

# TRIALS BEFORE THE KOSOVO SPECIALIZED CHAMBERS

(JULY- DECEMBER 2024)

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The Humanitarian Law Center Kosovo (HLCK) continuously monitors judicial proceedings taking place before the Kosovo Specialist Chambers (KSC). It publishes newsletters and analyses related to the work of the Specialist Chambers, which serve to better inform the general public about the status of court cases.

The present newsletter presents general information on the status of trials before KSC during the six-month period covering July- December 2024.

Five (5) cases were adjudicated during this period: Prosecutor versus Hashim Thaçi and others; Prosecutor versus Pjetër Shala; Prosecutor versus Salih Mustafa; Prosecutor versus Sabit Januzi and others; Prosecutor versus Hashim Thaçi and others (administration of justice)





# PRE-TRIAL PROCEEDINGS

## **Prosecutor versus Hashim Thaçi and others (administration of justice)**

Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu, and Hajredin Kuçi were charged based on the confirmed indictment of the Specialist Prosecutor's Office dated December 6, 2024. On December 5, 2024, Isni Kilaj, Bashkim Smakaj, and Fadil Fazliu were arrested by the SPO and transferred the following day to the Kosovo Specialist Chambers (KSC) detention facility in The Hague. Hashim Thaçi was also served with an arrest warrant on December 5, while Hajredin Kuçi was served a summons for his first appearance.

According to the indictment, in the time period from April 12, 2023 to November 2, 2023, during non-privileged visits to the detention facility, Hashim Thaçi gave Smakaj, Kilaj, Fazliu and Kuçi confidential information regarding SPO witnesses, instructions to influence the testimonies of SPO witnesses and details on how they were to conduct it. The indictment also alleges that Thaçi coordinated three separate groups, formed with Smakaj, Fazliu and Kilaj, along with other individuals who have not been charged, as well as Kuçi, with the aim of influencing the testimonies of SPO witnesses in the context of the current war crimes trial of Thaçi and others.

- Thaçi, Smakaj, Kilaj, and Fazliu are accused of committing the criminal offense of attempted obstruction of official persons in the performance of official duties.
- Thaçi, Smakaj, Kilaj, Fazliu, and Kuçi are accused of committing the criminal offense of court contempt.
- In addition, Thaçi is also accused of committing the criminal offense of violating the secrecy of proceedings.

During their initial appearance on December 8, 2024, Thaçi and Smakaj did not declare themselves regarding guilty or innocent plea, while Fazliu pleaded not guilty to all counts of the indictment. The following day, on December 9, Kuçi and Kilaj also pleaded not guilty to all charges against them.

A detention order was issued against Smakaj, Kilaj, and Fazliu, while no detention measure was imposed on Kuçi.

The case is still in pre-trial stage.



# FIRST INSTANCE TRIALS (MAIN TRIAL)

## **Prosecutor versus Hashim Thaçi and others**

Hashim Thaçi, Kadri Veseli, Jakup Krasniqi, and Rexhep Selimi, all with high positions in the KLA, are accused by the Prosecution of war crimes and crimes against humanity, for the period covering March 1998 to September 1999, in several locations in Kosovo and Albania, which are alleged to have been committed by members of the KLA against hundreds of civilians and persons who did not participate in fighting. All the accused have been in custody since November 2020.

At the beginning of April 2023, the main hearing started with the opening statements of the parties and continued intensively with the hearing of the witnesses proposed by the prosecution.

During the period July - December 2024, a total of 57 court hearings were held, where 36 witnesses proposed by the prosecution were heard. From the beginning of the trial until the end of 2024, a total of 110 witnesses proposed by the prosecution were heard.

Among these witnesses, 19 were protected witnesses, whose names were not disclosed and their testimonies were held mainly in private sessions, the other 17 witnesses testified with their identities revealed and in sessions open to the public. Among these witnesses, there were individuals who were victims or had knowledge of some cases related to the indictment, and the same testified about the organizational structures of the KLA as well as the detention centers in certain areas. Among them were former members of various levels of the KLA organization, including zone, brigade, and unit commanders.

On August 21, 2024, at the request of defendant Kadri Veseli and his attorney, Ben Emmerson, the trial panel approved their request and decided to terminate Emmerson's representation of Kadri Veseli. On August 22, 2024, attorney Rodney Dixon was appointed as lead attorney for Veseli. The termination of Emmerson's representation came as a result of "an irreparable breakdown in the attorney-client relationship."

The main hearing will continue on January 13, 2025, with the hearing of the next witnesses proposed by the prosecution.

## **Prosecutor versus Sabit Januzi, Ismet Bahtijari & Haxhi Shala**

Following their arrest by the Specialist Prosecutor's Office (SPO), Sabit Januzi and Ismet Bahtijari were transferred to the detention unit of the KSC in The Hague on 6 October, 2023, while Haxhi Shala was transferred on 12 December, 2023.

On December 13, 2023, the SPO filed a request to join the case against Januzi and Bahtijari with the case against Haxhi Shala. On February 8, 2024, the Pre-Trial Judge approved the SPO's request to join these two cases. On February 27, 2024, the SPO filed the consolidated indictment, which it later refiled on July 8, 2024, to include additional factual allegations concerning Januzi and Bahtijari.

According to the confirmed indictment, "Witness 1" is an individual who has provided information, or is likely to do so, to the Special Investigative Task Force, the Specialist Prosecutor's Office (SPO), or the Kosovo Specialist Chambers (KSC) Trial Panel regarding crimes or criminal offenses falling within the jurisdiction of the KSC. The indictment states that, between April 5 and 12, 2023, Shala, Januzi, and Bahtijari, in collaboration with other persons, influenced "Witness 1".

The indictment further specifies that, at Shala's orders, Januzi and Bahtijari held individual meetings with "Witness 1" on two separate occasions to incite him into withdrawing his testimony or refusing to testify in official proceedings before the KSC, using serious threats and making promises of benefits.

Thus committing the criminal offense of obstructing official persons in the performance of official duties as well as the criminal offense of intimidation during criminal proceedings.

On September 4, 2024, the case went before the trial panel.

On December 18 and 19, hearings were held for the plea agreements, during which all three defendants pleaded guilty to counts 2 and 3 of the confirmed indictment.

The panel is currently reviewing plea agreements in this case and will render a decision in due course.

# PROCEEDINGS IN THE SECOND INSTANCE – COURT OF APPEALS

## **Prosecutor versus Salih Mustafa**

Salih Mustafa, commander of the BIA unit of the KLA, has been tried for war crimes, which were committed in April 1999 in the village of Zllash/Zlaš of Prishtina/Priština Municipality.

On December 16, 2022, the Trial Chamber found him guilty and sentenced him to 26 years in prison for war crimes of arbitrary detention, torture, and illegal killing.

On April 6, 2023, the trial panel issued a victim restitution order, which required payment of €207,000 as compensation for the damage caused to crime victims.

Through a Judgment announced on December 14, 2023, the appeal panel, rejected almost all the points raised in the appeal submitted by Mustafa's defense, starting from the contention that it was a non-international conflict, the evidence that was used in the trial, the most favorable criminal law, witness statements, the element of illegal killing, arbitrary detention and even the alibi. Therefore, all defense appeal contentions were dismissed, except points 9F, 9H, and 9K of the Appeal file which were partially upheld. According to the panel, the only violation in the first instance decision was in the severity of the sentence. Consequently, the appeal panel reduced Mustafa's sentence from 26 to 22 years in prison, taking into account the time spent in detention.

On March 14, 2024, Salih Mustafa's Defense submitted a request for protection of legality before the Supreme Court. On July 29, 2024, the Supreme Court Panel partially approved Mustafa's request and annulled the part of the Appeals Judgment that is related to Mustafa's sentence of 22 years of imprisonment, and remanded the case to the appeal panel only in the part of severity of the sentence.

On September 10, 2024, the appeal panel, following the Supreme Court's decision to re-examine the sentence, imposed a sentence of 15 years, also counting the time spent in detention on remand. In its decision The appeal panel reduced the sentence imposed on Mustafa by re-establishing the Law that is most favorable for the defendant, namely the Criminal Code of the Republic of Kosovo of 2019, and by taking into account previous judicial practices for similar criminal offenses.

Mustafa's defense filed a second request for protection of legality before the Supreme Court on December 9, 2024, referring to Count 4 of the indictment, which relates to murder. According to this request, Mustafa's defense requests a reduction of the 15 years imprisonment sentence, in particular, it requests either a reduction of the sentence for Count 4 or a complete or partial annulment of the Decision, based on the legality of the trial.

The Supreme Court has not decided on this request yet.

## **Prosecutor versus Pjetër Shala**

Pjetër Shala, a member of the KLA, is charged by the Prosecution with war crimes committed between May 17, 1999, and June 5, 1999, against persons detained at the metal factory in Kukës/Kukeš, Albania. Pjetër Shala continues to remain in custody since his arrest in March 2021.

According to the indictment, it is alleged that between May 17 and June 5, 1999, Pjetër Shala and several KLA soldiers, police, and guards had the same common objective of interrogating and mistreating detainees. According to the indictment, victims of these crimes were all citizens of the FRY and persons who did not actively participate in the war.

The first-instance trial against Shala started on February 21, 2023 and lasted until April 17, 2024. During this trial, 10 witnesses proposed by the SPO, 2 witnesses proposed by the representative of the victim party, and 10 witnesses proposed by Shala's defense have testified. There were 8 victims participating in this case.

On July 16, 2024, the trial panel found Pjetër Shala guilty of war crimes, including arbitrary detention, torture, and unlawful killing and sentenced him to 18 years in prison. Meanwhile, on November 29, 2024, the trial panel issued the order for the compensation of victims, ordering the defendant to pay an amount of €208,000 as compensation for the physical, mental, and material damage caused to the victims of the crimes for which he was found guilty.

Shala's defense has submitted an appeal to the Court of Appeal against the first instance judgment, and as of the end of 2024, a decision has not yet been made by the second instance.



## TERMINATION OF PRISON SENTENCE

### **Prosecutor against Hysni Gucati and Nasim Haradinaj**

The defendants Hysni Gucati and Nasim Haradinaj were charged with criminal offenses against public order and obstruction of administration of justice and public administration.

On May 18, 2022, the jury found both accused guilty of obstructing official persons in the performance of official duties, intimidation during criminal proceedings, and violation of the secrecy of proceedings and sentenced each accused to four (4) years and six (6) months in prison.

After the appeal of the first instance decision by the defense counsel, on February 2, 2023 the Court of Appeals announced a conviction judgment and sentenced them to four (4) years and three (3) months of imprisonment. This is the final decision.

At the beginning of May 2023, the defense counsel of the defendants submitted requests for protection of legality before the Supreme Court. On September 18, 2023, the Supreme Court Panel rejected both requests for protection of legality.

After the modification of their sentences by the President of the KSC, Gucati, and Haradinaj were released on conditional release on October 17 and December 14, 2023, respectively.

Based on the 'Decision on Modification of Sentence' of December 12, 2023, Hysni Gucati and Nasim Haradinaj completed their sentence on December 24, 2024.

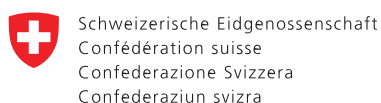
## **HLCK Findings:**

- A positive aspect in the judicial process against Hashim Thaçi and others (war crimes) is the attempt to economize the procedure. During this period, dozens of statements of witnesses proposed by the prosecution, who will not be heard personally in the main hearing, have been accepted as read. This action has helped speed up and improve the efficiency of the judicial process.

- Despite the fact that the Kosovo Specialist Chambers (KSC) were established primarily to try war crimes and crimes against humanity committed during the period 1998-2000, by the end of 2024, six (6) individuals had been indicted for war crimes and ten (10) individuals for obstruction of justice or witness tampering. This fact shows that witnesses often feel insecure when giving their testimonies due to attempts to influence them. This situation is further confirmed by the need to provide protective measures for a significant number of witnesses.

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