

**Public redacted version of 'ANNEX 1 to
Request to amend pursuant to Rule 90(1)(b)'**



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

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

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 27 February 2024

Language: English

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Public redacted version of 'Amended Indictment'

Specialist Prosecutor's Office

Kimberly P. West

The Specialist Prosecutor, pursuant to her authority under Articles 35(2)(i) and 38(4) of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ('Law'), charges:

HAXHI SHALA

SABIT JANUZI

ISMET BAHTIJARI

with **Criminal Offences Against the Administration of Justice and Public Administration** and **Criminal Offences Against Public Order** punishable under Chapters II, XXXI, and XXXII of the Criminal Code of the Republic of Kosovo, Code No.06/L-074 (2019) ('KCC') and Articles 15(2) and 16(3) of the Law, as set forth below:

I. THE ACCUSED

1. **Haxhi SHALA** was born on 17 March 1970, in Banje, Malisheve, Kosovo. He is a Kosovar national [REDACTED].
2. **Sabit JANUZI** was born on 29 April 1966, in Bërvenik/Brvenik, Kosovo. He is a Kosovar national [REDACTED].
3. **Ismet BAHTIJARI**, also known as 'Shema,' was born on 27 February 1963, in Fushticë e Poshtme/ Donja Fuštica, Kosovo. He is a Kosovar national [REDACTED].

II. STATEMENT OF FACTS

A. Charged Offences

4. All crimes charged in this indictment relate to official proceedings of the Kosovo Specialist Chambers ('KSC'), including investigations of the Specialist Prosecutor's Office ('SPO').

5. [REDACTED] ('Witness 1') is a person who has provided or is likely to provide information to the Special Investigative Task Force ('SITF'), SPO, and/or to any KSC Panel about any crimes or offences falling under KSC jurisdiction.

1) *Obstructing official persons in performing official duties*

6. **Haxhi SHALA, Sabit JANUZI and Ismet BAHTIJARI**, by serious threat and by the common action of a group of persons in which they participated, attempted to obstruct an official person, that is, a judge, a prosecutor, an official of a court, prosecution officer or a person authorised by the court and prosecution office, in performing official duties.

7. As set out below, between at least 5 April 2023 and 12 April 2023, **SHALA, JANUZI and BAHTIJARI**, in co-perpetration with each other and other individuals, coordinated as a group before and after in-person approaches made to Witness 1 by **JANUZI and BAHTIJARI**. Specifically, at **SHALA's** direction, **JANUZI and BAHTIJARI** individually met with Witness 1 in order to induce Witness 1 to withdraw evidence or refrain from providing evidence in official proceedings before the KSC. This conduct demonstrates **SHALA's, JANUZI's and BAHTIJARI's** intent to undermine and obstruct an official person in performing official duties.

First Approach

8. On 5 April 2023, **SHALA** called **JANUZI**. **BAHTIJARI** then also called **JANUZI**.

9. Then, after calling and verifying that Witness 1 was at home, **BAHTIJARI** came to Witness 1's home. **BAHTIJARI** told Witness 1 that **SHALA** had recently approached him and sent him to tell Witness 1 that he should withdraw his testimony.

10. When Witness 1 asked if he or his son would be killed if Witness 1 testified, **BAHTIJARI** replied in the affirmative.

11. **BAHTIJARI** left Witness 1's home and walked to a nearby car where two men were waiting, with a third person in the driver's seat.

12. As a result of this approach, Witness 1 became concerned for the safety of his family.

13. Later on 5 April 2023, after **BAHTIJARI** had visited Witness 1, **SHALA** and **JANUZI**, and separately **JANUZI** and **BAHTIJARI**, engaged in numerous text and phone contacts, including contacts between **SHALA** and **JANUZI** to coordinate an in-person meeting that same evening.

14. In the days that followed, **SHALA** and **JANUZI**, amongst others, remained in contact, including connecting by phone at least four times between 6 April and 9 April 2023.

Second Approach

15. On 12 April 2023, shortly after calling **SHALA**, **JANUZI** went to Witness 1's home. At Witness 1's home, **JANUZI** told Witness 1 that **SHALA** had asked **JANUZI** to follow-up on **BAHTIJARI**'s visit and to find out what Witness 1 planned to do and how the matter of his testimony could be addressed.

16. Specifically, **JANUZI** told Witness 1 that **SHALA** had asked **JANUZI** to convey the message that if Witness 1 withdrew his testimony, then **SHALA** and unnamed others would provide him with 'help.' Witness 1 responded that if **SHALA** and/or the others brought him 200,000 euros, they would have a deal.

17. Witness 1 did not confirm or deny being a witness. **JANUZI** said he would tell 'them' what Witness 1 had said.

18. Shortly after his 12 April 2023 visit to Witness 1, **JANUZI** again called **SHALA**.

19. As a result of the second approach, Witness 1 was further concerned for the safety of himself and his family.

20. **SHALA, JANUZI and BAHTIJARI** (i) created serious fears and concerns for a person, Witness 1, who has or is likely to provide information to the SITF, SPO, and/or to any KSC Panel about any crimes or offences falling under KSC jurisdiction, thereby constituting a strong disincentive for that person to provide (further) information about any crimes under KSC jurisdiction; (ii) threatened the KSC/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 KSC proceedings.

21. Regarding the impact on SPO and KSC time and resources, these include: the involvement of multiple SPO and KSC staff in otherwise unnecessary additional contacts with Witness 1 in order to ensure Witness 1's safety and ability to testify; the expenditure of SPO resources to investigate the events recounted in this Indictment; and the expenditure of SPO and KSC time and resources to take new security-related measures.

22. As set out in paragraphs 8 to 19 above, **SHALA, JANUZI and BAHTIJARI** had the requisite intent and knowledge for the crimes of (i) by serious threat, obstructing official persons in performing official duties, and (ii) participating in a group of persons which by common action attempted to obstruct an official person in performing official duties.

2) *Intimidation during criminal proceedings*

23. Between at least 5 April 2023 and 12 April 2023, **SHALA, JANUZI and BAHTIJARI** 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 another person,

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. **SHALA's**, **JANUZI's** and **BAHTIJARI's** acts demonstrate their intent to intimidate Witness 1 and to induce Witness 1 to withdraw evidence or refrain from providing evidence in KSC official proceedings.

24. Specifically, as set forth in paragraphs 8 to 19 (which are fully incorporated here by reference):

- i. On 5 April 2023, at **SHALA's** direction, **BAHTIJARI** approached Witness 1 and (i) told Witness 1 that Witness 1 should withdraw his testimony in KSC proceedings, and (ii) confirmed to Witness 1 that failure to do so could result in Witness 1 or Witness 1's son being killed.
- ii. On 12 April 2023, at **SHALA's** direction, **JANUZI** approached Witness 1 to follow up after **BAHTIJARI's** earlier approach and to relay the offer that **SHALA** and unnamed others would help Witness 1 if he agreed to withdraw his testimony.
- iii. Before and after approaching Witness 1, **JANUZI** and **BAHTIJARI** communicated and coordinated with each other and **SHALA**.

25. As set out in paragraphs 8 to 19 above, **SHALA**, **JANUZI** and **BAHTIJARI** had the requisite intent and knowledge for the crime of committing intimidation during criminal proceedings.

B. Modes of Liability

26. By their acts described above, **SHALA**, **JANUZI** and **BAHTIJARI** are individually criminally responsible for committing or attempting to commit each of

the crimes charged in this indictment through the following modes of liability. They had the requisite knowledge and intent for each mode of liability and crime.

1) *Commission and attempt*

27. **SHALA, JANUZI and BAHTIJARI** committed the crime alleged in Count 3 through their acts described above pursuant to KCC Article 17(1).

28. In addition, or in the alternative, through these acts, **SHALA, JANUZI and BAHTIJARI** attempted, within the meaning of KCC Article 28, the commission of the crimes.

2) *Co-perpetration and agreement to commit criminal offence*

29. By their acts described above, **SHALA, JANUZI and BAHTIJARI** (i) jointly committed the crimes alleged in Count 1 and Count 3 in co-perpetration, pursuant to KCC Article 31, by participating in the commission of the criminal offence or by substantially contributing to its commission in any other way, and/or (ii) pursuant to KCC Article 35, entered into an agreement to commit the crimes and one or more of the persons who were party to that agreement undertook substantial acts towards the commission of the crime. **SHALA, JANUZI and BAHTIJARI** substantially contributed to and undertook substantial acts toward the commission of the crimes in furtherance of their common purpose or agreement including in one or more of the following ways, as described in more detail in paragraphs 8 to 19 above:

- a. directing, co-ordinating, and/or otherwise participating in approaches to and meetings with Witness 1, an individual whom they believed to have provided or to be likely to provide evidence to the KSC/SPO;
- b. pressuring Witness 1 to recant his statement, provide false information, or refrain from testifying;

- c. directing, co-ordinating and/or otherwise participating in approaches to and meetings with Witness 1 that employed threatening behaviour and language to intimidate Witness 1; and
- d. directing, co-ordinating and/or otherwise participating in unwanted contacts with Witness 1, including through phone calls and in-person meetings.

3) *Assistance*

30. Finally, through one or more of the acts described at paragraphs 8 to 19 above, **SHALA, JANUZI** and **BAHTIJARI** provided assistance to each other and other persons in the commission of the crimes.

III. STATEMENT OF CRIMES

31. Through the acts described above, **SHALA, JANUZI** and **BAHTIJARI** committed or attempted, alone, in co-perpetration, and/or in agreement, and/or assisted in the crimes charged in this indictment.

32. **SHALA, JANUZI** and **BAHTIJARI** are individually criminally responsible for:

Count 1: OBSTRUCTING OFFICIAL PERSONS IN PERFORMING OFFICIAL DUTIES, by serious threat, between at least 5 and 12 April 2023, a CRIMINAL OFFENCE AGAINST PUBLIC ORDER, punishable under KCC Articles 17, 21, 28, 31, 33, 35, and 401(1) and (5), and Articles 15(2) and 16(3) of the Law;

Count 2: OBSTRUCTING OFFICIAL PERSONS IN PERFORMING OFFICIAL DUTIES, by participating in the common action of a group, between at least 5 and 12 April 2023, a CRIMINAL OFFENCE AGAINST PUBLIC ORDER, punishable under KCC Articles 17, 21, 28, 33, 35, and 401(2) and (5), and Articles 15(2) and 16(3) of the Law; and

Count 3: INTIMIDATION DURING CRIMINAL PROCEEDINGS, between at least 5 and 12 April 2023, a CRIMINAL OFFENCE AGAINST THE ADMINISTRATION OF JUSTICE AND PUBLIC ADMINISTRATION, punishable under KCC Articles 17, 21, 31, 33, 35, and 387, and Articles 15(2) and 16(3) of the Law.

All sections of this indictment should be read in conjunction with one another.



Kimberly P. West

Specialist Prosecutor

Tuesday, 27 February 2024

At The Hague, the Netherlands.