



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

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

Before: Pre-Trial Judge
Judge Marjorie Masselot

Registrar: Dr Fidelma Donlon

Date: 08 July 2024

Language: English

Classification: Public

Public Redacted Version of Decision on the Confirmation of Amendments to the Indictment and Related Matters

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 39 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rules 9(5)(a), 76, 86(3)-(5) and (9), and 90(1)(b) and (2)-(4), 92, 97 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 2 October 2023, the Pre-Trial Judge confirmed the indictment against Sabit Januzi ("Mr Januzi") and Ismet Bahtijari ("Mr Bahtijari") ("Case 10 Confirmation Decision").² On 4 October 2023, the Specialist Prosecutor's Office ("SPO") filed the indictment against Mr Januzi and Mr Bahtijari, as confirmed by the Pre-Trial Judge ("Case 10 Confirmed Indictment").³
2. On 10 November 2023, the SPO filed a request seeking leave to amend the Case 10 Confirmed Indictment, in particular to correct: (i) the spelling of Mr Bahtijari's last name; and (ii) evidentiary details relevant to material facts, consistent with revisions to a transcript relied upon in the supporting materials of the Case 10 Confirmed Indictment ("First Amendment").⁴
3. On 4 December 2023, the Pre-Trial Judge confirmed the indictment against Haxhi Shala ("Mr Shala") ("Case 11 Confirmation Decision").⁵ On 6 December

¹ KSC-BC-2023-10, F00001, President, *Decision Assigning a Pre-Trial Judge*, 11 September 2023, public; KSC-BC-2023-11, F00001, President, *Decision Assigning a Pre-Trial Judge*, 20 November 2023, public.

² KSC-BC-2023-10, F00008, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 2 October 2023, strictly confidential and *ex parte*. A confidential redacted version and a public redacted version of the decision were filed on 12 October 2023, F00008/CONF/RED and F00008/RED. A corrected version of the public redacted version of the decision was filed on 12 October 2023, F00008/RED/COR.

³ KSC-BC-2023-10, F00010, Specialist Prosecutor, *Submission of Confirmed Indictment*, 4 October 2023, strictly confidential and *ex parte*, with Annex 1, strictly confidential. A public redacted version of the submission and of the Annex were filed on 6 October 2023, F00016 and F00016/A01.

⁴ KSC-BC-2023-10, F00098, Specialist Prosecutor, *Prosecution Request for Leave to Amend the Indictment*, 10 November 2023, public, with Annex 1, strictly confidential, and Annex 2, public.

⁵ KSC-BC-2023-11, F00005, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 4 December 2023, confidential. A public redacted version of the decision was filed on 30 January 2024, F00005/RED.

2023, the SPO filed the indictment against Mr Shala, as confirmed by the Pre-Trial Judge (“Case 11 Confirmed Indictment”).⁶

4. On 13 December 2023, the SPO filed a request to join the case against Mr Januzi and Mr Bahtijari (“Case 10”) with the case against Mr Shala (“Case 11”) (“Request for Joinder”).⁷

5. On 12 January 2024, in support of the Request for Joinder and pursuant to an order of the Pre-Trial Judge,⁸ the SPO filed in Case 10 and Case 11 a proposed joint indictment (“Joint Indictment”) and joint Rule 86(3)(b) outline (“Joint Rule 86(3)(b) Outline”).⁹ In the Joint Indictment, the SPO included the First Amendment and further amendments with respect to Case 10, namely the factual allegations that Mr Januzi conveyed to [REDACTED] (“Witness 1”) the offer of Mr Shala that he and unnamed others would “help” Witness 1 if he agreed to withdraw his testimony, to which Witness 1 responded that, if Mr Shala and/or the others brought him 200,000 Euros, they would have a deal (“Second Amendment”).¹⁰

6. On 8 February 2023, the Pre-Trial Judge issued a decision (i) granting the Request for Joinder, and (ii) granting the SPO leave to amend the Case 10 Confirmed Indictment in relation to the First Amendment, while rejecting the

⁶ KSC-BC-2023-11, F00007, Specialist Prosecutor, *Submission of Confirmed Indictment*, 6 December 2023, public, with Annex 1, confidential. A public redacted version of the submission and of the Annex were filed on 12 December 2023, F00013 and F00013/A01.

⁷ KSC-BC-2023-10, F00132, Specialist Prosecutor, *Prosecution Request for Joinder*, 13 December 2023, public; KSC-BC-2023-11, F00016, Specialist Prosecutor, *Prosecution Request for Joinder*, 13 December 2023, public.

⁸ KSC-BC-2023-10, Transcript of Hearing, 14 December 2023, public, p. 132, line 20 to p. 133, line 10; KSC-BC-2023-11, Transcript of Hearing, 15 December 2023, public, p. 37, line 8 to p. 38, line 23.

⁹ KSC-BC-2023-10, F00146, Specialist Prosecutor, *Submission of Joint Indictment*, 12 January 2024, public, with Annexes 1-2, confidential; KSC-BC-2023-11, F00031 Specialist Prosecutor, *Submission of Joint Indictment*, 12 January 2024, public, with Annexes 1-2, confidential (collectively, “Joint Indictment Submissions”).

¹⁰ Annex 1 to Joint Indictment Submissions, paras 16-17.

Second Amendment (“Joinder Decision”).¹¹ The Pre-Trial Judge thus ordered the SPO to file an amended version of the Case 10 Confirmed Indictment, incorporating only the First Amendment.¹² The Pre-Trial Judge further invited the SPO to file a proper request with respect to the Second Amendment, in accordance with the provisions of Rule 86 of the Rules.¹³ The Pre-Trial Judge also considered the Joint Indictment non-operative, and indicated that the joint case will proceed under the case record number KSC-BC-2023-10 and, at that stage, on the basis of the Case 10 Confirmed Indictment and Case 11 Confirmed Indictment.¹⁴

7. On 16 February 2024, pursuant to the Joinder Decision, the SPO filed an amended version of the Case 10 Confirmed Indictment, incorporating the First Amendment (“Revised Case 10 Confirmed Indictment”).¹⁵ On the same day, the SPO filed its Pre-Trial Brief and accompanying materials.¹⁶

8. On 27 February 2024, pursuant to the Joinder Decision and Rule 90(1)(b) of the Rules, the SPO filed a request to amend the Revised Case 10 Confirmed Indictment and the Case 11 Confirmed Indictment (“Request”).¹⁷ In the Request, the SPO also re-submitted the Joint Indictment¹⁸ as well as the Joint Rule 86(3)(b) Outline.¹⁹

9. On 17 May 2024, the Pre-Trial Judge: (i) granted the SPO leave to amend the Revised Case 10 Confirmed Indictment, as well as the Rule 86(3)(b) Outline (“First

¹¹ KSC-BC-2023-10, F00161, Pre-Trial Judge, *Decision on Request for Joinder and Amendment of the Indictment*, 8 February 2024, confidential; a public redacted version of the decision was issued on the same day, F00161/RED; KSC-BC-2023-11, F00041, Pre-Trial Judge, *Decision on Request for Joinder and Amendment of the Indictment*, 8 February 2024, confidential; a public redacted version of the decision was issued on the same day, F00041/RED.

¹² Joinder Decision, para. 58(d).

¹³ Joinder Decision, paras 55, 58(e).

¹⁴ Joinder Decision, paras 55, 56(i), 58.

¹⁵ KSC-BC-2023-10, F00176, Specialist Prosecutor, *Submission of Amended Indictment*, 16 February 2024, public, with Annex 1, confidential, and Annex 2, public.

¹⁶ KSC-BC-2023-10, F00177, Specialist Prosecutor, *Submission of Prosecution Pre-Trial Brief, Witness and Exhibit Lists, and Rule 109(c) Chart*, 16 February 2024, public, with Annexes 1-4, confidential.

¹⁷ KSC-BC-2023-10, F00189, Specialist Prosecutor, *Request to Amend Pursuant to Rule 90(1)(b)*, 27 February 2024, confidential, with Annexes 1-2, confidential.

¹⁸ Annex 1 to the Request.

¹⁹ Annex 2 to the Request.

Decision on Request to Amend”); and (ii) ordered the Parties to file their responses and reply, as the case may be, on the question of whether the supporting material to the amendments supports a finding of well-grounded suspicion pursuant to Rule 86(4) of the Rules.²⁰

10. On 27 May 2024, the Defence for Mr Januzi filed its response to the Request (“Response”).²¹ The Defence for Mr Bahtijari did not file a response to the Request.

11. On 31 May 2024, the SPO replied to the Response.²²

II. SUBMISSIONS

12. The SPO seeks the confirmation of the following amendment, as reflected in the Joint Indictment, namely: adding for Mr Januzi and Mr Bahtijari, the “promise of gift or any other form of benefit” limb of intimidation during criminal proceedings under Article 387 of the 2019 Criminal Code of Kosovo, Code No. 06/L-074 (“KCC”)²³ and the factual allegations in support thereof, i.e. “Specifically, [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.’ Witness 1 responded that if [Mr Shala] and/or the others brought him 200,000 euros, they would have a deal”²⁴ and “[...] to relay the offer that [Mr Shala] and unnamed others would help Witness 1 if he agreed to withdraw his testimony” (“Main Amendment”).²⁵

²⁰ KSC-BC-2023-10, F00294, Pre-Trial Judge, *Decision on Prosecution Request to Amend the Indictment*, 17 May 2024, confidential.

²¹ KSC-BC-2023-10, F00304, Defence for Mr Januzi, *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”*, 27 May 2024, confidential.

²² KSC-BC-2023-10, F00313, Specialist Prosecutor, *Prosecution Reply to F00304* (“Reply”), 31 May 2024, public.

²³ Request, para. 1. *See* Annex 1 of the Request, para. 23.

²⁴ Request, para. 1. *See* Annex 1 of the Request, para. 16.

²⁵ Request, para. 1. *See* Annex 1 of the Request, para. 24.

13. The SPO submits that the Main Amendment is factually supported.²⁶

14. The Defence for Mr Januzi submits that the supporting material relied upon by the SPO in support of the Main Amendment is incapable of establishing a well-ground suspicion in relation to the new proposed charge of intimidation on the basis of a “promise of a gift or any other form of benefit”, contrary to Article 387 of the KCC and, accordingly, the new charge should be dismissed.²⁷

15. More specifically, the Defence for Mr Januzi contends that the supporting material establishes only negotiations falling short of the threshold of a “promise” within the meaning of Article 387 of the KCC, which the Defence for Mr Januzi defines as an unequivocal assurance or undertaking.²⁸

16. The Defence for Mr Januzi further maintains that the supporting material does not reveal the existence of “a gift” and references in the supporting material to “help” and “being” ready to meet [Witness 1’s] needs” do not amount to a form of “benefit”, within the meaning of Article 387 of the KCC.²⁹ According to the Defence for Mr Januzi, the KCC repeatedly characterises “gifts or benefits” in the context of offences concerning inducements, as things (whether property or some other mean) that can be confiscated.³⁰ The Defence for Mr Januzi thus argues that “help” and being “ready to meet [Witness 1’s] needs” is not a benefit that can be confiscated, neither identifiable property or an identifiable mean.³¹

17. The SPO replies that, in the Case 11 Confirmation Decision, the Pre-Trial Judge, having noted that Article 387 of the KCC does not define what constitutes “a promise of a gift or any other form of benefit”, provided ordinary-meaning definitions of these terms for the purposes of the legal assessment.³² The SPO

²⁶ Request, paras 2-4, 12.

²⁷ Response, paras 3, 14-15.

²⁸ Response, paras 4-9.

²⁹ Response, paras 10-11.

³⁰ Response, para. 12.

³¹ Response, para. 13.

³² Reply, para. 4.

contends that the Defence for Mr Januzi seeks to rely upon alternate definitions more favourable to its legal position without support.³³

18. The SPO maintains that the definitions adopted by the Pre-Trial Judge in the Case 11 Confirmation Decision should remain controlling for the following reasons: (i) applying the same definitions ensures consistency across the Case 10 Revised Confirmed Indictment and the Case 11 Confirmed Indictment; (ii) the definitions provided in the Oxford English Dictionary of other key terms in Article 387 of the KCC – namely, “force”, “serious threat” and “compulsion” – have been accepted at all levels of judicial review in the case of *The Specialist Prosecutor v. Hysni Gucati and Nasim Haradinaj* (KSC-BC-2020-07); and (iii) the Court of Appeals has held in relation to Article 387 of the KCC that the Panel’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.³⁴

19. The SPO also submits, as regards the object and purpose of Article 387 of the KCC, that it is widely recognised and well-established in the jurisprudence of the Specialist Chambers (“SC”) that said Article places emphasis on the perpetrator’s criminal conduct by proscribing 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.³⁵ According to the SPO, such interpretation comports best with the purpose of Article 387 of the KCC 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.³⁶

³³ Reply, paras 5-6, 10.

³⁴ Reply, para. 7.

³⁵ Reply, para. 8.

³⁶ Reply, para. 8.

20. The SPO further contends that Article 387 of the KCC does not require the conduct at issue to be “unequivocal”.³⁷

21. The SPO maintains that, even if the Defence for Mr Januzi’s contention that the relevant exchange outlined in the new evidence took place as part of a negotiation was accepted, the conduct of Mr Januzi still includes a “promise of a gift or any other form of benefit” according to the ordinary meaning of those terms, since Mr Januzi has, at minimum, made a “declaration or assurance” to Witness 1, “stating a commitment” to “give” Witness 1 “help” and/or “meet any of [Witness 1’s] needs”.³⁸ According to the SPO, that further discussion took place regarding the exact form the “help” would take, does not negate the fact that “help” has been promised by Mr Januzi.³⁹

22. Furthermore, the SPO posits that, contrary to the Defence of Mr Januzi’s assertions, 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.⁴⁰

23. The SPO concludes that the Pre-Trial Judge should reject the Response and find that there is a well-grounded suspicion in relation to the Main Amendment.⁴¹

III. APPLICABLE LAW

24. Pursuant to Article 39(1) and (2) of the Law and Rule 86(4) of the Rules, 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

³⁷ Reply, para. 9.

³⁸ Reply, para. 10.

³⁹ Reply, para. 10.

⁴⁰ Reply, para. 10.

⁴¹ Reply, para. 13.

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.

25. Pursuant to Article 39(8) of the Law and Rule 90(1)(b) of the Rules, after the indictment is confirmed but before the trial has begun, the Specialist Prosecutor may, with the permission of the Pre-Trial Judge, having heard the parties, amend the indictment. Rule 90(2) of the Rules provides that Rule 86(3) and (4) of the Rules applies *mutatis mutandis* where the Specialist Prosecutor seeks to amend an indictment and include new charges.

26. Pursuant to Article 39(8) of the Law and Rule 90(3) of the Rules, if the Specialist Prosecutor seeks to add new charges or to substitute more serious charges, the Pre-Trial Judge shall review such charges and hold an initial hearing. If the accused has already appeared before a Panel in accordance with Rule 92 of the Rules, a further appearance shall be held as soon as practicable.

27. Pursuant to Rule 90(4) of the Rules, the Defence shall be granted twenty-one (21) days to file preliminary motions pursuant to Rule 97 of the Rules in respect of the new charge.

28. Pursuant to Rule 76 of the Rules, any response to a motion shall be filed within ten (10) days of the motion and any reply shall be filed within five (5) days of the response.

29. Pursuant to Rule 9(5)(a) of the Rules, the Panel may *proprio motu* reduce any time limit prescribed by the Rules.

IV. LEGAL REQUIREMENTS

A. NATURE AND SCOPE OF REVIEW

30. The Pre-Trial Judge recalls the interpretation of the nature and scope of the indictment review process.⁴² This interpretation equally applies in the present case and, thus, the Pre-Trial Judge incorporates it by way of reference.

B. ELEMENTS OF THE OFFENCE AND MODES OF LIABILITY

31. The Pre-Trial Judge recalls the interpretation of the elements of the offence of intimidation during criminal proceedings pursuant to Article 387 of the KCC⁴³ and of the modes of liability,⁴⁴ which she incorporates by way of reference.

32. The Pre-Trial Judge will only elaborate on the “promise of gift or other form of benefit” limb of intimidation during criminal proceedings under Article 387 of the KCC which is the subject of the Main Amendment.

33. The Pre-Trial Judge recalls that, as observed in the Case 11 Confirmation Decision, Article 387 of the KCC does not define what constitutes “a promise of a gift or any other form of benefit”.⁴⁵ The Pre-Trial Judge notes in this regard that it is well-established in the SC jurisprudence that, under such circumstances, a Panel can be guided by the ordinary meaning of the terms used and the object and purpose of the relevant law, in accordance with general principles of interpretation.⁴⁶

⁴² Case 10 Confirmation Decision, paras 23-24, with further references to case law; Case 11 Confirmation Decision, paras 23-25.

⁴³ Case 10 Confirmation Decision, paras 26-35, with further references to case law; Case 11 Confirmation Decision, paras 26-35.

⁴⁴ Case 10 Confirmation Decision, paras 55-68, with further references to case law; Case 11 Confirmation Decision, paras 55-67.

⁴⁵ See Case 11 Confirmation Decision, para. 29.

⁴⁶ See KSC-CA-2022-01, F00114, Court of Appeals, *Appeal Judgment*, 2 February 2023, public, para. 279; KSC-BC-2020-06, IA029/F00005, Court of Appeals, *Public Redacted Version of Decision on Veseli and Krasniqi Appeal against Second Decision on Specialist Prosecutor’s Bar Table Motion* (“Case 06 Appeals

34. *Definitions in Case 11 Confirmation Decision.* The Pre-Trial Judge recalls that, according to their ordinary meaning: (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;⁴⁷ (ii) a “gift” is something, the possession of which is transferred to another without the expectation or receipt of an equivalent; a donation, present;⁴⁸ (iii) a “benefit” is an advantage, profit or good.⁴⁹

35. The Pre-Trial Judge notes that the Defence for Mr Januzi defines the term “promise” as an unequivocal assurance or undertaking⁵⁰ whereas the SPO replies that Article 387 of the KCC does not require the conduct at issue to be “unequivocal”.⁵¹ The Pre-Trial Judge also notes that, according to the Defence for Mr Januzi, the KCC repeatedly characterises “gifts” or “benefits” in the context of offences concerning inducements, as things (whether property or some other mean) that can be confiscated.⁵²

36. *Literal and Contextual Meaning.* The Pre-Trial Judge considers that the Defence for Mr Januzi seeks to rely on more restrictive definitions without substantiating or persuasively supporting its proposition that the “promise” must be

Decision”), 23 August 2023, public, paras 26-27; IA009/F00030, Court of Appeals, *Decision on Appeals Against “Decision on Motions Challenging the Jurisdiction of the Specialist Chambers”*, 23 December 2021, public, para. 139. See also KSC-CC-PR-2017-01, F00004, Constitutional Court, *Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office*, 26 April 2017, public, para. 13.

⁴⁷ Case 11 Confirmation Decision, para. 29 referring to OED Online (Oxford University Press, 2023) <https://www.oed.com/dictionary/promise_n?tab=meaning_and_use#28177403> accessed 28 November 2023.

⁴⁸ Case 11 Confirmation Decision, para. 29 referring to OED Online (Oxford University Press, 2023) <https://www.oed.com/dictionary/gift_n1?tab=meaning_and_use#3167860> accessed 28 November 2023.

⁴⁹ Case 11 Confirmation Decision, para. 29 referring to OED Online (Oxford University Press, 2023) <https://www.oed.com/dictionary/benefit_n?tab=meaning_and_use#23477071> accessed 28 November 2023.

⁵⁰ See *supra* para. 15.

⁵¹ See *supra* para. 20.

⁵² Response, para. 12.

“unequivocal” or amount to an “undertaking”. Whether the promise is unequivocal or amounts to an undertaking is a matter of evidence to be discussed at trial.

37. The Pre-Trial Judge finds the Defence for Mr Januzi to be equally restrictive in its interpretation of “gifts” or “benefits”, which it argues must consist of “things (whether property or some other mean) that can be confiscated”. To this end, the Defence for Mr Januzi refers to: (i) Article 92(1) of the KCC entitled “Confiscation of means and material benefits of criminal offences”; (ii) Article 212(5) of the KCC entitled “Giving or receiving a bribe in relation to voting”; (iii) Article 423(4) of the KCC entitled “Giving bribes to foreign public official or foreign official persons”; and (iv) Article 424(3) of the KCC entitled “Trading in influence”.⁵³

38. The Pre-Trial Judge considers that, while the meaning of Article 387 of the KCC is not to be construed in isolation, it is to be interpreted in the context of other *relevant* provisions.⁵⁴ The Pre-Trial Judge notes that Article 92(1) of the KCC does not concern an offence of inducement and therefore finds it irrelevant. As regards Articles 212, 423 and 424 of the KCC, the Pre-Trial Judge notes that these provisions employ the terms “bribe”, “gift”, “advantage” or “benefit”. Moreover, the Pre-Trial Judge notes that Articles 212(5), 423(4), and 424(3) of the KCC provide that “The gift or benefit received or offered contrary to [these Articles] shall be confiscated” and, thus, indicate that a gift or benefit under these Articles must take a certain form. However, the same provision is not included under Article 387 of the KCC. Therefore, no contextual conclusion can be drawn. Thus, the Pre-Trial Judge finds references to Articles 423(4) and 424(3) of the KCC likewise not pertinent to define the terms “gift” or “benefit” as used under Article 387 of the KCC and, accordingly, rejects the Defence for Mr Januzi’s submissions.

⁵³ Response, footnote 13.

⁵⁴ See *similarly* Case 06 Appeals Decision, para. 26.

39. *Object and Purpose.* In addition, in the view of the Pre-Trial Judge, the object and purpose of Article 387 of the KCC also militate against reading the terms “promise”, “gift”, and “benefit” in a restrictive way. The Pre-Trial Judge recalls in this regard that: (i) Article 387 of the KCC places emphasis on the perpetrator’s criminal conduct, i.e. 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; and (ii) the purpose of Article 387 of the KCC is 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.⁵⁵ This means that the provision seeks to punish any form of promise, gift and benefit, without requiring a particular physical form.

40. *Conclusion.* In the view of the Pre-Trial Judge, the Defence for Mr Januzi has failed to provide any justification for departing from the meaning of the words “promise”, “gift” and “benefit”, as defined above in paragraph 34 of this decision. The Pre-Trial Judge will thus proceed to assess whether the supporting material shows that the conduct alleged in the Main Amendment amounts to “a promise of a gift or any other benefit” pursuant to Article 387 of the KCC, as defined above in paragraph 34 of this decision.

V. Main Amendment

41. In its Joint Indictment, the SPO contends that Mr Januzi and Mr Bahtijari, together with Mr Shala, under various alternative forms of criminal responsibility, used and attempted to use 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

⁵⁵ Case 10 Confirmation Decision, para. 31 with further references to case law; Case 11 Confirmation Decision, para. 31.

otherwise fail to state true information to the police, a prosecutor or a judge, when such information relates to obstruction of criminal proceedings.⁵⁶

42. The Pre-Trial Judge underlines that the assessment that follows is limited to the question of whether the supporting material to the Main Amendment – which consists of factual allegations underpinning the “promise of gift or any other form of benefit” limb of intimidation during criminal proceedings under Article 387 of the KCC – supports a finding of well-grounded suspicion pursuant to Rule 86(4) of the Rules. Any findings entered below are made against and shall be considered together with the findings in the Case 10 Confirmation Decision. The Pre-Trial Judge also recalls that the Main Amendment only bears Mr Januzi and Mr Bahtijari, since the factual allegations underpinning this amendment is already part of the Case 11 Confirmed Indictment.⁵⁷ As a result, in the assessment that follows, the Pre-Trial Judge will not re-enter findings as regards Mr Shala’s participation in the offence under Count 3.

A. INTIMIDATION DURING CRIMINAL PROCEEDINGS (COUNT 3)

1. Material Elements

43. The findings below are made against and shall be considered together with the findings in paragraphs 71-89 of the Case 10 Confirmation Decision.

44. The Pre-Trial Judge finds that the supporting material shows that, during the second approach to Witness 1 on 12 April 2023 (“12 April 2023 Visit” or “Second Approach”), 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 Rexhep Selimi (“Mr Selimi”).⁵⁸ Witness 1 did not confirm or deny that he was a witness.⁵⁹

⁵⁶ Joint Indictment, paras 23-32.

⁵⁷ First Decision on Request to Amend, para. 27.

⁵⁸ 116623-01-TR-AT-ET, p. 5, line 21-25, p. 7, lines 6-9, p. 9, line 8, p. 31, lines 15-19.

⁵⁹ 112906-TR-AT Part 1 Revised 1-ET, p. 10, line 19.

45. 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”.⁶⁰ 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”.⁶¹ Mr Januzi claimed that he does not know who asked Mr Shala to convey the aforementioned message.⁶²

46. Moreover, the supporting material indicates that during the 12 April 2023 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], and [REDACTED].⁶³ Witness 1 also voiced his conviction that Messrs [REDACTED], Shala, and [REDACTED] and others would [REDACTED].⁶⁴ Witness 1 further recounted the [REDACTED] that he received through Mr Bahtijari.⁶⁵ Witness 1 declared eventually that if Mr Shala and/or others offered him 200,000 EUR, they would have a deal.⁶⁶

47. According to the supporting material, Mr Januzi replied that he would convey Witness 1’s request to Mr Shala⁶⁷ and/or to “them”.⁶⁸ Mr Januzi added that

⁶⁰ 116623-01-TR-AT-ET, p. 7, lines 11-13, 15. *See also* 116623-01-TR-AT-ET, p. 5, lines 12-13.

⁶¹ 116623-01-TR-AT-ET, p. 9, lines 4-5, 7-8.

⁶² 116623-01-TR-AT-ET, p. 8, lines 1-2.

⁶³ *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.

⁶⁴ 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.

⁶⁵ 116623-01-TR-AT-ET, p. 28, lines 7-9.

⁶⁶ 116623-01-TR-AT-ET, p. 21, lines 14-15, p. 25, lines 6-8, p. 26, lines 24-25.

⁶⁷ 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.

⁶⁸ 116623-01-TR-AT-ET, p. 27, lines 1, 5.

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”.⁶⁹

48. Lastly, the supporting material reveals that, 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.⁷⁰

49. The Pre-Trial Judge is of the view, contrary to the Defence for Mr Januzi’s averments,⁷¹ that the supporting material evinces that Mr Januzi, at the direction of Mr Shala, after bringing up the subject of the testimony of Witness 1 against Mr Selimi, made a “declaration or assurance” to Witness 1, “stating a commitment” that Mr Shala and others would “give” Witness 1 “help” and/or “meet any of [Witness 1’s] needs”, would Witness 1 agree to withdraw his testimony against Mr Selimi. In the view of the Pre-Trial Judge, the offer of “help” or “meet any of [Witness 1’s] needs” clearly denotes an offer of some form of benefit, such as an advantage, profit or good, albeit not yet ascertained at that stage. This is also evidenced by Witness 1’s subsequent proposition that if offered 200,000 EUR, “they would have a deal”⁷² which shows Witness 1’s understanding from his conversation with Mr Januzi that he could obtain an advantage, profit, or good, were he to withdraw his testimony against Mr Selimi. It is further clear from that same conversation that the statement “for him to help us” means that Witness 1 would provide “help” by withdrawing his testimony against Mr Selimi.

50. The Pre-Trial Judge also notes that, in his statement to the SPO, Mr Januzi admitted that Witness 1 asked for 200,000 EUR in exchange for agreeing to withdraw his testimony against Mr Selimi.⁷³ The Pre-Trial Judge finds however that Mr Januzi did not recall accurately the entire conversation with Witness 1, as

⁶⁹ 116623-01-TR-AT-ET, p. 45, lines 18-20, 22.

⁷⁰ 116623-01-TR-AT-ET, p. 47, lines 16-17.

⁷¹ See *supra* para. 15.

⁷² See *supra* para. 46 and supporting material referenced therein.

⁷³ See 116063-TR-ET Part 1, p. 26, line 23 to p. 27, line 4.

is evidenced in the transcript of the audio recording of the conversation between Mr Januzi and Witness 1 which occurred on 12 April 2023 at the home of Witness 1 and in the presence of the witness's family ("Transcript of 12 April 2023 Conversation Recording").⁷⁴ The Pre-Trial Judge notes for instance that, in his statement to the SPO, Mr Januzi did not admit that, during the 12 April 2023 Visit, he himself brought up the issue of the testimony of Witness 1 and the message from Mr Shala, as exposed above.⁷⁵

51. The Pre-Trial Judge further considers, contrary to the Defence for Mr Januzi's assertions,⁷⁶ the fact that no definitive agreement was reached during the 12 April 2023 Visit does not undermine the finding that, during said visit, Witness 1 was offered the promise of a benefit, were he to agree not testify or provide evidence against Mr Selimi.

52. Furthermore, the Pre-Trial Judge notes that, 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.⁷⁷ The Pre-Trial Judge considers this statement to be clearly contradicted by the Transcript of 12 April 2023 Conversation Recording, which reveals that, Mr Januzi reported to Witness 1 that Mr Shala knew that Witness 1 was a witness against Mr Selimi.⁷⁸

53. In light of the above, and considered together with the findings in paragraphs 71-89 of the Case 10 Confirmation Decision, the Pre-Trial Judge finds that the acts and statements of Mr Januzi during the Second Approach amount to a promise of

⁷⁴ 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.

⁷⁵ See *supra* paras 44-45.

⁷⁶ See *supra* para. 15 and Response, paras 6-9.

⁷⁷ See 116063-TR-ET Part 1, p. 27, line 7 to p. 29, line 1.

⁷⁸ See *supra* paras 44-46 and supporting material referenced therein.

a gift or any other form of benefit within the meaning of Article 387 of the KCC. Furthermore, the Pre-Trial Judge finds that such actions were undertaken to induce Witness 1 to refrain from testifying in official proceedings of the SC, including SPO investigations (“SC Proceedings”).

2. Mental Elements

54. The findings below are made against and shall be considered together with the findings in paragraphs 91-94 of the Case 10 Confirmation Decision.

55. The Pre-Trial Judge pays heed to the fact that: (i) Mr Januzi showed up at the home of Witness 1, although he is not a regular visitor to Witness 1; (ii) explicitly told Witness 1 that he was visiting him to follow-up on Mr Bahtijari’s 5 April 2023 visit to Witness 1 (“First Approach”), thereby showing that Mr Januzi had direct knowledge of the 5 April 2023 visit and its purpose; and (iii) explicitly stated that Witness 1’s position as to whether he would withdraw his potential testimony was not clear after the First Approach and that he had been sent by Mr Shala to clarify Witness 1’s position in that respect.⁷⁹ The Pre-Trial Judge further considers the fact that Mr Januzi agreed to convey, and subsequently conveyed, Mr Shala’s proposal to Witness 1 that Mr Shala and unnamed others “would be ready to meet any of [Witness 1]’s needs”,⁸⁰ which, in her view, denotes an outright and deliberate attempt to influence Witness 1’s will or intent to testify or provide evidence against Mr Selimi. Moreover, the Pre-Trial Judge considers that Mr Januzi’s answer that he would transmit the response from Mr Shala and/or unnamed others to Witness 1 in person as he does not “speak over the phone about those matters”,⁸¹ signals awareness of the prohibited nature and purpose of his contacts with Mr Shala and Witness 1.

⁷⁹ See Case 10 Confirmation Decision, para. 93 and supporting material referenced therein.

⁸⁰ See *supra* para. 45 and supporting material referenced therein.

⁸¹ See *supra* para. 47 and supporting material referenced therein.

56. In light of the above, and considered together with the findings in paragraphs 91-94 of the Case 10 Confirmation Decision, the Pre-Trial Judge finds on the basis of the material provided by the SPO that Mr Januzi was aware of, and desired for, using a promise of a benefit in order 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.

3. Conclusion

57. 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, by way of a promise of a gift or any other form of benefit, within the meaning of Article 387 of the KCC and Article 15(2) of the Law, was committed by Mr Januzi on 12 April 2023.

B. MODES OF LIABILITY

1. Commission

58. The findings below are made against and shall be considered together with the findings in paragraphs 125-126 of the Case 10 Confirmation Decision.

59. Regarding the objective and subjective elements⁸² of Mr Januzi's physical commission of the offence pursuant to Article 387 of the KCC, the Pre-Trial Judge refers to the above findings.⁸³

60. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that Mr Januzi committed the offence

⁸² Case 10 Confirmation Decision, paras 56-57.

⁸³ See *supra* paras 44-53, 55-56 and supporting material referenced therein.

under Count 3, by way of a promise of a gift or any other form of benefit, within the meaning of Articles 17 and 21 of the KCC and Article 16(3) of the Law.

2. Co-perpetration

61. The findings below are made against and shall be considered together with the findings in paragraphs 129-131 of the Case 10 Confirmation Decision.

62. Regarding the objective and subjective elements of this mode of liability,⁸⁴ the Pre-Trial Judge finds that the allegations involving Mr Januzi making a promise of a gift or any other form of benefit,⁸⁵ within the meaning of Article 387 of the KCC, were part of the co-perpetrator's substantial contributions to the commission of the offence under Count 3 and these acts were intentionally made.

63. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that Messrs Januzi and Bahtijari co-perpetrated the offence under Count 3, within the meaning of Articles 21 and 31 of the KCC and Article 16(3) of the Law.

3. Assistance

64. The findings below are made against and shall be considered together with the findings in paragraphs 133-135 of the Case 10 Confirmation Decision.

65. Regarding the objective and subjective elements of this mode of liability,⁸⁶ the Pre-Trial Judge finds that the acts and statements of Messrs Januzi and Bahtijari⁸⁷ amount to assistance within the meaning of Article 33 of the KCC and were intentionally made.

⁸⁴ Case 10 Confirmation Decision, paras 56, 58-60.

⁸⁵ See *supra* paras 44-47 and supporting material referenced therein.

⁸⁶ Case 10 Confirmation Decision, paras 56, 62-63.

⁸⁷ See *supra* paras 44-47 and supporting material referenced therein; Case 10 Confirmation Decision, paras 133-135 and supporting material references therein.

66. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that Messrs Januzi and Bahtijari assisted in the commission of the offence under Count 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

67. The findings below are made against and shall be considered together with the findings in paragraphs 137-139 of the Case 10 Confirmation Decision.⁸⁸

68. Regarding the objective and subjective elements of this mode of liability,⁸⁹ the Pre-Trial Judge finds that the acts described above⁹⁰ further support the existence of an agreement within the meaning of Article 35 of the KCC and were intentionally made.

69. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that Messrs Januzi and Bahtijari agreed to commit the offence under Count 3 and undertook substantial acts towards its commission, within the meaning of Articles 21 and 35 of the KCC and Article 16(3) of the Law.

C. OVERALL CONCLUSION

70. In light of the above, the Pre-Trial Judge confirms the Main Amendment and:
(i) the charge against Mr Januzi contained therein, namely intimidation during

⁸⁸ See also 116623-01-TR-AT-ET, p. 4, line 21 to p. 5, line 13, 21-25, p. 6, lines 6-9, 11-17, p. 7, lines 6-13, 15, p. 8, lines 19-25, p. 9, lines 3-5, 7-8, 16-18, p. 26, lines 4, 19-20, p. 28, line 6, p. 31, lines 21-24, p. 46, lines 3-4; 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). The Pre-Trial Judge also notes the fact that, in his statement to the SPO, Mr Januzi admitted having recounted his conversation with Witness 1 to Mr Shala (116063-TR-ET Part 1, p. 27, line 5 to p. 31, line 2). The Pre-Trial Judge further notes that the supporting material reveals that, on 4 October 2023, directly after Mr Januzi was interviewed by the SPO, Mr Januzi and his legal counsel during said interview (116063 TR ET Part 1, p. 1, lines 20-21) met in person with Mr Shala (116158-01).

⁸⁹ Case 10 Confirmation Decision, paras 56, 64-65.

⁹⁰ See *supra* paras 44-47 and supporting material referenced therein.

criminal proceedings, by way of a promise of a gift or any other form of benefit, 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); and (ii) the charge against Mr Bahtijari contained therein, namely intimidation during criminal proceedings, by way of a promise of a gift or any other form of benefit, punishable under Articles 21, 31, 33, 35, and 387 of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 3).

VI. RELATED MATTERS

A. OPERATIVE INDICTMENT AND RULE 86(3)(B) OUTLINE

71. In light of the above, the Pre-Trial Judge decides that the Revised Case 10 Confirmed Indictment and the Case 11 Confirmed Indictment are no longer operative. Rather, the present case will proceed on the basis of a *joint* indictment. As such, the Pre-Trial Judge considers it necessary to order the SPO to submit a new joint indictment which incorporates the Main Indictment, as confirmed above, as well as the minor adjustments which were previously approved in the First Decision on Request to Amend and deemed necessary to include Mr Januzi, Mr Bahtijari and Mr Shala (“Accused”) in one indictment.⁹¹

72. Moreover, for the purpose of stipulating the charges as clearly as possible, the Pre-Trial Judge instructs the SPO to set out, in said joint indictment, on which acts specifically the SPO relies to establish the criminal responsibility for each Accused under each of the forms of criminal responsibility charged, in light of the above.

73. Furthermore, the Pre-Trial Judge recalls that the mode of liability of attempt pursuant to Article 28 of the KCC was not confirmed with respect to Count 3⁹² and

⁹¹ First Decision on Request to Amend, paras 30, 37, 41. *See also* Request, para. 1. *See* Annex 1 of the Request.

⁹² Case 10 Confirmation Decision, paras 141, 155(a)(i). *See* paragraph 23 of the Joint Indictment which contains the following language “[...] attempted to use” which in the view of the Pre-Trial Judge does

therefore instructs the SPO to reflect this finding in the forthcoming joint indictment.

74. Accordingly, the SPO is ordered to submit, by **Wednesday, 10 July 2024**, (i) a joint indictment as confirmed in the Case 10 Confirmation Decision, the Case 11 Confirmation Decision, and this decision, (ii) a joint Rule 86(3)(b) outline, and/or (iii) public (redacted) versions of said indictment and Rule 86(3)(b) outline, as the case may be.

B. FURTHER APPEARANCES

75. Considering that the Main Amendment is confirmed, the Pre-Trial Judge informs Mr Januzi and Mr Bahtijari that their further appearances will take place, together, on **Friday, 12 July 2024 at 09:30 hours**.

76. Should Counsel wish to appear via video link, the Pre-Trial Judge authorises them to do so. Any request to attend the further appearance via video link shall be made directly to the Registrar, in accordance with the Registrar's Practice Direction on Video Links (KSC-BD/23/COR), sufficiently in advance for the Registrar to take the appropriate steps, including to inform the Pre-Trial Judge.

C. RECLASSIFICATION ORDER

77. Lastly, the Defence for Mr Januzi is ordered to file (i) a request for the reclassification of the Response (F00304) as public or (ii) a public redacted version thereof, by **Thursday, 11 July 2024**.

not reflect the finding in the Case 10 Confirmation Decision. *See also* Case 11 Confirmation Decision, para. 155(a)(i).

D. TIME LIMIT FOR PRELIMINARY MOTIONS

78. Considering (i) the very limited scope of the Main Amendment; (ii) the fact that the Main Amendment is known to Mr Januzi and Mr Bahtijari since at least 12 January 2024; (iii) the underlying evidence has been disclosed to the Accused on the same day; and (iv) the right of the Accused to be tried within a reasonable time pursuant to Article 23(4)(d) of the Law, the Pre-Trial Judge finds it appropriate to vary the time limits to submit preliminary motions regarding the Main Amendment, if any, pursuant to Rules 9(5)(a) and 90(4) of the Rules. Accordingly, the Defence for Mr Januzi and the Defence for Mr Bahtijari may file, if they so wish, a motion by **Friday, 19 July 2024**, the SPO may submit a response, if it so wishes, by **Friday, 26 July 2024**, and the Defence for Mr Januzi and the Defence for Mr Bahtijari, may file a reply, if they so wish, by **Friday, 2 August 2024**.

VII. DISPOSITION

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

- a) **CONFIRMS** the Main Amendment and the charge against Mr Januzi contained therein, namely intimidation during criminal proceedings, by way of a promise of a gift or any other form of benefit, 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);
- b) **CONFIRMS** the Main Amendment and the charge against Mr Bahtijari contained therein, namely intimidation during criminal proceedings, by way of a promise of a gift or any other form of benefit, punishable under Articles 21, 31, 33, 35, and 387 of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 3);

- c) **ORDERS** the SPO to file, by **Wednesday, 10 July 2024**, a joint indictment as confirmed in the Case 10 Confirmation Decision, the Case 11 Confirmation Decision, and this decision, as well as public redacted versions of said indictment and a Rule 86(3)(b) outline, as set out in paragraphs 71-74 of this decision.
- d) **DECIDES** that the indictment to be submitted by **Wednesday, 10 July 2024**, shall be the operative indictment in the present case;
- e) **INFORMS** Mr Januzi and Mr Bahtijari that their further appearances will take place, together, on **Friday, 12 July 2024 at 09:30 hours**; and **AUTHORISES** the Registrar to organise, at the start of each hearing on the further appearance, the taking of photographs for one minute and a half;
- f) **ORDERS** the Defence for Mr Januzi to file (i) a request for the reclassification of the Response (F00304) as public or (ii) a public redacted version thereof, by **Thursday, 11 July 2024**; and
- g) **ORDERS** the Defence for Mr Januzi and the Defence for Mr Bahtijari to file, if they so wish, a preliminary motion by **Friday, 19 July 2024**, the SPO to file a response, if it so wishes, by **Friday, 26 July 2024**, and the Defence for Mr Januzi and the Defence for Mr Bahtijari, to file a reply, if they so wish, by **Friday, 2 August 2024**.



Judge Marjorie Masselot

Pre-Trial Judge

Dated this Monday, 08 July 2024

At The Hague, the Netherlands.