

ANNEX 1 to

Submission by the Defence of Haxhi Shala of written information as specified in paragraphs 12-20 of F00479

Public

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

Before: **Trial Panel I**
Judge Mappie Veldt-Foglia, Presiding
Judge Roland Dekkers
Judge Gilbert Bitti
Judge Vladimir Mikula, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Haxhi Shala

Date: 28 September 2024

Language: English

Classification: Public

Written information as specified in paragraphs 12-20 of F00479 submitted by the Haxhi Shala Defence

Specialist Prosecutor

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13. The Parties are instructed to file written submissions on the following questions or topics:

c. Whether the Defence has completed its investigations; if this is not the case, whether it anticipates carrying out (further) investigations and approximately how much time it will need to finalise such investigative activities;

The Defence investigations are continuing. The Defence is not in a position to say how much time it will need to finalise such investigative activities. This is partly due to the fact that the SPO continues to make new disclosures, the most recent of which were Disclosures 45 and 46 disclosed on 27 September 2024. In the event that the SPO continues to disclose additional material leading up to the anticipated opening of their case on 11 November 2024, the Defence investigations are expected to continue.

d. Whether and when, at this stage, as a result of these investigative activities, the Defence can already anticipate disclosing evidence and amending its Pre-Trial Briefs and/or its Lists of Potential Witnesses; and

The Defence is not in a position to say whether and when as a result of these investigative activities it can anticipate disclosing evidence and amending its Pre-Trial Briefs and/or its Lists of Potential Witnesses. An update will be provided at the Trial Preparation Conference 7-11 October 2024.

e. Whether the Defence requires an ex parte, closed session, in order to address the Panel on matters related to its preparation for trial and, if so, what are the matters concerned.

The Defence does not at the present time require an ex parte, closed session, in order to address the Panel on matters related to its preparation for trial, but it reserves the right to request one if it were necessitated by future developments.

14. The Parties are instructed to file written submissions on the following questions or topics:

a. Submissions by the Parties as to the date of 11 November 2024 for the commencement of the trial;

The Defence does not oppose the date of 11 November 2024 for the commencement of the trial.

b. Whether the Accused object to the SPO reading a summary of the Indictment at the opening of the case, instead of the Indictment in its entirety, with a view to promoting efficiency;

The Defence does not object to the SPO reading a summary of the Indictment at the opening of the case, instead of the Indictment in its entirety.

d. Whether, at this stage, the Defence can confirm whether it will make opening statements pursuant to Rule 126(2) of the Rules and, if so: (i) will such opening statement(s) be given directly after the opening statement of the SPO, if any, or after the closing of the SPO case and before the opening of the Defence cases; (ii) how much time will the Defence require; and (iii) will visual aids or other tools be used; and

The Defence can confirm that it will make an opening statement pursuant to Rule 126(2) of the Rules directly after the opening statement of the SPO, if any. The Defence opening statement will last approximately 30 minutes. No visual aids or other tools will be used.

e. Whether, at this stage, the Defence can indicate whether the Accused intend to make unsworn statements pursuant to Rule 142(1) of the Rules and, if so, whether this will take place together with the Defence opening statements or at a later stage.

It is anticipated that the Accused will give evidence at trial. It is not anticipated that he will make a statement during the Defence opening.

15. The Panel intends to issue directions on witness familiarisation prior to testimony in due course. The Parties and the Registry / WPSO may make submissions on this matter, if they so wish, taking into account the Panel's previous practice.

The Defence has no objection to the guidelines on witness familiarisation that the Trial Panel refers to in paragraphs paras. 9-33 of the Decision cited by the Trial Panel.¹

16. The Parties are instructed to file written submissions on the following questions or topics:

b. Confirmation by the Januzi Defence, the Bahtijari Defence, and the Shala Defence of their intention to present a case; whether the Januzi Defence can indicate if its List of Potential Witnesses is final and what is the requested time for direct examination of the witnesses; and whether and when the Bahtijari Defence and the Shala Defence can indicate the number of witnesses they intend to call, whether they intend to call expert witnesses and what is the requested time for direct examination of the witnesses;

The Defence intends to present a case. Since the outcome of ongoing investigations is not yet known, the Defence is unable at the present time to indicate the number of witnesses it intends to call, whether it intends to call expert witnesses or what is the requested time for direct examination of the witnesses. It is anticipated that witnesses of fact and expert evidence will

¹ Specialist Prosecutor v. Pjetër Shala, KSC-BC-2020-04/F00435, Decision on witness familiarisation 24 February 2023.

give evidence at trial. This will depend upon the case that the SPO intends to call.

c. Taking into consideration Rule 104(3) of the Rules, whether the Januzi Defence and/or the Shala Defence intend to offer a defence of alibi; and

The Defence does not intend to offer a defence of alibi and the SPO will be put to strict proof in respect of the charges in the indictment.

d. Whether the Januzi Defence, the Bahtijari Defence, and the Shala Defence intend to request the admission of prior statements or transcripts in lieu of oral testimony under Rules 153-155 of the Rules and, if so, under which specific provision, in relation to which witnesses and how many items are concerned.

The Defence is unable at the present time to give the requested information in regard to the admission of prior statements or transcripts in lieu of oral testimony under Rules 153-155 of the Rules and will object to any SPO application in this regard.

18. The Parties are instructed to file written submissions on the following questions or topics:

b. Whether, at this stage, each Defence can already indicate the order in which it intends to call the witnesses and the modalities of the witnesses' testimonies

(live or video-link), without prejudice to any further changes to be communicated sufficiently in advance of presenting the Defence cases.

At the present time the Defence is unable to give the requested information.

19. The Parties are instructed to file written submissions on the following questions or topics:

a. Confirmation that the Defence intends to object to the admissibility of non-oral evidence disclosed under Rule 102 of the Rules and what is the nature of the objections; and

On 13 May 2024 in Request for a Finding of Inadmissibility of Items Disclosed Under Rule 102 of the Rules (“F00287”),² the Defence submitted that certain items disclosed by the Specialist Prosecutor’s Office were inadmissible pursuant to Article 138(2) of the Rules.³ On 4 September 2024, the Pre-Trial Judge considered that admissibility of evidence was best addressed by the Trial Panel and that for this reason the matter was before the Trial Panel.⁴ The Defence confirms that it will renew its request before the Trial Chamber for a finding of inadmissibility of the items concerned.

² KSC-BC-2023-10/F00287, confidential.

³ *Ibid.*, paras. 17-33.

⁴ KSC-BC-2023-10/F00468, Decision Transmitting the Case File to Trial Panel I, Annex 1 (Handover Document), confidential, para. 40.

The Defence reserves the right to make submissions of inadmissibility in regard to other non-oral evidence during the trial proceedings.

b. Submissions by the Parties, taking into account the Panel's previous practice and the limited amount of evidentiary material in the present case, as to whether the admissibility of non-oral evidence should be decided at the time of its submission at trial or whether it can be deferred to the judgment, after giving the Parties an opportunity to make submissions, if they wish to do so, on the admissibility of any such items.

The Defence submits that at any stage of the trial proceedings it should be entitled to make submissions on the inadmissibility of any items of non-oral evidence adduced by the SPO. In particular, the Defence submits that given the nature of the items that were the subject of F00287 it is in the interests of justice that the Trial Panel after hearing the parties should render a decision on their admissibility before the testimony of the two SPO witnesses is given.