

1 Friday, 3 November 2023

2 [Open session]

3 [The accused entered the courtroom]

4 --- Upon commencing at 9.31 a.m.

5 JUDGE GUILLOU: Good morning and welcome, everyone. I shall say
6 welcome back for some of the participants today.

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

8 THE COURT OFFICER: Good morning, Your Honour. This is case
9 KSC-BC-2023-10, The Specialist Prosecutor versus Sabit Januzi and
10 Ismet Bahtijari.

11 JUDGE GUILLOU: Thank you, Madam Court Officer.

12 Now, I would kindly ask the parties and participants to
13 introduce themselves, starting with the Specialist Prosecutor's
14 Office.

15 Madam Prosecutor.

16 MS. D'ASCOLI: Thank you, Your Honour, and good morning. The
17 Specialist Prosecutor's Office today is represented by Nathan Quick,
18 legal officer, team leader; Line Pedersen, case manager; and myself,
19 Silvia D'Ascoli, Prosecutor. Thank you.

20 JUDGE GUILLOU: Thank you, Madam Prosecutor.

21 Now I turn to the Defence, starting with the Defence of
22 Mr. Januzi, please.

23 MR. REES: Your Honour, I appear on behalf of Mr. Januzi,
24 Specialist Counsel Jonathan Elystan Rees, King's Counsel. I am
25 pleased to say that the team is intact, or *tout ensemble*, if you

1 prefer, Mr. Huw Bowden, co-counsel, and Mr. Remi Halilaj as team
2 member.

3 JUDGE GUILLOU: Thank you, Mr. Rees.

4 Now I turn to the Defence of Mr. Bahtijari. Counsel, please.

5 MR. SYTEMA: Thank you, Your Honour. My name is Hendrik Sytema.
6 I'm a member of The Hague bar association and Duty Counsel for
7 Mr. Bahtijari. Thank you.

8 JUDGE GUILLOU: Thank you, Mr. Sytema.

9 And now I turn to the Registry, please.

10 MR. NILSSON: Good morning, Your Honour. Jonas Nilsson, Deputy
11 Registrar for the Registry today.

12 JUDGE GUILLOU: Thank you, Mr. Nilsson. And for the record, I
13 am Nicolas Guillou, Pre-Trial Judge for this case.

14 On 27 October, I scheduled this second Status Conference for
15 this case. My goal today is to review the status of the case and to
16 organise exchanges between the parties to ensure an expeditious
17 preparation for trial.

18 In particular, I want to discuss the issue of the correct
19 spelling of the surname of Mr. Bahtijari as a preliminary matter;
20 disclosure of evidentiary material and, in this context, the timeline
21 of the preliminary motions; the status of the Specialist Prosecutor's
22 investigations; the date of the SPO pre-trial brief and other related
23 materials; the position of the Defence regarding the status of its
24 investigations, its intention to give notice of an alibi or grounds
25 for excluding responsibility, and its intention to make requests

1 concerning unique investigative opportunity; finally, any other
2 issues the parties may wish to raise.

3 I thank the SPO for its submissions ahead of the Status
4 Conference, and I note that the Defence for Mr. Januzi and the
5 Defence for Mr. Bahtijari did not file submissions.

6 In any event, as usual, I would invite the parties and the
7 Registry to present their views in a concise fashion for each item on
8 the agenda, which I will address in turn. And as usual again, I
9 remind the parties and the Registry that they need to give prior
10 notice should any submission require the disclosure of confidential
11 information so we can go into private or closed session.

12 Let me start our agenda today with a preliminary matter, which
13 is the issue of the correct spelling of the surname of Mr. Bahtijari.
14 I recall that on 23 October, having been informed by the Registrar
15 that the last name of the accused was spelled incorrectly, I
16 instructed the Registrar to file a copy of the passport of
17 Mr. Bahtijari on the record of the case.

18 I also instructed the SPO to respond to the filing of the
19 Registrar within five days from notification of the said filing and
20 propose any measures if deemed necessary.

21 On 26 October, the Registrar submitted a filing, F00080, with a
22 related annex concerning the copy of Mr. Bahtijari's passport.

23 I also recall that on 31 October, by way of e-mail, I instructed
24 the parties and the Registry to use the spelling of the surname of
25 Mr. Bahtijari as indicated in his passport for all future filings,

1 including for the name of the case.

2 Counsel for Mr. Bahtijari, would you like to make any
3 submissions on this point, please?

4 MR. SYTEMA: Thank you, Your Honour. That's not necessary.

5 JUDGE GUILLOU: Thank you, counsel.

6 Now let me turn to Madam Prosecutor. Do you intend to file a
7 corrected version of the Confirmed Indictment in its strictly
8 confidential as well as its public redacted version, which are filing
9 F00010, Annex 1, and F00016, Annex 1. Madam Prosecutor.

10 MS. D'ASCOLI: Thank you, Your Honour. Yes, we will.

11 JUDGE GUILLOU: Thank you, Madam Prosecutor. Is there anything
12 that you would like to add at this point?

13 MS. D'ASCOLI: No, Your Honours. We would just note the correct
14 spelling and we will be using it for future filings, and we will file
15 a corrected version of the filings you mentioned. That's all.

16 JUDGE GUILLOU: Thank you, Madam Prosecutor.

17 Lastly, Mr. Deputy Registrar, do you want to add anything on
18 that matter?

19 MR. NILSSON: Thank you, Your Honour. Nothing to add.

20 JUDGE GUILLOU: Thank you, Mr. Nilsson.

21 Let us now move to the disclosure process.

22 The SPO indicated, in its written submissions, that it completed
23 its Rule 102(1)(a) disclosure obligation on 31 October 2023. I note
24 that disclosure package number 2 has indeed been disclosed on October
25 21st. I also note that it contains statements obtained from the

1 accused on 4 and 5 October, respectively.

2 I note that since the SPO has discharged its disclosure
3 obligations under Rule 102(1)(a) on 31 October 2023, the deadline for
4 the Defence to file preliminary motions started running on that day.
5 As such, pursuant to Rule 97(2), the Defence has 30 days from the
6 disclosure date to file any preliminary motions, that is, until 30
7 November 2023.

8 After that, the SPO has ten days to respond, and the Defence has
9 a further five days to reply pursuant to Rules 9 and 76.

10 I note in this context that the deadline for the Defence for
11 Mr. Januzi and the Defence for Mr. Bahtijari's respective replies
12 falls during judicial recess which starts on Monday, 18 December. As
13 a result, and as I did in previous instances, I intend to modify the
14 briefing schedule to give adequate time to the Defence to prepare its
15 reply.

16 Before I proceed, I invite the SPO and the Defence to make oral
17 submissions on this topic.

18 Madam Prosecutor, please.

19 MS. D'ASCOLI: Your Honours, we'd just note the scheduling, and
20 we have no further comments. No additional -- nothing additional to
21 raise. Thank you.

22 JUDGE GUILLOU: Thank you, Madam Prosecutor.

23 I turn to the Defence of Mr. Januzi, please.

24 MR. REES: As Your Honour knows, we've very recently been
25 instructed, having been granted access to the file yesterday. We

1 will, at this stage, aim to comply with the 30 days within the rules
2 for the filing of any preliminary motion. Now, if there is any issue
3 with that date, we will apply in good time for an extension as per
4 the rules.

5 Assuming that we are able to comply with the present deadline as
6 provided for the rules, we would ask for Your Honour to allow time
7 for us to put in a timely reply to any Prosecution response. We are
8 in Your Honour's hands as to whether you do that to allow the Court
9 to deal with any such reply after the recess.

10 There's not much, I think, I can add at this stage further to
11 that.

12 JUDGE GUILLOU: Thank you, counsel.

13 I turn to the Defence of Mr. Bahtijari.

14 MR. SYTEMA: Thank you, Your Honour. I have no comment on this
15 subject at this moment. Thank you.

16 JUDGE GUILLOU: Thank you, counsel.

17 Just give me a second.

18 I will issue an oral order on this matter at the end of the
19 Status Conference.

20 Now, I note that the SPO indicated, in its written submission,
21 that it is not facing any difficulties relating to the disclosure of
22 evidentiary material at this time and that it has taken note of the
23 calendar set out in the Framework Decision on Disclosure of Evidence
24 and Related Material of 24 October 2023.

25 The SPO notably specified that it is continuing to review the

1 Rule 103 material, and following any necessary processing and
2 application of required redactions, it shall immediately disclose
3 such material.

4 The SPO further specified that it continues to anticipate
5 obtaining additional evidence that would constitute Rule 102(1)(b)
6 materials and that any necessary translations are expected to be
7 completed within the proposed timeline for the disclosure of material
8 under Rule 102(1)(b).

9 Madam Prosecutor, would you like to make any further submissions
10 on this matter?

11 MS. D'ASCOLI: No, Your Honour. That's exactly as we put it in
12 our submissions, and I have nothing to add at this stage. Thank you.

13 JUDGE GUILLOU: Let me now turn to the Defence.

14 Counsel, do you have any submissions on the disclosure?
15 Mr. Rees, please.

16 MR. REES: Not in relation to the proposed timetable. There's a
17 matter that I wish to raise that falls under the "any other business"
18 aspect of the agenda, and I'll deal with that in due course if I may.

19 JUDGE GUILLOU: Thank you, counsel.

20 Mr. Sytema, please.

21 MR. SYTEMA: Thank you, Your Honour. No remarks on this
22 subject. Thank you.

23 JUDGE GUILLOU: Thank you, Mr. Sytema.

24 Finally, and still on the issue of disclosure, I note that the
25 SPO has proposed in its written submissions a case-specific

1 subcategorisation to be applied in Legal Workflow.

2 Madam Prosecutor, did you manage to conclude the *inter partes*
3 discussions and reach an agreement with the Defence on this topic,
4 please?

5 MS. D'ASCOLI: Thank you, Your Honour. Yes, I can confirm that.
6 The counsels from the other side will do that too, I assume. But on
7 1 November, the counsel for Mr. Bahtijari replied to our proposal
8 agreeing with it, in terms of what categories and subcategories to be
9 applied in Legal Workflow. And this morning, Mr. Rees as well said
10 he didn't have anything to raise and had no issues with those
11 proposals.

12 So if Your Honours consider the agreement as reached, then we
13 will immediately apply those categories and subcategories starting
14 with the disclosure package 2 because we were waiting for the
15 agreement to be finalised, as when we disclosed it on 31 October, the
16 *inter partes* communications were still pending. So we are in
17 Your Honour's hands at that point. Thank you.

18 JUDGE GUILLOU: Thank you, Madam Prosecutor.

19 I turn to the Defence.

20 Mr. Rees, please.

21 MR. REES: Nothing to add, Your Honour.

22 JUDGE GUILLOU: It means that you agree with the proposed
23 categorisation; is it correct?

24 MR. REES: Yes, it does.

25 JUDGE GUILLOU: Thank you, Mr. Rees.

1 Mr. Sytema.

2 MR. SYTEMA: Thank you, Your Honour. The Defence also agrees,
3 like the SPO already said. Thank you.

4 JUDGE GUILLOU: Thank you.

5 I will then note that an agreement has been reached, and I will
6 issue a first oral order.

7 I hereby order the adoption of the case-specific
8 subcategorisation to be applied in Legal Workflow as proposed by the
9 SPO in paragraph 9 of its written submissions of 31 October 2023,
10 filing F00084.

11 This concludes my first oral order.

12 Let me now move to the third item in our agenda, which is the
13 status of the SPO's investigations.

14 In its written submissions, the SPO indicated that the result of
15 recent investigative steps are currently being processed for review,
16 analysis and, as applicable, disclosure.

17 It further indicated that it is possible that certain additional
18 investigative steps may follow from that analysis, and that the SPO
19 is currently organising its work to conduct any such steps by the end
20 of December 2023 to the extent possible.

21 Madam Prosecutor, do you wish to add anything to your written
22 submissions? And I see that it's Mr. Prosecutor.

23 MR. QUICK: Yes. Thank you, Your Honour. In that accurate
24 summary, I have nothing to add to it. Thank you.

25 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

1 Now I turn to the Defence. Do you have any submissions on the
2 SPO investigations?

3 Mr. Rees, please.

4 MR. REES: No, thank you.

5 JUDGE GUILLOU: Thank you, Mr. Rees.

6 Mr. Sytema.

7 MR. SYTEMA: Thank you, Your Honour. No submissions from my
8 side either.

9 JUDGE GUILLOU: Thank you, counsel.

10 Let me now move to the SPO pre-trial brief and related material.
11 In its written submissions, the SPO indicated that in light of the
12 disclosure calendar set out in the Framework Decision, it anticipates
13 that it will be able to file its pre-trial brief and related material
14 by Friday, 2 February 2024.

15 Madam or Mr. Prosecutor, do you want to add anything on these
16 written submissions? Mr. Prosecutor.

17 MR. QUICK: We have nothing to add, Your Honour, but I'm happy
18 to answer any questions you might have.

19 JUDGE GUILLOU: But you confirm the date?

20 MR. QUICK: Yes, we confirm the date, 2 February 2024. Thank
21 you.

22 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

23 Now I turn to the Defence.

24 Mr. Rees, any comments on this schedule?

25 MR. REES: No comment on the proposal for the SPO to file their

1 pre-trial brief by 2 February. That does not, of course, dictate the
2 timetable in relation to service of the Defence pre-trial brief on
3 that basis. But as far as the date proposed by the SPO is concerned,
4 it's a matter for them.

5 JUDGE GUILLOU: Thank you, Mr. Rees.

6 Mr. Sytema, please.

7 MR. SYTEMA: No comments on this subject, Your Honour. Thank
8 you.

9 JUDGE GUILLOU: Thank you, counsel.

10 Having heard the parties, I will issue a second oral order on
11 the submissions of the SPO's pre-trial brief.

12 I hereby order the SPO to submit its pre-trial brief within the
13 meaning of Rule 95(4)(a) of the rules, by Friday, 2 February 2024 at
14 the latest.

15 This concludes my second oral order.

16 For the next point to the agenda, let me turn to the Defence
17 first.

18 I note that the Defence did not file any written submissions
19 ahead of this Status Conference. Nevertheless, based on the
20 information given by the Prosecutor on the course of the Status
21 Conference, are you in a position to make any preliminary submissions
22 on, first, the status of your investigations; second, any intention
23 to give notice of an alibi or other grounds for excluding
24 responsibility and any associated disclosure; and, third, any
25 intention to make requests concerning unique investigative

1 opportunities.

2 And I start with the Defence of Mr. Januzi.

3 Mr. Rees, please.

4 MR. REES: No. I repeat, as Your Honour is aware, we were only
5 instructed yesterday, so we are not in a position to assist with
6 those three items. There is a specific matter in relation to case
7 preparation that we do wish to deal with, but we'll raise that in the
8 final item on the agenda, and also we wish to address you in relation
9 to the timetable to deal with the outstanding issue of detention or
10 interim release.

11 JUDGE GUILLOU: Thank you, Mr. Rees.

12 Mr. Sytema, please.

13 MR. SYTEMA: Thank you, Your Honour. The Defence has no
14 submissions at this particular moment. This week, we received some
15 evidentiary material. I still have to discuss it with Mr. Bahtijari,
16 so only after that a moment could arise in which I could make any
17 submissions. But not at this moment. Thank you.

18 JUDGE GUILLOU: Thank you, Mr. Sytema.

19 If you want to raise any of these issues during the course of
20 the pre-trial phase, I, as usual, invite the Defence to raise these
21 issues as early as possible so that the case is not delayed before
22 its transmission to the Trial Panel.

23 Madam or Mr. Prosecutor, do you have anything to add on this
24 matter?

25 MR. QUICK: No, Your Honour.

1 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

2 At this point, I would like to ask the parties and the Registry
3 whether they have any other issue they would like to raise, and I
4 remind the parties and the Registry that should any submission
5 require the disclosure of confidential information, please indicate
6 this before you take the floor so we can move into private or closed
7 session if necessary.

8 And I start with Madam Prosecutor.

9 MS. D'ASCOLI: Nothing from us, Your Honour. Thank you.

10 JUDGE GUILLOU: Thank you, Madam Prosecutor.

11 Mr. Rees, you indicated that you wanted to raise a specific
12 point.

13 MR. REES: Yes, two specific points.

14 JUDGE GUILLOU: Do we --

15 MR. REES: I'll deal with the first one.

16 JUDGE GUILLOU: Do we need to move into private session?

17 MR. REES: We will do, but I'll deal with the first matter
18 because we can deal with that outside of private session.

19 The first matter then is the timetable that Your Honour set in
20 relation to dealing with the issue of detention or interim release.

21 We're aware that there is a timetable set down to allow for the
22 supplementation of an earlier filing that had been made in relation
23 to a request for interim release. We would ask Your Honour to
24 consider an amended timetable to allow us time to, firstly, get
25 acquainted with the case file, then review the filings that have

1 already been submitted in relation to the issue of detention or
2 interim release, and then, if necessary, to refile once we have
3 amended them.

4 So that's my first request, that Your Honour sets an amended
5 timetable to allow us to do that.

6 JUDGE GUILLOU: Before we move to the second one, can you give
7 me a suggestion for the new schedule that you would wish me to order?

8 MR. REES: I would be satisfied if Your Honour gave us seven
9 days to review the filings that have been made thus far and to, if
10 necessary, submit a refiled application for interim release.

11 JUDGE GUILLOU: So Friday in one week from now?

12 MR. REES: Indeed.

13 JUDGE GUILLOU: Before we move to your second point, if you
14 don't mind, I will give the floor to the SPO --

15 MR. REES: Yes.

16 JUDGE GUILLOU: -- so that we finish with this matter.

17 Mr. Prosecutor, please.

18 MR. QUICK: Yes, Your Honour. In relation to Mr. Rees'
19 submission, we defer to Your Honour as to the timetable. Obviously,
20 our deadline to respond to the submissions of both Defence on
21 detention were today, so we are ready to proceed. We defer to you.

22 In relation to the other accused, we would propose that the
23 timetable should stay the same.

24 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

25 Then I will give the floor to Mr. Sytema on the submissions of

1 the SPO that the timetable stays the same for your client. Do you
2 have any submissions, or would you like it to be changed as well?

3 MR. SYTEMA: Thank you, Your Honour. From my side, there is no
4 need to change the timetable, but I can imagine -- but that's your
5 decision to make, to keep both timetables the same. But as far as
6 the Defence of Mr. Bahtijari is concerned, there is no need to change
7 it, but I'll adopt the changes that you would make.

8 JUDGE GUILLOU: Thank you, counsel.

9 Mr. Rees, do you want to reply?

10 MR. REES: No, thank you.

11 JUDGE GUILLOU: Thank you, Mr. Rees.

12 I will issue an oral order on this matter at the end of the
13 Status Conference after a short break.

14 Now we can move to your second point, Mr. Rees. Do we need to
15 move into private session?

16 MR. REES: Please.

17 JUDGE GUILLOU: Madam Court Officer, can we move into private
18 session, and please indicate me when we are in private session.

19 [Private session]

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12 [Open session]

13 THE COURT OFFICER: Your Honour, we're now in public session.

14 JUDGE GUILLOU: Thank you, Madam Court Officer.

15 I'd just take note that Mr. Sytema and the Registry do not have
16 any further submissions on this Status Conference.

17 I would like to inform the parties and the Registry that I
18 intend to hold the third Status Conference in this case on Thursday,
19 14 December 2023.

20 I recall in this regard that should counsel or the accused wish
21 to participate via video-conference, written notice shall be sent via
22 e-mail to the Registry 24 hours in advance of the relevant hearing so
23 that arrangements can be made. Such notice should include the
24 written consent of the accused as the Defence did for this -- was
25 aware for this Status Conference.

1 And, as usual, you will receive a Scheduling Order that will
2 include the agenda before the Status Conference. I invite the
3 parties to make written submissions if they would like to raise any
4 specific issue during the next Status Conference.

5 We will now break for approximately 20 minutes, and I will come
6 back for oral orders before we close this session for the day. For
7 the moment, the hearing is adjourned for 20 minutes.

8 --- Recess taken at 10.03 a.m.

9 --- On resuming at 10.22 a.m.

10 JUDGE GUILLOU: I will now issue two oral orders.

11 Concerning the briefing schedule for the submissions of
12 preliminary motions and subsequent response and replies, I issue the
13 following third oral order.

14 Having heard the parties, I find it appropriate to vary the time
15 limits prescribed by the rules. I hereby order the Defence for
16 Mr. Januzi and the Defence for Mr. Bahtijari to reply to the SPO's
17 response to any preliminary motions by Tuesday, 9 January 2024.

18 This concludes my third oral order.

19 I will now issue my fourth oral order.

20 Having heard the parties, and noting the assignment of a new
21 Duty Counsel for Mr. Januzi, I find it appropriate to vary the time
22 limits prescribed by the rules as regards any supplementary
23 submissions by the Defence of Mr. Januzi concerning interim release
24 and the SPO's response to these supplementary submissions.

25 I hereby order the Defence for Mr. Januzi to file its

1 supplementary submissions by 10 November; the SPO to respond by 17
2 November; and the Defence for Mr. Januzi to reply by 24 November.

3 This concludes my fourth oral order.

4 The schedule for submissions as regards the request for interim
5 release by the Defence of Mr. Bahtijari remains the same.

6 This concludes today's hearing. As usual, I thank the parties
7 and the Registry for their attendance. And I thank the stenographer,
8 audio-visual technician, interpreters, and security personnel for
9 their assistance.

10 This hearing is adjourned.

11 --- Whereupon the Status Conference adjourned
12 at 10.25 a.m.

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