



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**In:** KSC-BC-2023-10  
Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala

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

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor's Office

**Date:** 31 May 2024

**Language:** English

**Classification:** Confidential

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**Prosecution reply to F00304**

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## I. INTRODUCTION

1. In the Decision,<sup>1</sup> the Pre-Trial Judge invited the Defence of Sabit Januzi and the Defence of Ismet Bahtjari to provide submissions regarding whether a well-grounded suspicion in relation to the Main Amendments<sup>2</sup> proposed by the Specialist Prosecutor's Office ('SPO') to the Revised Case 10 Confirmed Indictment<sup>3</sup> has been established pursuant to Rule 86(4) of the Rules.<sup>4</sup>

2. Januzi has timely made responsive submissions (the 'Submissions').<sup>5</sup> Bahtjari has not.

3. In the Submissions, Januzi wilfully misstates or seeks to depart from established definitions of material elements of Article 387 of the Kosovo Criminal Code (KCC)<sup>6</sup>—namely, 'promise' and 'gift or any other form of benefit'—without providing any support or justification for such departure. Contrary to Defence submissions, a well-grounded suspicion is clearly established by the new evidence underlying the Main Amendments.

## II. SUBMISSIONS

4. As noted by the Pre-Trial Judge, the substance of the Main Amendments is already contained in the Case 11 Confirmed Indictment<sup>7</sup> against Haxhi Shala.<sup>8</sup> Indeed, in the Shala

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<sup>1</sup> Decision on Prosecution Request to Amend the Indictment, KSC-BC-2023-10/F00294, 17 May 2024, Confidential ('Decision'), paras 34, 45, 46(c).

<sup>2</sup> As the term 'Main Amendments' is defined in the Decision, KSC-BC-2023-10/F00294, paras 10, 38.

<sup>3</sup> As the term 'Revised Case 10 Confirmed Indictment' is defined in the Decision, KSC-BC-2023-10/F00294, para.7.

<sup>4</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').

<sup>5</sup> Submissions pursuant to F00294 on whether a well-grounded suspicion is established in relation to the new charge of intimidation on the basis of "promise of a gift or any other form of benefit", KSC-BC-2023-10/F00304, 27 May 2024, Confidential ('Submissions').

<sup>6</sup> 2019 Kosovo Criminal Code, Law No. 06/L-074 ('KCC')

<sup>7</sup> As the term 'Case 11 Confirmed Indictment' is defined in the Decision, KSC-BC-2023-10/F00294, para.3.

<sup>8</sup> See Decision, KSC-BC-2023-10/F00294, para.27.

Confirmation Decision, after noting that ‘Article 387 of the KCC does not define what constitutes “a promise of a gift or any other form of benefit,”’<sup>9</sup> the Pre-Trial Judge provided the following ordinary-meaning definitions of these terms for the purposes of the court’s legal assessment:

- i. ‘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>10</sup>
- ii. ‘[a] “gift” is something, the possession of which is transferred to another without the expectation or receipt of an equivalent; a donation, present’;<sup>11</sup>  
and
- iii. ‘[a] “benefit” is an advantage, profit or good.’<sup>12</sup>

5. Rather than acknowledging the Court’s accepted definitions or offering any reason they should not apply to the assessment of the Main Amendments pursuant to Rule 86(4), Januzi seeks to, without support, rely upon alternate definitions more favourable to his legal position.

6. In particular, without citing to any authoritative source, Januzi provides the following definition of a promise: ‘[a] promise is an unequivocal assurance or

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<sup>9</sup> Public Redacted Version of the Decision on the Confirmation of the Indictment, KSC-BC-2023-11/F00005/RED, 4 December 2023 (‘Shala Confirmation Decision’), para.29.

<sup>10</sup> Shala Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.29 footnote 36 (citing *Oxford English Dictionary (OED) Online* (Oxford University Press 2023), accessed at [https://www.oed.com/dictionary/promise\\_n?tab=meaning\\_and\\_use#28177403](https://www.oed.com/dictionary/promise_n?tab=meaning_and_use#28177403) on 28 November 2023).

<sup>11</sup> Shala Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.29 footnote 37 (citing *OED Online*, accessed at [https://www.oed.com/dictionary/gift\\_n1?tab=meaning\\_and\\_use#3167860](https://www.oed.com/dictionary/gift_n1?tab=meaning_and_use#3167860) on 28 November 2023).

<sup>12</sup> Shala Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.29 footnote 38 (citing *OED Online*, accessed at [https://www.oed.com/dictionary/benefit\\_n?tab=meaning\\_and\\_use#23477071](https://www.oed.com/dictionary/benefit_n?tab=meaning_and_use#23477071) on 28 November 2023).

undertaking.<sup>13</sup> He provides no reason for departing from the Shala Confirmation Decision definition in favour of his own definition, which uniquely requires a promise to be ‘unequivocal.’

7. The definitions adopted by the Pre-Trial Judge in the Shala Confirmation Decision should remain controlling for a number of reasons. First, applying the same definitions provides consistency across the Revised Case 10 Confirmed Indictment and the Case 11 Confirmed Indictment in the joined case. Second, the Pre-Trial Judge has adopted the ordinary-meaning definitions of the terms as provided in the Oxford English Dictionary. It is noteworthy that the definitions provided in the Oxford English Dictionary of other key terms in Article 387—namely, ‘force’, ‘serious threat’ and ‘compulsion’—have been accepted at all levels of judicial review in KSC-BC-2020-07 (‘Case 7’).<sup>14</sup> Finally, also in relation to Article 387, the Court of Appeals has held that the court’s interpretation should be guided by the ordinary meaning of the terms used and the object and purpose of the Law, according to general principles of interpretation.<sup>15</sup>

8. Regarding the object and purpose of the relevant provision of the law, that is, Article 387, it is widely recognized and well established in Kosovo Specialist Chambers jurisprudence that Article 387 places emphasis on the perpetrator’s criminal conduct<sup>16</sup> by proscribing any conduct that may have (or is expected by the perpetrator to have) an

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<sup>13</sup> See Submissions, KSC-BC-2023-10/F00304, para.5.

<sup>14</sup> *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on the Confirmation of the Indictment, KSC-BC-2020-07/F00074, 11 December 2020 (*Gucati and Haradinaj* Confirmation Decision), para.60; *Specialist Prosecutor v. Gucati and Haradinaj*, Trial Judgment, KSC-BC-2020-07/F00611, 18 May 2022 (*Gucati and Haradinaj* Trial Judgment), para.112; *Specialist Prosecutor v. Gucati and Haradinaj*, Appeal Judgment, KSC-CA-2022-01/F00114, 2 February 2023 (*Gucati and Haradinaj* Appeal Judgment), paras 208-230; *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on Requests for Protection of Legality, KSC-SC-2023-01/F00021, 18 September 2023 (*Gucati and Haradinaj* Legality Decision), paras 51-65.

<sup>15</sup> *Gucati and Haradinaj* Appeal Judgment, KSC-CA-2022-01/F00114, para.279.

<sup>16</sup> Shala Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.31; *Gucati and Haradinaj* Appeal Judgment, KSC-CA-2022-01/F00114, para.229; Decision on the Confirmation of the Indictment, KSC-BC-2023-10/F00008/RED, 2 October 2023 (‘Case 10 Confirmation Decision’), para.31.

impact or influence on the statement or information to be given by the person.<sup>17</sup> This interpretation 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>18</sup>

9. Such an understanding is also consistent with the accepted Case 7 interpretation of the analogous ‘serious threat’ limb of Article 387, which focusses on the larger context and decidedly does not require the relevant conduct to be ‘unequivocal.’<sup>19</sup> Nor has such an ‘unequivocal’ conduct requirement been applied by other courts, when interpreting and applying the requirements of similar offences.<sup>20</sup>

10. Therefore, even if one, *arguendo*, accepted Januzi’s contention in the Submissions that the relevant exchange outlined in the new evidence took place as part of a negotiation,<sup>21</sup> it still included a ‘promise of a gift or any other form of benefit’ according to the ordinary meaning of those terms. Januzi had, at minimum, made a ‘declaration or assurance’ to Witness 1, ‘stating a commitment’ to ‘give’ Witness 1 ‘help’ and/or ‘meet any of [Witness

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<sup>17</sup> Shala Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.28; *Gucati and Haradinaj* Confirmation Decision, KSC-BC-2020-07/F00074, para.59; Case 10 Confirmation Decision, KSC-BC-2023-10/F00008/RED, para.28.

<sup>18</sup> Shala Confirmation Decision, KSC-BC-2023-11/F00005/RED, para.31; *Gucati and Haradinaj* Confirmation Decision, KSC-BC-2020-07/F00074, para.62; *Gucati and Haradinaj* Trial Judgment, KSC-BC-2020-07/F00611, para.115; *Gucati and Haradinaj* Appeal Judgement, KSC-CA-2022-01/F00114, para.229; Case 10 Confirmation Decision, KSC-BC-2023-10/F00008/RED, para.31. *See also* *Gucati and Haradinaj* Legality Decision, KSC-SC-2023-01/F00021, para.41.

<sup>19</sup> *See* *Gucati and Haradinaj* Trial Judgment; KSC-BC-2020-07/F00611, paras 558-858; *See Generally* *Gucati and Haradinaj* Appeal Judgement, KSC-CA-2022-01/F00114, paras 224-230

<sup>20</sup> ICC, *Prosecutor v Jean-Pierre Bemba Gomba et al*, ICC-01/05-01/13, Public Redacted Version of Judgement Pursuant to Article 74 of the Statute, 19 October 2016, paras 15, 45, 78 (Obstruction of justice and witness interference are construed in broad terms with many modes of commission); *see also* IRMCT, *Prosecutor v Fatuma et al*, MICT-18-116-A, Judgement, 25 June 2021, para.99 & IRMCT, *Prosecutor v Fatuma et. al*. Transcript 15 March 2021, pp 50-59 (Initial broad discussion regarding payment, which led to payment, was found to be interference with the administration of justice); ICTY, *Prosecutor v Blaskic*, IT-95-14-T, Judgement, 3 March 2000, paras 270, 280 (Interference via instigation has broad application, through express or implied conduct).

<sup>21</sup> Submissions, KSC-BC-2023-10/F00304, paras 5-9.

1's] needs.<sup>22</sup> That further discussion took place regarding the exact form the 'help' would take does not negate the fact that the 'help' had been promised. Moreover, the offer of 'help' clearly corresponds to a 'gift' or a 'benefit': any such help (including the type of financial payment contemplated and discussed) would constitute a donation or present, and/or an advantage, profit, or good. Thus, Januzi's questionable interpretation in the Submissions of what these terms may mean under different articles of the KCC is unpersuasive, especially when considered against the established definitions adopted by the Court.<sup>23</sup>

11. Finally, Januzi's conduct unquestionably violated the object and purpose of Article 387 in that he met with Witness 1 with at least the expectation of having an impact or influence on the statement or information to be given—by transmitting the request for Witness 1 to withdraw his testimony—in a blatant attempt to violate the integrity of criminal proceedings.

### III. CLASSIFICATION

12. This filing is submitted confidentially pursuant to Rule 82(4).

### IV. CONCLUSION


13. For the foregoing reasons, the Pre-Trial Judge should reject the Submissions and find there is a well-grounded suspicion in relation to the Main Amendments.

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<sup>22</sup> See Shala Confirmation Decision, KSC-BC-2023-11/F00005/RED, paras 86, 93.

<sup>23</sup> See Submissions, KSC-BC-2023-10/F00304, para.12.

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At The Hague, the Netherlands