

TRIALS AT THE KOSOVO SPECIALIST CHAMBERS

JULY - DECEMBER 2023

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The Humanitarian Law Center Kosovo (HLCK) continuously monitors the court proceedings taking place before the Kosovo Specialist Chambers (KSC). Publishes newsletters and analysis related to the work of the Specialist Chambers, which serve the public to be better informed about the ongoing cases.

This newsletter presents general information regarding the ongoing trials before the KSC for the six-month period covering July to December 2023.

During this period, seven cases were processed: The Prosecutor v. Hashim Thaci et al; The Prosecutor v. Pjetër Shala; The Prosecutor v. Salih Mustafa; The Prosecutor v. Hysni Gucati and Nasim Haradinaj; The Prosecutor v. Sabit Januzi and Ismet Bahtijari; The Prosecutor v. Isni Kilaj; and The Prosecutor v. Haxhi Shala.

Since the previous newsletter, which covered the period January to June 2023, two new indictments related to crimes against public order and obstruction of justice and administration have been lodged within this court. Additionally, another individual has been arrested and is currently in detention on suspicion of obstructing the administration of justice. The investigation into this case is ongoing.





PRE-TRIAL PROCEEDINGS

Prosecutor v. Sabit Januzi & Ismet Bahtijari

Sabit Januzi and Ismet Bahtijari are accused by the Specialist Prosecutor's Office of criminal offenses against public order and obstruction of administration of justice and public administration. Their indictment was confirmed on October 2, 2023, and made public on October 6, 2023. The accused were arrested on October 5, 2023, and transferred to the Kosovo Specialist Chambers detention facility the following day. They are charged on two counts with obstructing official persons in performing official duties (points 1 and 2), and on one count of intimidation during criminal proceedings (point 3). According to the confirmed indictment, the criminal acts occurred between April 5, 2023, and April 12, 2023, during which the accused each separately met with 'Witness 1' to persuade him to retract his testimony, or not to testify at all before the Kosovo Specialist Chambers, using grave threats. The indictment also alleges that they acted in coordination with other individuals, intending to intimidate 'Witness 1' and obstruct prosecutors and investigators of the Specialist Prosecutor's Office in performing their official duties.

The accused made their initial appearance before the pre-trial judge of the KSC on October 9, 2023, where they simultaneously pleaded not guilty to all counts of the indictment.

During this reporting period, a progress conference was held for this case, providing an opportunity for the parties to exchange views on case progress, defense access to documentation, detention issues, and other technical matters related to ongoing proceedings.

Prosecutor v. Haxhi Shala

Haxhi Shala is accused by the Specialist Prosecutor's Office of criminal offenses against public order and criminal offenses against the administration of justice and public administration. He was arrested on December 11, 2023, and transferred to the Hague detention facility. According to the indictment confirmed on December 4, Haxhi Shala is charged with two counts of obstructing official persons in the performance of official duties (points 1 and 2) as well as one count of intimidation during criminal proceedings (point 3).

According to this indictment, between April 5 and 12, 2023, the defendant, in coordination with other individuals, among them Sabit Januzi and Ismet Bahtijari, were organized as a group before and after Januzi and Bahtijari's personal contacts with 'Witness 1'. Shala is also accused of instructing Januzi and Bahtijari to each meet with 'Witness 1' on two separate occasions to induce him to either withdraw his testimony or refrain from providing any evidence at all before the SPO or KSC.

After his arrest, Haxhi Shala appeared for the first time before the pre-trial procedure judge on December 13, 2023. During this period, a conference on the progress of the case was held on December 15, in which Haxhi Shala pleaded not guilty to all counts of the indictment.

The prosecution requested that proceedings in the case against Haxhi Shala and the case against Januzi and Bahtijari be combined into a single trial. The judge of the pre-trial procedure gave an oral order on December 14, 2023, ordering the prosecution to deliver the proposed consolidated indictment by January 12, 2024.

Prosecutor v. 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.

Subsequently, within 48 hours, the pre-trial judge decided to extend his detention, citing sufficient reason to believe there is a risk the defendant might flee the country, obstruct the proceedings, or commit further offenses.

As of the end of December 2023, the investigation against Isni Kilaj is ongoing, and the SPO has not yet filed any charges.



TRIALS IN THE FIRST INSTANCE (MAIN TRIAL)

Prosecutor v. Hashim Thaçi and others

Hashim Thaçi, Kadri Veseli, Jakup Krasniqi, and Rexhep Selimi, all of whom held senior positions in the KLA, are indicted by the Prosecution for war crimes and crimes against humanity. These crimes were allegedly committed by KLA members against hundreds of civilians and non-combatants from March 1998 to September 1999, at several locations in Kosovo and Albania. All of the accused have been in detention since November 2020.

The pre-trial proceedings in this case lasted approximately two and a half years. The main trial began in early April 2023 with the presentation of the opening statements by the parties to the proceedings. Since then, the trial has continued intensively with the hearing of witnesses proposed by the prosecution.

During the period from July to December 2023, a total of 50 court hearings were held, during which 28 witnesses proposed by the prosecution were heard.

Among these witnesses, 14 were protected witnesses whose names were not made public, and their testimony was mostly held in private sessions. The other 14 witnesses testified with their identities revealed to the public. These witnesses included victims or individuals with knowledge of any case related to the indictment, and they testified about the KLA's command structures as well as detention centers in certain areas.

Prosecutor v. 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. Mr. Shala has been in custody since his arrest in March 2021.

During the period from July to December 2023, a total of 20 court hearings were held, during which twelve (12) witnesses testified: one (1) witness from the SPO, two (2) witnesses from the victims' representative, and nine (9) defense witnesses.

In September of this year, the defense began presenting its witnesses. Almost all witnesses testified without safeguards, and the majority of their testimony was held in public hearings. Through its witnesses, the defense presented the defendant's alibi for the critical period of the indictment.



PROCEEDINGS BEFORE THE COURT OF APPEAL

Prosecutor v. Salih Mustafa

Salih Mustafa, commander of the KLA's BIA unit, was tried for war crimes committed during April 1999 in the village of Zllash/Zlaš of the Municipality of Pristina/Priština.

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

On April 6, 2023, the court issued a reparations order requiring payment of €207,000 in compensation to the victims for the damage caused by the crime.

During the reporting period, this matter was before the Appeals Chamber. The appeal hearings were held on October 26 and 27. And the second-degree verdict was delivered on December 14.

The appeals panel dismissed nearly all points raised in the appeal filed by Mustafa's defense. Ranging from the characterization of the conflict as non-international, the evidence used in the trial, the most favourable criminal law, witness statements, the element of unlawful killing, arbitrary detention, to alibis. All defense complaints have been dismissed, except for the partial acceptance of points 9F, 9H, and 9K in the Appeal document. According to the panel, the only violation in the first-degree decision was the severity of the penalty. The Court of Appeal deemed it appropriate to reduce the individual sentences as follows:

- The sentence of 10 years for point 1 (arbitrary detention) was reduced to 8 years.
- The sentence of 22 years for point 3 (torture) was reduced to 20 years.
- The sentence of 25 years for point 4 (unlawful killing) was reduced to 22 years.

In light of this, the panel handed down a singular sentence of 22 years imprisonment, factoring in time served in custody.

PROCEEDINGS BEFORE THE SUPREME COURT

Prosecutor v. Hysni Gucati and Nasim Haradinaj

Hysni Gucati and Nasim Haradinaj have been tried for criminal offenses against public order and obstruction of the administration of justice and public administration. Since their arrest in late September 2020, they have been in detention. After the Court of Appeal decision, they have been serving their sentence since early February 2023.

On May 18, 2022, the court found them guilty of obstructing officials in the performance of official duties, intimidation during the criminal proceedings, and violation of the secrecy of the procedure, and sentenced each accused to four (4) years and six (6) months imprisonment.

After appealing the first instance decision, the Court of Appeals pronounced its verdict on February 2, 2023, sentencing them to four (4) years and three (3) months in prison. This is a final-form decision.

In early May 2023, the defendants' defense counsel filed requests with the Supreme Court for the protection of legality. On September 18, 2023, the Panel of the Supreme Court rejected both requests for protection of legality.

REDUCED PENALTY

After serving 2/3 of his sentence, and having received information and opinions from relevant institutions regarding a sentence reduction, on October 12, 2023 the President of the KSC decided through separate decisions to modify Mr. Gucati's sentence and review a modification of Mr. Haradinaj's sentence.

Mr Gucati's sentence was modified for release on or around October 18, 2023 based on demonstrated rehabilitation, likelihood of successful societal reintegration, and consideration of the severity of his offenses. His release occurred on October 17, 2023 under specified conditions in the decision. These conditions must be adhered to for the remainder of his four year, three month sentence imposed by the Appeals Court through December 24, 2024.

Nasim Haradinaj's sentence was also modified for release on or around December 14, 2023 based on demonstrated distance from his past offenses he was convicted for, rehabilitation, and strong familial and social ties aiding reintegration in Kosovo. He was released on December 14, 2023 under specified conditions remaining in effect for the remainder of his Appeals Court- imposed sentence.

These conditional requirements, binding until sentence completion, include: not leaving their residence and the Kosovo without permission from the KSC Administration, appearing at scheduled police check-ins, surrendering travel documents, avoiding contact with KSC witnesses or possible victims, and refraining from television appearances absent KSC Administration approval, etc.

Findings of the HLCK:

-During the reporting period July - December 2023, four individuals were arrested for obstructing the administration of justice or influencing the testimony of prosecution witnesses for cases related to the case against Thaçi et al. Witnesses must not be influenced by third parties and they must testify independently about what they have seen or experienced. Such interference conveys that witnesses still risk safety when they testify in cases of war crime or crimes against humanity.

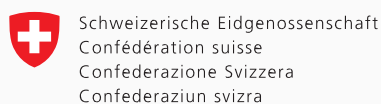
-Unlike the first six months, in the second half, KSC has been more transparent and court hearings have been more open to the public. This practice should continue, as the public has a right to hear witness statements. However, the court must ensure only identity-concealing portions are redacted, not full witness testimonies.

-The punitive policy and application of the most favorable criminal law for sentencing in war crimes cases remains quite critical and unclear to the public and Kosovo legal experts. The Supreme Court of the KSC should give a legal opinion on why the Criminal Law of the SFRY is not applied as such the most favorable criminal law in the case of sentencing for war crimes, always taking into consideration UNMIK Regulation 24/1999, since this law has been applied by prosecutors and judges of the international missions in Kosovo, and the local Kosovo courts also have the same opinion, that the most favorable criminal law in cases of war crimes in Kosovo is the Criminal Law of SFRY.

-Institutions in Kosovo should establish mechanisms and methods to provide compensation to all injured parties following the conclusion of court cases. This right, which is guaranteed by law, should be implemented in practice and not merely exist on paper.

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