



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**In:** **KSC-BC-2023-11**  
**The Specialist Prosecutor v. Haxhi Shala**

**Before:** **Pre-Trial Judge**  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Date:** 4 December 2023

**Language:** English

**Classification:** **Public**

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**Public Redacted Version of the Decision on the Confirmation of the Indictment**

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<b>I.</b>	<b>PROCEDURAL BACKGROUND</b> .....	<b>2</b>
<b>II.</b>	<b>SUBMISSIONS</b> .....	<b>2</b>
<b>III.</b>	<b>APPLICABLE LAW</b> .....	<b>5</b>
	A. Review of Indictment .....	5
	B. Offences under Article 15(2) of the Law and Modes of Liability .....	6
	C. Maintaining Confidentiality .....	7
<b>IV.</b>	<b>JURISDICTION</b> .....	<b>7</b>
<b>V.</b>	<b>LEGAL REQUIREMENTS</b> .....	<b>8</b>
	A. Nature and Scope of the Review.....	8
	1. Nature of the Review.....	8
	2. Scope of the Review .....	9
	B. Elements of Offences .....	9
	1. Intimidation During Criminal Proceedings .....	9
	2. Obstructing Official Persons in Performing Official Duties .....	13
	C. Modes of Liability .....	18
	1. Commission .....	19
	2. Co-Perpetration .....	19
	3. Assistance .....	20
	4. Agreement to Commit a Criminal Offence .....	20
	5. Attempt.....	21
<b>VI.</b>	<b>CHARGES</b> .....	<b>21</b>
	A. The Offences Charged .....	22
	1. Intimidation During Criminal Proceedings (Count 3).....	22
	2. Obstructing Official Persons in Performing Official Duties – by Serious Threat (Count 1).....	37
	3. Obstructing Official Persons in Performing Official Duties – by Common Action of a Group (Count 2).....	42
	B. The Modes of Liability Charged .....	47
	1. Commission .....	47
	2. Co-Perpetration .....	47
	3. Assistance .....	48
	4. Agreement to Commit Criminal Offences.....	49
	5. Attempt.....	51
<b>VII.</b>	<b>RELATED REQUESTS FOR MAINTAINING CONFIDENTIALITY</b> .....	<b>52</b>
<b>VIII.</b>	<b>DISPOSITION</b> .....	<b>54</b>

**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Article 39(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rule 86 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 20 November 2023, the Specialist Prosecutor's Office ("SPO") filed before the Pre-Trial Judge: (i) the "Submission of Indictment for confirmation and related requests" ("SPO Submission of Indictment"); (ii) the indictment against Haxhi Shala ("Mr Shala" or "Suspect") ("Indictment"); (iii) the outline of the evidence in support of the Indictment; and (iv) a request for his arrest and transfer to the Specialist Chambers' ("SC") Detention Facilities.<sup>2</sup>

## II. SUBMISSIONS

2. In the Indictment, the SPO contends that Mr Shala, between at least 5 April and 12 April 2023, by serious threat and by the common action of a group of persons in which he participated, obstructed or attempted to obstruct an official person, that is, a judge, a prosecutor, an official of a court, a prosecution officer or a person authorised by the court and prosecution office, in performing official duties.<sup>3</sup> The SPO also contends that Mr Shala, in co-perpetration with other individuals, including Sabit Januzi ("Mr Januzi") and Ismet Bahtijari ("Mr Bahtijari"), coordinated as a group before and after in-person approaches made to

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<sup>1</sup> KSC-BC-2023-11, F00001, President, *Decision Assigning a Pre-Trial Judge*, 20 November 2023, confidential.

<sup>2</sup> KSC-BC-2023-11, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Requests*, 20 November 2023, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

<sup>3</sup> Indictment, paras 4, 24-26.

[REDACTED] (“Witness 1”) by Messrs Januzi and Bahtijari.<sup>4</sup> According to the SPO, at Mr Shala’s direction, Messrs Januzi and Bahtijari individually met with Witness 1 in order to induce him to withdraw evidence or refrain from providing evidence in official proceedings before the SC.<sup>5</sup>

3. More specifically, the SPO submits that on 5 April 2023 (“First Approach”), Mr Shala called Mr Januzi, and Mr Bahtijari then also called Mr Januzi.<sup>6</sup> The SPO submits that, after calling and verifying that Witness 1 was at home, Mr Bahtijari went to Witness 1’s home and told him that Mr Shala had recently approached him and sent him to tell Witness 1 that Witness 1 should withdraw his testimony.<sup>7</sup> According to the SPO, when Witness 1 asked if [REDACTED] if Witness 1 testified, Mr Bahtijari replied in the affirmative.<sup>8</sup> The SPO contends that, after the First Approach, Messrs Shala and Januzi, and, separately, Messrs Januzi and Bahtijari engaged in numerous text and telephone contacts.<sup>9</sup>

4. The SPO further submits that on 12 April 2023 (“Second Approach”), shortly after calling Mr Shala, Mr Januzi went to Witness 1’s home, told him that Mr Shala had asked Mr Januzi to follow up on Mr Bahtijari’s visit during the First Approach and to find out what Witness 1 planned to do and how the matter of his testimony could be addressed.<sup>10</sup> The SPO avers that Mr Januzi told Witness 1 that Mr Shala had asked Mr Januzi to convey the message that if Witness 1 withdrew his testimony, then Mr Shala and unnamed others would provide him with help.<sup>11</sup> The SPO contends that Witness 1 did not confirm or deny being a witness.<sup>12</sup> According to the SPO, Witness 1 responded that if Mr Shala and/or the others brought him

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<sup>4</sup> Indictment, para. 5.

<sup>5</sup> Indictment, para. 5.

<sup>6</sup> Indictment, para. 6.

<sup>7</sup> Indictment, para. 7.

<sup>8</sup> Indictment, para. 8.

<sup>9</sup> Indictment, paras 11-12.

<sup>10</sup> Indictment, para. 13.

<sup>11</sup> Indictment, para. 14.

<sup>12</sup> Indictment, para. 15.

200,000 EUR, Mr Shala and/or the others would have a deal.<sup>13</sup> According to the SPO, Mr Januzi said that he would tell “them” what Witness 1 had said.<sup>14</sup>

5. The SPO submits that, shortly after the Second Approach, Mr Januzi called Mr Shala.<sup>15</sup>

6. According to the SPO, as a result of the First Approach and the Second Approach, Witness 1 became concerned for his safety and that of his family.<sup>16</sup>

7. Lastly, the SPO contends that Mr Shala: (i) created serious fears and concerns for Witness 1, who has provided or is likely to provide information to the Special Investigative Task Force (“SITF”), SPO and/or to any SC Panel about any crimes or offences falling under the SC jurisdiction, thereby constituting a strong disincentive for that person to provide (further) information about any such crimes; (ii) threatened the SC/SPO’s ability to effectively investigate and prosecute crimes, including by obtaining and securing relevant witness evidence; and (iii) diverted SPO resources and time to address actual and potential consequences to Witness 1 and his family in connection with official SC proceedings.<sup>17</sup> Regarding the impact on SC/SPO time and resources, the SPO refers to the involvement of multiple SC/SPO staff in otherwise unnecessary additional contacts with Witness 1, the expenditure of SPO resources to investigate the events, and the expenditure of SC/SPO time and resources to take new security-related measures.<sup>18</sup>

8. The SPO submits that, based on the supporting material, there is a well-grounded suspicion that through the actions described above Mr Shala is individually criminally responsible for having committed, attempted to commit, alone, in co-perpetration, and/or agreed to, and/or assisted in, between at least

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<sup>13</sup> Indictment, para. 14.

<sup>14</sup> Indictment, para. 15.

<sup>15</sup> Indictment, para. 16.

<sup>16</sup> Indictment, paras 10, 17.

<sup>17</sup> Indictment, para. 18.

<sup>18</sup> Indictment, para. 19.

5 April and 12 April 2023, the offences of: (i) obstructing official persons in performing official duties by serious threat (Count 1), pursuant to Articles 17, 21, 28, 31, 33, 35, and 401(1) and (5) of the 2019 Kosovo Criminal Code, Law No. 06/L-074 (“KCC”), and Articles 15(2) and 16(3) of the Law; (ii) obstructing official persons in performing official duties by participating in the common action of a group (Count 2), pursuant to Articles 17, 21, 28, 33, 35, and 401(2) and (5) of the KCC, and Articles 15(2) and 16(3) of the Law; and (iii) intimidation during criminal proceedings (Count 3), pursuant to Articles 17, 21, 31, 33, 35, and 387 of the KCC, and Articles 15(2) and 16(3) of the Law.<sup>19</sup>

9. In light of the above, the SPO requests the Pre-Trial Judge to confirm the Indictment and order the temporary non-disclosure of the Indictment, related documents and information to Mr Shala and the public until further order.<sup>20</sup>

### III. APPLICABLE LAW

#### A. REVIEW OF INDICTMENT

10. Article 39(1) and (2) of the Law and Rule 86(4) of the Rules provide that the Pre-Trial Judge shall have the power to review an indictment. Pursuant to Article 39(2) of the Law and Rule 86(4) and (5) of the Rules, if satisfied that a well-grounded suspicion has been established by the Specialist Prosecutor, the Pre-Trial Judge shall confirm the indictment. If the Pre-Trial Judge is not so satisfied, the indictment or charges therein shall be dismissed. Rule 86(5) of the Rules provides that the Pre-Trial Judge must render a reasoned decision.

11. Pursuant to Rule 86(3) of the Rules, an indictment must set forth the name and particulars of the suspect and a concise statement of the facts of the case and of the crime(s) with which the suspect is charged, in particular the alleged mode of

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<sup>19</sup> Indictment, paras 29-30; SPO Submission of Indictment, para. 3.

<sup>20</sup> SPO Submission of Indictment, para. 25.

liability in relation to the crimes charged. The indictment shall be filed together with supporting material, i.e. evidentiary material supporting the facts underpinning the charges and a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation.

12. Upon confirmation of any charge(s) of the indictment, Rule 86(6) of the Rules provides that the suspect shall have the status of an Accused and the Pre-Trial Judge may issue any other decisions or orders provided for in Article 39(3) of the Law.

13. Rule 86(8) and (10) of the Rules provides that the Registrar shall retain and prepare certified copies of the confirmed indictment bearing the seal of the Specialist Chambers, and notify the President of the confirmed indictment.

#### B. OFFENCES UNDER ARTICLE 15(2) OF THE LAW AND MODES OF LIABILITY

14. As provided in Article 3(2) of the Law, the SC adjudicate in accordance with, *inter alia*, the Constitution of Kosovo, the Law, provisions of Kosovo law expressly incorporated in the Law, and international human rights law.

15. Pursuant to Articles 6(2) and 15(2) of the Law, the SC has jurisdiction over specific offences against the administration of justice, as set out in the KCC, when they relate to the official proceedings and officials of the SC and the SPO.<sup>21</sup>

16. For offences set out in Article 15(2) of the Law, Article 16(3) of the Law provides that, for the purpose of individual criminal responsibility, Articles 8-10, 17, 21-24, 27-37 of the 2019 KCC shall apply.

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<sup>21</sup> It is recalled that when the specific 2012 KCC provisions, set forth in Articles 15 and 16 of the Law, are replaced, the Law must be interpreted, by virtue of Article 64 of the Law, as relating to the analogous provisions of the successor legislation. In the present instance, the provisions listed in Articles 6(2) and 15(2) of the Law were renumbered, *see also* KSC-BC-2020-07, F00147/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Defence Preliminary Motions* ("Case 07 Preliminary Motion Decision"), 8 March 2021, public, para. 30; F00074/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on the Confirmation of the Indictment* ("Case 07 Confirmation Decision") 11 December 2020, public, para. 13; F00057, Single Judge, *Decision on Defence Challenges* ("Case 07 Defence Challenges Decision"), 27 October 2020, public, para. 24.

### C. MAINTAINING CONFIDENTIALITY

17. Article 39(11) of the Law stipulates that the Pre-Trial Judge may, where necessary, provide for the protection of victims and witnesses.

18. Rule 85(4) of the Rules provides that all documents and information submitted by the SPO to the Pre-Trial Judge during investigation shall remain at the least confidential and *ex parte*, subject to Rule 102 of the Rules.

19. Rule 88 of the Rules provides that the indictment shall be made public upon confirmation by the Pre-Trial Judge. However, in exceptional circumstances, upon a showing of good cause, the Pre-Trial Judge may order the temporary non-disclosure of the indictment, related documents or information to the public until further order. The indictment shall in any case be made public, with redactions, where necessary, no later than the Accused's initial appearance. The SPO may disclose an indictment or part thereof to the authorities of a Third State or another entity, if deemed necessary for the purposes of an investigation or prosecution.

20. Rule 102(1)(a) of the Rules provides that the SPO shall make available to the Accused, as soon as possible, but at least within 30 days of the initial appearance of the Accused, the supporting material to the indictment submitted for confirmation, as well as all statements obtained from the Accused.

21. Rule 105(1) of the Rules provides that the SPO may apply to the Panel for interim non-disclosure of the identity of a witness or victim participating in the proceedings until appropriate protective measures have been ordered.

### IV. JURISDICTION

22. Based on the information provided by the SPO, and without prejudice to subsequent determinations on this matter, the Pre-Trial Judge finds that, pursuant to Articles 6(2) and 15(2) of the Law, the SC have jurisdiction over the offences of



intimidation during criminal proceedings and obstructing official persons in performing official duties, with respective reference to Articles 387 and 401 of the KCC, as they relate to SC official proceedings and officials.<sup>22</sup> Notably, the offences under Counts 1-3 of the Indictment concern events allegedly occurred between at least 5 April and 12 April 2023 and, hence, fall within SC temporal jurisdiction.<sup>23</sup>

## V. LEGAL REQUIREMENTS

### A. NATURE AND SCOPE OF THE REVIEW

#### 1. Nature of the Review

23. The Pre-Trial Judge recalls his interpretation of the nature of the indictment review process and will only elaborate the salient issues.<sup>24</sup>

24. Regarding the evidentiary threshold applicable at this stage, the Pre-Trial Judge recalls that, while falling short of the certainty of a proven fact, determining the existence of well-grounded suspicion<sup>25</sup> nevertheless requires a conviction on the part of the Pre-Trial Judge, beyond mere theory or suspicion, that: (i) the offences have indeed occurred; and (ii) the suspect committed or participated in the commission of the offence(s) through the alleged mode(s) of liability. The Pre-Trial Judge bases such findings on concrete and tangible supporting material, demonstrating a clear line of reasoning underpinning the charges in the indictment.

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<sup>22</sup> See also Case 07 Defence Challenges Decision, paras 23-26; Case 07 Confirmation Decision, para. 22; Case 07 Preliminary Motion Decision, paras 28-34.

<sup>23</sup> See also Case 07 Defence Challenges Decision, paras 25-26.

<sup>24</sup> Case 07 Confirmation Decision, paras 26-28. See also KSC-BC-2023-10, F00008/RED, Pre-Trial Judge, *Corrected Version of Public Redacted Version of the Decision on the Confirmation of the Indictment* ("Case 10 Confirmation Decision"), 2 October 2023, public, para. 23.

<sup>25</sup> According to Article 19.1.12 of the Kosovo Criminal Procedure Code of 2022, No. 08/L-032, well-grounded suspicion is reached when the evidence "would satisfy an objective observer that a criminal offense has occurred and the defendant has committed the offense".

In so doing, the Pre-Trial Judge evaluates the supporting material holistically, without scrutinising each item of evidentiary material in isolation.<sup>26</sup>

## 2. Scope of the Review

25. The Pre-Trial Judge recalls his interpretation of the scope of the indictment review process.<sup>27</sup> This interpretation equally applies in the present case and, thus, the Pre-Trial Judge incorporates it by way of reference.

### B. ELEMENTS OF OFFENCES

#### 1. Intimidation During Criminal Proceedings

26. Article 387 of the KCC provides that whoever uses force or serious threat, or any other means of compulsion, a promise of a gift or any other form of benefit to induce another person to refrain from making a statement or to make a false statement or to otherwise fail to state true information to the police, a prosecutor or a judge, when such information relates to the obstruction of criminal proceedings shall be punished by a fine of up to one hundred and twenty-five thousand (125,000) EUR and by imprisonment of two (2) to ten (10) years.<sup>28</sup>

##### (a) Material elements

27. The offence of intimidation during criminal proceedings, within the meaning of Article 387 of the KCC, is committed (i) through the use of force, serious threat,

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<sup>26</sup> *Similarly*, Case 07 Confirmation Decision, para. 30 with further references to case law; Case 10 Confirmation Decision, para. 24.

<sup>27</sup> Case 07 Confirmation Decision, paras 31-32. *See also* KSC-BC-2020-05, F00008/RED, Pre-Trial Judge, *Public Redacted Version of Decision on the Confirmation of the Indictment Against Salih Mustafa*, 5 October 2020, public, paras 38-39, with further references to case law; Case 10 Confirmation Decision, para. 25.

<sup>28</sup> Case 07 Confirmation Decision, paras 58-65; F00611/RED, Trial Panel II, *Public Redacted Version of the Trial Judgment* ("Case 07 Trial Judgment"), 18 May 2022, public, paras 109, 112-115, 119-124; KSC-CA-2022-01, F00114, Court of Appeals Panel, *Appeal Judgment* ("Case 07 Appeal Judgment"), 2 February 2023, public, paras 221, 224-226; Case 10 Confirmation Decision, paras 27-35.

any other means of compulsion, a promise of a gift or any other form of benefit (ii) directed at any person making or likely to make a statement or provide information to the police, a prosecutor or a judge.<sup>29</sup>

28. Article 387 of the KCC proscribes any conduct that may have (or is expected by the perpetrator to have) an impact or influence on the statement or information to be given by the person.<sup>30</sup>

29. Article 387 of the KCC does not delimit what constitutes force, serious threat, compulsion or other means of commission.<sup>31</sup> Accordingly, “force” may include any form of physical violence or intoxication<sup>32</sup> exerted upon a person.<sup>33</sup> A “serious threat” is understood equally broadly and may include any serious threat of harmful action, including for example threats to use force or to inflict serious harm on the health, well-being, safety, security or privacy of a person.<sup>34</sup> Compulsion refers to any act of constraining or coercing a person.<sup>35</sup> Equally, Article 387 of the KCC does not define what constitutes “a promise of a gift or any other form of benefit”. According to their ordinary meaning, a “promise” is a declaration or assurance made to another person, stating a commitment to give, do, or refrain from doing a specified thing or act, or guaranteeing that a specified thing will or will not happen.<sup>36</sup> A “gift” is something, the possession of which is transferred to another

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<sup>29</sup> *Similarly*, Case 07 Confirmation Decision, para. 58; Case 07 Trial Judgment, para. 109; Case 10 Confirmation Decision, para. 27.

<sup>30</sup> *Similarly*, Case 07 Confirmation Decision, para. 59; Case 10 Confirmation Decision, para. 28.

<sup>31</sup> *Similarly*, Case 07 Confirmation Decision, para. 60; Case 10 Confirmation Decision, para. 29.

<sup>32</sup> *See* Article 113(15) of the KCC.

<sup>33</sup> *Similarly*, Case 07 Confirmation Decision, para. 60; Case 07 Trial Judgment, para. 112; KSC-SC-2023-01, F00021, Panel of the Supreme Court Chamber, *Decision on Requests for Protection of Legality* (“Case 07 Principle of Legality Decision”), 18 September 2023, public, para. 60; Case 10 Confirmation Decision, para. 29.

<sup>34</sup> *See similarly* Case 07 Appeal Judgment, para. 224; Case 07 Confirmation Decision, para. 60; Case 10 Confirmation Decision, para. 29.

<sup>35</sup> *Similarly*, Case 07 Confirmation Decision, para. 60; Case 07 Trial Judgment, para. 112; Case 10 Confirmation Decision, para. 29.

<sup>36</sup> *See* OED Online (Oxford University Press, 2023) <[https://www.oed.com/dictionary/promise\\_n?tab=meaning\\_and\\_use#28177403](https://www.oed.com/dictionary/promise_n?tab=meaning_and_use#28177403)> accessed 28 November 2023.

without the expectation or receipt of an equivalent; a donation, present.<sup>37</sup> A “benefit” is an advantage, profit or good.<sup>38</sup>

30. Article 387 of the KCC covers any witness or potential witness, or other information provider to police or prosecutorial and judicial authorities (“Potential Information Provider”). Within the SC legal framework, Potential Information Provider means any person who has or is likely to provide information to the SITF, the SPO and/or to any SC Panel about any crimes or offences falling under SC jurisdiction.<sup>39</sup> Specifically, a witness is a person “whom the SITF/SPO met and obtained information from, including in the form of an interview”; a “potential witness” is a person “from whom the SPO is seeking to obtain, including through other organisations, information, including in the form of an interview”.<sup>40</sup> Such person must be identifiable either as an individual or, at least, as a member of a clearly identifiable category to the SITF, SPO and/or SC Panel.<sup>41</sup>

31. By its wording (“[w]hoever uses force or serious threat [...] to induce”), Article 387 of the KCC does not require proof of consequence, namely that the force or serious threat, a promise of a gift or any other form of benefit, did in fact induce a person to refrain from making a statement, make a false statement or fail to state true information.<sup>42</sup> In fact, contrary to Article 386 of the KCC,<sup>43</sup> which lays emphasis

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<sup>37</sup> See *OED Online* (Oxford University Press, 2023) <[https://www.oed.com/dictionary/gift\\_n1?tab=meaning\\_and\\_use#3167860](https://www.oed.com/dictionary/gift_n1?tab=meaning_and_use#3167860)> accessed 28 November 2023.

<sup>38</sup> See *OED Online* (Oxford University Press, 2023) <[https://www.oed.com/dictionary/benefit\\_n?tab=meaning\\_and\\_use#23477071](https://www.oed.com/dictionary/benefit_n?tab=meaning_and_use#23477071)> accessed 28 November 2023.

<sup>39</sup> *Similarly*, Case 07 Confirmation Decision, para. 61; Case 07 Trial Judgment, para. 113; Case 07 Appeal Judgment, para. 223; Case 10 Confirmation Decision, para. 30.

<sup>40</sup> See Case 07 Trial Judgment, paras 511-512; Annex 2 to Case 07 Trial Judgment, definitions of “Witnesses” and “Potential Witnesses”, pp. 5, 8. *Similarly*, Case 10 Confirmation Decision, para. 30.

<sup>41</sup> *Similarly*, Case 07 Trial Judgment, para. 113; Case 10 Confirmation Decision, para. 30.

<sup>42</sup> *Similarly*, Case 07 Appeal Judgment, para. 229; Case 07 Trial Judgment, paras 115, 121; Case 07 Confirmation Decision, para. 62; Case 10 Confirmation Decision, para. 31.

<sup>43</sup> Article 386 of the KCC stipulates that whoever, by any means of compulsion or bribe, with intent, *inter alia* (i) causes any person to make a false statement, provide a false document or conceal a material fact in an official proceeding (paragraph 1.1) or (ii) induces a witness or an expert to decline

on the result of the perpetrator's action, Article 387 of the KCC places emphasis on the perpetrator's criminal conduct.<sup>44</sup> This interpretation also comports best with the purpose of the provision to protect the information of witnesses and other information providers and, more generally, the integrity of criminal proceedings, by penalising perpetrators who intend to influence a witness.<sup>45</sup>

(b) Mental elements

32. The perpetrator must have acted with direct or eventual intent, within the meaning of Article 21 of the KCC.<sup>46</sup>

33. For direct intent, the perpetrator must have acted with awareness of, and desire for, using force, serious threat, any other means of compulsion, a promise of a gift or any other form of benefit in order to induce a person to refrain from making a statement, provide a false statement or fail to state true information to the police, a prosecutor or a judge.<sup>47</sup>

34. For eventual intent, the perpetrator must have acted with the awareness that, as a result of his or her acts or omissions, a person might refrain from making a

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to give or to give a false statement in court proceedings (paragraph 1.7) is guilty of the offence of obstruction of evidence or official proceedings. The wording in said provision ("causes", "induces") makes it clear that it applies to situations where the perpetrator actually causes or induces a person to make a false statement, conceal a material fact or decline to give a statement. For a discussion on the *lex specialis* relationship between Articles 387 and 386 of the KCC, see Case 07 Principle of Legality Decision, para. 62.

<sup>44</sup> Similarly, Case 07 Appeal Judgment, para. 229; Case 10 Confirmation Decision, para. 31.

<sup>45</sup> Similarly, Case 07 Confirmation Decision, para. 62, with further references to case law; Case 07 Trial Judgment, para. 115; Case 07 Appeal Judgment, para. 229; Case 10 Confirmation Decision, para. 31. See also Case 07 Principle of Legality Decision, para. 41.

<sup>46</sup> Similarly, Case 07 Confirmation Decision, para. 63; Case 07 Trial Judgment, para. 124; Case 10 Confirmation Decision, para. 32.

<sup>47</sup> Similarly, Case 07 Confirmation Decision, para. 64; Case 07 Trial Judgment, para. 121; Case 10 Confirmation Decision, para. 33.

statement, provide a false statement or fail to state true information to the police, a prosecutor or a judge, and the perpetrator acceded to the occurrence of that result.<sup>48</sup>

35. There is no requirement that the perpetrator must be aware of the truthfulness of the information to be provided by the Potential Information Provider under the third alternative of intimidation.<sup>49</sup>

## **2. Obstructing Official Persons in Performing Official Duties**

### **(a) Obstruction of official persons by force or serious threat**

36. Article 401(1) of the KCC provides that whoever, by force or serious threat, obstructs or attempts to obstruct an official person in performing official duties or, using the same means, compels him or her to perform official duties shall be punished by imprisonment of three (3) months to three (3) years.<sup>50</sup>

37. Article 401(5) of the KCC stipulates that “when the offense [in Article 401(1)] is committed against a judge, a prosecutor, an official of a court, prosecution officer or a person authorized by the court and prosecution office, a police officer, a military officer, a customs officer or a correctional officer during the exercise of their official functions the perpetrator shall be punished by imprisonment of one (1) to five (5) years”.<sup>51</sup>

### **(i) Material element**

38. The offence of obstructing an official person in performing official duties, within the meaning of Article 401(1) of the KCC, is committed (i) through the use

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<sup>48</sup> *Similarly*, Case 07 Confirmation Decision, para. 65; Case 07 Trial Judgment, para. 121; Case 10 Confirmation Decision, para. 34.

<sup>49</sup> *See* Case 07 Appeal Judgment, para. 264. *Similarly*, Case 10 Confirmation Decision, para. 35.

<sup>50</sup> *See* Case 07 Confirmation Decision, paras 66-73; Case 07 Trial Judgment, paras 139, 144-149, 150, 152-155; Case 07 Appeal Judgment, paras 278-285, 290-292; Case 10 Confirmation Decision, paras 36-46.

<sup>51</sup> *See* Case 07 Confirmation Decision, para. 69; Case 07 Trial Judgment, paras 140, 149, 150, 152-155; Case 10 Confirmation Decision, para. 37.

of force or serious threat resulting in the (ii) obstruction or attempted obstruction of an official person in performing official duties, or the compelling of that person to perform official duties.<sup>52</sup>

39. Article 401(1) of the KCC does not define what constitutes “force” or a “serious threat”. However, their meaning is comparable to that under Article 387 of the KCC, thus including any serious threat of harmful action and not only a threat to use force.<sup>53</sup>

40. Furthermore, Article 401(1) of the KCC does not require that the force or the serious threat be directed against the official person.<sup>54</sup> Rather, the force or serious threat may be directed against one or more other persons, as long as it results in the (attempted) obstruction of an official person in performing official duties.<sup>55</sup> This is in line with the rationale of the offence, which is to ensure that official duties are not obstructed, directly or indirectly; in other words, the provision is not designed to protect official persons as such, but rather to protect them in the unimpeded exercise of their official duties.<sup>56</sup> Under this light, a threat against (potential) witnesses may have the capacity to obstruct official persons in the exercise of their official duties.<sup>57</sup>

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<sup>52</sup> *Similarly*, Case 07 Confirmation Decision, para. 67; Case 07 Trial Judgment, para. 141; Case 10 Confirmation Decision, para. 38.

<sup>53</sup> *See supra* para. 29 (Intimidation During Criminal Proceedings). *Similarly*, Case 07 Confirmation Decision, para. 68; Case 07 Trial Judgment, para. 144; Case 07 Appeal Judgment, paras 278-280 (as pointed out by the Court of Appeals Panel, such interpretation is also consistent with the interpretation of the term given by Kosovo courts); Case 10 Confirmation Decision, para. 39.

<sup>54</sup> *Similarly*, Case 07 Confirmation Decision, para. 68; Case 07 Trial Judgment, para. 146; Case 07 Appeal Judgment, para. 282; Case 07 Principle of Legality Decision, paras 40, 48; Case 10 Confirmation Decision, para. 40.

<sup>55</sup> *Similarly*, Case 07 Confirmation Decision, para. 68; Case 07 Trial Judgment, para. 146; Case 07 Appeal Judgment, para. 282; Case 07 Principle of Legality Decision, para. 48; Case 10 Confirmation Decision, para. 40.

<sup>56</sup> *See* Case 07 Appeal Judgment, para. 282; Case 07 Principle of Legality Decision, para. 47; Case 10 Confirmation Decision, para. 40.

<sup>57</sup> *See* Case 07 Appeal Judgment, para. 282; Case 07 Principle of Legality Decision, para. 48; Case 10 Confirmation Decision, para. 40.

41. Article 113(2) of the KCC defines an “official person” as, *inter alia*, any person who is entrusted with the actual performance of certain official duties or works. Within the SC legal framework, such an “official person” would be any person authorised to act on behalf of the SC or SPO, including a judge, a prosecutor, an investigator or any other SC or SPO official (“SC/SPO Official”). By virtue of Article 401(5) of the KCC, the offence is committed in an aggravated form where it is directed against, *inter alia*, a judge, a prosecutor, an official of a court, a prosecution officer or a person authorised by the court and prosecution office. Accordingly, where the offence under Article 401(1) of the KCC is committed against an SC/SPO Official, the requirements of the aggravated form are met. For the purposes of Article 401(1) of the KCC and within the SC legal framework, the “official duties” of an SC/SPO Official relate to any responsibility or work within the context of official proceedings of the Specialist Chambers, including SPO investigations (“SC Proceedings”).<sup>58</sup>

42. The term “obstruct” means to prevent, impede, hinder, or delay the motion, passage, or progress of something.<sup>59</sup> In the context of SC Proceedings, obstruction would entail impeding, hindering or delaying the work of SC/SPO Officials.<sup>60</sup>

43. For the purposes of the offence under Article 401(1) and (5) of the KCC, both in its basic and aggravated form, the use of force or serious threat need not be simultaneous with the exercise of official duties. Rather, it can occur at any moment in time other than when the official person is actively exercising a particular duty,

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<sup>58</sup> *Similarly*, Case 07 Confirmation Decision, para. 69; Case 10 Confirmation Decision, para. 41.

<sup>59</sup> *Similarly*, Case 07 Confirmation Decision, para. 70; Case 07 Trial Judgment, para. 145; Case 10 Confirmation Decision, para. 42.

<sup>60</sup> *Similarly*, Case 07 Confirmation Decision, para. 70; Case 07 Trial Judgment, paras 146-148; Case 10 Confirmation Decision, para. 42.



with a view to obstructing the performance of an expected or ongoing official duty.<sup>61</sup>

(ii) Mental element

44. The perpetrator must have acted with direct or eventual intent, within the meaning of Article 21 of the KCC.<sup>62</sup>

45. For direct intent, the perpetrator must have acted with awareness of, and desire for, using force or serious threat in order to obstruct an official person in performing official duties.<sup>63</sup>

46. For eventual intent, the perpetrator must have acted with the awareness that, as a result of his or her acts or omissions, the official person might be obstructed in the performance of official duties, and the perpetrator acceded to the occurrence of that result.<sup>64</sup>

(b) Obstruction of official persons by common action of a group

47. Article 401(2) of the KCC provides that whoever participates in a group of persons which by common action obstructs or attempts to obstruct an official person in performing official duties or, using the same means, compels him or her to perform official duties shall be punished by a fine or by imprisonment of up to three (3) years.<sup>65</sup>

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<sup>61</sup> *Similarly*, Case 07 Trial Judgment, para. 148; Case 07 Appeal Judgment, paras 282-283; Case 07 Principle of Legality Decision, para. 49; Case 10 Confirmation Decision, para. 43.

<sup>62</sup> *Similarly*, Case 07 Confirmation Decision, para. 71; Case 07 Trial Judgment, paras 152, 155; Case 10 Confirmation Decision, para. 44.

<sup>63</sup> *Similarly*, Case 07 Confirmation Decision, para. 72; Case 07 Trial Judgment, para. 153; Case 10 Confirmation Decision, para. 45.

<sup>64</sup> *Similarly*, Case 07 Confirmation Decision, para. 73; Case 07 Trial Judgment, paras 154-155; Case 10 Confirmation Decision, para. 46.

<sup>65</sup> Case 07 Confirmation Decision, paras 74-76, 78-80; Case 07 Trial Judgment, paras 156, 158, 161-164, 172, 175-178; Case 07 Appeal Judgment, paras 301-308; Case 10 Confirmation Decision, paras 47, 48-53.

(i) Material element

48. The offence of obstructing an official person in performing official duties, within the meaning of Article 401(2) of the KCC, is committed (i) through participation in a group of persons which by common action (ii) obstructs or attempts to obstruct an official person in performing official duties.<sup>66</sup>

49. Article 113(12) of the KCC clarifies that a “group” consists of three or more persons.<sup>67</sup> As to the group’s common action, Article 401(2) of the KCC does not delimit its contours. Accordingly, common action may include any activity jointly undertaken by the group members.<sup>68</sup> Crucially, Article 401(2) of the KCC penalises any conduct of the perpetrator, who partakes in the group, that contributes to or enables in some other form the common action; it does not require that the actions of *each* participant in the group contribute directly to the obstructive purpose.<sup>69</sup>

50. All other material elements of this offence are identical with those discussed above under Article 401(1) of the KCC.<sup>70</sup>

(ii) Mental element

51. The perpetrator must have acted with direct or eventual intent, within the meaning of Article 21 of the KCC.<sup>71</sup> Within the group, one perpetrator may act with direct intent, while another perpetrator may participate with eventual intent.

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<sup>66</sup> *Similarly*, Case 07 Confirmation Decision, para. 74; Case 07 Trial Judgment, para. 158; Case 10 Confirmation Decision, para. 48.

<sup>67</sup> *Similarly*, Case 07 Confirmation Decision, para. 75; Case 07 Trial Judgment, para. 161; Case 10 Confirmation Decision, para. 49.

<sup>68</sup> *Similarly*, Case 07 Confirmation Decision, para. 75; Case 07 Trial Judgment, para. 162; Case 10 Confirmation Decision, para. 49.

<sup>69</sup> *Similarly*, Case 07 Trial Judgment, para. 163; Case 07 Appeal Judgment, para. 307; Case 10 Confirmation Decision, para. 49.

<sup>70</sup> *See supra* paras 41-42 (Obstructing Official Persons by Force or Serious Threat).

<sup>71</sup> *Similarly*, Case 07 Confirmation Decision, para. 78; Case 07 Trial Judgment, para. 175; Case 10 Confirmation Decision, para. 51.

Article 401(2) of the KCC does not require that all persons in the group participate with the same form of intent.<sup>72</sup>

52. For direct intent, the perpetrator must have acted with awareness of, and desire for, participating in a group in order to obstruct by common action an official person in performing official duties.<sup>73</sup>

53. For eventual intent, the perpetrator must have acted with the awareness that, as a result of participation in a group, the official person might be obstructed by common action in the performance of official duties, and the perpetrator acceded to the occurrence of that result.<sup>74</sup>

(c) Relationship between Article 401(1) and (2) of the KCC

54. As regards the relationship between Articles 401(1) and 401(2) of the KCC, although it is not a matter for determination at this stage of the proceedings, the Pre-Trial Judge recalls the Court of Appeals Panel's findings that the relationship between the two forms of obstruction foreseen in paragraphs (1) and (2) of Article 401 of the KCC is one of subsidiarity, "where one provision (Article 401(2) of the KCC) 'is only applicable if it is not possible to apply the other' (Article 401(1) of the KCC)".<sup>75</sup>

C. MODES OF LIABILITY

55. In accordance with Article 16(3) of the Law and Articles 17, 21, 28, 31, 33 and 35 of the KCC, the Specialist Prosecutor pleads the following modes of liability:

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<sup>72</sup> *Similarly*, Case 07 Trial Judgment, para. 178; Case 10 Confirmation Decision, para. 51.

<sup>73</sup> *Similarly*, Case 07 Confirmation Decision, para. 79; Case 07 Trial Judgment, para. 176; Case 10 Confirmation Decision, para. 52.

<sup>74</sup> *Similarly*, Case 07 Confirmation Decision, para. 80; Case 07 Trial Judgment, para. 177; Case 10 Confirmation Decision, para. 53.

<sup>75</sup> Case 07 Appeal Judgment, para. 308. *Similarly*, Case 10 Confirmation Decision, para. 54.

commission, attempt, co-perpetration, agreement to commit criminal offence, and assistance.<sup>76</sup>

56. The objective elements of these modes of liability are set out below. As regards their respective subjective element, these modes of liability require direct or eventual intent, within the meaning of Article 21 of the KCC.<sup>77</sup>

### 1. Commission

57. Commission, within the meaning of Article 17(1) of the KCC, requires that the perpetrator physically carries out the objective elements of an offence, or omits to act when required to do so under the law.<sup>78</sup>

### 2. Co-Perpetration

58. Co-perpetration, within the meaning of Article 31 of the KCC, requires that (i) two or more persons jointly (ii) participate in or substantially contribute in any other way to the commission of an offence.<sup>79</sup>

59. Joint commission does not require a previous agreement on the commission of the offence.<sup>80</sup> To infer the existence of an agreement it suffices that the actions of the co-perpetrators are concerted in the course of committing the offence.<sup>81</sup>

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<sup>76</sup> Indictment, paras 24-30.

<sup>77</sup> *Similarly*, Case 07 Confirmation Decision, para. 82; Case 07 Trial Judgment, paras 181, 187, 196, 199, 202; Case 10 Confirmation Decision, para. 56.

<sup>78</sup> *Similarly*, Case 07 Confirmation Decision, para. 83; Case 07 Trial Judgment, para. 180; Case 10 Confirmation Decision, para. 57.

<sup>79</sup> *Similarly*, Case 07 Confirmation Decision, para. 84; Case 07 Trial Judgment, para. 185; Case 10 Confirmation Decision, para. 58.

<sup>80</sup> *Similarly*, Case 07 Confirmation Decision, para. 85; Case 07 Trial Judgment, para. 186; Case 10 Confirmation Decision, para. 59. *See also* Kosovo, Supreme Court, *S.H.*, PAII-KZII-2/2016, [Judgment](#), 20 September 2016, para. 58.

<sup>81</sup> *Similarly*, Case 07 Confirmation Decision, para. 85; Case 07 Trial Judgment, para. 186; Case 10 Confirmation Decision, para. 59. *See also* Kosovo, Court of Appeals, *S.G. et al.*, PAKR 966/2012, [Judgment](#), 11 September 2013, para. 74.

60. Article 31 of the KCC does not delimit what constitutes participation in or substantial contribution to the commission of the offence. In any event, each person participating in or substantially contributing to the offence must fulfil one or more of the required material elements of that offence.<sup>82</sup>

### 3. Assistance

61. Assistance, within the meaning of Article 33(1) of the KCC, requires that the person assists the perpetrator in the commission of a criminal offence.<sup>83</sup>

62. Pursuant to Article 33(2) of the KCC, such assistance includes, but is not limited to: giving advice or instruction on how to commit a criminal offence; making available the means to commit a criminal offence; creating conditions or removing the impediments to the commission of a criminal offence; or promising in advance to conceal evidence of the commission of a criminal offence, the perpetrator or identity of the perpetrator, the means used for the commission of a criminal offence, or the profits or gains which result from the commission of a criminal offence.

### 4. Agreement to Commit a Criminal Offence

63. An agreement to commit a criminal offence, within the meaning of Article 35 of the KCC, requires that (i) the perpetrator agrees with one or more other persons to commit a criminal offence and (ii) one or more of these persons undertakes any substantial act towards the commission of the criminal offence.<sup>84</sup>

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<sup>82</sup> *Similarly*, Case 07 Confirmation Decision, para. 86; Case 10 Confirmation Decision, para. 60. *See also* Kosovo, Supreme Court, *S.H.*, PAIL-KŽII-2/2016, [Judgment](#), 20 September 2016, para. 58.

<sup>83</sup> *Similarly*, Case 07 Confirmation Decision, para. 91; Case 07 Trial Judgment, para. 195; Case 10 Confirmation Decision, para. 62.

<sup>84</sup> *Similarly*, Case 07 Confirmation Decision, para. 93; Case 07 Trial Judgment, para. 198; Case 10 Confirmation Decision, para. 64.

64. Pursuant to Article 35(2) of the KCC, a “substantial act towards the commission of a crime” need not be a criminal act, but must amount to a substantial preparatory step towards the commission of the criminal offence which the persons have agreed to commit.<sup>85</sup>

## 5. Attempt

65. Attempt, within the meaning of Article 28 of the KCC, requires that the perpetrator takes action towards the commission of an offence, but the action is not completed or the elements of the intended offence are not fulfilled.<sup>86</sup>

66. Article 28 of the KCC does not further delimit what constitutes taking action towards the commission of the offence. In any case, such action must amount to more than preparatory acts, which are separately provided for in Article 27 of the KCC. Accordingly, a perpetrator attempts the commission of an offence when he or she has intentionally begun to execute the offence by fulfilling one or more of the material elements of the offence.<sup>87</sup>

67. Pursuant to Article 28(2) of the KCC, an attempt to commit a criminal offence is penalised only if (i) the punishment for the committed offence is three (3) or more years or (ii) it is expressly so provided for by law. Accordingly, attempt may be punishable in relation to the offences under Counts 1-3.

## VI. CHARGES

68. Before examining the supporting material in relation to each charge and determining whether a well-grounded suspicion has been established against the Suspect, the Pre-Trial Judge notes that the SPO has complied with the requirements

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<sup>85</sup> *Similarly*, Case 07 Confirmation Decision, para. 94; Case 10 Confirmation Decision, para. 65.

<sup>86</sup> *Similarly*, Case 07 Confirmation Decision, para. 95; Case 07 Trial Judgment, para. 201; Case 10 Confirmation Decision, para. 66.

<sup>87</sup> *Similarly*, Case 07 Confirmation Decision, para. 96; Case 07 Trial Judgment, para. 201; Case 10 Confirmation Decision, para. 67.

under Rule 86(3) of the Rules by submitting: (i) the Indictment; (ii) evidentiary material supporting the facts underpinning the charges; and (iii) a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation.

#### A. THE OFFENCES CHARGED

##### 1. Intimidation During Criminal Proceedings (Count 3)

69. In the Indictment, the SPO contends that Mr Shala used and attempted to use serious threat, or any other means of compulsion, a promise of a gift or any other form of benefit to induce Witness 1 to refrain from making a statement or to make a false statement or to otherwise fail to state true information to the police, a prosecutor or a judge, when such information relates to obstruction of criminal proceedings.<sup>88</sup>

##### (a) Material Elements

##### (i) Attribution of Relevant Telephone Numbers

70. Before turning to the material elements of the offence, the Pre-Trial Judge recalls that he has previously found that [REDACTED] may be attributed to Mr Shala having noted that Mr Shala is listed under the name “Haxhi Shala” in Mr Januzi’s previously seized mobile telephone.<sup>89</sup> The Pre-Trial Judge also recalls that he has previously found that telephone number [REDACTED] may be attributed to Mr Bahtijari noting that this telephone number is registered to Mr Bahtijari’s previously seized mobile telephone.<sup>90</sup> The Pre-Trial Judge lastly finds that telephone number telephone number [REDACTED] may be attributed to

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<sup>88</sup> Indictment, paras 21-23.

<sup>89</sup> SPOE00339028-00339032, pp. SPOE00339029-SPOE00339030. *See also* KSC-BC-2018-01, [REDACTED]; F00342, Single Judge, *Decision Authorising Search and Seizure and Related Measures* (“Bahtijari & Shala Search & Seizure Decision”), 28 April 2023, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential.

<sup>90</sup> [REDACTED]. *See also* Bahtijari & Shala Search & Seizure Decision.

Mr Januzi given that this number is registered to Mr Januzi's previously seized mobile telephone.<sup>91</sup>

(ii) First Approach

71. Regarding the material elements of the offence, the supporting material shows that, on 5 April 2023, at 10h32, Mr Shala called Mr Januzi [REDACTED]<sup>92</sup> for 45 seconds,<sup>93</sup> and, approximately two hours later, i.e. at 12h13, Mr Bahtijari, [REDACTED],<sup>94</sup> also known as "Shema",<sup>95</sup> called Mr Januzi for around one minute via Facebook Messenger.<sup>96</sup>

72. The supporting material then shows that approximately three hours after Mr Bahtijari had called Mr Januzi, i.e. at 15h10, Mr Bahtijari called Witness 1 for one minute via Facebook Messenger.<sup>97</sup> During the call, Mr Bahtijari asked [REDACTED], whether Witness 1 was there.<sup>98</sup> [REDACTED] responded that Witness 1 was sleeping and asked whether Witness 1 should be awoken, to which Mr Bahtijari replied not to wake him up.<sup>99</sup>

73. The supporting material also shows that, approximately half an hour after his brief conversation with [REDACTED], Mr Bahtijari arrived at the home of

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<sup>91</sup> [REDACTED]. See also KSC-BC-2018-01, F00348, Single Judge, *Decision Authorising Search and Seizure and Related Measures*, 3 May 2023, strictly confidential and *ex parte*, para. 20, with Annex 1, strictly confidential.

<sup>92</sup> 112906-TR-AT Part 1 Revised 1-ET, p. 12, line 19, p. 14, line 5.

<sup>93</sup> SPOE00339009-00339013, p. SPOE00339011 (Call Log #3).

<sup>94</sup> 112906-TR-AT Part 1 Revised 1-ET, p. 4, lines 6-15.

<sup>95</sup> 112769-112772, p. 112769; 112906-TR-AT Part 1 Revised 1-ET, p. 12, lines 9-10, p. 10, lines 7-9; 116063-TR-ET Part 1, p. 18, lines 15-21, p. 20, lines 2-3.

<sup>96</sup> SPOE00339014-00339017, p. SPOE 00339016 (Call Log #1-2); SPOE00339033-00339038, pp. 00339037 (Call Log #1), SPOE00339038 (Chat #1).

<sup>97</sup> SPOE00339024-00339027, p. SPOE00339026 (Call Log #1-2); 113310-113320, p. 113320. See also 112909-TR-ET Part 1, p. 5, line 5.

<sup>98</sup> 112906-TR-AT Part 1 Revised 1-ET, p. 24, line 11 to p. 25, line 5; 112909-TR-ET Part 1, p. 4, lines 6-25. See also 116065 TR ET Part 1, p. 16, lines 16-25.

<sup>99</sup> 112906-TR-AT Part 1 Revised 1-ET, p. 25, lines 5-7; 112769-112772, p. 112769, para. 3; 112909-TR-ET Part 1, p. 4, line 25 to p. 5, line 3.



Witness 1.<sup>100</sup> Mr Bahtijari told Witness 1 that he had not come “for celebrations”, followed by an Albanian phrasing meaning “I am devil’s mouthpiece, devil’s advocate”.<sup>101</sup> Mr Bahtijari informed Witness 1 that Mr Shala (also known as “Topi”)<sup>102</sup> had sent him to tell Witness 1 that: (i) they know that Witness 1 will be a witness in the case against Rexhep Selimi (“Mr Selimi”); (ii) Witness 1 possesses harmful evidence against Mr Selimi; and (iii) Witness 1 should withdraw his testimony in said case.<sup>103</sup> Witness 1 responded that he was not afraid and that it was his business whether he would testify or not, if he were to be summonsed to do so.<sup>104</sup> The Pre-Trial Judge observes that, according to the supporting material, members of the family of Witness 1 [REDACTED] were present during the conversation with Mr Bahtijari.<sup>105</sup>

74. Moreover, the supporting material reveals that Mr Bahtijari told Witness 1 that, prior to the First Approach, Mr Shala had approached Mr Bahtijari at a café which Mr Bahtijari frequents, located between Fushticë and Komoran, in Kosovo.<sup>106</sup> During that encounter, Mr Shala said to Mr Bahtijari that Witness 1 is a witness in the case against Mr Selimi and to tell Witness 1 to withdraw his testimony.<sup>107</sup> The supporting material suggests that this statement refers to Witness 1’s testimony

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<sup>100</sup> 112769-112772, p. 112770, para. 4. In his statement to the SPO, Mr Januzi also confirmed that Mr Bahtijari visited Witness 1 and asked him whether he was a witness before the SC, *see* 116063-TR-ET Part 1, p. 22, line 24 to p. 23, line 24.

<sup>101</sup> 112769-112772, p. 112770, para. 5; 112906-TR-AT Part 1 Revised 1-ET, p. 22, lines 24-25; 112909-TR-ET Part 1, p. 5, lines 18-19 (“I’ve come here to bring you something, a bad message”).

<sup>102</sup> 112768-112768, p. 112768, para. 2.

<sup>103</sup> 112906-TR-AT Part 1 Revised 1-ET, p. 4, line 24 to p. 5, line 1, p. 7, lines 16-25, p. 22, line 11 to p. 24, line 4; 112769-112772, p. 112770, para. 5; 112768-112768, p. 112768, para. 2. *See also* 112909-TR-ET Part 1, p. 6, lines 22-23, p. 8, lines 9-11; 116623-01-TR-AT-ET, p. 3, lines 16-23 (in which Mr Januzi refers to the First Approach, during the Second Approach).

<sup>104</sup> 112768-112768, p. 112768, para. 2.

<sup>105</sup> 112769-112772, p. 112771, para. 12; 112909-TR-ET Part 1, p. 6, lines 13-16, p. 8, line 4. *See also* 116065-TR-ET Part 1, p. 17, lines 15-17.

<sup>106</sup> 112769-112772, p. 112770, paras 5-6; 113354-113355, p. 113355, para. 8.

<sup>107</sup> 112769-112772, p. 112770, para. 5 (According to Witness 1, Mr Shala told Mr Bahtijari “Go and tell [REDACTED] that he’s Selimi’s weakness and tell him to withdraw”); 112906-TR-AT Part 1 Revised 1-ET, p. 23, line 21 (“Of course, I have a huge impact on him.”). *See also* 112906-TR-AT Part 1 Revised 1-ET, p. 23, lines 3-4.

believed to have been or to be provided to the SPO or in SC Proceedings. Likewise, the supporting material reveals that, a few days before the First Approach, Messrs Bahtijari and Januzi met in person at a fuel station near their residence and, among other things, discussed Witness 1's alleged status as a witness before the SC.<sup>108</sup> The Pre-Trial Judge understands this visit to refer to the First Approach.

75. According to the supporting material, Witness 1 asked Mr Bahtijari whether Mr Shala warned that if Witness 1 testified against Mr Selimi, "they" would [REDACTED].<sup>109</sup> Mr Bahtijari replied in the affirmative.<sup>110</sup> Witness 1 indicated to the SPO that "they" refers to Mr Shala and [REDACTED].<sup>111</sup> The supporting material further indicates that Witness 1 told Mr Bahtijari to inform the individuals who had sent Mr Bahtijari that said individuals can come for him whenever they want.<sup>112</sup> In this context, according to Witness 1: (i) [REDACTED]; and (ii) [REDACTED], and Mr Shala are responsible for the message that Witness 1 should withdraw his testimony against Mr Selimi.<sup>113</sup> The supporting material reveals that Mr Bahtijari appeared to feel uncomfortable throughout the visit.<sup>114</sup>

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<sup>108</sup> 116063-TR-ET Part 1, p. 13, line 16 to p. 15, line 20, p. 18, line 15 to p. 22, line 24. According to Mr Januzi, they met again after Mr Bahtijari's visit to Witness 1 (*see infra* para. 80).

<sup>109</sup> 112906-TR-AT Part 1 Revised 1-ET, p. 10, lines 3-9, p. 13, lines 9-10, p. 23, lines 3-7, p. 24, lines 4-5; 112769-112772, p. 112770, para. 8. *See also* 112909-TR-ET Part 1, p. 6, lines 2-3, p. 8, lines 4-6; 116623-01-TR-AT-ET, p. 28, lines 7-8.

<sup>110</sup> 112906-TR-AT Part 1 Revised 1-ET, p. 10, lines 3-5 ("When I asked him 'Did they say they were going to [REDACTED]?' [The witness nods affirmatively] Yes, man, yes. Yes, man, yes, and he did not dare."), p. 23, lines 6-7 ("I said 'Did they tell you to [REDACTED]?' He said 'Yes, yes, yes', something like that. 'Yes. Yes'."), p. 24, lines 4-9 ("Yes, they did. But he did not tell me that they had told him to [REDACTED]. I got it out of him"); p. 25, lines 16-23 ("Yes, yes. He was nodding to say 'yes', that I was [REDACTED], he meant to say, he wanted to say that I was [REDACTED]."); 112769-112772, p. 112770, para. 8. *See also* 112909-TR-ET Part 1, p. 6, lines 3-4, p. 6, lines 5-6; 116623-01-TR-AT-ET, p. 28, line 8.

<sup>111</sup> 112769-112772, p. 112770, para. 8. *See also* 112906-TR-AT Part 1 Revised 1-ET, p. 13, lines 2-5.

<sup>112</sup> [REDACTED].

<sup>113</sup> 112769-112772, p. 112770, paras 6, 9. *See also* 112906-TR-AT Part 1 Revised 1-ET, p. 26, lines 5-24.

<sup>114</sup> *See* 112906-TR-AT Part 1 Revised 1-ET, p. 13, lines 8-15 ("I am not like that, I am not like that'. He then lost his mind, you know, because of fear"), p. 22, lines 16 ("But he was frightened"); 112769-112772, p. 112770, para. 7 ("During their discussion at [Witness 1]'s home, [Mr Bahtijari] appears nervous and uncomfortable and kept his head down and avoided eye contact with [Witness 1]"), para. 10 ("After the discussion finished, [Mr Bahtijari] looked nervous").

76. Furthermore, the supporting material shows that, after the discussion, Mr Bahtijari left the house of Witness 1 and walked down the street towards a Volkswagen Golf vehicle waiting approximately 200 meters away.<sup>115</sup> The supporting material further shows that Mr Bahjtari and two men, who were standing near the vehicle, got into the vehicle; a fourth man was in the driver's seat.<sup>116</sup> According to the supporting material, these men were likely watching the home of Witness 1 during the visit of Mr Bahtijari to Witness 1.<sup>117</sup>

77. In addition, as detailed below, the supporting material reveals that, after the First Approach, on the same day, Mr Shala and Mr Januzi, and separately, Mr Januzi and Mr Bahtijari, engaged in multiple contacts via mobile telephone, WhatsApp, and Facebook Messenger.

78. The supporting material shows that Mr Januzi called on 5 April 2023 Mr Shala three times over the span of an hour with no answer at 16h53, 16h54, and 17h44, before sending Mr Shala a text message at 19h47 asking him to call him back.<sup>118</sup> Mr Shala then attempted to call via WhatsApp Mr Januzi (19h56), and subsequently Mr Januzi called back (19h58) and talked to Mr Shala for two minutes and 54 seconds.<sup>119</sup> Almost immediately after his call with Mr Shala, namely at 20h02, Mr Januzi made a brief audio call via Facebook Messenger to Mr Bahtijari (34 seconds).<sup>120</sup> A short time later, at 20h22, Mr Shala sent a WhatsApp message to Mr Januzi, saying, "Tomorrow, Sabit", to which Mr Januzi responded two minutes later, "Ok, I will let them know".<sup>121</sup> According to the supporting material, Mr Shala

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<sup>115</sup> 112769-112772, p. 112771, para. 11. *See also* 112909-TR-ET Part 1, p. 9, lines 7-10.

<sup>116</sup> 112769-112772, p. 112771, para. 11.

<sup>117</sup> 112769-112772, p. 112771, para. 11.

<sup>118</sup> SPOE00339009-00339013, p. SPOE00339011 (Call Log #4-6), p. SPOE00339012 (Chat #1); SPOE00339028-00339032, p. SPOE00339032 (Chat #2) ("Call me when you finish *Iftar*").

<sup>119</sup> SPOE00339009-00339013, pp. SPOE00339011 (Call Log #7-8), SPOE00339012 (Chats #2-3); SPOE00339028-00339032, p. SPOE00339032 (Chat #3).

<sup>120</sup> SPOE00339014-00339017, pp. SPOE00339016 (Call Log #3), SPOE00339017 (Chat #2).

<sup>121</sup> SPOE00339009-00339013, p. SPOE00339012 (Chats #4-5); SPOE00339028-00339032, p. SPOE00339032 (Chats #4-5).

replied via WhatsApp at 20h24, “Wait a bit more”, and, within seconds, Mr Shala called via WhatsApp Mr Januzi and talked for 46 seconds.<sup>122</sup> Mr Shala and Mr Januzi then discussed meeting in person over WhatsApp messages, with Mr Januzi at one point indicating that the meeting must be at or close to his home because he did not have his car (messages between 20h39 and 20h40).<sup>123</sup> This was followed by a short call (26 seconds) via WhatsApp from Mr Shala to Mr Januzi at 20h40.<sup>124</sup>

79. The supporting material also shows that, shortly after messaging via WhatsApp Mr Shala to arrange a meeting, Mr Januzi called via Facebook Messenger Mr Bahtijari three times without answer (20h45, 20h47, 20h49) and also sent Mr Bahtijari two Facebook Messenger messages at 20h47 and 20h50, respectively, writing “Hello” and “Hello Shem”.<sup>125</sup> Mr Bahtijari called via Facebook Messenger Mr Januzi at 20h51 and 20h59, connecting for one minute and for 37 seconds, respectively.<sup>126</sup> At 20h59, Mr Januzi also sent via Facebook Messenger the number [REDACTED] to Mr Bahtijari.<sup>127</sup> Mr Bahtijari then called Mr Januzi at 21h01 (15 seconds), using the mobile telephone number he had just received from the latter.<sup>128</sup> Mr Januzi briefly called (11 seconds) Mr Shala (21h40) via mobile telephone.<sup>129</sup> Five minutes later (21h45), Mr Januzi briefly called (10 seconds) Mr Bahtijari.<sup>130</sup> Between 21h38 and 21h58, Mr Shala sent two WhatsApp messages

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<sup>122</sup> SPOE00339009-00339013, p. SPOE00339012 (Chats #6-7), SPOE00339011 (Call Log #9); SPOE00339028-00339032, p. SPOE00339032 (Chat #6).

<sup>123</sup> SPOE00339009-00339013, p. SPOE00339012 (Chats #8-15); SPOE00339028-00339032, p. SPOE00339032 (Chats #7-14).

<sup>124</sup> SPOE00339009-00339013, p. SPOE00339011 (Call Log #10).

<sup>125</sup> SPOE00339014-00339017, pp. SPOE00339016 (Call Log #4-6), SPOE00339017 (Chats #3-7); SPOE00339033-00339038, p. SPOE00339038 (Chats #3-7).

<sup>126</sup> SPOE00339014-00339017, p. SPOE00339016 (Call Log #7-10), SPOE00339017 (Chats #8-9); SPOE00339033-00339038, p. SPOE00339038 (Chats #8-9).

<sup>127</sup> SPOE00339014-00339017, p. SPOE00339017 (Chat #10). *See supra* para. 70.

<sup>128</sup> SPOE00339014-00339017, p. SPOE00339016 (Call Log #10).

<sup>129</sup> SPOE00339009-00339013, p. SPOE00339011 (Call Log #11).

<sup>130</sup> SPOE00339014-00339017, p. SPOE00339016 (Call Log #11).

to Mr Januzi, writing “come out” and “where are you”.<sup>131</sup> The timing, sequence, and frequency of the above-mentioned communications, as evidenced in the supporting material, strongly suggests that the contacts between Mr Januzi and Mr Shala, on the one hand, and between Mr Januzi and Mr Bahtijari, on the other hand, concerned Mr Bahtijari’s visit to Witness 1 to deliver the message from Mr Shala that Witness 1 should withdraw his testimony against Mr Selimi.

80. The supporting material further shows that, in the following days, Messrs Shala, Januzi and Bahtijari remained in contact: (i) on 6 April 2023, Mr Januzi called Mr Shala at 15h37 for 47 seconds;<sup>132</sup> shortly thereafter, Mr Januzi called Mr Bahtijari at 15h56 for one minute and 42 seconds;<sup>133</sup> and, at 20h39, Mr Januzi called Mr Shala via WhatsApp for one minute and 50 seconds, after Mr Shala sent him a WhatsApp message “Hey? Bit”;<sup>134</sup> and (ii) on 9 April 2023, Mr Shala called Mr Januzi via WhatsApp at 16h42 for one minute and 50 seconds;<sup>135</sup> Mr Januzi also attempted to call Mr Bahtijari at 16h44 and 16h45; and, lastly, Mr Januzi called Mr Shala via WhatsApp at 19h17 for one minute and 34 seconds.<sup>136</sup> Lastly, Mr Januzi in his statement to the SPO stated that, after the First Approach, he met Mr Bahtijari in person, who confirmed that he had visited Witness 1 and asked him whether he was a witness before the SC.<sup>137</sup>

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<sup>131</sup> SPOE00339028-00339032, p. SPOE00339032 (Chats #15-16); SPOE00339009-00339013, p. SPOE00339012-00339013 (Chats #17-18).

<sup>132</sup> SPOE00339009-00339013, p. SPOE00339011 (Call Log #12).

<sup>133</sup> SPOE00339014-00339017, p. SPOE00339016 (Call Log #12).

<sup>134</sup> SPOE00339009-00339013, p. SPOE00339011 (Call Log #13).

<sup>135</sup> SPOE00339009-00339013, p. SPOE00339011 (Call Log #14).

<sup>136</sup> SPOE00339009-00339013, p. SPOE00339011 (Call Log #15).

<sup>137</sup> 116063-TR-ET Part 1, p. 22, line 24 to p. 23, line 24.

(iii) Second Approach

81. Similar to the sequence of events related to the First Approach, the supporting material shows that the Second Approach was equally preceded by a series of preparatory contacts among Messrs Shala, Januzi and Bahtijari.

82. Specifically, the supporting material indicates that on 12 April 2023, between 17h53 and 17h56, Mr Januzi sent a series of messages via Facebook Messenger to a [REDACTED] of Witness 1 (“Relative”), asking him to arrange a meeting between Mr Januzi and a person referred to as [REDACTED], while specifying that he did not “want to tell everyone”.<sup>138</sup> Mr Januzi explained that [REDACTED] is Witness 1<sup>139</sup> [REDACTED]<sup>140</sup> [REDACTED]. According to the supporting material the messages between Mr Januzi and the Relative were followed by an audio call of two minutes via Facebook Messenger shortly thereafter between the two,<sup>141</sup> and a message from Mr Januzi to the Relative containing Mr Januzi’s telephone number.<sup>142</sup>

83. The supporting material further indicates that on the same day (12 April 2023) Mr Januzi’s request was executed by the Relative, who informed Witness 1 of Mr Januzi’s intention to meet, and gave Witness 1 Mr Januzi’s telephone number, after which Witness 1 contacted Mr Januzi at 21h23 and 21h41.<sup>143</sup> In the course of one of these two calls, Mr Januzi informed Witness 1 that he would come to visit

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<sup>138</sup> SPOE00339018-00339023, p. SPOE00339022 (Chats #9-20); 112906-TR-AT Part 1 Revised 1-ET, p. 5, line 23 to p. 6, line 25; 116063-TR-ET Part 1, p. 32, lines 9-19; 116063-TR-ET Part 2, p. 7, line 14 to p. 8, line 4, p. 26, lines 12, 14.

<sup>139</sup> 116623-01-TR-AT-ET, p. 32, line 25 to p. 33, line 4.

<sup>140</sup> 116623-01-TR-AT-ET, p. 3, lines 2-14, p. 46, line 21, p. 47, lines 8-9.

<sup>141</sup> SPOE00339018-00339023, p. SPOE00339023 (Chat #21).

<sup>142</sup> SPOE00339018-00339023, p. SPOE00339022 (Chats#22).

<sup>143</sup> 112906-TR-AT Part 1 Revised 1-ET, p. 6, lines 10-24, p. 16, lines 2-3, p. 17, lines 3-11; 113310-113320, pp. 113310-113315 (specifically p. 113313 at the bottom, where the call to Mr Januzi at 21h23 is visible); 112909-TR-ET Part 1, p. 9, lines 21-22 (in which W04891 corroborates Witness 1’s account that the Relative came in person to give Mr Januzi’s telephone number).

“in about half an hour, one hour”.<sup>144</sup> The supporting material also indicates that within a few minutes from the second call between Witness 1 and Mr Januzi, the latter called Mr Shala and talked for one minute and 20 seconds.<sup>145</sup>

84. Based on the supporting material, [REDACTED], upon arrival at Witness 1’s home, Mr Januzi asked Witness 1 whether Mr Bahtijari had visited him and whether Witness 1 had “had a clear conversation with him”.<sup>146</sup> Mr Januzi confirmed that the request to meet had in fact originated from Mr Shala.<sup>147</sup> Mr Januzi explained that, after Mr Bahtijari’s visit to Witness 1, Mr Shala had met with Mr Bahtijari, but Mr Shala “did not understand” how things stood with Witness 1,<sup>148</sup> since “[Mr Bahtijari] was not able to explain the message [Witness 1] gave him”.<sup>149</sup> As result, according to Mr Januzi, Mr Shala sent Mr Januzi to follow-up on the 5 April 2023 visit,<sup>150</sup> given Mr Januzi’s relationship with Witness 1.<sup>151</sup>

85. The supporting material shows that Mr Januzi brought up the issue of the testimony of Witness 1 and explained that, according to Mr Shala, Witness 1 was a witness against Mr Selimi.<sup>152</sup> Witness 1 did not confirm or deny that he was a witness.<sup>153</sup>

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<sup>144</sup> 112906-TR-AT Part 1 Revised 1-ET, p. 7, lines 2-4. *See also* 116063-TR-ET Part 1, p. 25, lines 2-23, p. 29, lines 15-25.

<sup>145</sup> SPOE00339009-00339013, p. SPOE00339011 (Call Log #16).

<sup>146</sup> 116623-01-TR-AT-ET, p. 3, lines 16-18.

<sup>147</sup> 116623-01-TR-AT-ET, p. 4, lines 13-23. *See also* 112906-TR-AT Part 1 Revised 1-ET, p. 7, lines 16-19.

<sup>148</sup> 116623-01-TR-AT-ET, p. 6, lines 6-9, p. 26, line 19-20. *See also* 112906-TR-AT Part 1 Revised 1-ET, p. 7, lines 19-23.

<sup>149</sup> 112906-TR-AT Part 1 Revised 1-ET, p. 7, lines 16-21, p. 21, lines 8-10; 116623-01-TR-AT-ET, p. 28, line 6.

<sup>150</sup> 116623-01-TR-AT-ET, p. 4, line 21 to p. 5, line 13, p. 5 lines 21-25, p. 6, lines 11-17, p. 7, lines 6-13, 15, p. 8, lines 19-25, p. 9, lines 3-5, 7-8, 16-18, p. 9, line 25 to p. 10, line 1, p. 26, line 4. *See also* 112906-TR-AT Part 1 Revised 1-ET, p. 8, lines 3-9; 116063-TR-ET Part 1, p. 16, lines 17-24, p. 17, lines 18-19, p. 18, lines 3-4 (in which Mr Januzi confirms that he visited Witness 1 at his home at the approximate time indicated above).

<sup>151</sup> *See for instance* 116623-01-TR-AT-ET, p. 6, lines 12-17, p. 8, lines 21-25, p. 26, line 4, p. 31, lines 21-24, p. 46, lines 3-4.

<sup>152</sup> 116623-01-TR-AT-ET, p. 5, line 21-25, p. 7, lines 6-9, p. 9, line 8, p. 31, lines 15-19.

<sup>153</sup> 112906-TR-AT Part 1 Revised 1-ET, p. 10, line 19.

86. According to the supporting material, Mr Januzi conveyed a message from Mr Shala, namely that if there was a possibility that Witness 1 agreed to withdraw his testimony against Mr Selimi, then Mr Shala and others “would be ready to meet any of [Witness 1]’s needs” or, in other terms, “he [Witness 1] helps us, and we [Mr Shala and others] help him”.<sup>154</sup> Mr Januzi recounted that Mr Shala told him “Go and ask him [Witness 1] ‘Is there a way forward for this matter [...] for us to help him and for him to help us’ [...] It is regarding Rexha’s case”.<sup>155</sup> Mr Januzi claimed that he does not know who asked Mr Shala to convey the aforementioned message.<sup>156</sup>

87. The supporting material further shows that during the visit, Witness 1 expressed to Mr Januzi his grievances stemming from his perceived unfair treatment during and after the war in Kosovo, which he attributes, among others, to Messrs Shala, [REDACTED].<sup>157</sup> Witness 1 also voiced his conviction that Messrs [REDACTED], Shala, and [REDACTED] and others would [REDACTED].<sup>158</sup> Witness 1 further recounted the [REDACTED] that he received through Mr Bahtijari.<sup>159</sup> Witness 1 declared eventually that if Mr Shala and/or others offered him 200,000 EUR, they would have a deal.<sup>160</sup> The Pre-Trial Judge understands that Witness 1 would withdraw his testimony against Mr Selimi in exchange for the aforementioned sum of money. In his statement to the SPO, Mr Januzi admitted that Witness 1 asked for 200,000 EUR in exchange for agreeing to withdraw his

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<sup>154</sup> 116623-01-TR-AT-ET, p. 7, lines 11-13, 15.

<sup>155</sup> 116623-01-TR-AT-ET, p. 9, lines 4-5, 7-8.

<sup>156</sup> 116623-01-TR-AT-ET, p. 8, lines 1-2.

<sup>157</sup> See 116623-01-TR-AT-ET, p. 11, lines 20-24, p. 16, lines 20-24, p. 18, lines 5-7, p. 21, lines 2-3, 9-14, 16-18, p. 23, line 14 to p. 23, line 10, p. 26, lines 2-3, 21-23.

<sup>158</sup> 116623-01-TR-AT-ET, p. 21, lines 2-3, 9-14, p. 27, line 10. See also 112906-TR-AT Part 1 Revised 1-ET, p. 21, line 11 to p. 22, line 3.

<sup>159</sup> 116623-01-TR-AT-ET, p. 28, lines 7-9.

<sup>160</sup> 116623-01-TR-AT-ET, p. 21, lines 14-15, p. 25, lines 6-8, p. 26, lines 24-25.



testimony against Mr Selimi.<sup>161</sup> The Pre-Trial Judge finds however that Mr Januzi did not recall accurately the entire conversation with Witness 1, [REDACTED].<sup>162</sup>

88. According to the supporting material, Mr Januzi replied that he would convey Witness 1's request to Mr Shala<sup>163</sup> and/or to "them".<sup>164</sup> Mr Januzi added that he would transmit the response he would receive from Mr Shala and/or others to Witness 1 in person as he does not "speak over the phone about those matters".<sup>165</sup> In his statement to the SPO, Mr Januzi indicated that, after the 12 April 2023 visit, he conveyed his conversation with Witness 1 to Mr Shala. Notably, he affirmed that Mr Shala reportedly declared that he did not know Witness 1, and that there was no reason why Mr Shala should send Witness 1 200,000 EUR.<sup>166</sup> The Pre-Trial Judge considers this statement to be clearly contradicted by [REDACTED].<sup>167</sup> Lastly, upon departing from the home of Witness 1, Mr Januzi remarked that if "they" wanted to lower tensions, they would reward Witness 1 for the damage "they" have caused.<sup>168</sup>

89. The supporting material shows that the aforementioned conversation between Mr Januzi and Witness 1 took place in the presence of the family of Witness 1.<sup>169</sup>

90. As a result of the First Approach and the Second Approach, Witness 1 informed the SPO that he became concerned for the safety of [REDACTED],

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<sup>161</sup> See 116063-TR-ET Part 1, p. 26, line 23 to p. 27, line 4.

<sup>162</sup> Compare in particular 116063-TR-ET Part 1, p. 27, line 7 to p. 29, line 1 with 116623-01-TR-AT-ET, p. 7, lines 11-13, 15, 116623-01-TR-AT-ET, p. 9, lines 4-5, 7-8.

<sup>163</sup> 116623-01-TR-AT-ET, p. 45, lines 11, 14, 16, p. 46, lines 6-7; 112906-TR-AT Part 1 Revised 1-ET, p. 10, line 19.

<sup>164</sup> 116623-01-TR-AT-ET, p. 27, lines 1, 5.

<sup>165</sup> 116623-01-TR-AT-ET, p. 45, lines 18-20, 22.

<sup>166</sup> See 116063-TR-ET Part 1, p. 27, line 7 to p. 29, line 1.

<sup>167</sup> See *supra* paras 86-87.

<sup>168</sup> 116623-01-TR-AT-ET, p. 47, lines 16-17.

<sup>169</sup> 116623-01-TR-AT-ET, p. 3, lines 2-9, p. 47, lines 8-9; 112906-TR-AT Part 1 Revised 1-ET, p. 19, line 13 to p. 20, line 1. See also 112909-TR-ET Part 1, p. 10, lines 9-22. See also 116063-TR-ET Part 1, p. 17, lines 19, 21-22; 116063-TR-ET Part 4, p. 2, lines 5-15 (in which Mr Januzi confirms the presence of the family of Witness 1 during his visit and conversation with Witness 1).

including whether he would be able to defend his family [REDACTED].<sup>170</sup> As regards the seriousness of the security concerns of Witness 1, the supporting material makes reference to one instance when Witness 1 had sent [REDACTED] outside his home to greet Mr Januzi, as Witness 1 thought that “[s]omeone could have come earlier than him [Mr Januzi] and [REDACTED]. [...] they could have [REDACTED]”.<sup>171</sup>

91. Lastly, consistent with the pattern found in relation to the First Approach, the supporting material reveals that after the Second Approach, Mr Januzi called Mr Shala at 22h52 and that less than an hour later, Mr Shala called Mr Januzi, at 23h34.<sup>172</sup> In his statement to the SPO, Mr Januzi admitted having recounted his conversation with Witness 1 to Mr Shala.<sup>173</sup> The supporting material further reveals that, on 4 October 2023, directly after Mr Januzi was interviewed by the SPO, Mr Januzi and his legal counsel during said interview<sup>174</sup> met in person with Mr Shala.<sup>175</sup>

#### (iv) Conclusion

92. The Pre-Trial Judge finds on the basis of the material provided by the SPO that, in the context of the First Approach and the Second Approach: (i) Mr Shala met with and/or contacted Messrs Bahtijari and Januzi, [REDACTED], and instructed them to approach Witness 1 regarding his alleged status as a witness against Mr Selimi; and, (ii) pursuant to Mr Shala’s instructions, Messrs Bahtijari and Januzi tried, jointly with and on behalf of the Suspect, on two separate occasions, within days of each other, to dissuade Witness 1 from testifying in SC Proceedings. The Pre-Trial Judge also finds that Mr Shala had [REDACTED]. In

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<sup>170</sup> 112906-TR-AT Part 1 Revised 1-ET, p. 27, lines 12-14; 112769-112772, p. 112771, para. 13.

<sup>171</sup> 112906-TR-AT Part 1 Revised 1-ET, p. 27, lines 3-10.

<sup>172</sup> SPOE00339009-00339013, p. SPOE00339011 (Call Logs #17-18).

<sup>173</sup> 116063-TR-ET Part 1, p. 27, line 5 to p. 31, line 2.

<sup>174</sup> 116063 TR ET Part 1, p. 1, lines 20-21.

<sup>175</sup> 116158-01.

the view of the Pre-Trial Judge, this demonstrates that the messages were delivered on behalf of Mr Shala to Witness 1 with the specific aim to withdraw his testimony against Mr Selimi and to frighten and/or threaten Witness 1. The Pre-Trial Judge also notes in this regard that, as result of the First Approach and the Second Approach, Witness 1 became concerned for the safety of [REDACTED]. Moreover, the Pre-Trial Judge is of the view that the fact that: (i) the First Approach and the Second Approach took place at the home of Witness 1, in the presence of his family, and within days of each other, (ii) Mr Bahtijari was accompanied by three men, who waited outside the home of Witness 1 during the First Approach, and (iii) Messrs Bahtijari and Januzi referred to each other as well as to the Suspect during said approaches, reinforced the threatening and intimidating nature of the messages delivered to Witness 1.

93. The Pre-Trial Judge further finds in the context of the Second Approach that, through Mr Januzi who relayed the proposal, Mr Shala offered an incentive to Witness 1 in exchange for agreeing not to provide evidence against Mr Selimi.

94. Furthermore, the Pre-Trial Judge is persuaded that Witness 1 has or is likely to provide information to the SITF/SPO and/or any SC Panel about any crimes or offences falling under the SC jurisdiction.

95. Considering the above, the Pre-Trial Judge finds that the acts and statements of Mr Shala in the context of the First Approach and the Second Approach created a serious threat to use force or to inflict serious harm on the well-being, safety, security or privacy of Witness 1 and/or his family. Likewise, the Pre-Trial Judge finds that, in the context of the Second Approach, the acts and statements of Mr Shala amount to a promise of a benefit. Furthermore, the Pre-Trial Judge finds that such acts and statements were undertaken to induce Witness 1 to refrain from testifying in SC Proceedings.

(b) Mental Elements

96. Regarding the mental elements of the offence, the supporting material reveals the deliberate, coordinated, and repeated manner, in which Mr Shala, by serious threat and through a promise of a gift or any other form of benefit, attempted to induce Witness 1 to refrain from testifying in SC Proceedings.

97. More specifically, the supporting material reveals that Mr Shala purposefully targeted [REDACTED], Messrs Bahtijari and Januzi, who had access to the witness, and would thus be better suited to persuade Witness 1 to withdraw his testimony against Mr Selimi.<sup>176</sup> Mr Shala also engaged persistently in numerous and successive communications with Messrs Bahtijari and Januzi ahead and after the First Approach and the Second Approach.<sup>177</sup> Mr Shala further outrightly told Messrs Bahtijari and Januzi that Witness 1 is a witness in the case against Mr Selimi and Witness 1 should withdraw his testimony in that case.<sup>178</sup> In the view of the Pre-Trial Judge, this demonstrates that Mr Shala intended specifically to make Witness 1 withdraw his testimony, that he believed Witness 1 would give against Mr Selimi.

98. Moreover, the supporting material shows that Mr Shala met in person with Mr Bahtijari – with whom Mr Shala is not in frequent contact with – in a location in close proximity to Mr Bahtijari’s place of residence before the First Approach, in order to instruct him specifically to convey the threatening and intimidating messages to Witness 1.<sup>179</sup> Likewise, the supporting material suggests that Mr Shala met in person with Mr Januzi to instruct him specifically to approach Witness 1, as

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<sup>176</sup> This is apparent in particular in the language used by Mr Januzi when recounting his previous conversation with Mr Shala concerning Witness 1, [REDACTED], *see* 116623-01-TR-AT-ET, p. 3, lines 10-14, p. 4, line 24, p. 5, lines 4-5, p. 6, lines 12-13, 15-17, p. 8, lines 21-25, p. 29, lines 12-14, 16-17, 19-20, 22, 24-25, p. 30, lines 1-4, p. 31, lines 21-24, p. 46, lines 3-4. *See also* 116063-TR-ET Part 1, p. 15, line 22 to p. 16, line 6.

<sup>177</sup> *See supra* paras 71, 77-82, 91 and supporting material referenced therein.

<sup>178</sup> *See supra* paras 74, 85 and supporting material referenced therein.

<sup>179</sup> *See supra* para. 74 and supporting material referenced therein.

it occurred during the Second Approach.<sup>180</sup> In the view of Pre-Trial Judge, the fact that such threatening and intimidating messages were delivered in person through the intermediaries, Messrs Januzi and Bahtijari, further confirms that Mr Shala was at the very least aware that the content and/or purpose of the messages to be delivered to Witness 1 was/were illicit.

99. Furthermore, the supporting material reveals that, when Mr Shala was apprised of the fact that the First Approach was inconclusive, i.e. that Mr Bahtijari was unable to confirm whether Witness 1 would withdraw his testimony against Mr Selimi, he turned to Mr Januzi. In the view of the Pre-Trial Judge, Mr Shala did so after making sure that Mr Januzi was in good terms with Witness 1, so that Mr Januzi could ascertain Witness 1's position and find out if there was "a way forward" as regards the matter of the testimony of Witness 1 against Mr Selimi. On that second occasion, Mr Shala offered, through Mr Januzi who relayed the proposal, "to meet any of [Witness 1]'s needs",<sup>181</sup> which denotes an outright and deliberate attempt to influence Witness 1's will or intent to testify or provide evidence against Mr Selimi.

100. Taking into consideration his acts and statements in the context of the First Approach and the Second Approach, the Pre-Trial Judge finds on the basis of the material provided by the SPO that Mr Shala was aware of and intended to use serious threat and a promise of a gift or any other form of benefit to induce Witness 1 to refrain from making a statement, provide a false statement or fail to state true information to the SC in the context of SC Proceedings, within the meaning of Article 387 of the KCC.

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<sup>180</sup> See 116623-01-TR-AT-ET, p. 4, line 21-23 ("Topi came to me"), p. 5, line 1 ("He came and said [...]"), p. 29, line 7-8 ("I told Haxhi at the table, and I told him 'Don't come back with anybody. You can come in person as I don't want to compromise anybody'"), lines 12-14 ("You can come in person. Let's talk. Don't talk to me by phone". He came. I told him, "Now you listen what I have to say. I don't know what Shema told you. Had it been anyone else apart from [REDACTED]"). See also 116623-01-TR-AT-ET, p. 45, lines 18-22.

<sup>181</sup> See *supra* paras 84-86 and supporting material referenced therein.

(c) Conclusion

101. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that the offence of intimidation during criminal proceedings within the meaning of Article 387 of the KCC and Article 15(2) of the Law was committed by Mr Shala between at least 5 April and 12 April 2023.

**2. Obstructing Official Persons in Performing Official Duties – by Serious Threat (Count 1)**

102. In the Indictment, the SPO alleges that Mr Shala, by serious threat, in the context of the First Approach and the Second Approach, obstructed or attempted to obstruct an official person, that is a judge, a prosecutor, an official of a court, a prosecution officer or a person authorised by the court and prosecution office, in performing official duties in the framework of proceedings before the SC.<sup>182</sup>

(a) Material Elements

103. Regarding the material elements of the offence, the Pre-Trial Judge takes note of and relies on the intimidation allegations and related supporting material.<sup>183</sup> The relevant facts are summarised shortly in what follows.

104. The Pre-Trial Judge recalls that the acts and statements of Mr Shala in the context of the First Approach and the Second Approach, as described in Count 3,<sup>184</sup> amount to a serious threat.

105. More specifically, the Pre-Trial Judge recalls that, according to the supporting material, ahead of and after the First Approach and the Second Approach, Mr Shala met with and/or contacted Messrs Bahtijari and Januzi, [REDACTED], and

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<sup>182</sup> Indictment, paras 4-20, 24-25.

<sup>183</sup> See *supra* paras 69 *et seq.*

<sup>184</sup> See *supra* paras 71-95 and supporting material referenced therein.

instructed them to approach Witness 1 with the clear messages that the witness ought to withdraw his testimony against Mr Selimi; and, pursuant to Mr Shala's instructions, Messrs Bahtijari and Januzi carried out the threatening and intimidating approaches, jointly with and on behalf of Mr Shala, against Witness 1. When prompted by Witness 1, Mr Bahtijari confirmed that Mr Shala had threatened that failure to do so could result in [REDACTED]. Moreover, as held above, the following factors reinforced the threatening and intimidating nature of the messages delivered to Witness 1 on behalf of Mr Shala: (i) the First Approach and the Second Approach took place, within days of each other, at the home of Witness 1 in the presence of his family; (ii) Mr Bahtijari was accompanied by three men who waited outside the residence of Witness 1 during the First Approach; and (iii) both Messrs Bahtijari and Januzi made reference to each other as well as to Mr Shala during the approaches. As a result of the First Approach and the Second Approach, Witness 1 became concerned for the safety of [REDACTED], including whether he would be able to defend his family [REDACTED].

106. In addition to the aforementioned, the supporting material shows that in order to ensure the safety of Witness 1 and his family, as well as Witness 1's ability to testify, the SPO: (i) intensified its contacts with Witness 1 due to the increased security concerns of Witness 1;<sup>185</sup> (ii) assigned staff to investigate the First Approach and the Second Approach;<sup>186</sup> and (iii) allocated resources to take new security-related measures, [REDACTED].<sup>187</sup>

107. In the view of the Pre-Trial Judge, Mr Shala's aforementioned acts and statements engendered a serious threat to use force or to inflict serious harm on the well-being, safety, security or privacy of Witness 1 and/or his family.

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<sup>185</sup> See 112769-112772, p. 112769, paras 1-2, p. 112771, paras 13, 16, p. 112772, para. 18; 113181-113182, p. 113181, paras 1-2; 113354-113355; 113356-113356; 113434-113436.

<sup>186</sup> See 113181-113182, p. 113182, para. 3; 113310-113320, p. 113310, paras 1-2.

<sup>187</sup> See 113181-113182, p. 113181, paras 1-2; 113354-113355; 113356-113356.

108. Bearing in mind the impact of the serious threat on Witness 1 and/or his family members, the Pre-Trial Judge is of the view that the serious threat generated by Mr Shala' aforementioned acts and statements could, in principle, hinder and/or delay the work of SC/SPO Officials, namely SPO prosecutors and investigators, as well as SC staff members, in the context of SC Proceedings.<sup>188</sup> For instance, as a result of the serious threat, Witness 1 might decide that he does no longer wish to cooperate with and provide evidence to the SPO, which, in turn, could hinder or delay the SPO's presentation of evidence in a trial before the SC.

109. In this regard, the Pre-Trial Judge observes that, according to the SPO, Mr Shala obstructed or attempted to obstruct SC proceedings by: (i) creating serious fears and concerns for Witness 1 and his family, thereby constituting a strong disincentive for that person to provide (further) information about any crimes under the jurisdiction of the SC; (ii) threatening the ability of the SPO and the SC to effectively investigate and prosecute crimes, including obtaining relevant evidence from potential witnesses; and (iii) thus compelling the SPO and the SC to divert resources and time to address actual and potential consequences to Witness 1 and his family.<sup>189</sup>

110. The Pre-Trial Judge accepts that securing the testimony of a witness who no longer wishes to interact with the SPO or who has been frightened as a result of the serious threat generated by the Suspect's aforementioned acts and statements, may raise particular challenges for the SPO, [REDACTED]. However, in the view of the Pre-Trial Judge, the SPO has not (i) demonstrated any concrete and actual impediment to its investigations that could be imputed to the conduct of the Suspect; (ii) pointed to any act that the SC/SPO was prevented, hindered or delayed in performing as part of their work in SC proceedings; or (iii) demonstrated that, as

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<sup>188</sup> See *similarly* Case 07 Trial Judgment, para. 647; Case 10 Confirmation Decision, para. 102.

<sup>189</sup> Indictment, para. 18.



a result of the diversion of resources and time, the SPO was prevented from or delayed in carrying out its regular investigative functions.<sup>190</sup> The Pre-Trial Judge also considers that the use of resources by investigative or prosecutorial authorities to respond to criminal activity undermining their work is the normal and expected course of action, and is not necessarily evidence of obstruction.<sup>191</sup> Finally, the Pre-Trial Judge is not persuaded that the diversion of SPO or SC resources, as supported by investigative notes provided by the SPO,<sup>192</sup> was so significant that it led to the obstruction of the work of SC/SPO Officials in the context of SC Proceedings.

111. Considering the above, the Pre-Trial Judge finds that the supporting material does not demonstrate that there is a well-grounded suspicion that Mr Shala's acts and statements obstructed the work of SC/SPO Officials in the context of SC Proceedings.

112. Nevertheless, the Pre-Trial Judge recalls that the offence under Article 401(1) and (5) of the KCC can also be committed if the perpetrator only attempts to obstruct an official person in performing official duties.<sup>193</sup> In this regard, the Pre-Trial Judge recalls that he has already found that the Suspect's acts and statements amount to a serious threat within the meaning of Article 401(1) of the KCC, which in principle could result in the obstruction of the work of SC/SPO Officials, in particular SPO prosecutors and investigators, in the context of SC Proceedings.<sup>194</sup> Accordingly, the Suspect fulfilled one of the material elements of the present offence amounting to an attempted form of this offence.

113. For these reasons, the Pre-Trial Judge finds that Mr Shala's acts and statements amounted to attempted obstruction of the work of the SPO/SC Officials, in

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<sup>190</sup> See *similarly* Case 07 Trial Judgment, paras 651, 653; Case 10 Confirmation Decision, para. 104.

<sup>191</sup> See *similarly* Case 07 Trial Judgment, para. 654; Case 10 Confirmation Decision, para. 104.

<sup>192</sup> See *supra* footnote numbers 185-187.

<sup>193</sup> See *supra* para. 67.

<sup>194</sup> See *supra* paras 107-108.

particular SPO prosecutors and investigators, within the context of SC Proceedings, within the meaning of Article 401(1) and (5) of the KCC.

(b) Mental Elements

114. Regarding the mental elements of the offence, the supporting material demonstrates the deliberate, coordinated, and repeated manner, in which the Suspect, by serious threat, attempted to obstruct the work of SC/SPO Officials in the context of SC Proceedings.

115. As held above,<sup>195</sup> the supporting material indicates that Mr Shala purposefully targeted [REDACTED], Messrs Bahtijari and Januzi, who had access to the witness and would thus be better suited to persuade Witness 1 that he should withdraw his testimony against Mr Selimi. Mr Shala also engaged in numerous and successive communications ahead of and after the First Approach and the Second Approach. Mr Shala outrightly told Messrs Bahtijari and Januzi that Witness 1 is a witness in the case against Mr Selimi and that he ought to withdraw his testimony in that case. In this respect, it is recalled that Mr Shala first instructed Mr Bahtijari to deliver the threatening and intimidating messages to Witness 1, and, when he was apprised of the fact that the First Approach was inconclusive, he turned to Mr Januzi, within days of said Approach, to carry out the Second Approach. On that second occasion, Mr Shala offered, through Mr Januzi who relayed the proposal, “to meet any of [Witness 1]’s needs”, which is an outright and deliberate attempt to persuade Witness 1 to refrain from testifying against Mr Selimi. Mr Shala was subsequently informed of the outcome of the Second Approach.<sup>196</sup> Moreover, the fact that Mr Shala met with both his intermediaries, Mr Bahtijari and Mr Januzi, *in person* to deliver his instructions further confirms that Mr Shala was aware that the content and/or purpose of the messages to be delivered to Witness 1 was/were illicit.

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<sup>195</sup> See *supra* paras 97-99.

<sup>196</sup> See *supra* para. 91.

116. In the Pre-Trial Judge's assessment, Mr Shala's statements and acts during the First Approach and the Second Approach translate into a direct intent to obstruct the work of the SPO/SC Officials within the context of SC Proceedings: they show that the Suspect acted with awareness of, and desire for, using the serious threat conveyed through the First Approach and the Second Approach, to deter Witness 1 from cooperating with the SPO/SC, thus, ultimately, obstructing the presentation of witness evidence by SPO/SC Officials, in particular SPO prosecutors and investigators. In the alternative, the Pre-Trial Judge finds that, on the basis of the supporting material, the Suspect was aware that, as a result of the Suspect's coordinated and concerted efforts, Witness 1 would be deterred from cooperating with the SPO/SC, and, this would, ultimately, obstruct the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings. He nevertheless acceded to this possible occurrence.

(c) Conclusion

117. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that the offence of obstructing official persons in performing official duties within the meaning of Article 401(1) and (5) of the KCC and Article 15(2) of the Law was attempted to be committed, by serious threat, by the Suspect, between at least 5 April and 12 April 2023.

**3. Obstructing Official Persons in Performing Official Duties – by Common Action of a Group (Count 2)**

118. In the Indictment, the SPO alleges that in the context of the First Approach and the Second Approach, Mr Shala, by the common action of a group of persons, in which he participated, obstructed or attempted to obstruct an official person, that is a judge, a prosecutor, an official of a court, a prosecution officer or a person

authorised by the court and prosecution office, in performing official duties in the framework of proceedings before the SC.<sup>197</sup>

(a) Material Elements

119. Regarding the material elements of the offence, the Pre-Trial Judge recalls that a “group” as foreseen under Article 113(12) of the KCC, must consist of at least three persons.<sup>198</sup> In the case at hand, the Pre-Trial Judge finds that the supporting material indicates that Mr Shala formed a group comprising at least him and Messrs Januzi and Bahtijari. Moreover, the Pre-Trial Judge finds on the basis of the material provided by the SPO that Messrs Shala, Januzi, and Bahtijari’s actions indicate a joint endeavour to dissuade Witness 1 from testifying in SC Proceedings. The supporting material reveals, in particular, that Messrs Shala, Januzi, and Bahtijari coordinated between each other on several occasions between at least 5 April and 12 April 2023. This is evident from the following considerations.

120. First, the supporting material reveals that prior to the First Approach, Mr Shala met with Mr Bahtijari at a public café and told Mr Bahtijari to deliver the threatening and intimidating messages to Witness 1.<sup>199</sup> Likewise, the supporting material reveals that Messrs Bahtijari and Januzi met in person before and after the First Approach and discussed Witness 1’s alleged status as a witness before the SC.<sup>200</sup>

121. Second, the supporting material shows that during the First Approach, Mr Bahtijari made an explicit reference to Mr Shala as the source of the threatening and intimidating messages against Witness 1; whereas during the Second Approach, Mr Januzi made an equally explicitly reference to Mr Shala as well as to

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<sup>197</sup> Indictment, paras 4-20, 24-25.

<sup>198</sup> See *supra* para. 49.

<sup>199</sup> See *supra* paras 74-75 and supporting material referenced therein.

<sup>200</sup> See *supra* paras 74, 80 and supporting material referenced therein.

Mr Bahtijari and the First Approach.<sup>201</sup> This demonstrates in the view of the Pre-Trial Judge that both the First Approach and the Second Approach were part of the same joint effort to convince Witness 1 to withdraw his testimony in SC Proceedings and that both approaches originated from Mr Shala and were executed by Messrs Januzi and Bahtijari.

122. Third, the supporting material shows that both before and after the First Approach and the Second Approach, Messrs Shala and Januzi, on the one hand, and Messrs Januzi and Bahtijari, on the other hand, engaged in numerous and successive exchanges both in messaging applications and over the telephone.<sup>202</sup> The Pre-Trial Judge is of the view that the timing, sequence, and frequency of said communications is further indicative of Messrs Shala, Januzi, and Bahtijari's concerted effort to dissuade Witness 1 from testifying in SC Proceedings.

123. Fourth, the supporting material shows that Mr Shala acted as the conveyor of instructions to both Messrs Januzi and Bahtijari; whereas Messrs Januzi and Bahtijari were tasked with the delivery of the messages to Witness 1 that he should withdraw his testimony in SC Proceedings, which they personally executed during the First Approach and the Second Approach, as well as to report back on the outcome of the First Approach and the Second Approach.<sup>203</sup> In the view of the Pre-Trial Judge, the division of tasks among Mr Shala and Messrs Januzi and Bahtijari is also reflective of the joint and coordinated nature of their actions.

124. Considering the above, the Pre-Trial Judge is satisfied that Mr Shala participated in a group which, by common action, obstructed or attempted to obstruct the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings, through a joint endeavour aimed at inducing Witness 1 to refrain from testifying in SC Proceedings.

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<sup>201</sup> See *supra* paras 73, 84-87 and supporting material referenced therein.

<sup>202</sup> See *supra* paras 71, 77-82, 91 and supporting material referenced therein.

<sup>203</sup> See *supra* paras 71-91 and supporting material referenced therein.

125. Furthermore, the Pre-Trial Judge recalls that he found under Count 1 that the SPO failed to establish that the acts and statements of Mr Shala obstructed the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings, within the meaning of Article 401(1) and (5) of the KCC.<sup>204</sup> Given that the alleged obstruction under Count 1 relies on the same acts and statements of Mr Shala as pleaded under Count 2, the Pre-Trial Judge considers that the above findings also apply for the present count. As a result, the Pre-Trial Judge finds that the SPO failed to establish that the acts and statements of the Suspect obstructed the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings within the meaning of Article 401(2) and (5) of the KCC.

126. Notwithstanding this, the offence under Article 401(2) and (5) of the KCC can also be committed if the obstruction of an official person in performing official duties has only been attempted.<sup>205</sup> In this regard, the Pre-Trial Judge recalls that he has already established that Mr Shala participated in the common action of a group, within the meaning of Article 401(2) of the KCC, which, in principle, could result in the obstruction of the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings.<sup>206</sup> Accordingly, the Suspect fulfilled one of the material elements of the present offence, amounting to an attempted form of this offence.

127. For these reasons, the Pre-Trial Judge finds that the participation of Mr Shala in a group's common action amounted to attempted obstruction of the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings, within the meaning of Article 401(2) and (5) of the KCC.

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<sup>204</sup> See *supra* para. 111.

<sup>205</sup> See *supra* para. 67.

<sup>206</sup> See *supra* para. 124.

(b) Mental Elements

128. Regarding the mental element of the offence, the Pre-Trial Judge recalls that he found under Count 1 that (i) Mr Shala, by deterring Witness 1 through the First Approach and the Second Approach from cooperating with the SPO/SC, acted with awareness of, and desire for, obstructing the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings; or (ii) in the alternative, that Mr Shala was aware that, as a result of his coordinated and concerted efforts, Witness 1 would be deterred from cooperating with the SPO/SC, and, this would, ultimately, obstruct the work of the SPO/SC Officials, within the context of SC Proceedings, and the Suspect' acceded to this possible occurrence.<sup>207</sup> Given that the alleged intent to obstruct under Count 1 relies on the same acts and statements of the Suspect as pleaded under Count 2, the Pre-Trial Judge considers that the above findings also apply for the present count, in respect of Mr Shala. In addition, the Pre-Trial Judge finds on the basis of the supporting material that Mr Shala's conduct demonstrates that he intended to participate in the common action of a group to achieve the obstructive purpose.

(c) Conclusion

129. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that the offence of obstructing official persons in performing official duties within the meaning of Article 401(2) and (5) of the KCC and Article 15(2) of the Law was attempted to be committed, by Mr Shala, between at least 5 April and 12 April 2023.

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<sup>207</sup> See *supra* paras 114-116.

## B. THE MODES OF LIABILITY CHARGED

### 1. Commission

130. In the Indictment, the SPO alleges that Mr Shala committed the offences under Counts 1-3 pursuant to Article 17 of the KCC and Article 16(3) of the Law.<sup>208</sup>

131. Regarding the objective and subjective elements of the Suspect's physical commission of the aforementioned offences, the Pre-Trial Judge refers to the above findings in Counts 1-3.<sup>209</sup>

132. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that Mr Shala committed the offence under Count 3, within the meaning of Articles 17 and 21 of the KCC and Article 16(3) of the Law. However, as held above,<sup>210</sup> the Pre-Trial Judge finds that the Indictment and supporting material do not demonstrate that there is a well-grounded suspicion that Mr Shala committed, within the meaning of Articles 17 and 21 of the KCC and Article 16(3) of the Law, the offences under Counts 1-2.

### 2. Co-Perpetration

133. The SPO further alleges that, alternatively to their responsibility for commission and attempt, the Suspect co-perpetrated the offences under Counts 1-3 by participating in the commission of the criminal offences, pursuant to Article 31 of the KCC and Article 16(3) of the Law.<sup>211</sup>

134. Regarding the objective elements of this mode of liability, the Pre-Trial Judge finds that the supporting material indicates that, as described in relation to

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<sup>208</sup> Indictment, paras 24-25, 29-30.

<sup>209</sup> See *supra* paras 71-95, 96-100, 103-113, 114-116, 119-127, 128 and supporting material referenced therein.

<sup>210</sup> See *supra* paras 111, 124.

<sup>211</sup> Indictment, paras 24, 27, 29-30.



Counts 1-3,<sup>212</sup> the Suspect acted in a concerted manner, participating in or substantially contributing to the commission of the (attempted) offences enshrined in Count 1 and Count 3, considering the following: (i) the Suspect coordinated with Messrs Bahtijari and Januzi on multiple occasions between at least 5 April and 12 April 2023, (ii) the Suspect instructed specifically both Messrs Bahtijari and Januzi, in person and via numerous exchanges both in messaging applications and over the phone, to carry out the approaches against Witness 1, and (iii) Messrs Bahtijari and Januzi reported back to Mr Shala on the outcome of said approaches.

135. Regarding the subjective element of this mode of liability, the Pre-Trial Judge refers to the above findings in Counts 1 and 3.<sup>213</sup>

136. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that Mr Shala co-perpetrated the offences under Count 1 and Count 3, within the meaning of Articles 21 and 31 of the KCC and Article 16(3) of the Law.

### **3. Assistance**

137. The SPO further alleges that, alternatively to his responsibility under the above modes of liability, Mr Shala provided assistance to Messrs Januzi and Bahtijari and other persons in the commission of the offences under Counts 1-3, pursuant to Article 33 of the KCC and Article 16(3) of the Law.<sup>214</sup>

138. Regarding the objective elements of this mode of liability, the Pre-Trial Judge finds that the supporting material indicates that Mr Shala assisted at least Messrs Januzi and Bahtijari in the commission of the (attempted) offences under Counts 1-3. In this respect, the Pre-Trial Judge recalls his findings that Mr Shala coordinated with Messrs Bahtijari and Januzi both before and after the First

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<sup>212</sup> See *supra* paras 71-95, 103-113, 119-127 and supporting material referenced therein.

<sup>213</sup> See *supra* paras 96-100, 114-116, 128 and supporting material referenced therein.

<sup>214</sup> Indictment, paras 24, 28-30.

Approach and the Second Approach and instructed specifically both Messrs Bahtijari and Januzi, in person and via numerous exchanges both in messaging applications and over the phone, to carry out the intimidating approaches against Witness 1.<sup>215</sup>

139. Regarding the subjective elements of this mode of liability, the aforementioned acts demonstrate the Suspect's direct intention of giving advice and instructions on how to commit the offences under Counts 1-3, creating the conditions for, as well as removing the impediments to, the commission of the offences under Counts 1-3.

140. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that Mr Shala assisted in the commission of the offences under Counts 1-3, within the meaning of Articles 21 and 33 of the KCC and Article 16(3) of the Law.

#### **4. Agreement to Commit Criminal Offences**

141. The SPO further alleges that, alternatively to his responsibility under the above modes of liability, the Suspect entered into an agreement to commit the offences under Counts 1-3 and one or more of the persons who were party to that agreement undertook substantial acts towards the commission of such offences, pursuant to Article 35 of the KCC and Article 16(3) of the Law.<sup>216</sup>

142. Regarding the objective elements of this mode of liability, the Pre-Trial Judge recalls his findings that both before and after the First Approach and the Second Approach, Mr Shala and Messrs Bahtijari and Januzi engaged in numerous exchanges both in messaging applications and over the phone.<sup>217</sup> Moreover, prior to the First Approach, Mr Shala met with Mr Bahtijari at a public café and told

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<sup>215</sup> See *supra* paras 71-95, 119-127 and supporting material referenced therein.

<sup>216</sup> Indictment, paras 24, 27, 29-30.

<sup>217</sup> See *supra* paras 71-72, 77-82, 91 and supporting material referenced therein.

Mr Bahtijari to deliver the messages to Witness 1 that he should withdraw his testimony in the SC Proceedings.<sup>218</sup> Likewise, a few days before the First Approach, Messrs Bahtijari and Januzi met in person and discussed Witness 1's alleged status as a witness before the SC.<sup>219</sup> In this light, the Pre-Trial Judge recalls that during the First Approach, Mr Bahtijari made an explicit reference to Mr Shala as the source of the intimidating messages against Witness 1; whereas during the Second Approach, Mr Januzi made an equally explicitly reference to Mr Shala as well as to Mr Bahtijari and the First Approach. When assessing the context, number, and frequency of the communications between Mr Shala and Messrs Bahtijari and Januzi, together with the references that they made to each other when approaching Witness 1, the Pre-Trial Judge infers that there existed an agreement between at least these three persons to commit the offences charged under Counts 1-3, and that each of them took substantial preparatory steps towards the commission of the offences, for which the Pre-Trial Judge refers to his findings under Counts 1-3.<sup>220</sup>

143. Regarding the subjective element of this mode of liability, the Pre-Trial Judge also refers to the above findings in Counts 1-3.<sup>221</sup>

144. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that Mr Shala agreed to commit the offences under Counts 1-3 and undertook substantial acts towards their commission, within the meaning of Articles 21 and 35 of the KCC and Article 16(3) of the Law.

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<sup>218</sup> See *supra* para. 74 and supporting material referenced therein.

<sup>219</sup> See *supra* para. 74 and supporting material referenced therein.

<sup>220</sup> See *supra* paras 71-95, 103-113, 119-127 and supporting material referenced therein.

<sup>221</sup> See *supra* paras 96-100, 114-116, 128 and supporting material referenced therein.

## 5. Attempt

145. Lastly, the SPO alleges that, in addition or alternatively to his responsibility under the above modes of liability, Mr Shala attempted the commission of the offences under Counts 1-3, pursuant to Article 28 of the KCC and Article 16(3) of the Law.<sup>222</sup>

146. With regard to Count 3, having found that there is a well-grounded suspicion that Mr Shala committed the offence under said count, within the meaning of Articles 17 and 21 of the KCC and Article 16(3) of the Law,<sup>223</sup> the Pre-Trial Judge does not find it necessary to assess the liability of Mr Shala under Article 28 of the KCC and Article 16(3) of the Law.

147. With respect to Counts 1 and 2, regarding the objective elements of this mode of liability, the Pre-Trial Judge finds that the supporting material indicates that the Suspect at the least took action towards the commission of the offences under Counts 1 and 2 by coordinating with Messrs Bahtijari and Januzi and instructing them specifically to execute the intimidating approaches against Witness 1, thus fulfilling one or more of their material elements. As regards the specific acts in which the Suspect engaged, the Pre-Trial Judge refers to the findings under Counts 1 and 2.<sup>224</sup>

148. Regarding the subjective element of this mode of liability, the Pre-Trial Judge refers to the above findings in Counts 1-2.<sup>225</sup>

149. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that Mr Shala attempted to commit the offences under Counts 1-2, within the meaning of Articles 21 and 28 of the KCC and Article 16(3) of the Law.

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<sup>222</sup> Indictment, paras 24, 26, 29-30.

<sup>223</sup> See *supra* para. 132.

<sup>224</sup> See *supra* paras 71-95, 103-113, 119-127 and supporting material referenced therein.

<sup>225</sup> See *supra* paras 114-116, 128 and supporting material referenced therein.

## VII. RELATED REQUESTS FOR MAINTAINING CONFIDENTIALITY

150. As a general rule, Rule 88(1) of the Rules provides that an indictment shall be made public upon confirmation. Further, pursuant to Rules 95(1) and (2)(b) and 102(1)(a) of the Rules, any disclosure of material, including the names of witnesses and victims, will take place after the initial appearance of the Accused, against whom an indictment has been confirmed. In exceptional circumstances, however, pursuant to Rules 88(2) and 105(1) of the Rules, the SPO may apply for the temporary non-disclosure of the indictment, related documents, and the identities of victims and witnesses to continue after confirmation of the indictment or initial appearance of the Accused, as the case may be. It is highlighted that Rule 105(1) measures are provisional in nature, allowing for the protection of vulnerable witnesses and victims until such time as a request for protective measures has been decided.

151. The Pre-Trial Judge refers to the aforementioned findings that the Suspect intimidated Witness 1 through his actions between at least 5 April and 12 April 2023;<sup>226</sup> and as a result of the aforementioned acts, he attempted to hinder and/or delay the work of SC/SPO Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings.<sup>227</sup> The Pre-Trial Judge therefore concludes that the Suspect has an incentive to obstruct the proceedings and, based on his resolve to intimidate Witness 1 and to interfere with SC proceedings, may commit further similar offences.

152. In light of the above, the Pre-Trial Judge finds that the SPO has demonstrated good cause justifying exceptional circumstances that allow, pursuant to Rule 88(2) of the Rules, the temporary non-disclosure to the public of the SPO Submission of Indictment with its annexes (“Related Documents”). The Pre-Trial Judge also finds

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<sup>226</sup> See *supra* paras 71-101 (Count 3).

<sup>227</sup> See *supra* paras 103-129 (Counts 1-2).

that the SPO has demonstrated exceptional circumstances, pursuant to Rule 105(1) of the Rules, justifying interim non-disclosure of the identities of witnesses and victims, as applicable, until appropriate protective measures have been ordered.

153. Upon arrest of Mr Shala and transfer to the SC custody, the Indictment, as confirmed in the present decision (“Confirmed Indictment”), shall be made public,<sup>228</sup> with redactions, as appropriate, after it has been served on the Accused, as per Rule 87(1) of the Rules. The Accused shall be served with the confidential (redacted) Confirmed Indictment pursuant to Rules 87(1) and 105(1) of the Rules. Notwithstanding the confidentiality of the Confirmed Indictment, pursuant to Rule 88(3) of the Rules, the SPO or the Registrar may disclose the (redacted) version or parts of the Confirmed Indictment to authorities of Kosovo, a Third State or another entity, if deemed necessary for the purposes of an investigation or prosecution.

154. The non-disclosure of the Related Documents and supporting material to the Confirmed Indictment shall be maintained until further order of the Pre-Trial Judge, as provided in Rule 88(2) of the Rules. However, the supporting material shall be made available to the Accused with redactions, as appropriate, no later than 30 days after his initial appearance, in accordance with Rules 102(1)(a) and 105(1) of the Rules.

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<sup>228</sup> For the purposes of this decision, public shall mean all persons, organisations, entities, Third States, clients, associations and groups, including the media, other than the judges of the Specialist Chambers (and their staff), the Registry, the SPO, and the Accused.

## VIII. DISPOSITION

155. For the above reasons, the Pre-Trial Judge hereby:

- a. **CONFIRMS** the following charges against Mr Shala:
  - i. intimidation during criminal proceedings, punishable under Articles 17, 21, 31, 33, 35, and 387 of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 3);
  - ii. attempting to obstruct, by serious threat, official persons, including SPO prosecutors and investigators in performing official duties, punishable under Articles 17, 21, 28, 31, 33, 35, and 401(1) and (5) of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 1); and
  - iii. attempting to obstruct, by common action of a group, official persons, including SPO prosecutors and investigators in performing official duties, punishable under Articles 17, 21, 28, 33, 35, and 401(2) and (5) of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 2);
- b. **ORDERS** the Specialist Prosecutor to submit, by **Wednesday, 6 December 2023**, the indictment as confirmed in the present decision, which shall be considered the strictly confidential Confirmed Indictment and *ex parte*, only available to the SPO and the Pre-Trial Judge;
- c. **AUTHORISES** the Specialist Prosecutor to redact any identifying information of witnesses and victims, as applicable, or confidential information from the Related Documents, the Confirmed Indictment, and supporting material, and assign and use provisional pseudonyms to these witnesses and victims, as applicable;

- d. **ORDERS** the Specialist Prosecutor to submit a confidential (redacted) Confirmed Indictment, to be made available to the Accused, by **Wednesday, 6 December 2023**;
- e. **ORDERS** the Registrar to serve on the Accused, in consultation with the SPO, the confidential (redacted) Confirmed Indictment as soon as practicable after his arrest and transfer to SC custody;
- f. **ORDERS** the Specialist Prosecutor to submit a public (redacted) version of the Confirmed Indictment as soon as practicable after the Accused's arrest and transfer to SC custody;
- g. **AUTHORISES** the Specialist Prosecutor and the Registrar to disclose the confidential (redacted) Confirmed Indictment or parts thereof to authorities of Kosovo, a Third State or another entity, if deemed necessary for the purposes of an investigation or prosecution;
- h. **ORDERS** the non-disclosure of the Related Documents and supporting material until further order;
- i. **REQUESTS** the Specialist Prosecutor to provide, by **Monday, 11 December 2023**, strictly confidential and *ex parte* written submissions, if any, as to the proposed redactions to be applied to this decision, in order to make it available to the Defence and the public; and
- j. **ORDERS** the Specialist Prosecutor to submit a request for protective measures, if any, in relation to victims and witnesses, as applicable, identified in the Confirmed Indictment, Related Documents and supporting material, by **Monday, 11 December 2023**.





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**Judge Nicolas Guillou**  
**Pre-Trial Judge**

Dated this Monday, 4 December 2023

At The Hague, the Netherlands.