10 JUDGE GUILLOU: Thank you, Mr. Bahtjari.

11 Counsel, just to make sure that it is crystal clear in the  
12 transcript, Mr. Bahtjari enters a plea today and he pleads not  
13 guilty; correct?

14 MR. SYTEMA: Thank you, Your Honour. That's correct.

15 JUDGE GUILLOU: Thank you Mr. Bahtjari.

16 Thank you, counsel.

17 You may be seated.

18 Now, let me move to the working language in the proceedings. In  
19 the Scheduling Order for this Initial Appearance, I asked the parties  
20 to make oral submissions at today's hearing on the working language  
21 to be used in the present case according to Rule 8.

22 Could the parties indicate their preference for the record, and  
23 I will first ask the Prosecutor's Office.

24 Mr. Prosecutor.

25 MR. HAFETZ: Thank you, Your Honour. Our preference would be

1 English.

2 JUDGE GUILLOU: Thank you, Mr. Prosecutor. This is noted.

3 Counsel.

4 MR. SYTEMA: Thank you, Your Honour. The same goes for the  
5 Defence.

6 JUDGE GUILLOU: Thank you, counsel.

7 I will issue a written decision in due course on this matter.

8 In the Scheduling Order for this Initial Appearance, I indicated  
9 that I intend to schedule, pursuant to Rule 96, the first Status  
10 Conference on Thursday, 12 October 2023, at 1400, 2.00 p.m. The  
11 purpose of the Status Conference will be to review the status of the  
12 case and to organise exchanges between the parties to ensure  
13 expeditious preparation for trial.

14 Mr. Bahtjari, I wish to remind you that you have the right to  
15 attend the Status Conference with your counsel. However, with your  
16 written consent, and after receiving advice from your counsel  
17 pursuant to Rule 96(2), the Status Conference may be attended by you  
18 in person with your counsel participating by video-conference link,  
19 by your counsel with you, Mr. Bahtjari, participating via  
20 video-conference link, or it may also take place in your absence,  
21 Mr. Bahtjari, with your counsel present or participating via  
22 video-conference link.

23 And I remind everyone in that regard that should counsel of the  
24 accused or the accused wish to participate via video-conference,  
25 written notice must be provided within 24 hours in advance of the

1 relevant hearing so that the Registry has the time to make the  
2 appropriate accommodations. Such notice shall be sent via e-mail to  
3 the Registry and should include the written consent of the accused.  
4 The Registry shall file these e-mails as correspondence on the record  
5 in the proceedings.

6 I would like to ask the Defence whether it plans to participate  
7 to the first Status Conference in person or via video-conference  
8 link?

9 MR. SYTEMA: Thank you, Your Honour. I will be present here in  
10 the courtroom.

11 JUDGE GUILLOU: Thank you, counsel. This is noted. And your  
12 client as well, I guess?

13 MR. SYTEMA: Thank you, Your Honour. I guess so. Yes.

14 JUDGE GUILLOU: Thank you. If it wasn't the case, you're  
15 invited to communicate this to the Registry. Thank you.

16 MR. SYTEMA: I will. Thank you.

17 JUDGE GUILLOU: Mr. Prosecutor, do you have any comment on the  
18 Status Conference?

19 MR. HAFETZ: No, Your Honour. Thank you.

20 JUDGE GUILLOU: Thank you. You will receive a Scheduling Order  
21 that will include the agenda in due course, probably tonight or  
22 tomorrow morning.

23 I will also ask the parties for written submissions ahead of the  
24 Status Conference on the topics that will be on the agenda. And I  
25 intend to schedule Wednesday, 11 October, at noon, for the date for

1 filing these written submissions.

2 After the Status Conference, I will issue a decision on the  
3 Specialist Prosecutor's obligation in accordance with Rule 102 and on  
4 the redaction regime for the proceedings. But before I issue the  
5 decision, I will seek submissions from the parties.

6 I recommend that the parties review my framework decisions on  
7 disclosure in other cases before making their submissions.

8 At this point, I would like to ask the parties whether they have  
9 any other issues that they would like to raise, and I remind the  
10 parties to give prior notice should any submission require the  
11 disclosure of confidential information so that appropriate measures  
12 may be taken.

13 Mr. Prosecutor.

14 MR. HAFETZ: Nothing from us, Your Honour. Thank you.

15 JUDGE GUILLOU: Thank you, Mr. Prosecutor.  
16 Counsel.

17 MR. SYTEMA: Thank you, Your Honour. Nothing from the Defence  
18 at this moment.

19 JUDGE GUILLOU: Thank you, counsel.

20 And, finally, I would like to ask the accused whether he has any  
21 issues to raise in relation to his arrest, transfer, or detention.

22 Mr. Bahtjari.

23 THE ACCUSED BAHTJARI: I do not have anything to add. My  
24 counsel has all the details. I don't have anything to add or take  
25 away for that matter.

1 JUDGE GUILLOU: Thank you, Mr. Bahtjari.

2 Finally, as you remain in detention, Mr. Bahtjari, I would like  
3 to inform you that you may challenge your detention on remand in  
4 accordance with Rule 57, and this will be dealt with written rulings.

5 This concludes today's first Initial Appearance. As usual, I  
6 thank the parties, the Registry, the interpreters, stenographer,  
7 audio-visual technician, and security personnel for their assistance.

8 The hearing is adjourned.

9 --- Whereupon the Initial Appearance adjourned  
10 at 2.29 p.m.

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