

1 Tuesday, 8 October 2024  
2 [Open session]  
3 [Trial Preparation Conference]  
4 [The Accused Januzi and Bahtijari appeared  
5 via videolink]  
6 --- Upon commencing at 3.00 p.m.

7 PRESIDING JUDGE VELDT-FOGLIA: Good afternoon, and welcome to  
8 this second and last day of the Trial Preparation Conference.  
9 Court Officer, could you please call the case.

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

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

14 I would kindly ask the parties and participants to introduce  
15 themselves, and we start again with the Specialist Prosecutor's  
16 Office.

17 You have the floor.

18 MR. HAFETZ: Thank you. Good afternoon, Your Honour. Josh  
19 Hafetz on behalf of the Specialist Prosecutor's Office, and I'm  
20 joined by my colleagues, John Devaney on my left, and our case  
21 managers Line Pedersen and Aniko Boldog behind me. Thank you.

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

23 I turn to the Registry. Deputy Registrar, you have floor.

24 MR. NILSSON: Thank you, Your Honour. Good afternoon,  
25 colleagues. Good afternoon, Your Honours. Same constellation as

1 yesterday: Me, Jonas Nilsson, Deputy Registrar, together with legal  
2 counsel Whitney Price. Thank you.

3 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

4 And now I turn to the Defence. And could you kindly add, like  
5 we did yesterday, to your introduction who of your team is  
6 participating remotely or is present in the courtroom, and likewise  
7 for your clients. Thank you.

8 And we will start again with the Defence for Mr. Shala.

9 MR. CADMAN: Good afternoon, Your Honour. Toby Cadman,  
10 Specialist Counsel for Mr. Shala. Mr. Shala has waived his right to  
11 attend for reasons which I believe Your Honours are aware. I'm  
12 joined today by John Cubbon, co-counsel; Isabella Kirwan, legal  
13 associate; and Admir Berisha, investigator.

14 PRESIDING JUDGE VELDT-FOGLIA: Very well.

15 MR. CADMAN: All of our team are appearing in court. None of us  
16 are appearing remotely.

17 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Specialist Counsel.  
18 And, yes, in conformity with Rule 68 of the Rules, your client has  
19 waived his right to be present -- to participate in this proceeding  
20 today. Very well.

21 I turn to the Defence for Mr. Bahtijari. You have floor.

22 MS. CARRIN: Good afternoon, Your Honours. Today Mr. Bahtijari  
23 is joining through videolink from the detention unit. And we also  
24 have through videolink Ms. Caitlin Delaney and Ms. Phillipa Stafford,  
25 our administrative associates. In the courtroom is Yuqing Liu, our

1 legal associate, and I am Marion Carrin, co-counsel. Thank you very  
2 much.

3 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

4 Now I turn to the Defence for Mr. Januzi. You have the floor.

5 MR. REES: [via videolink] Your Honour, my name is Jonathan  
6 Elystan Rees, King's Counsel. I appear as Specialist Counsel for  
7 Mr. Januzi, who is attending remotely from the detention unit. My  
8 co-counsel, Mr. Huw Bowden, also attends remotely.

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Thank you. Very  
10 well.

11 As indicated yesterday, we will now issue a set of oral orders,  
12 and the following orders are informed by the Panel's envisaged date  
13 for the commencement of the trial, namely, on 8 November 2024.

14 And before we begin with the oral orders, the Panel wishes to  
15 address two preliminary matters which should be addressed in private  
16 session.

17 Court Officer, can you bring us into private session, please.

18 [Private session]

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9 [Open session]

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

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

12 Then we will now go to the oral orders, and we have several of  
13 them.

14 The first oral order concerns the request by the Defence for  
15 Mr. Januzi for adjournment, which is filing 511. And this oral order  
16 concerns the request for adjournment submitted by the Januzi Defence  
17 in paragraph 4 of its filing bearing number 511.

18 The Panel notes that the Januzi Defence invites the Panel to  
19 adjourn the intended proceedings after their opening on 8 November  
20 2024 until 13 November for the first Prosecution witness to be called  
21 due to the unavailability of lead counsel on the 11th and 12th  
22 November 2024, as conveyed to the Panel on 4 October, so last week.  
23 The Panel further notes that the Januzi Defence does not explain why  
24 co-counsel could not represent Mr. Januzi for the first Prosecution  
25 witnesses -- witnesses, witness.

1           Therefore, the Panel decides that, in case of need, Mr. Januzi  
2 will be represented by co-counsel, who has previously indicated his  
3 availability on the 11th and 12th November 2024 in filing bearing  
4 number 504.

5           Lastly, the Panel takes note of the Shala Defence and the  
6 Bahtijari confirmation as regards their readiness and availability to  
7 start the trial on Friday, 8 November 2024, with trial hearings in  
8 the week of 11 to 15 November conveyed in their respective filings  
9 bearing numbers 509 and 510.

10           And this concludes the Panel's first order.

11           The next oral order concerns the modalities concerning the  
12 conduct of proceedings and the practice of witness preparation.

13           The Panel has taken note of the SPO's submissions and proposals  
14 on the following issues relating to the conduct of proceedings: One,  
15 the submission and admissibility of non-oral evidence, paragraphs 29  
16 till 32, and 36 and 37 of filing 491; two, the public character of  
17 the proceedings, paragraphs 38 and 39 of filing 491; and the third,  
18 the fair and expeditious character of the proceedings, paragraphs 40  
19 and 41 of the same filing.

20           The Panel invites the teams to file written submissions, if they  
21 so wish, on the aforementioned proposals by the Specialist  
22 Prosecutor's Office by no later than Wednesday, 16 October, at 4.00.

23           The Panel further invites the Defence teams to file submissions,  
24 if they so wish, on the practice of witness preparation by no later  
25 than Wednesday, 16 October 2024, at 4.00, taking into consideration



1 the submissions of the SPO as they were detailed in paragraphs 16  
2 till 23 of filing 491, as well as the Panel's previous practice in  
3 the prior cases.

4 This concludes the Panel's oral order.

5 The next oral order concerns the Defence request for - the  
6 Januzi Defence - the SPO to make available the forensic copies of the  
7 mobile telephones of the two witnesses as indicated in paragraphs 5  
8 and 18 of its submissions bearing number 495.

9 The Panel has taken note of the parties' further submissions on  
10 this matter conveyed during the Trial Preparation Conference held on  
11 Monday, 7 October 2024. The Panel notes in particular the SPO's  
12 submissions that it's not in possession of the forensic copies of the  
13 mobile telephones of the witnesses. The Panel also notes that the  
14 parties agreed to undertake *inter partes* consultation on this matter  
15 and subsequently seek the Panel's relevant authorisation. And I  
16 refer to the transcript of 7 October 2024, confidential page 286,  
17 line 19, to page 292, line 5.

18 We have also taken note of the Pre-Trial Judge's scope of  
19 authorisation for the creation of forensic copies of the mobile  
20 telephones of the witnesses. And in particular, we refer to  
21 paragraph 32 of decision bearing number 141 and paragraph 35 of  
22 decision 151.

23 And in light of the foregoing, the Panel orders the parties to  
24 undertake *inter partes* consultations and, if they so decide, to file  
25 a written joint request seeking the Panel's relevant authorisation by

1 no later than Thursday, 10 October, at 4.00. Any such request shall  
2 take the form of a request for assistance pursuant to Article 55(1)  
3 of the Law and specify, with appropriate justification, the scope of  
4 the sought material and information.

5 In addition, the Panel orders the SPO to inquire as soon as  
6 possible with the external forensic institute when such forensic  
7 copies of the mobile telephones of witnesses could be made available  
8 and inform the Panel accordingly and by no later than Thursday,  
9 10 October, at 4.00.

10 This concludes the Panel's oral order.

11 I will now give the Panel's next oral order, which concerns  
12 admissibility of evidence submitted by the SPO.

13 The Panel orders the SPO to submit any request for the admission  
14 of non-oral evidence, including concerning the items that are subject  
15 to admissibility challenges by the Defence by no later than Tuesday,  
16 15 October 2024. And for reasons of expeditiousness, the Panel  
17 further decides, pursuant to Rule 9(5)(a) of the Rules, to shorten  
18 the time limits for responses and replies as follows: The Defence  
19 shall file any response to the SPO request by no later than Tuesday,  
20 22 October 2024, so a week after; and the SPO shall file any reply to  
21 the Defence responses by no later than Friday, 25 October 2024.

22 And this concludes the Panel's oral order.

23 The next oral order concerns the filing by the Defence teams of  
24 their respective lists of witnesses pursuant to Rule 119(1) of the  
25 Rules.

1           The Panel has taken note of the Defence teams' further  
2           submissions conveyed during the Trial Preparation Conference on  
3           Monday, 7 October 2024, as well as in a recent filing by the Januzi  
4           Defence bearing number 511.

5           The Panel noted, notably, that both the Bahtijari Defence and  
6           the Shala Defence indicated that their respective lists can be  
7           submitted by Monday, 4 November. Whereas the Januzi Defence  
8           indicated that it's able to file its list by Monday, 18 November  
9           2024. The Panel also notes that, according to the Defence for  
10          Mr. Januzi in its filing bearing number 511, accurate estimations for  
11          the time required for the Defence case on behalf of Mr. Januzi can be  
12          given ahead of 4 November 2024.

13          In light of the foregoing, and mindful of the envisaged date for  
14          the commencement of the trial, the Panel instructs the Defence teams  
15          to file their respective lists of witnesses by no later than Monday,  
16          4 November 2024. And in accordance with Rule 119(1) of the Rules,  
17          each filing must include the total time estimated for the  
18          presentation of each Defence case; the total number of witnesses who  
19          are expected to testify for each accused, including whether the  
20          accused himself is expected to appear as a witness in accordance with  
21          Rule 142(4) of the Rules; the name or pseudonym of each witness; a  
22          summary of the facts on which each witness is expected to testify,  
23          and in case the Defence did not have access to the witness, it will  
24          have to explain on what it anticipates the witness will testify; the  
25          allegations in the indictment on which each witness is expected to

1 testify, including specific reference to charges and relevant  
2 paragraphs of the indictment; an indication whether the witness will  
3 testify in person or give evidence through other means as provided  
4 for by the Rules; and the estimated length of time required for  
5 direct examination of each witness.

6 In addition, the Defence teams are directed to include in their  
7 respective filings any request for protective measures that each  
8 witness may require as well as any request for summons pursuant to  
9 Rule 121 of the Rules.

10 Furthermore, for reasons of expeditiousness, the Panel further  
11 decides, pursuant to Rule 9(5) (a) of the Rules, to shorten the time  
12 limits for responses and replies to any request for summons as  
13 follows: The SPO shall file any response to the Defence requests by  
14 no later than Monday, 11 November 2024; and the Defence shall file  
15 any reply to any SPO responses by no later than Thursday, 14 November  
16 2024.

17 And this concludes the present oral order.

18 The next order concerns the reading of the indictment or its  
19 summary at the opening of the case.

20 The Panel has taken note of the Shala Defence and the  
21 Bahtijari's agreement that the SPO read a summary of the indictment  
22 at the opening of the case instead of the indictment in its entirety.  
23 The Panel has taken note of the SPO and the Januzi Defence's further  
24 submissions conveyed during the Trial Preparation Conference on  
25 Monday, 7 October 2024, that they will undertake *inter partes*

1 discussion on the matter.

2 The Panel orders the SPO and the Januzi Defence to either file a  
3 joint proposal of summary of the indictment or inform that no such  
4 proposal was agreed upon no later than Friday, 1 November 2024.

5 The Panel stresses that if the SPO and the Januzi Defence fail  
6 to reach an agreement, the indictment will be read in its entirety at  
7 the opening of the case pursuant to Rule 124(2) of the Rules.

8 This concludes the present oral order.

9 With regard to the SPO request to amend the exhibit list, we  
10 have the following briefing schedule.

11 The Panel orders the Defence teams, if they so wish, of course,  
12 to respond to the SPO request, filing bearing number 512, by no later  
13 than Friday, 11 October 2024; and the SPO, if it so wishes, to reply  
14 to any responses by no later than Tuesday, 15 October 2024.

15 Moreover, the Panel has also taken note that, according to the  
16 SPO, it will file a separate request for the items not yet in its  
17 possession and disclose them to the Defence team upon their receipt.  
18 I refer to the transcript of 7 October, confidential, page 341, lines  
19 18 till 25, and filing 512, paragraph 7.

20 The Panel has noted in this regard that, according to the SPO,  
21 said items are of a very limited volume and do not reveal a  
22 significant amount of new information. And I refer to the same  
23 transcript, page 297, line 25, to page 312, line 13. And in light of  
24 the foregoing, the Panel orders the SPO to file the relevant request  
25 and/or disclose the remaining items identified at paragraph 3 and 4

1 of its submissions bearing number -- filing bearing number 491 as  
2 soon as possible. I mean, it has been outstanding, allow me, for a  
3 while.

4 Furthermore, the Panel has taken note of the submissions of the  
5 Defence for Mr. Januzi conveyed during the Trial Preparation  
6 Conference held on Monday, 7 October 2024 that it is unable to  
7 conduct its expert investigations, as identified in paragraph 4 of  
8 its submissions bearing number 495, until the SPO discloses any  
9 outstanding material relating to the telephones seized.

10 The Panel has also taken note that the Januzi Defence raised  
11 issues regarding the allotment for contracting external  
12 investigators/consultants under the KSC legal aid regime.

13 The Panel directs the Defence for Mr. Januzi to liaise with the  
14 Registry and the Defence Office immediately in accordance with the  
15 legal aid regulations and Annex C to the legal aid regulations, as  
16 well as the Guidelines on Administration and Monitoring of Legal Aid,  
17 in order to make the necessary arrangements, such as securing expert  
18 assistance, to proceed without delay with its envisaged  
19 investigations. In this regard, the Panel rejects the Januzi  
20 Defence's submissions that it would only be able to conduct said  
21 expert investigations upon disclosure of any outstanding material  
22 relating to the telephones seized. Rather, if, following disclosure  
23 of the remaining items, additional work by any secured expert is  
24 required, the Januzi Defence can ask the Registry, the Defence Office  
25 for further funding subject to the ceiling allocated for Defence

1 expert investigations.

2 And, lastly, the Panel has taken note of the Defence teams of  
3 Mr. Januzi and Mr. Shala's submissions conveyed during the Trial  
4 Preparation Conference as to their difficulties to access the  
5 forensic copies of the six phones seized. And I refer to the  
6 transcript of yesterday, page 313, lines 6, to page 316, line 17.

7 And in this light, the Panel finds it appropriate to instruct  
8 the SPO and the Registrar to provide technical assistance to the  
9 Defence teams, including the Bahtijari Defence team, if necessary, in  
10 order to ensure access to said material by Wednesday, 9 October 2024.  
11 The Panel directs that from now on the parties and the Registry  
12 proactively liaise with each other in order to solve such technical  
13 issues without delay.

14 And this concludes the Panel's order.

15 Then we go to the last order. This order concerns the  
16 Pre-Trial Judge's instructions on reclassification in paragraphs  
17 58(d) to (g) in the order bearing number 469.

18 The Panel has taken note that since the transmission of the case  
19 to the Panel on 4 September 2024, the parties have submitted on a  
20 regular basis public redacted versions of their respective filings as  
21 instructed by the Pre-Trial Judge in the aforementioned order. And  
22 the Panel finds it appropriate, in order to conclude this exercise,  
23 to instruct the parties to submit any outstanding public redacted  
24 versions of the relevant filings no later than Monday, 21 October  
25 2024.

1 And this concludes the Panel's oral order.

2 Then we are at the list of decisions.

3 Prior to the opening of the case, the Panel intends to issue the  
4 following decisions: A decision setting the date for the  
5 commencement of the trial. The Panel recalls that it currently is  
6 intending the start of the trial on Friday, 8 November 2024. We will  
7 issue a decision on this. The Panel thanks you for ensuring your  
8 readiness and availability.

9 A decision on witness familiarisation and/or preparation will be  
10 issued.

11 A decision on the conduct of proceedings. And this decision  
12 will include the applicable time limits, such as for the Defence  
13 teams' submissions of their respective proposed list of exhibits  
14 pursuant to Rule 119(2) (b) of the Rules.

15 And a decision on the submission and admissibility of non-oral  
16 evidence.

17 At this moment of the hearing, is there anything the parties and  
18 the Registry would like to raise with the Panel?

19 Mr. Prosecutor, you have the floor.

20 MR. HAFETZ: No, Your Honour. That's clear. Thank you.

21 MR. NILSSON: Nothing from the Registry. Thank you.

22 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel for Mr. Shala.

23 MR. CADMAN: Nothing at this time, Your Honour. Thank you.

24 PRESIDING JUDGE VELDT-FOGLIA: Very well.

25 Defence counsel for Mr. Bahtijari.



1 MS. CARRIN: No further observations, Your Honour. Thank you.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

3 Defence counsel for Mr. Januzi.

4 MR. REES: [via videolink] No, thank you.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

6 This concludes the Panel's public hearing. I thank the parties  
7 and the Registry for their attendance. I also wish to thank the  
8 interpreters this afternoon and the stenographer and our audio-visual  
9 technicians and the security personnel for their assistance.

10 The hearing is adjourned.

11 --- Whereupon the hearing adjourned at 3.35 p.m.

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