

TRIALS AT THE KOSOVO SPECIALIST CHAMBERS

JANUARY - JUNE 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 serves 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 January - June 2024.

Five (5) cases were adjudicated during this period: Prosecutor versus Hashim Thaçi and others; Prosecutor versus Pjeter Shala; Prosecutor versus Salih Mustafa; Prosecutor versus Sabit Januzi and others; Prosecutor versus Isni Kilaj.



PRE-TRIAL PROCEEDINGS

Prosecutor versus Sabit Januzi, Ismet Bahtijari & Haxhi Shala

The Specialist Prosecutor's Office (SPO) arrested Sabit Januzi and Ismet Bahtijari on October 5, 2023, in Kosovo and transferred them to the Detention Facility of the Kosovo Specialist Chambers on October 6, 2023. The indictment against Januzi and Bahtijari was confirmed on 2 October 2023 and made public on 6 October 2023. At their first appearance on October 9, 2023, both accused pleaded not guilty to criminal charges against public peace and order and obstruction of administration of justice and public administration. SPO arrested Haxhi Shala on December 11, 2023, in Kosovo and was transferred to the Detention Facility of the Kosovo Specialist Chambers on December 12, 2023. The indictment against Shala was confirmed on 4 December 2023 and made public on 12 December 2023. At his first appearance on December 13, 2023, the accused did not declare himself in relation to culpability. At the next session, held on December 15, 2023, he pleaded not guilty to the same criminal offenses.

On January 12, 2024, after a request to join these two court cases, the SPO submitted the motion for a joint indictment. On February 16, 2024, at the request of the Pre-Trial Judge, the SPO submitted the amended version of the indictment against Januzi and Bahtijari thereby correcting Bahtijari's last name and improving the clarity and accuracy of the case. On May 17, 2024, the Pre-trial Judge approved the motion of the SPO to modify the indictment and include new factual contentions for Januzi and Bahtijari.

The joint indictment was resubmitted by the SPO on February 27, 2024.

The same are accused of two counts for obstructing official persons in performing official duties (counts 1 and 2) and in one count for intimidation during criminal proceedings (counts 3). According to the confirmed indictment, the offenses occurred between April 5, and 12, 2023, where the accused each met 'Witness 1' separately to induce him to either withdraw his testimony or refrain from testifying before the Kosovo Specialist Chambers, by using serious threats. According to the indictment, they also acted in co-perpetration with other individuals, with the aim of intimidating "Witness 1" and obstructing the prosecutors and investigators of the Specialist Prosecutor's Office, in the performance of their official duties.

During this reporting period, two (2) status conferences were held on the case, whereby parties had the opportunity to exchange their views regarding the status of the case: access documentation from the defense side, discuss the detention issue, and other technical issues on how to proceed further.

Prosecutor versus Isni Kilaj

The Specialist Prosecutor's Office (SPO) arrested the defendant, Isni Kilaj, on November 2, 2023. He was apprehended on suspicion of committing criminal offenses against the administration of justice, including obstruction of official persons in the performance of official duties and violation of the secrecy of proceedings. Kilaj made his initial appearance before the KSC on November 4, 2023.

On December 15, 2023, the SPO submitted the initial indictment against Kilaj for Confirmation. After submitting the revised indictment on March 11, 2024, on May 2, 2024, the SPO requested the suspension of the revised indictment to submit another version for confirmation. Considering these developments as well as the presumption of innocence principle and Kilaj's right to freedom, on May 15, 2024, the single trial judge Nikola Giju modified the security measure of the defendant replacing detention with the measure of bail and reporting to the police, and imposing other strict conditions.

The Specialist Prosecutor has not filed an indictment in this case yet. Currently, Isni Kilaj is considered a suspect.



FIRST INSTANCE TRIALS (MAIN TRIAL)

Prosecutor versus Hashim Thaçi and others

Hashim Thaçi, Kadri Veseli, Jakup Krasniqi, and Rexhep Selimi, all with senior positions in the KLA, are accused by the Prosecution for 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.

The pre-trial procedure in this case lasted about two and a half years. At the beginning of April 2023, the main hearing started with the opening statements of parties and continued intensively with the hearing of the witnesses proposed by the prosecution.

During the period January - June 2024, a total of 50 court hearings were held, where 35 witnesses proposed by the prosecution were heard.

Among these witnesses, 24 were protected witnesses, whose names were not made public and their testimonies were held mainly in private sessions, the other 9 witnesses testified with revealed identities and in sessions open to the public, while 2 witnesses were heard in a semi-open session. Among these witnesses, there were those who were victims or had knowledge of some cases related to the indictment, and the same testified about the command structures of the KLA as well as the detention centers in certain areas. Among them were personnel of diplomatic missions who were in Kosovo on a mission during the war, as well as former members of KFOR.

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, Albania. Pjetër Shala has remained in custody since his arrest in March 2021.

During the period January - June 2024, a total of 5 court sessions were held, where only 1 defense witness was heard without protective measures in two sessions. On January 15, 2024, Pjetër Shala's defense announced the official conclusion of their file. On February 9, 2024, the procedure for presenting evidence in this case was closed. The closing statements were presented from April 15 to 17.

The Judgment will be announced on July 16, 2024.



PROCEEDINGS AT IN THE THIRD INSTANCE- SUPREME COURT

Prosecutor versus Salih Mustafa

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

On December 16, 2022, the first instance Chamber found him guilty and sentenced him to 26 years in prison for the 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 restitution for the damage caused to crime victims.

Through a Judgment announced on December 14, 2023, the Appellate 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 the length of sentence. Consequently, the Appeal Panel reduced Mustafa's unified sentence from 26 to 22 years in prison, which includes time spent in detention.

On March 14, 2024, Salih Mustafa's Defense submitted a request for protection of legality to the Supreme Court.

The Supreme Court has not decided on the request for protection of legality yet.

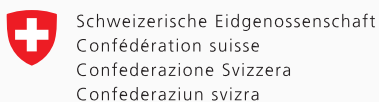
Findings of the HLCK:

- During the reporting period January - June 2024, 35 witnesses proposed by the prosecution were heard in the case Prosecutor v. Hashim Thaçi and others. Of them, 24 have testified under protective measures, their identity was unknown and they mostly testified in sessions closed to the public. The court also heard 11 witnesses, whose identity was known to the public, and hearings were mostly open to the public. About 60% of court hearings have been redacted for the public. The public has the right to hear the witness statements, but the court must always make sure that information that may lead to the disclosure of the identity of the protected witnesses is redacted rather than the entire testimony of the witness. The transparency of these trials and the principle of publicity risks losing its meaning, if this practice is to continue.

- There are 8 accused held in custody in the KSC, who are subject to court re-evaluation of grounds for imposing and extending this security measure every two months, namely that there is a risk of absconding, influence and/or obstruction of the course of criminal proceedings or the risk of repetition of the criminal offense, and that less severe security measures will be insufficient to ensure a successful conduct of criminal proceedings. On the other hand in the case of Isni Kilaj, after the SPO withdrew the indictment proposed for confirmation and requested additional time to submit a new indictment, as a result of these developments and Kilaj's right to freedom, the Court, among other factors, ordered the replacement of the security measure. In its Decision the Court replaced Kilaj's detention measure with a less severe measure, applying the measure of reporting to the police station in Kosovo, bail of thirty thousand (30,000) Euros, as well as other measures aimed at preventing the accused from fleeing or avoiding judicial proceedings. Since the beginning of the KSC operation, this is the only case where a severe security measure was replaced with a milder one.

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