

1 Thursday, 19 December 2024

2 [Open session]

3 [Plea Agreement Hearing]

4 [The Accused Shala not present]

5 [The Accused Bahtijari entered the courtroom]

6 [The Accused Januzi appeared via videolink]

7 --- Upon commencing at 1.00 p.m.

8 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated].

9 THE COURT OFFICER: Good afternoon, Your Honours. This is file  
10 KSC-BC-2023-10, The Specialist Prosecutor versus Sabit Januzi,  
11 Ismet Bahtijari, and Haxhi Shala.

12 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated].

13 I would kindly ask the parties to introduce themselves, and we  
14 will start today with the Specialist Prosecutor's Office.

15 You have the floor.

16 MR. DEVANEY: Good morning, Your Honour. Good morning to every  
17 -- and to the Panel and to everyone in the courtroom. Today in the  
18 courtroom we have Deputy Specialist Prosecutor Ward Ferdinandusse  
19 behind me to my right; behind me to my left, Case Manager  
20 Line Pedersen; to my right, Prosecutor Tazneen Shahabuddin; and  
21 myself, Associate Prosecutor John Devaney.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

23 Now I turn to the Defence. And could you kindly add to your  
24 introduction who of your team is participating remotely or is present  
25 in the courtroom, and likewise for your client. And we will start

1 with the Defence for Mr. Bahtijari.

2 Defence counsel, you have the floor.

3 MS. GERRY: Certainly. I appear as Specialist Counsel. My name  
4 is Felicity Gerry. Co-counsel is here, Marion Carrin; legal  
5 associate Yuqing Liu, also present in court. The three of us are  
6 physically here. Online you can see Phillipa Stafford, our  
7 administrator; Cassandra Le Good and Ismar Ridzalovic, who are both  
8 our interns. Thank you.

9 PRESIDING JUDGE VELDT-FOGLIA: Very well.

10 MS. GERRY: I do apologise. Is Caitie here as well? And also  
11 today joining us is Caitlin Delaney, our other administrator. Thank  
12 you.

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you. And I also note that  
14 Mr. Bahtijari is present in the courtroom.

15 MS. GERRY: He is.

16 PRESIDING JUDGE VELDT-FOGLIA: Now I turn to the Defence for  
17 Mr. Shala.

18 MR. CADMAN: Good afternoon, Your Honours. Toby Cadman,  
19 Specialist Counsel, joined just today by Isabella Kirwan, legal  
20 associate. Mr. Shala is not present and he is not appearing  
21 remotely, having signed a waiver on his appearance yesterday.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

23 And now I turn to the Defence for Mr. Januzi. You have the  
24 floor, counsel.

25 MR. REES: Jonathan Elystan Rees. I am counsel for Mr. Januzi.

1 Co-counsel present in court with me is Mr. Huw Bowden. We are  
2 assisted also by the following who are in court as well,  
3 Mr. Muharem Halilaj, Ms. Elin Morgan, Ms. Zoe Laugharne, and  
4 Ms. Sali Harmes.

5 PRESIDING JUDGE VELDT-FOGLIA: Very well. And I note that  
6 Mr. Januzi is appearing via videolink.

7 MR. REES: He is indeed.

8 PRESIDING JUDGE VELDT-FOGLIA: Very well. Then regarding the  
9 publicity of the hearings, I said it yesterday but I will repeat it  
10 again today, we intend to conduct these hearings in public. And we  
11 remind the parties that in case there is any need to go into private  
12 session, either for reasons of privacy or for avoiding disclosing any  
13 confidential information, I expect the parties to seize the Panel  
14 immediately and we will decide on the matter.

15 We have convened today's hearing to discuss and hear the  
16 submissions of the Defence for Ismet Bahtijari on various issues  
17 pertaining to the plea agreement proceedings. And this is filing  
18 628, Annex 1.

19 The Panel recalls that it will not issue today a decision on  
20 whether to approve the plea agreement, including on sentencing. The  
21 Panel will issue such decision in due course.

22 Today, the Panel will proceed as follows. We will ask  
23 Mr. Bahtijari to confirm pursuant to Rule 94(5) (a) till (d) of the  
24 Rules whether his Specialist Counsel has discussed with him the terms  
25 of his plea agreement. We will also ask him whether Mr. Bahtijari

1 understands the terms of the plea agreement; and whether  
2 Mr. Bahtijari confirms the admission of the facts in respect of the  
3 charges contained in his plea agreement; and whether Mr. Bahtijari  
4 has agreed to his plea agreement voluntarily, without threats or  
5 coercion; and whether Mr. Bahtijari understands the consequences of  
6 his plea agreement and waives his right to be tried under the  
7 ordinary trial procedure.

8 We will see then, after that, if we need one more session, which  
9 could take place from around half past 3.00 or right away after the  
10 plea hearing. It just depends where we stand at that moment in time  
11 and if the break is necessary, and depending on how many issues there  
12 are still on the table we would need to discuss. But that's for all  
13 three accused.

14 Very well. We will now proceed with the plea hearing regarding  
15 Mr. Bahtijari, and I see counsel for Mr. Bahtijari standing.

16 You have the floor.

17 MS. GERRY: Thank you very much. Just very briefly. You will  
18 know that I asked for Ms. Liu to sit with Mr. Bahtijari. I'm told  
19 for security reasons that's not appropriate, but there will be  
20 someone to assist him to point at the screen when he needs to read.  
21 So if he gets stuck moving between your questions and what he needs  
22 to read, I understand someone will help him to look in the right  
23 direction.

24 PRESIDING JUDGE VELDT-FOGLIA: And, Defence counsel, you were  
25 present yesterday throughout --

1 MS. GERRY: I was.

2 PRESIDING JUDGE VELDT-FOGLIA: -- and -- no, it was an  
3 affirmative remark. And you have seen that we have assisted both  
4 accused in that way. And today we will even have, on the instruction  
5 of the Presiding Judge, the Court Officer assisting your client with  
6 the pointer at the screen. So both the Court Clerk will be standing  
7 next to him and there will be on my instruction some guidance, if  
8 necessary, with the pointer. Then we can assure that your client is  
9 really understanding what I'm reading to him, because that is the  
10 main aim of today.

11 MS. GERRY: We're very grateful. And also thank you to the  
12 Court staff who have been very helpful. Thank you.

13 PRESIDING JUDGE VELDT-FOGLIA: Good. Very well.

14 So, for the record, I note that the plea agreement was entered  
15 between Mr. Bahtijari and the Specialist Prosecutor's Office on  
16 16 December 2024, and that the accused's Specialist Counsel is  
17 Felicity Gerry.

18 Counsel, can you confirm this?

19 MS. GERRY: It's actually Gerry, with a hard G, but, yes, it is  
20 me. Thank you.

21 PRESIDING JUDGE VELDT-FOGLIA: Gerry. Gerry?

22 MS. GERRY: Yes, thank you.

23 PRESIDING JUDGE VELDT-FOGLIA: Very well.

24 Before we begin, I ask the Court Officer to show on the screen  
25 the plea agreement bearing filing number 628, Annex 1.

1           And then, Mr. Bahtijari, I refer you to the document called  
2 "Plea Agreement" which has been submitted to the Panel as Annex 1 to  
3 filing 628, which is currently being shown to you electronically on  
4 your screen.

5           And, Madam Court Officer, could you please go to page 10. Yes.  
6 And then the same page in the version in Albanian version. Yes.  
7 Very well.

8           And then I have a question for you. On the left-hand side of  
9 the screen, Mr. Bahtijari, there is a signature. Is that signature  
10 -- and the Court Officer is pointing at the signature in the left  
11 corner. Is that your signature?

12           THE ACCUSED BAHTIJARI: [No interpretation].

13           PRESIDING JUDGE VELDT-FOGLIA: Thank you.

14           Mr. Bahtijari, I'm going to give you some instructions with  
15 regard to your microphone. Every time you want to speak to the  
16 Panel, you should switch on your microphone. And security is now so  
17 kind to indicate to you where it is. If you don't press the button,  
18 I cannot hear the translation of what you are saying into English,  
19 and then I don't understand you.

20           So please be mindful -- and I understand that it's not easy, but  
21 please be mindful to press the button if you want to talk. And if  
22 you are done with talking, press the button to switch it off.

23           THE ACCUSED BAHTIJARI: [Microphone not activated].

24           [No interpretation].

25           PRESIDING JUDGE VELDT-FOGLIA: And the reason that you have to

1 switch it off is that, for you, you can hear better what is being  
2 said. So it's also important for you that when you don't talk, you  
3 switch it off. And I will try to assist you in this if I see that  
4 it's difficult.

5 Very well. Then we go to the -- I see you standing,  
6 Madam Prosecutor. You have the floor.

7 MS. SHAHABUDDIN: Before we move on, I'd just note for the  
8 purpose of the record that the transcript doesn't actually reflect  
9 Mr. Bahtijari's answer to your question regarding paragraph 24.

10 PRESIDING JUDGE VELDT-FOGLIA: Okay. Then I will ask -- thank  
11 you very much. Then I will ask the question again.

12 Mr. Bahtijari, the signature on the left-hand side of your  
13 screen in the corner, and Madam Court Officer is pointing at it, is  
14 that your signature?

15 THE ACCUSED BAHTIJARI: [Interpretation] Yes.

16 PRESIDING JUDGE VELDT-FOGLIA: Very well.

17 Then we go to the right-hand side, to the right side -- the page  
18 at the right side. Is the signature halfway the page, is that your  
19 signature? And I would ask -- yes, and Madam Court Officer is  
20 pointing at it.

21 THE ACCUSED BAHTIJARI: [Interpretation] Yes. Yes, yes.

22 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you very much.

23 And then I would like to go to page -- to, let me see, page 22  
24 in the Albanian version. Yes. Thank you. And page 11 in the  
25 English version. Thank you.

1           Then in paragraph 26, Mr. Bahtijari, the first signature, is  
2   that your signature?

3           THE ACCUSED BAHTIJARI: [Interpretation] Yes.

4           PRESIDING JUDGE VELDT-FOGLIA: Thank you.

5           And then we go to the page at the right side of the screen. The  
6   first signature from -- looking at it from the start of the page,  
7   under the number 26, is that your signature?

8           THE ACCUSED BAHTIJARI: [Interpretation] Yes.

9           PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you for confirming  
10   that.

11          Now I will turn to your counsel, and we stay on these two pages.  
12          Defence counsel, can you confirm that on both pages it is your  
13   signature?

14          MS. GERRY: Yes.

15          PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

16          And then we go back to the two pages which were 10 and 21. Are  
17   those your signatures?

18          MS. GERRY: Yes, they are.

19          PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel. Very  
20   well.

21          You assisted, Defence counsel -- no, no, you can remain, but  
22   that's an affirmation. You assisted Mr. Bahtijari in reaching this  
23   plea agreement, and these were your signatures we have just  
24   indicated?

25          MS. GERRY: Yes, that's correct.



1 PRESIDING JUDGE VELDT-FOGLIA: Very well.

2 Madam Prosecutor, or Mr. Prosecutor, I will turn to you to  
3 confirm for the record whether the signatures on the pages 11 and 23  
4 in the English version -- and I will ask Madam Court Officer to go to  
5 these pages. So 11 in the English version and 23 in the Albanian  
6 version. Yes. If you can confirm for the record that those  
7 signatures in the plea agreement are the signatures of the  
8 representatives of the Specialist Prosecutor's Office.

9 MS. SHAHABUDDIN: Yes, they are.

10 PRESIDING JUDGE VELDT-FOGLIA: Very well. We note that. Then  
11 we may proceed.

12 Mr. Bahtijari, I turn now to you. As you know, and certainly  
13 your counsel is aware, the Panel may approve the plea agreement as  
14 concluded between the Specialist Prosecutor's Office and your counsel  
15 on your behalf if it's satisfied that certain conditions are met.  
16 This is what Rule 94(5) of the Rules require.

17 I will, therefore, proceed to ask you some questions, and I will  
18 ask the SPO and also your counsel further questions, where necessary,  
19 in order to verify that all conditions of Rule 94(5) are fulfilled.  
20 And I begin with Rule 94(5) (a).

21 In the plea agreement signed by you, it is indicated that you  
22 have discussed the terms of the plea agreement with your counsel, and  
23 that you have entered the plea agreement after sufficient  
24 consultation with her. These are paragraphs 19 and 24, 25 for your  
25 lawyer for the record. Is this the case?

1 THE ACCUSED BAHTIJARI: [Interpretation] Yes.

2 PRESIDING JUDGE VELDT-FOGLIA: Yes. So you confirm? You  
3 confirm this?

4 THE ACCUSED BAHTIJARI: [Interpretation] Yes.

5 PRESIDING JUDGE VELDT-FOGLIA: Very well.

6 Now I turn to Rule 94(5)(b) and (c). In this context, I will go  
7 through the terms of the plea agreement in order for the Panel to  
8 assess that you understand the terms of the plea agreement, and not  
9 only that you understand, but also that you agree to those terms of  
10 the plea agreement.

11 Mr. Bahtijari, do you confirm that you have carefully reviewed  
12 with your counsel every part of the plea agreement in a language that  
13 you understand and that you understand the terms of this plea  
14 agreement, as specified in paragraph 24 of this plea agreement? You  
15 may respond.

16 THE ACCUSED BAHTIJARI: [Interpretation] Yes.

17 PRESIDING JUDGE VELDT-FOGLIA: Yes, you confirm that you --

18 THE ACCUSED BAHTIJARI: [Interpretation] Yes, yes.

19 PRESIDING JUDGE VELDT-FOGLIA: But I want to hear you say that  
20 you understand it, and I want to --

21 THE ACCUSED BAHTIJARI: [Interpretation] I understand it. I do.

22 PRESIDING JUDGE VELDT-FOGLIA: Yeah? You understand it, the  
23 language? And you also understand --

24 THE ACCUSED BAHTIJARI: [Interpretation] Yes.

25 PRESIDING JUDGE VELDT-FOGLIA: -- the terms.

1 THE ACCUSED BAHTIJARI: [Interpretation] Yes, yes.

2 PRESIDING JUDGE VELDT-FOGLIA: Then we go now to Rule 94(5)(c),  
3 which concerns the facts admitted by you, Mr. Bahtijari, which are  
4 underlying the charges that are in the plea agreement, and I will  
5 start with Annex 1 to your plea agreement which contains the Agreed  
6 Factual Basis.

7 And while I read, Mr. Bahtijari, you may remain seated.

8 It is filing 628, for Madam Court Officer, Annex 1, page 12.  
9 And in the Albanian version it's page 24.

10 Mr. Bahtijari, I'm going to read out the Agreed Factual Basis.

11 So:

12 "The Defendant Ismet Bahtijari accepts that he was part of a  
13 group which sought to induce Witness 1 to refrain from giving  
14 evidence before the Kosovo Specialist Chambers through the promise of  
15 a benefit. In particular, members of the group - acting at the  
16 direction of Haxhi Shala - approached Witness 1 at his home on 5 and  
17 12 April 2023, respectively. During the 5 April ... approach, the  
18 Defendant Ismet Bahtijari told Witness 1 that he should withdraw his  
19 testimony before the Kosovo Specialist Chambers. During the 12 April  
20 2023 approach, Sabit Januzi followed up on the first approach and  
21 relayed to Witness 1 an offer that Haxhi Shala and others would help  
22 him if he withdrew his testimony. Before and after the 5 April 2023  
23 approach and before the 12 April 2023 approach the Defendant Ismet  
24 Bahtijari communicated and coordinated with other group members  
25 regarding their interactions with Witness 1."

1 Mr. Bahtijari, do you confirm your agreement on the Agreed  
2 Factual Basis as I just read out to you?

3 THE ACCUSED BAHTIJARI: [Interpretation] Yes.

4 PRESIDING JUDGE VELDT-FOGLIA: Very well.

5 Now, Bahtijari, for reasons -- because the plea agreement refers  
6 to them, I will proceed to read the corresponding paragraphs from the  
7 Confirmed Indictment of 10 July 2024, which are paragraphs 8 and 9,  
8 13 and 18, and 24(i) under (i), (ii), and (iii). And I ask, in that  
9 regard, the Court Officer to show on the screen the public version of  
10 the Confirmed Indictment of 10 July 2024, which is filing 379, Annex  
11 3, and, please, yes, indeed, in the English and in the Albanian  
12 version.

13 And I will now read out, Mr. Bahtijari, the paragraphs which are  
14 mentioned in paragraph 5 of the plea agreement. And for the record,  
15 I repeat them. I will read out 8 and 9, the paragraphs 13 till 18,  
16 and 24(i) under (i), (ii), and (iii).

17 Very well. Madam Court Officer, could you please bring us to  
18 paragraph 8 for both versions. Yes.

19 Mr. Bahtijari, do you see on your screen the paragraphs 8 and 9?

20 THE ACCUSED BAHTIJARI: [Interpretation] Yes.

21 PRESIDING JUDGE VELDT-FOGLIA: Very well. Then I start reading:

22 "On 5 April ..."

23 This is paragraph 8.

24 "On 5 April 2023, Shala called Januzi. Bahtijari then also  
25 called Januzi."

1 We go to paragraph 9:

2 "Then, after calling and verifying that Witness 1 was at home,  
3 Bahtijari came to Witness 1's home. Bahtijari told Witness 1 that  
4 Shala had recently approached him and sent him to tell Witness 1 that  
5 he should withdraw his testimony."

6 Madam Court Officer, please bring us to paragraph 13 in both  
7 versions. And because I will be reading till paragraph 18, I  
8 think -- yeah, we can go a little bit higher. And I ask you that  
9 when we are near paragraph 18, you -- no, when we are at paragraph  
10 16, I will ask you to change what we are seeing on the screen. Okay.  
11 Very well.

12 Paragraph 13:

13 "Later on 5 April 2023, after Bahtijari had visited Witness 1,  
14 Shala and Januzi, and separately Januzi and Bahtijari, engaged in  
15 numerous text and phone contacts, including contacts between Shala  
16 and Januzi to coordinate an in-person meeting that same evening.

17 "In the days that followed, Shala and Januzi, amongst others,  
18 remained in contact, including connecting by phone at least four  
19 times between 6 April and 9 April 2023."

20 Paragraph 15:

21 "On 12 April ... shortly after calling Shala, Januzi went to  
22 Witness 1's home. At Witness 1's home, Januzi told Witness 1 that  
23 Shala had asked Januzi to follow-up on Bahtijari's visit and to find  
24 out what Witness 1 planned to do and how the matter of his testimony  
25 could be addressed."

1 Paragraph 16:

2 "Specifically, Januzi told Witness 1 that Shala had asked Januzi  
3 to convey the message that if Witness 1 withdrew his testimony, then  
4 Shala and unnamed others would provide him with 'help.' Witness 1  
5 responded that if Shala and/or the others brought him 200.000 euros,  
6 they would have a deal."

7 We go to paragraph 17. Yeah, thank you, Madam Court Officer.

8 "Witness 1 did not confirm or deny being a witness. Januzi said  
9 he would tell 'them' what Witness 1 had said."

10 Paragraph 18:

11 "Shortly after his 12 April 2023 visit to Witness 1, Januzi  
12 again called Shala."

13 And now, please, Madam Court Officer, bring us to paragraph 24.

14 Thank you.

15 Paragraph 24(i) under (i):

16 "On 5 April 2023, at Shala's direction, Bahtijari approached  
17 Witness 1 and (i) told Witness 1 that Witness 1 should withdraw his  
18 testimony in KSC proceedings;

19 "On 12 April 2023, at Shala's direction, Januzi approached  
20 Witness 1 to follow up after Bahtijari's earlier approach and to  
21 relay the offer that Shala and unnamed others would help Witness 1 if  
22 he agreed to withdraw his testimony."

23 And then (iii):

24 "Before and after approaching Witness 1, Januzi and Bahtijari  
25 communicated and coordinated with each other and Shala."

1           This was the content of the paragraphs in the Confirmed  
2           Indictment of 10 December 2024.

3           And I will now turn to paragraph 5 of the plea agreement, which  
4           states as follows:

5           "Ismet Bahtijari and the Prosecution agree" -- oh.

6           Thank you, Madam Court Officer, for bringing us to paragraph 5.

7           "Ismet Bahtijari and the Prosecution agree that if the  
8           Prosecution were to proceed with evidence, the facts and allegations  
9           as set out in paragraphs 8-9, 13-18, and 24 (sub-paragraphs i(i), ii  
10          and iii) of the Indictment dated 10 July 2024 would be proven beyond  
11          reasonable doubt, and that those facts are true and correct and not  
12          disputed by Ismet Bahtijari."

13          Mr. Bahtijari, I turn to you. Do you confirm your agreement  
14          with this statement that I just read out to you?

15          THE ACCUSED BAHTIJARI: [Interpretation] Yes, I confirm.

16          PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

17          Now we turn to the nature of the charges.

18          Mr. Bahtijari, the Panel also wants to ensure that you are fully  
19          aware of the charges contained in the plea agreement, and for that  
20          purpose I will read out to you paragraphs 3, 8, and 9 of the plea  
21          agreement itself.

22          Madam Court Officer -- yes, thank you very much. We're already  
23          there in the two versions.

24          Paragraph 3 reads as follows. Do you have it in front of you?

25          Mr. Bahtijari, do you see it?

1 THE ACCUSED BAHTIJARI: [Interpretation] Yes.

2 PRESIDING JUDGE VELDT-FOGLIA: "Ismet Bahtijari agrees to admit  
3 guilt before the Trial Panel pursuant to Rule 94 of the Rules in  
4 relation to Counts Two (2) and Three (3) of the Indictment, dated  
5 10 July 2024, to the extent they are alleging, in Count Two (2),  
6 obstructing official persons in performing official duties by  
7 participating in the common action of a group between at least 5 and  
8 12 April 2023, punishable under Kosovo Criminal Code ('KCC') Articles  
9 17, 21, 28, 33, 35, and 401(2) and (5), and Articles 15(2) and 16(3)  
10 of the Law on the Specialist Chambers and Specialist Prosecutor's  
11 Office," referred to as "('Law'), and, in Count Three (3),  
12 intimidation during criminal proceedings by means of a promise of a  
13 gift or any other form of benefit, between at least 5 and 12 April  
14 2023, punishable under KCC Articles 17, 21, 31, 33, 35, and 387, and  
15 Articles 15(2) and 16(3) of the Law, including all modes of liability  
16 alleged therein."

17 Paragraph 8 reads as follows. Do you have it in front of you,  
18 Mr. Bahtijari?

19 THE ACCUSED BAHTIJARI: [Interpretation] Yes.

20 PRESIDING JUDGE VELDT-FOGLIA: "Ismet Bahtijari fully  
21 understands that he is admitting guilt in relation to Counts Two (2)  
22 and Three (3) of the Indictment, as described above, and specifically  
23 admitting his conduct as set forth in paragraphs 8-9, 13-18, and 24  
24 (sub-paragraphs i(i), ii and iii) of the Indictment and as further  
25 described in the Agreed Factual Basis."



1           And then we turn to paragraph 9, and that's a long paragraph,  
2           and it reads as follows:

3           "Ismet Bahtijari understands that if a trial were held, the  
4           Prosecution would be required to prove the following elements of  
5           Articles 21, 387, and 401(2) and (5), beyond reasonable doubt."

6           And for Count 2, those are the following elements:

7           "(a) Participation in a group which by common action (KCC  
8           Article 401(2))

9           "(b) Obstructs or attempts to obstruct an official person in  
10          performing official duties (KCC Article 401(2))

11          "(c) The offence was committed against a judge, a prosecutor, an  
12          official of a court, prosecution officer or a person authorised by  
13          the court and prosecution office, or a police officer during the  
14          exercise of their official functions (KCC Article 401(5))

15          "(d) Awareness of, and desire to commit, the act, or awareness  
16          that a prohibited consequence can occur as a result of the act or  
17          omission and accession to its occurrence." And this is KCC Article  
18          21.

19          We turn to Count 3 and to its elements. Under (a):

20          "The use of force or serious threat, or any other means of  
21          compulsion, a promise of a gift or any other form of benefit," which  
22          is KCC Article 387.

23          And:

24          "To induce another person to refrain from making a statement or  
25          to make a false statement or to otherwise fail to state true

1 information to the police, a prosecutor or a judge and such  
2 information relates to obstruction of criminal proceedings," and this  
3 is KCC Article 387.

4 And then there's the last element:

5 "Awareness of, and desire to commit, the act, or awareness that  
6 a prohibited consequence can occur as a result of the act or omission  
7 and accession to its occurrence," and this is KCC Article 21.

8 Mr. Bahtijari, I turn again to you, can you confirm that you  
9 agree to the above charges?

10 THE ACCUSED BAHTIJARI: [Interpretation] Yes.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

12 Now, as regards admission of guilt, I refer to paragraphs 3 and  
13 7 of the plea agreement, and I will read out to you paragraph 7 but  
14 not paragraph 3. It remains relevant also in this context, but I  
15 have just read it out so I will not repeat it here again.

16 So paragraph 7 in the English and in the Albanian version. Do  
17 you see them, Mr. Bahtijari, on your screen?

18 THE ACCUSED BAHTIJARI: [Interpretation] Yes.

19 PRESIDING JUDGE VELDT-FOGLIA: Very well. I will read it out:

20 "Ismet Bahtijari agrees to make an admission of guilt in  
21 relation to the charges identified at paragraph 3 above because he is  
22 in fact guilty and acknowledges his guilt and accepts full  
23 responsibility for his conduct as described in the Agreed Factual  
24 Basis."

25 Mr. Bahtijari, do you confirm your agreement on this point?

1 THE ACCUSED BAHTIJARI: [Interpretation] Yes.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

3 Mr. Bahtijari, the Panel takes note of your agreement on this  
4 point, and I will formally ask you to enter a plea later on in this  
5 hearing.

6 Now we turn to the term of the sentence.

7 Madam Court Officer, could you please bring us to paragraph 11.

8 Now, in terms of the sentence. Mr. Bahtijari, I read in  
9 paragraph 11 of the plea agreement, bearing filing number 628,  
10 paragraph 1, that you agree on the imposition of a sentence of two  
11 years' imprisonment.

12 Mr. Bahtijari, do you confirm that you agree on the imposition  
13 of a sentence of two years' imprisonment?

14 THE ACCUSED BAHTIJARI: [Interpretation] Yes.

15 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

16 Now I have a question for Defence counsel. In the previous  
17 version of the plea agreement, bearing filing number 618, Annex 3,  
18 paragraph 10, dated 6 December 2024, Mr. Bahtijari agreed to the  
19 imposition of a sentence of imprisonment up to and including ten  
20 years.

21 Madam Court Officer, could you bring this document on the  
22 screen, but not in public.

23 Sorry, Defence counsel, for making you stand. Please --

24 MS. GERRY: Not at all. I'm fine.

25 PRESIDING JUDGE VELDT-FOGLIA: Okay. Very well.

1           As just said, in the plea agreement as it stands, Mr. Bahtijari  
2 agrees to the imposition of a sentence of two years' imprisonment.  
3 Could you further clarify the change of position of Mr. Bahtijari in  
4 this respect? And you have the floor.

5           MS. GERRY: In the previous plea agreement, we did not agree to  
6 ten years. What we agreed with the Prosecution was that the range  
7 was 0 to 10, and then there was a recommendation from the Prosecution  
8 of 2 years.

9           The current plea agreement contains an agreement for two years.  
10 The previous plea agreement used some specific language to refer to  
11 the Kosovan criminal code that allows this Court to go below the  
12 statutory minimum of two years. So the previous plea agreement tried  
13 to capture that in a way that we understand did not find favour with  
14 this Court. The current plea agreement is made with the agreement of  
15 the Prosecution and Mr. Bahtijari so that it can comply with Rule 94  
16 in the way that Rule 94 has been expressed by this Court.

17           We hope that provides the relevant assistance.

18           PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, for now this  
19 will do. Thank you.

20           MS. GERRY: Thank you.

21           PRESIDING JUDGE VELDT-FOGLIA: And for the record, the filing is  
22 Annex 3 to filing 618. Yes.

23           Mr. Bahtijari, I have two questions for you. And you may, of  
24 course, confer with your counsel before you give your answer.

25           Can you confirm that you have been fully informed that the Panel

1 will not take a decision today on the plea agreement, including the  
2 sentencing, despite the submission of the new plea agreement?

3 And, second, knowing that, do you confirm that you agree to the  
4 imposition of a sentence of two years of imprisonment as per the plea  
5 agreement you signed this week?

6 You have the floor.

7 MS. GERRY: He may not understand "you have the floor." It  
8 might be --

9 THE ACCUSED BAHTIJARI: [Interpretation] Yes.

10 MS. GERRY: [Microphone not activated].

11 PRESIDING JUDGE VELDT-FOGLIA: This is your role to take care of  
12 his interests, like we do.

13 MS. GERRY: Thank you very much.

14 PRESIDING JUDGE VELDT-FOGLIA: The plea agreement also states in  
15 paragraph 16 that in exchange for your admission of guilt, the SPO  
16 will recommend to the Trial Panel a sentence of two years'  
17 imprisonment and recommend that you be given credit for the time  
18 served in the custody of the Kosovo Specialist Chambers.

19 And as per paragraph 16(c) of the plea agreement, the SPO also  
20 agrees to withdraw Count 1 against you, Mr. Bahtijari.

21 Do you confirm that?

22 THE ACCUSED BAHTIJARI: [Interpretation] Yes.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

24 Let me now turn to paragraph 12 of the plea agreement which  
25 concerns the legal remedies.

1 Thank you, Madam Court Officer, for pulling up the plea  
2 agreement. Yes, we can go to paragraph 12 of the plea agreement  
3 filing 628, Annex 1. Thank you. Yes.

4 In terms of legal remedies, Mr. Bahtijari, I will read out the  
5 relevant parts in paragraphs 12 and paragraph 16 of the plea  
6 agreement, which concern your ability to appeal the conviction or  
7 sentencing.

8 And as a preliminary remark, I note that the SPO has withdrawn  
9 its request for reconsideration and leave to appeal of decision 612,  
10 and this withdrawal was in filing 631, dated 17 December 2024. And  
11 as a result, paragraph 12 of the plea agreement is to be amended in  
12 order to conform to decision 612. The Panel will issue the necessary  
13 order in due course. I wish, however, to ensure that you understand  
14 how this impacts your plea agreement and that you agree with this  
15 change. And you may, of course, confer with your counsel before you  
16 have your answer.

17 And in addition, as per the terms of paragraph 12 of the plea  
18 agreement, I would also like you to confirm that you will not move to  
19 withdraw your guilty plea or appeal your conviction pursuant to your  
20 guilty plea.

21 Mr. Bahtijari, do you understand and agree that should the Panel  
22 approve the plea agreement and set a sentence which accords with the  
23 terms of the plea agreement, you will be precluded from pursuing  
24 appellate remedies against said decision; and that you will not move  
25 to withdraw your guilty plea or appeal your conviction pursuant to

1 your guilty plea?

2 And I would like you to confirm that you understand both of the  
3 above points, Mr. Bahtijari, and I repeat you may also confer with  
4 your Defence counsel before you give your answer. Yes, you have the  
5 floor, Mr. Bahtijari.

6 THE ACCUSED BAHTIJARI: [Interpretation] If you could -- if you  
7 could repeat the question, please. I wasn't able to understand.

8 MS. GERRY: I wonder if I may assist.

9 PRESIDING JUDGE VELDT-FOGLIA: No, Defence counsel. You may  
10 confer with your client, and we have a procedure for that in place,  
11 but I prefer that I ask the questions and he replies to them. So  
12 I --

13 MS. GERRY: Absolutely.

14 PRESIDING JUDGE VELDT-FOGLIA: So I don't --

15 MS. GERRY: If I may --

16 PRESIDING JUDGE VELDT-FOGLIA: No, if you want to confer with  
17 your client, explain it.

18 MS. GERRY: No. I would like you to break it down into two  
19 questions. You asked two questions in one. The first one was  
20 whether he would not withdraw his guilty plea; and the second one was  
21 that -- whether he would not appeal. So all I'm asking you is to ask  
22 the questions separately and then I think he will understand, please.

23 PRESIDING JUDGE VELDT-FOGLIA: No, we are not going to proceed  
24 like this. If you want to explain it to him, you may explain it, but  
25 I think they have to go together.

1 MS. GERRY: Okay. So perhaps if the question could be asked in  
2 this way: That this question contains two things, one is withdrawal  
3 of your guilty plea, and the other is the appeal, I think that will  
4 help him to understand.

5 PRESIDING JUDGE VELDT-FOGLIA: We can proceed. But they are not  
6 separate. They go together.

7 MS. GERRY: I understand your position --

8 PRESIDING JUDGE VELDT-FOGLIA: No, but therefore, Defence  
9 counsel, we cannot break them up. Yes? But it's enough for now.

10 MS. GERRY: I suspect having heard me he'll understand the  
11 question now. Thank you.

12 PRESIDING JUDGE VELDT-FOGLIA: Mr. Bahtijari, I will repeat the  
13 question for you.

14 Do you understand and agree that should the Panel approve the  
15 plea agreement and set a sentence which accords with the terms of the  
16 plea agreement, you will be precluded from pursuing appellate  
17 remedies against said decision, and if you understand and agree that  
18 you will not move to withdraw your guilty plea or appeal your  
19 conviction pursuant to your guilty plea?

20 THE ACCUSED BAHTIJARI: [Interpretation] No.

21 PRESIDING JUDGE VELDT-FOGLIA: You don't understand? Then I  
22 propose that --

23 THE ACCUSED BAHTIJARI: [Interpretation] No, I meant I will  
24 not -- I will act accordingly to the instructions and the -- what you  
25 just read.



1 PRESIDING JUDGE VELDT-FOGLIA: Very well.

2 On the SPO's side, I note paragraph 16 of the plea agreement.  
3 And the same preliminary remark applies to paragraph 16(b)(i) of the  
4 plea agreement in terms of amending.

5 MR. DEVANEY: Yes, we note Your Honour's submission. Yes.

6 PRESIDING JUDGE VELDT-FOGLIA: Very well.

7 Mr. Bahtijari, we now move to Rule 94(5)(c), according to which  
8 the Panel must be satisfied that you entered the plea agreement from  
9 your own free will, Mr. Bahtijari. And I note that in paragraph 24  
10 of the plea agreement -- Madam Court Officer, could you please bring  
11 us to paragraph 24. Thank you.

12 It is stated that "no one" -- you state that "no one has  
13 threatened or forced me in any way to enter into this Agreement," and  
14 "I have entered into this Plea Agreement freely and voluntarily."

15 Your counsel also submits in paragraph 19 - and could we please  
16 go to paragraph 19 - that you entered into this plea agreement  
17 "freely and voluntarily," "that no threats were made," and "that the  
18 only promises made to [you] are those set forth in this Agreement."

19 Mr. Bahtijari, could you confirm before the Panel that you have  
20 agreed to this plea agreement voluntarily, without threats or  
21 coercion?

22 THE ACCUSED BAHTIJARI: [Interpretation] Yes, I confirm.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

24 Let us now move to the next point. The Panel wants to confirm  
25 that you, Mr. Bahtijari, understand the consequences of the plea

1 agreement, and that you waive your right to be tried under the  
2 ordinary procedure, as per Rule 94(5) of the Rules.

3 And on this point, Mr. Bahtijari, there are several steps and I  
4 will walk you through them.

5 First, I will read out paragraph 17(a) till (f) and paragraphs  
6 18(a) and (b) of the plea agreement, as these paragraphs summarise  
7 the rights you waive and the rights you will still retain pursuant to  
8 the terms of the plea agreement.

9 Mr. Bahtijari, by virtue of this plea agreement you will be  
10 giving up, in whole or in part, the opportunity to exercise the  
11 following rights, paragraph 17:

12 The right to plead not guilty and to require the Prosecution to  
13 prove the charges in the Indictment beyond reasonable doubt at a fair  
14 and impartial public trial;

15 The right to be tried in your presence, and to defend yourself  
16 through a Specialist Counsel at such trial;

17 The right to raise defences and grounds for excluding criminal  
18 responsibility and to present admissible evidence at such trial,  
19 without prejudice to the right to make submissions and present  
20 evidence with regard to sentencing;

21 The right not to be compelled to testify against yourself or to  
22 confess guilt;

23 The right to examine or to have examined the witnesses against  
24 you and to obtain the attendance and examination of witnesses on your  
25 behalf under the same conditions as witnesses against you, without

1 prejudice to your right to examine any witnesses that may be called  
2 to testify, and your right to call witnesses and have them examined  
3 on your behalf at any proceedings with regard to sentencing.

4 And then under (f):

5 The right to pursue appellate remedies with regard to conviction  
6 or sentencing, as specified in paragraph 12 of the plea agreement,  
7 which I just read out.

8 Mr. Bahtijari, can I have your confirmation that you understand  
9 this and that you waive these rights?

10 THE ACCUSED BAHTIJARI: [Interpretation] I confirm.

11 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you.

12 Second, pursuant to the terms of the plea agreement,  
13 Mr. Bahtijari, and these are paragraph 18 under (a) and (b) - thank  
14 you, Madam Court Officer, yes - it is understood that you retain all  
15 other rights, including, in particular:

16 The right to be represented by Specialist Counsel at all stages  
17 of the proceedings and to communicate freely with such counsel in  
18 confidence; and

19 The right to submit any information or evidence relevant for the  
20 determination of the sentence, pursuant to Rule 162(1) and (5) of the  
21 Rules.

22 Before I turn to ask Mr. Bahtijari if he understands the  
23 consequences of the plea agreement and waiving his right to be tried  
24 under the ordinary procedure, I would like to give an opportunity to  
25 the SPO and counsel to make any other observations or submissions

1 that they deem relevant, including as regards Rule 94(5)(e) and (f).

2 So, first, Specialist Prosecutor's Office, you have the floor.

3 Mr. Prosecutor.

4 MR. DEVANEY: Your Honour, having listened carefully to the  
5 colloquy, it's the SPO's position that the requirements under  
6 Rule 94(5) at this point have been met, including (e) and (f). And  
7 the SPO has no further comments at this point.

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

9 Defence counsel, you have the floor.

10 MS. GERRY: I agree and have no submissions to make.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

12 Mr. Bahtijari, may I ask you to confirm again, having heard that  
13 there are no further submissions from the side of the SPO and the  
14 counsel, can you confirm again that you understand the terms and  
15 consequences of the plea agreement and that you do not wish to change  
16 anything in the plea agreement that you have signed?

17 THE ACCUSED BAHTIJARI: [Interpretation] Yes. Yes, I confirm.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

19 Mr. Bahtijari, I will now ask you to stand up. Please stand up.  
20 And then I will ask you to change your initial plea.

21 During the hearings of 9 October 2023 and 12 July 2024, you  
22 pleaded not guilty to the charge of obstructing official persons in  
23 performing official duties by participating in the common action of a  
24 group, under Count 2 of the Confirmed Indictment of 4 October, filing  
25 10, in Case, then, 10, and the charge of intimidation during criminal

1 proceedings, under Count 3 of the Confirmed Indictment of 10 July  
2 2024, Case 10, filing 379, Annex 1, respectively.

3 Are you ready to change your initial plea of not guilty?

4 THE ACCUSED BAHTIJARI: [Interpretation] I do not understand the  
5 question. Can you please repeat it?

6 PRESIDING JUDGE VELDT-FOGLIA: Of course.

7 During the hearings already more than a year ago, you pleaded  
8 not guilty to the charges. And I'm going to ask you now if you  
9 confirm that you will plead guilty, and I want to know if you are  
10 ready to change your plea.

11 THE ACCUSED BAHTIJARI: [Interpretation] Yes.

12 PRESIDING JUDGE VELDT-FOGLIA: If you have difficulties  
13 standing, please sit.

14 THE ACCUSED BAHTIJARI: [Interpretation] I will change my initial  
15 plea.

16 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you. I will proceed  
17 to read out Counts 2 and 3 as reflected in the Confirmed Indictment  
18 of 10 July 2024 and ask you to enter a plea for each one of them.

19 Mr. Bahtijari, you may be seated.

20 Count 2: Obstructing official persons in performing official  
21 duties by participating in the common action of a group, between at  
22 least 5 and 12 April 2023, a criminal offence against public order,  
23 punishable under Article 17, 21, 28, 33, and 35, and 401(2) and (5)  
24 of the Criminal Code of the Republic of Kosovo of 2019 and Articles  
25 15(2) and 16(3) of the Law.

1 To this count, Mr. Bahtijari, how do you plead, guilty or not  
2 guilty?

3 THE ACCUSED BAHTIJARI: [Interpretation] Guilty.

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

5 I proceed to Count 3: Intimidation during criminal proceedings,  
6 between at least 5 and 12 April 2023, a criminal offence against the  
7 administration of justice and public administration, punishable under  
8 Articles 17, 21, 31, 33, 35 of the Criminal Code of the Republic of  
9 Kosovo of 2019, and also 387 of the same code, and Articles 15(2) and  
10 16(3) of the Law.

11 Mr. Bahtijari, how do you plead to this count, guilty or not  
12 guilty?

13 THE ACCUSED BAHTIJARI: [Interpretation] Guilty.

14 PRESIDING JUDGE VELDT-FOGLIA: Very well.

15 We proceed with the topic of reparations.

16 The Panel will turn to you, Defence counsel, if you want to make  
17 any observations on the matter.

18 MS. GERRY: We have made some written observations that there  
19 should be no financial cost in any respect as regards Mr. Bahtijari,  
20 so we include that -- in that any fine or costs of proceedings or  
21 reparations. But in the light of the oral order that you made  
22 yesterday that there ought to be inquiries with potential victims as  
23 to whether there are any victims who seek reparations at all or to  
24 whom reparations would be applicable, we accept that you have ordered  
25 that that inquiry should be made. You've made an oral order to that

1 effect. And, thus, we cannot make full submissions about reparations  
2 until that inquiry has been made.

3 So what I say now are set out preliminary submissions that we  
4 would submit that this is not a case to which reparations is  
5 applicable, but we reserve our right to make full submissions on the  
6 question of reparations once the oral order has been complied with.

7 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel. That  
8 indeed clarifies, because, as you rightly said, you made submissions  
9 regarding monetary penalties, that there should be no financial  
10 consequences, you said, but we did not see anything explicitly about  
11 reparations. And we saw in -- what is in paragraph 15, if I'm not  
12 mistaken, that -- yeah, it's in all the plea agreements that it would  
13 be addressed at some point.

14 So I just wanted to be sure that we have everything on board,  
15 and I've heard what you've said with regard to the outcome of the  
16 oral order of the Panel.

17 MS. GERRY: Thank you very much. I've nothing further to add at  
18 this stage, and we hope to assist you at the appropriate moment.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

20 Then the floor is for the Specialist Prosecutor's Office.

21 Mr. Prosecutor.

22 MR. DEVANEY: Yes, Your Honour. We have very little to add. We  
23 are in agreement as to the submissions being premature at this point  
24 until we know whether there will be participating victims or not,  
25 which is set in line with the modalities of the oral order given by

1 the Panel yesterday.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Prosecutor.

3 Then we are at the point of sentencing submissions.

4 We note the written submissions on sentencing. And before I  
5 give the floor to make any addition to that to both Defence counsel  
6 and to the Prosecutor, I will first seek clarification from Defence  
7 counsel, and then we can have the moment for additional submissions.

8 Defence counsel, Mr. Bahtijari confirmed earlier in the session  
9 that he agreed to the imposition of a sentence of two years'  
10 imprisonment as per paragraph 11 of the plea agreement as it stands  
11 now. This week's. And could you clarify the position of the Defence  
12 as expressed in court yesterday during the preliminary matters that,  
13 and I quote, and I will also give you the references:

14 "... Mr. Bahtijari's position is that he should be released  
15 immediately, so any further delay is of a complete prejudice to his  
16 position."

17 And this position is also expressed in your sentencing  
18 submissions filing 620, paragraph 70, of 6 December 2024, and that is  
19 a confidential one, but because it's the same like yesterday, we feel  
20 at liberty to say that in open court.

21 And what the Panel would like to know, if you could clarify and  
22 further reason your position on this.

23 MS. GERRY: Yes. I apologise if it was phrased badly yesterday.  
24 We're not seeking to go behind the plea agreement at all, but we hope  
25 that our sentencing submissions will find favour in the exercise of



1 your discretion.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel. I  
3 will give you first the floor for any additional submissions. We  
4 have taken note of the written submissions. And then we will give  
5 the floor to the Specialist Prosecutor's Office.

6 Defence counsel, please.

7 MS. GERRY: Thank you. I'll just get a little closer to the  
8 microphone with my paperwork and to reassure you that I don't propose  
9 to take terribly long, but I do wish to put some matters orally to  
10 this Court.

11 Because of the nature of some of the material, may I first ask  
12 to go into private session. That will enable me to make full  
13 submissions without reference to confidential material in public  
14 session.

15 PRESIDING JUDGE VELDT-FOGLIA: We will go into private session,  
16 and I will ask you to further reason why the whole session should be  
17 in private, but we will discuss that in private.

18 MS. GERRY: Thank you.

19 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, could you  
20 bring us into private session, please.

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1 [Open session]

2 THE COURT OFFICER: Your Honours, we are now in public session.

3 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.

4 Please proceed, Defence counsel.

5 MS. GERRY: May it please the Court. I adopt the words of  
6 Mr. Devaney from the Prosecution Office yesterday that he used. In  
7 our submission, Mr. Bahtijari is not the beginning, the middle, or  
8 the end of this offending but is at the lowest possible level of  
9 culpability.

10 I have mentioned his health in a Status Conference publicly back  
11 in March 2022, so I invite you to reach this conclusion: He is a  
12 poor, sick, old man, older than his years, who was acting under  
13 direction.

14 We accept, as a matter of law, this is a case where the Court  
15 will consider general public deterrence. However, we submit, in his  
16 case, that that is accounted for in the plea agreement. Our  
17 submission is there is absolutely no need for specific deterrence to  
18 Mr. Bahtijari. They are two different legal principles - general  
19 deterrence to the public, specific deterrence for him. There is no  
20 need, in our submission, to deter a sick, old man, suffering the  
21 issues that we have raised in private session.

22 Our observation on the offences are as follows. These are two  
23 offences, two charges for one event or one set of events.

24 I'll just pause while the security change over. Thank you.

25 These are two charges for one event or one set of events for him

1 involving one visit and a few calls. There is a clear plea agreement  
2 that this was an offer of a benefit and not threats. His plea  
3 agreement was made before any witness had to come to court and,  
4 indeed, just before the trial started.

5 On 5 April 2023, Mr. Bahtijari was acting under direction.  
6 Mr. Devaney said yesterday, on page 75 of yesterday's transcript,  
7 "the first approach did not work." In our submission, that makes  
8 Mr. Bahtijari's role even smaller.

9 Witness 1, as you know, is able to describe Mr. Bahtijari's  
10 demeanour. We've set that out in private session.

11 As we have set out in private session what we say about those  
12 matters that plainly reduce Mr. Bahtijari's culpability. This was a  
13 single visit. Save for minimal phone contacts, after 5 April 2023  
14 Mr. Bahtijari played no further part. He was not involved in the  
15 12 April 2023 events. He was plainly not himself offering any  
16 benefit or gift. He has created no aggravating features for the  
17 offending. He has no criminal convictions. He cooperated on arrest  
18 and answered questions when he has interviewed and did not seek to  
19 run an alibi.

20 I now move to his mitigation, which, in our submission, is  
21 substantial.

22 Of course, we invite the Panel to take into account all of our  
23 sentencing submissions and all of the confidential annexes that we  
24 have referred to in private session. So what I say now is a mere  
25 summary for the purposes of the principle of orality so that his

1 mitigation can be heard without waiving private matters.

2 On paper, he doesn't look very old. There might be many people  
3 in this room about the same age, but he is plainly older. You have  
4 details about the potential for his longevity or the shortening of  
5 his life which, in our submission, wholly mitigate this sentence on  
6 their own.

7 But on top of that, he is a father, and a good father, a loving  
8 father and a loved father. He is a grandfather, a loving grandfather  
9 and a loved grandfather. He is a community man of exceptional good  
10 character, much loved and supported by his community.

11 When we visited, we were invited to a funeral so that we could  
12 pay respects on his behalf so that he could reach out and still pay  
13 his respects to his community from here, because he is not at home.  
14 He is the centre of his family's world. It's sometimes hard to  
15 understand very close families, the effects that can happen from one  
16 person in a close family being removed. You can understand that from  
17 the evidence that you have from us for the purposes of sentencing  
18 Mr. Bahtijari.

19 He is hard-working. He has worked all his life to support his  
20 family.

21 He is a survivor of war in which it is public knowledge that  
22 people in his location survived genocidal attacks. You have  
23 information about what happened to his village. It is public  
24 knowledge that a broken Serbian tank still stands on the hill in his  
25 village as a permanent reminder, as do the painted words on one of

1 the buildings overshadowing that village where that tank and others  
2 rolled into that village as the people of that village escaped to the  
3 mountains and lived in the mountains at risk of genocidal attacks and  
4 death. It is a beautiful rural village. These people have survived  
5 as a close community, and he has played his part in rebuilding that  
6 village.

7 Those villages, it is publicly known, left twice, and you have  
8 the ages of his children. Frankly, how a baby would be kept alive in  
9 those conditions in the mountains is true respect to these parents of  
10 those children, and including Mr. Bahtijari.

11 He has his community's full support. He rebuilt that village by  
12 hand. And, indeed, you have descriptions of what happened to that  
13 village and what happened to the livestock, and what happened in his  
14 own garden, and the bravery that he showed in his own house and  
15 garden, and the descriptions of where everyone had to live until that  
16 house was rebuilt.

17 His family and community ties could not be stronger.

18 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel.

19 Mr. Bahtijari, is there anything we can do for you?

20 THE ACCUSED BAHTIJARI: [Microphone not activated]. [No  
21 interpretation].

22 MS. GERRY: I've nearly finished.

23 PRESIDING JUDGE VELDT-FOGLIA: I didn't hear the answer of  
24 Mr. Bahtijari.

25 THE ACCUSED BAHTIJARI: [Interpretation] I don't need anything.

1 Thank you.

2 PRESIDING JUDGE VELDT-FOGLIA: Okay. Very well.

3 MS. GERRY: As you know, his family are significantly affected,  
4 and they have set that out in moving matters, which I've dealt with  
5 in private session. You have the impact of these proceedings both on  
6 him and on his family and the descriptions from his community members  
7 that enable you to reach this conclusion. He is needed at home.

8 He has suffered hardship in detention over and above other  
9 people in his position. His situation is extraordinarily sad. He  
10 needs to be at home with his family for whatever time he has left.  
11 We submit that should be immediate. We asked for this matter to be  
12 listed on 10 December. From that date to today would account for any  
13 days to be served for any financial cost.

14 We urge you to find a sentence that can sentence him in a way  
15 that allows for his immediate release on this day, 19 December 2024.  
16 We understand that that places this Court under pressure. If you  
17 cannot accede to that request, the most I can ask is you release him  
18 as soon as possible.

19 Those are our submissions.

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

21 I will give now the floor to the Specialist Prosecutor's Office.  
22 And you have heard the request with regard to the immediate release,  
23 and I ask you also to give your submissions on that.

24 MR. DEVANEY: Yes, Your Honour. The submission of the  
25 Specialist Prosecutor's Office is that two years is the agreed-upon

1 sentence between the parties in this case. That sentence is also the  
2 lowest sentence of any of the accused in this case. It's a fair and  
3 a just sentence, and it encompasses, to the extent appropriate, the  
4 mitigating factors relied upon by the Defence.

5 The agreed-upon sentence factors in the accused's admission of  
6 guilt and the timing of that admission; the degree of cooperation  
7 given by the accused, which was limited; limited admissions on the  
8 very eve of trial; the character of the accused; Mr. Bahtijari's role  
9 in the offences as compared to the other accused; and to the extent  
10 appropriate, the medical submissions of the accused.

11 Regarding the 5 April approach, it is important to understand  
12 exactly what is at stake.

13 From the agreed-upon facts, it reads as follows:

14 "During the 5 April 2023 approach, the Defendant Ismet Bahtijari  
15 told Witness 1 that he should withdraw his testimony before the  
16 Kosovo Specialist Chambers."

17 If you go to the agreed-upon paragraph in the indictment, which  
18 comes from paragraph 9:

19 "Bahtijari came to Witness 1's home. Bahtijari told Witness 1  
20 that Shala had recently approached him and sent him to tell Witness 1  
21 that he should withdraw his testimony."

22 So essentially Witness 1 is approached in his home and told that  
23 former KLA Commander Haxhi Shala says that you should withdraw your  
24 testimony. At this point, no offer of a benefit. Just withdraw your  
25 testimony.



1 This statement must be considered in the context of the  
2 palpable, persistent, and pervasive climate of witness interference  
3 in Kosovo.

4 The SPO would submit that the only logical conclusion to such a  
5 statement is fear and concern, fear and concern for yourself and for  
6 your family, which is exactly what happened in this case.

7 And this is akin to the fear opined that related to  
8 Mr. Bahtijari, and this fear is harm. And this result is  
9 attributable not just to Mr. Bahtijari but also to Messrs Shala and  
10 Januzi who both set this approach into motion.

11 Your Honour, at this time we would ask to go into private  
12 session to address the other submissions of counsel.

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Prosecutor.

14 Madam Court Officer, can you bring us into private session,  
15 please.

16 [Private session]

17 [Private session text removed]

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1 [Open session]

2 THE COURT OFFICER: Your Honours, we are in public session.

3 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

4 You may proceed.

5 MR. DEVANEY: Yes, Your Honour.

6 Offences against the administration of justice constitute a  
7 grave challenge to the security and integrity of judicial  
8 proceedings. Such offences can undermine the discovery of truth and  
9 impede justice for victims --

10 THE INTERPRETER: Could the speaker please slow down for the  
11 purpose of interpretation. Thank you very much.

12 MR. DEVANEY: -- and for society as a whole.

13 PRESIDING JUDGE VELDT-FOGLIA: Mr. Prosecutor, please slow down  
14 your pace for the purposes of translation.

15 MR. DEVANEY: Ah. Of course, Your Honour.

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

17 MR. DEVANEY: The impact of these offences as part of the  
18 continuing pervasive climate of witness interference cannot be  
19 overstated. That protected witnesses at the KSC can be repeatedly  
20 approached and subjected to criminal conduct has a potential chilling  
21 effect on the public confidence and the effectiveness of the KSC  
22 orders and decisions, including those related to protective measures.  
23 Deterrence in the form of a significant sentence protects this  
24 confidence.

25 Your Honours, the Panel, we would like -- the SPO responds now

1 briefly to a point made by the accused. Counsel for Mr. Bahtijari  
2 references witness statements disclosed by the SPO to say that on  
3 April 5th -- during the April 5th, 2023, approach, Mr. Bahtijari was  
4 in fear. Therefore, the SPO would ask that you consider those same  
5 statements and fear that the accused collectively caused to the  
6 victims that they targeted.

7 In the final analysis, the sentence of two years in this case is  
8 the just, agreed-upon sentence, and it should be accepted by this  
9 Panel. Thank you.

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Prosecutor.

11 Is there something explicit you would like to say with regard to  
12 the request for immediate release today?

13 [Specialist Prosecutors confer]

14 MR. DEVANEY: Your Honour, as part of the plea agreement, the  
15 SPO does support giving credit for time served, so we do stand by the  
16 two years, although noting counsel is free to pursue other remedies  
17 and that this does not represent a significant additional time from  
18 the present for the accused.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

20 Defence counsel, I will rule right away on this issue. We said  
21 it earlier today, and I will repeat it now for reasons of clarity,  
22 the Panel will not issue a decision on the plea agreements, including  
23 on sentencing, so that means that we will proceed with the course we  
24 have indicated. So there will be no release today.

25 MS. GERRY: I understand there will be no release today. I

1 repeat my submission that we invite you to release him as soon as  
2 possible. That's as high as I can put it.

3 And I wonder if I might just briefly respond to what the  
4 Prosecution have submitted --

5 PRESIDING JUDGE VELDT-FOGLIA: Yes.

6 MS. GERRY: -- in a couple of respects.

7 PRESIDING JUDGE VELDT-FOGLIA: Yes, you may. And we have noted  
8 your submissions, and we will proceed as indicated with this  
9 procedure. And, of course, and after you, the Prosecution will be  
10 put in the position. And if all views are exchanged, then we  
11 finalise.

12 So please proceed.

13 MS. GERRY: Yes. Did you want me --

14 PRESIDING JUDGE VELDT-FOGLIA: You may react to the submissions  
15 of the --

16 MS. GERRY: Thank you.

17 PRESIDING JUDGE VELDT-FOGLIA: -- Specialist Prosecutor's  
18 Office.

19 MS. GERRY: Thank you. I was just checking I understood you  
20 correctly. Thank you very much.

21 So we're grateful to the Prosecution for recognising  
22 Mr. Bahtijari's cooperation, his character, his role as compared to  
23 others is the way in which it was expressed by Mr. Devaney.

24 We do have a concern at the way in which Mr. Devaney approached  
25 the visit on 5 April, in which Mr. Devaney suggested that this was

1 not a -- I'm sure he made a mistake and didn't mean to do it, but he  
2 was suggesting that this was a visit that was somehow without the  
3 offer of a benefit. I'm sure he didn't mean to go behind the facts  
4 that are agreed, that the whole course of the conduct is on the basis  
5 of the offer of a benefit and not of a threat, and I'm sure he didn't  
6 mean to suggest that Mr. Bahtijari was threatening Witness 1 in any  
7 way.

8 So assuming what he means is that the follow-up was the detail  
9 of the offer of a benefit, then we make no alternative submission.

10 We are grateful to the Prosecution of recognising the fear and  
11 concern on Mr. Bahtijari. We are grateful for the Prosecution  
12 recognising that Mr. Bahtijari is a sympathetic character.

13 We submit that the information that you have in relation to the  
14 connection between the issues that are raised in terms of medical  
15 matters, which I'll ask for private session in a moment, do satisfy  
16 the relevant legislation for you to conclude that Mr. Bahtijari was  
17 substantially diminished.

18 Accordingly, I submit, that we're not very far apart with the  
19 Prosecution. But a few months to Mr. Devaney may not be very much,  
20 but it's an extraordinarily long period of time over this particular  
21 seasonal break where every other family in the world will be having  
22 some form of celebration, whatever their religion. In our  
23 submission, it is a long period of time for Mr. Bahtijari.

24 If I might just finally go into private session and deal with  
25 one or two other matters.

1           PRESIDING JUDGE VELDT-FOGLIA: Madam Court Officer, can you  
2 bring us into private session, please.

3           And you will explain to us why we have to be in private session  
4 as soon as --

5           MS. GERRY: Of course.

6           PRESIDING JUDGE VELDT-FOGLIA: -- we are there. Yes, very well.

7           MS. GERRY: Sorry.

8                                       [Private session]

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15 [Open session]

16 THE COURT OFFICER: Your Honours, we're in public session.

17 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

18 Defence counsel, you have the floor.

19 MS. GERRY: Thank you.

20 Two final matters to respond. In terms of the language of  
21 "pervasive" and "chilling," we dealt with that at the outset of our  
22 submissions on the question of general deterrence. We have accepted  
23 that this is a case where general deterrence will be applicable. We  
24 say that that is encapsulated by the plea agreement in relation to  
25 Mr. Bahtijari, and we repeat our submissions that there is no need



1 for specific deterrence. So that language of "pervasive" and  
2 "chilling" need not be applicable or applied by you to Mr. Bahtijari.

3 Overall, we finish with this: Mitigation matters. It really,  
4 really matters in these courts, perhaps more than any other court,  
5 that there is a recognition that there is a need to understand  
6 people, people in the places that you adjudicate over. To understand  
7 them, their families, their health, their communities, and to  
8 understand how sentences can be properly mitigated for poor, sick,  
9 old men acting under direction.

10 For all the reasons that we have set out in public and private  
11 session, this case is emotional for a reason, and it's emotional for  
12 a reason because he shouldn't be here any longer, or at least any  
13 longer than possible that it takes for you to make a decision in his  
14 case.

15 Those are our submissions. Thank you very much.

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

17 For Mr. Prosecutor, do you have any submissions -- additional  
18 submissions in reply to the Defence counsel?

19 MR. DEVANEY: Nothing further, Your Honour.

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

21 Then we proceed with a last part of this hearing with regard to  
22 the plea agreement of Mr. Bahtijari.

23 Defence counsel, in paragraph 63 of the sentencing submissions,  
24 bearing filing number 620/COR, you state, and I quote, that:

25 "The guilty plea suggests," emphasis put on the "suggests,"

1 "that Mr. Bahtijari understands the wrongful nature of his conduct  
2 and is unlikely to re-offend, removing the need for specific  
3 deterrence through sentencing."

4 And I noted that you indicated that Mr. Bahtijari is not going  
5 to make a statement with regard to sentencing.

6 MS. GERRY: No.

7 PRESIDING JUDGE VELDT-FOGLIA: No. I will anyway ask him the  
8 question, and he's free not to answer it. And if you want to confer  
9 with your client just to give him a heads-up on this, or if you want  
10 to -- then you are free to do that.

11 MS. GERRY: I don't think I need to because he was very firm  
12 that he did not wish to speak to the Court at all. But I understand  
13 that you --

14 PRESIDING JUDGE VELDT-FOGLIA: On this?

15 MS. GERRY: On any topic, but on this -- including this topic.  
16 But I understand that you will ask him the question. If he appears  
17 unable to answer, then I will ask for time to speak to him. But I  
18 believe you can ask the question.

19 PRESIDING JUDGE VELDT-FOGLIA: Mr. Bahtijari, I have a question  
20 for you, but you are, of course, under no obligation to answer them.  
21 And I would like to ask you, Mr. Bahtijari, if you feel any remorse,  
22 in the sense that you feel sorry for doing what you agreed on in the  
23 agreed facts? Did you think that it was wrong or bad?

24 THE ACCUSED BAHTIJARI: [Interpretation] Yes, yes.

25 PRESIDING JUDGE VELDT-FOGLIA: Yes what?

1 THE ACCUSED BAHTIJARI: [No interpretation].

2 PRESIDING JUDGE VELDT-FOGLIA: *"Po, po"*?

3 MS. GERRY: You asked if it was wrong or bad. I would infer  
4 that he is agreeing that, yes, it was wrong, and yes, it was bad.

5 PRESIDING JUDGE VELDT-FOGLIA: But then I will ask him and I  
6 want to be sure --

7 MS. GERRY: I understand.

8 PRESIDING JUDGE VELDT-FOGLIA: -- what I heard.

9 Do you confirm that what you did was wrong? Is that what you're  
10 saying? I don't want to put words in your mouth, but are you saying  
11 that you now consider that it's wrong what you did back then?

12 THE ACCUSED BAHTIJARI: [Interpretation] That's correct.

13 PRESIDING JUDGE VELDT-FOGLIA: And would you like to say  
14 something more about why you think that it is wrong? Mr. Bahtijari,  
15 did you hear my question?

16 THE ACCUSED BAHTIJARI: [Interpretation] I heard your question,  
17 but I'm not able to answer.

18 PRESIDING JUDGE VELDT-FOGLIA: Then we leave it to this,  
19 Mr. Bahtijari.

20 If there is nothing else with regard to the plea agreement that  
21 parties would like to raise with the Panel? I look at the SPO.

22 MR. DEVANEY: No further arguments, Your Honour.

23 PRESIDING JUDGE VELDT-FOGLIA: And, Defence counsel, is there  
24 anything with regard to the plea agreement that you would like to  
25 raise --

1 MS. GERRY: No, thank you.

2 PRESIDING JUDGE VELDT-FOGLIA: Very well.

3 Then this concludes, Mr. Bahtijari, the hearing on the plea  
4 agreement entered between you and the Specialist Prosecutor's Office.

5 As announced earlier, there is a wrap-up session. For the  
6 Panel, there's only one issue we would like to clarify or resolve.  
7 So we could do that now if -- but we can also reconvene in half an  
8 hour.

9 So unless the parties indicate that there are further issues we  
10 need to discuss, because then we need to have a break and -- because  
11 I don't want to prolong this hearing, which has already taken two  
12 hours, and we have -- we ourselves -- but the translation -- the  
13 interpretation booths are working at full speed. So --

14 MS. GERRY: Might I jump up first and hope that everybody could  
15 deal with it now. I don't want to cause Mr. Bahtijari much more  
16 delay, and I think having a break and coming back for him might be  
17 quite hard. So if everybody can manage now, I would be very grateful  
18 if we could just carry on. I don't anticipate any of us will speak  
19 for terribly long.

20 PRESIDING JUDGE VELDT-FOGLIA: Okay. You have spoken for  
21 yourself. Thank you.

22 MS. GERRY: I have. I understand that.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Thank you very much.  
24 And it's noted.

25 MS. GERRY: Thank you.

1           PRESIDING JUDGE VELDT-FOGLIA: I go to the Defence for  
2 Mr. Januzi.

3           MR. REES: We're in the Court's hands.

4           PRESIDING JUDGE VELDT-FOGLIA: Thank you.

5           Mr. Cadman.

6           MR. CADMAN: I would ask that we continue now for as long as is  
7 necessary to complete the session.

8           PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

9           Specialist Prosecutor's Office, what is your position?

10          MR. DEVANEY: Yes, we would also like to continue now,  
11 Your Honour.

12          PRESIDING JUDGE VELDT-FOGLIA: Okay. Very well. Then we  
13 continue.

14          Mr. Bahtijari, bear with us a little bit more. We are going to  
15 proceed with the last part of this hearing which will be for all  
16 Defence teams. Very well.

17          There is one issue that is regarding the reclassification  
18 request made yesterday by the Defence for Mr. Januzi. It regards  
19 filing 612, Annex 1. And specifically during yesterday's hearing,  
20 the Januzi Defence, and I noted that he was -- the Defence was joined  
21 by the other Defence teams, they asked the Panel to reclassify as  
22 confidential Annex 1 of 612. And there were also some requests  
23 related to it which was not reclassification but a summary of the  
24 annex. And we heard the submissions of the Specialist Prosecutor's  
25 Office pursuant to said annex. And there was also a request to have

1 a public redacted version of that annex or a summary.

2 The Panel has taken note of those submissions made by the Januzi  
3 Defence in this respect, the submissions of the SPO, the Shala  
4 Defence, and the Bahtijari Defence. We refer to page 526 till page  
5 531 of the transcript of yesterday's hearing.

6 And what we note is that in this regard, that the SPO  
7 submissions in response to the Panel's request in annex to filing 612  
8 are to be found in paragraphs 15 and 16 of the SPO filing 618, which  
9 is classified as confidential, and, thus, all parties have access to  
10 it. And as a result, the Panel finds that it is no longer justified  
11 to maintain the current classification of Annex 1 to filing 612 as  
12 its contents have been shared already with the Defence.

13 So, accordingly, the Panel will proceed to reclassify the annex  
14 by lifting the *ex parte* marking unless - unless - the SPO wishes to  
15 object to said reclassification. And if there is an objection, then  
16 we will proceed with written submissions, and I will give deadlines  
17 for the Special Prosecutor's Office and then for the Defence teams.

18 MS. SHAHABUDDIN: May I have a very brief moment to confer with  
19 my colleague.

20 PRESIDING JUDGE VELDT-FOGLIA: Of course.

21 [Specialist Prosecutors confer]

22 MS. SHAHABUDDIN: Your Honour, I can confirm that the SPO has no  
23 objection to the course Your Honour proposes.

24 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

25 And that will mean that we instruct the Registrar to lift the

1 *ex parte* marking from filing 612, Annex 1.

2 And that concludes our oral order.

3 MS. SHAHABUDDIN: Sorry. We do have an additional submission we  
4 would like to make before we close out today's session. Happy to do  
5 so now or at a later moment, as Your Honour prefers.

6 PRESIDING JUDGE VELDT-FOGLIA: Yes, you may proceed in order to  
7 wrap up now. And can this be done in public?

8 MS. SHAHABUDDIN: Yes.

9 PRESIDING JUDGE VELDT-FOGLIA: Very well.

10 MS. SHAHABUDDIN: Yes.

11 PRESIDING JUDGE VELDT-FOGLIA: You have the floor,  
12 Madam Prosecutor.

13 MS. SHAHABUDDIN: The SPO has reflected on what has occurred in  
14 the hearings of yesterday and today, and in particular the indication  
15 from the Panel with at least regard to paragraph 12 of each of the  
16 plea agreements, that certain further amendments would be recommended  
17 by the Panel.

18 We've conferred with our colleagues in the Defence, and the SPO  
19 has certain submissions, in particular that it's our position - a  
20 shared position with the Defence - that no change is actually  
21 required to the plea agreements because, including in paragraph 12,  
22 they have been carefully designed in order to cover all  
23 eventualities, including the one that we find ourselves in as  
24 addressed by the Court in colloquy with the individual accused when  
25 going through paragraph 12.

1           We see, in addition, that there may be unnecessary and  
2           potentially significant complications arising from the creation of  
3           new plea agreements following the entry of the guilty pleas by the  
4           accused yesterday and today. Each accused has confirmed the scope of  
5           their pleas and their understanding of the consequences of entering  
6           the pleas in court this week. Clearly, that is on the record, and  
7           our position is that nothing further is needed.

8           In addition, the status of any further plea agreement entered  
9           into after the accused have already pleaded guilty and how the Panel  
10          would satisfy itself that those new agreements comply with Rule 94  
11          without redoing the entire proceedings that took place yesterday and  
12          today would seem to be very unclear.

13          It is therefore the SPO's submission -- and as mentioned, this  
14          has been discussed with my colleagues in the Defence, and my  
15          understanding is that they join us in this. It is our position that  
16          nothing further is required, and that doing more at this point may,  
17          in fact, introduce unnecessary complications to future procedures.

18          That's all I have for Your Honour.

19          PRESIDING JUDGE VELDT-FOGLIA: Thank you very much,  
20          Madam Prosecutor.

21          From the side of the Defence teams, is there something you would  
22          like to add to this apparent common position?

23          MR. REES: Only to say that it is, indeed, a common position,  
24          and we join it.

25          PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you.



1 Defence counsel for Mr. Shala.

2 MR. CADMAN: Having discussed it with the SPO this morning, we  
3 concur.

4 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you very much.

5 MS. GERRY: The same.

6 PRESIDING JUDGE VELDT-FOGLIA: This is noted.

7 The Panel will give further instructions after the judicial  
8 winter recess as soon as possible.

9 There is something you want to say, Defence counsel? I  
10 understood that we were wrapping up. You have the floor.

11 MR. REES: Yes, I do have two matters that I'd like to raise as  
12 part of the wrapping-up session.

13 The first matter is that acknowledging the timetable that the  
14 Court set down for contact with the VPO yesterday, I nevertheless  
15 request the Trial Panel to move to an issue on the decision to  
16 approve the plea agreement and impose a sentence in accordance with  
17 the recommendations in the plea agreement less -- with credit for  
18 time served as soon as possible. And I would urge, if possible, that  
19 decision to be before the end of this term.

20 The issue of the applicability or otherwise of reparations is,  
21 it seems to me, an entirely separate matter, and a decision as to  
22 approval of the plea agreements and sentence should not wait for the  
23 reparations issue to be resolved.

24 We note that in the cases of Mr. Salih Mustafa and  
25 Mr. Pjeter Shala, Cases 06 and 05, respectively, the Court did,

1 indeed, proceed to sentence and retained jurisdiction to deal with  
2 the issue of reparations at a later date. And I exhort the  
3 Trial Panel to take that course in the present cases, particularly  
4 given the scope of the plea agreements and the terms of imprisonment  
5 that are considered therein, and the fact that the defendants have,  
6 of course, spent a significant period of time in custody already.

7 In relation to the second oral order that Your Honour made  
8 yesterday dealing with that timetable for contact with the Victims  
9 Participation Office, it was part of that order that the Victims  
10 Participation Office was to be provided with the -- what we were  
11 referring to as the 6 December 2024 version of the indictment.

12 That oral order was issued by the Trial Panel, of course, before  
13 that 6 December 2024 version of the indictment was effectively set  
14 aside, and it has, in accordance with that decision of the  
15 Trial Panel, not featured at all. It has not been used properly  
16 during the course of these hearings. And it would be my submission  
17 that that document should not be provided to the Victims  
18 Participation Office in these circumstances. It only risks  
19 creating -- it gives them a document that hasn't, in fact, been used,  
20 and only risks creating a degree of confusion at the Victims  
21 Participation Office.

22 So I would ask that the Court considers amending its earlier  
23 oral order yesterday just in that limited respect.

24 It was part of the second oral order that you ordered,  
25 Your Honour, that the Victims Participation Office be provided with

1 the 10 July 2024 indictment together with the plea agreements, and,  
2 of course, those are the two instruments, as it were, that have been  
3 used during the course of the plea hearing. I take no issue with  
4 that. They would then have everything they would need and do not  
5 need to have the document that has not been used accordingly.

6 Those are my two submissions.

7 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

8 Defence counsel for Mr. Shala, is there something you would like  
9 to submit to the Panel?

10 MR. CADMAN: Just to say that I fully support both requests that  
11 Mr. Rees has made. Obviously, this term effectively ends tomorrow.  
12 I understand that gives you limited time by which to comply with the  
13 first request. And it would appear that 17 January would be the  
14 first next available court date after the winter recess.

15 We would only urge that as this is a matter which can be dealt  
16 with by way of a written order, that that is communicated to the  
17 three accused as soon as is possible, not to -- to put these matters  
18 to the end of January, I think would be unfair to the three accused  
19 and would be inconsistent with the efforts that have been taken to  
20 agree these plea agreements.

21 So I would only urge Your Honours to issue your written order as  
22 soon as possible and then schedule the hearing on the first available  
23 court date, which would be sometime after 17 January.

24 PRESIDING JUDGE VELDT-FOGLIA: Your submissions are noted,  
25 Defence counsel.

1 Defence counsel for Mr. Bahtijari.

2 MS. GERRY: I think I've already made my position clear, but the  
3 application is supported.

4 PRESIDING JUDGE VELDT-FOGLIA: Very well.

5 What we will do is -- I noted that the Prosecution has made all  
6 the submissions it wanted to make in this respect. Would you like to  
7 further react to the submissions of the Defence for Mr. Januzi?

8 MS. SHAHABUDDIN: Very briefly, Your Honour. Just to say that  
9 we've heard the Defence submissions, and we would join our colleagues  
10 in agreeing to the same.

11 PRESIDING JUDGE VELDT-FOGLIA: Very well.

12 What we will do is that we will now adjourn for half an hour to  
13 discuss on this matter, and also that I think we are now at a moment  
14 that we need to take a break for all people that have been working  
15 since 1.00 till now.

16 What we can do is that Mr. Bahtijari can be excused for the  
17 second part, and then we see each other back at quarter to 4.00.

18 MS. GERRY: Can I just understand that he doesn't need to come  
19 back at all, and he can be returned to the detention centre? Is that  
20 what you meant?

21 PRESIDING JUDGE VELDT-FOGLIA: That's the meaning of that he  
22 is excused --

23 MS. GERRY: Very grateful.

24 PRESIDING JUDGE VELDT-FOGLIA: -- the next session.

25 MS. GERRY: And would you mind excusing me? Co-counsel will be

1 here.

2 PRESIDING JUDGE VELDT-FOGLIA: That's your choice. She can as  
3 well represent your client as you can. So that's in our rules, in  
4 our regulations.

5 MS. GERRY: I'm very grateful, indeed. Thank you very much.

6 PRESIDING JUDGE VELDT-FOGLIA: Then the hearing is --

7 MR. REES: Your Honour? Sorry.

8 PRESIDING JUDGE VELDT-FOGLIA: Yes?

9 MR. REES: Would you also consider excusing Mr. Januzi from the  
10 returned hearing?

11 PRESIDING JUDGE VELDT-FOGLIA: He may. If that is his wish,  
12 then --

13 MR. REES: I think it would be. I think he would rather us deal  
14 with administrative matters in his absence.

15 PRESIDING JUDGE VELDT-FOGLIA: We can proceed in that way.

16 MR. REES: Thank you.

17 PRESIDING JUDGE VELDT-FOGLIA: Very well. Then the hearing is  
18 adjourned till quarter till 4.00.

19 --- Recess taken at 3.18 p.m.

20 --- On resuming at 4.13 p.m.

21 PRESIDING JUDGE VELDT-FOGLIA: Welcome back.

22 For the record, I will see who is present and if there are any  
23 changes.

24 Specialist Prosecutor's Office, you have the floor.

25 MS. SHAHABUDDIN: Tazneen Shahabuddin, Prosecutor, for the

1 Specialist Prosecutor's Office. And I'm joined by Deputy  
2 Specialist Prosecutor Ward Ferdinandusse, Associate Prosecutor  
3 John Devaney, and Case Manager Line Pedersen.

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

5 On my left-hand side, the Defence team, the Defence for  
6 Mr. Bahtijari, could you indicate who is present now?

7 MS. CARRIN: Sorry, Your Honour. Joining us remotely is our  
8 administrator, Caitie Delaney. And in the courtroom, Ms. Yuqing Liu,  
9 associate legal officer. And I am co-counsel, Marion Carrin. Thank  
10 you.

11 PRESIDING JUDGE VELDT-FOGLIA: That last I did not hear. I did  
12 not hear what you say --

13 MS. CARRIN: Sorry?

14 PRESIDING JUDGE VELDT-FOGLIA: I did not hear your last -- the  
15 last words you --

16 MS. CARRIN: Oh, sorry, and I am co-counsel Marion Carrin.  
17 Thank you.

18 PRESIDING JUDGE VELDT-FOGLIA: Is there a special reason that we  
19 are looking at a screen without visualisation of the person? Oh,  
20 yes. Very well. Because we could not proceed in that way.

21 The Defence for Mr. Januzi, could you indicate who is present?

22 MR. REES: Your Honour, the representation for Mr. Januzi  
23 remains as per the earlier sessions today. The only difference is  
24 that Mr. Januzi himself is not present online as he was earlier in  
25 the morning.

1           PRESIDING JUDGE VELDT-FOGLIA: Thank you very much. And we note  
2 that the same goes for Mr. Bahtijari, he is not present, and both  
3 have been excused.

4           And then the Defence for Mr. Shala, you have the floor.

5           MR. CADMAN: No change in the representation for Mr. Shala.

6           PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

7           There were two outstanding issues, and I will deal with them now  
8 on behalf of the Panel.

9           As regards the oral order on reparations issued by the Panel on  
10 18 December 2024, yesterday, the Panel clarifies that the Victims  
11 Participation Office should receive the Confirmed Indictment of  
12 10 July 2024, which is filing bearing number 379, Annex 1, and not  
13 the 6 December 2024 Confirmed Indictment, which bears filing number  
14 619, Annex 1.

15           The Panel further clarifies that the plea agreements, that are  
16 public now, also need to be transmitted to the Victims Participation  
17 Office.

18           The Panel also wishes to clarify that it will only be in a  
19 position to decide on the plea agreements, including sentencing,  
20 following the report of the Victims Participation Office - and that's  
21 put for 20 January 2025 - and observations of the parties on that  
22 report - that was set for 27 January 2025 - as the issue of  
23 reparations, if it arises, has to be dealt as part of the plea  
24 agreements, pursuant to Rule 94(2)(c) of the Rules.

25           And the Panel will also give further instructions in due course

1 after the judicial winter recess.

2 These were the clarifications of the Panel.

3 And I thank again the parties for their participation and all  
4 the colleagues of the different units of the Registry for their  
5 assistance.

6 The hearing stands adjourned.

7 --- Whereupon the hearing adjourned at 4.18 p.m.

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