



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: **Trial Panel I**

Judge Mappie Veldt-Foglia, Presiding Judge

Judge Roland Dekkers

Judge Gilbert Bitti

Judge Vladimir Mikula, Reserve Judge

Registrar: Fidelma Donlon

Date: 11 November 2024

Language: English

Classification: **Public**

Decision on the conduct of the proceedings

To be notified to:

Specialist Prosecutor
Kimberly P. West

Counsel for Sabit Januzi
Jonathan Elystan Rees

Counsel for Ismet Bahtijari
Felicity Gerry

Counsel for Haxhi Shala
Toby Cadman

I.	PROCEDURAL BACKGROUND	2
II.	APPLICABLE LAW	4
III.	PRELIMINARY MATTERS	4
IV.	DIRECTIONS.....	4
A.	Attendance of the Accused	5
B.	Order of Presentation of Evidence.....	6
C.	Length of Presentation of Evidence.....	6
1.	Allocation of Time to the SPO.....	6
2.	Allocation of Time to the Defence	7
D.	Evidentiary Blocks and Witness Order.....	8
E.	Effective Use of Courtroom Time	9
F.	Examination by Video-Conference and Examination Away From the Trial Venue ...	10
G.	In-Court Protective and Special Measures	12
H.	Order and Mode of Questioning of Witnesses	12
I.	Use of Material During the Questioning of Witnesses	15
J.	Publicity of the Proceedings and Use of Private and/or Closed Sessions.....	18
K.	In-Court Redactions.....	19
L.	Self-Incrimination by a Witness.....	20
M.	Expert Witnesses	21
N.	Rules 153-155 of the Rules.....	22
O.	Agreed Facts	22
P.	Facts of Common Knowledge.....	23
Q.	Submissions on Sentencing Procedure	23
R.	Submission of Filings.....	23
S.	Reclassification of Filings and Transcripts	24
T.	Communication with the Panel	26
V.	DISPOSITION	26

TRIAL PANEL I (Panel) hereby renders this decision on the conduct of the proceedings.

I. PROCEDURAL BACKGROUND

1. On 4 September 2024, the Pre-Trial Judge transmitted the case file to the Panel.¹
2. On 24 September 2024, the Panel sought submissions from the Parties on, *inter alia*, matters related to the conduct of proceedings (Decision on Trial Preparation Conferences).²
3. Between 28 September and 2 October 2024, the Specialist Prosecutor's Office (SPO),³ the Defence for Haxhi Shala (Shala Defence),⁴ the Defence for Sabit Januzi (Januzi Defence),⁵ the Defence for Ismet Bahtijari (Bahtijari Defence),⁶ (collectively, Accused and Defence), and the Registry⁷ made their submissions.

¹ KSC-BC-2023-10, F00468, Pre-Trial Judge, [Decision Transmitting the Case File to Trial Panel I](#), 4 September 2024, public, with Annex 1, confidential, and Annex 2, public. See also F00466, President of the Specialist Chambers, [Decision Assigning Trial Panel I](#), 3 September 2024, public.

² KSC-BC-2023-10, F00479, Trial Panel I, [Decision setting the dates for trial preparation conferences, requesting submissions and on related matters](#), 24 September 2024, public, paras 12, 32(c).

³ KSC-BC-2023-10, F00491, Specialist Prosecutor, *Prosecution submissions in advance of trial preparation conferences* (SPO Submissions), 1 October 2024, confidential, with Annex 1, confidential. A public redacted version of the main filing was filed on 4 October 2024, F00491/RED.

⁴ KSC-BC-2023-10, F00482, Shala Defence, *Submission by the Defence of Haxhi Shala of written information as specified in paragraphs 12-20 of F00479*, 28 September 2024, public, with Annex 1, public.

⁵ KSC-BC-2023-10, F00495, Januzi Defence, *Submissions for the Trial Preparation Conferences on behalf of Januzi*, 2 October 2024, public.

⁶ KSC-BC-2023-10, F00494, Bahtijari Defence, *BAHTIJARI submissions on trial preparation pursuant to F00479*, 2 October 2024, confidential. A public redacted version was filed on 18 October 2024, F00494/RED. The Panel granted the request of the Bahtijari Defence for an extension of time to file its submissions, see CRSPD79, *Instruction from Presiding Judge of Trial Panel I*, 30 September 2024, confidential.

⁷ KSC-BC-2023-10, F00490, Registry, *Registry Submissions for Trial Preparation Conferences*, 1 October 2024, public, with Annex 1, confidential and Annexes 2 to 5, strictly confidential and *ex parte*.

4. On 7 and 8 October 2024, the Panel held trial preparation conferences, where the Parties and the Registry made further submissions.⁸
5. On 17 October 2024, following further directions from the Panel,⁹ the Shala Defence filed additional submissions in respect to, *inter alia*, a proposal made by the SPO¹⁰ regarding the fair and expeditious conduct of the proceedings (Shala Additional Submissions).¹¹
6. On 18 October 2024, the SPO filed a request seeking the admission of the evidence of two witnesses pursuant to Rule 154 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (Rules and Rule 154 Motion, respectively).¹²
7. On 24 October 2024, the Panel set the commencement date of the trial on 14 November 2024, gave directions on the opening statements and set the date for the commencement of the presentation of evidence on 9 December 2024.¹³
8. On 5 November 2024, the Panel issued the “Decision on the Specialist Prosecutor’s motion for admission of evidence of Witness 1 and W04891 pursuant to Rule 154”, dismissing the Rule 154 Motion.¹⁴

⁸ KSC-BC-2023-10, Transcript of Hearing, 7 October 2024, confidential, pp. 279-360; Transcript of Hearing, 8 October 2024, confidential, pp. 361-377.

⁹ See KSC-BC-2023-10, Transcript of Hearing, 8 October 2024, public, p. 368, lines 11-22.

¹⁰ SPO Submissions, paras 40-41.

¹¹ KSC-BC-2023-10, F00539, Shala Defence, *Defence response to various submissions made by the SPO for the Trial Preparation Conference*, 17 October 2024, confidential, para. 14.

¹² KSC-BC-2023-10, F00540, Specialist Prosecutor, *Prosecution Motion for Admission of Evidence of Witness 1 and W04891 pursuant to Rule 154*, 18 October 2024, confidential, with Annexes 1-2, confidential. A public redacted version of the main filing was filed on 23 October 2024, F00540/RED.

¹³ KSC-BC-2023-10, F00559, Trial Panel I, [Decision on the date for the commencement of the trial](#), 24 October 2024, public, para. 17.

¹⁴ KSC-BC-2023-10, F00580, Trial Panel I, *Decision on the Specialist Prosecutor’s motion for admission of evidence of Witness 1 and W04891 pursuant to Rule 154*, 5 November 2024, public, para. 18(a).

9. Between 4 and 6 November 2024, the Defence filed their respective list of witnesses.¹⁵

10. On 6 November 2024, the Panel issued the “Decision on the submission and admissibility of non-oral evidence” (Framework Decision on Evidence).¹⁶

II. APPLICABLE LAW

11. The Panel notes Articles 21(2) and 40(2) and (6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (Law) and Rules 82, 84(1), 104(1), 116, 120, 127, 141, 143-146, 149, 151 and 153-157 of the Rules.

III. PRELIMINARY MATTERS

12. The Panel recalls that it dismissed the Shala Additional Submissions as out of time.¹⁷ Accordingly, the Panel will not consider them for the purpose of this decision.

IV. DIRECTIONS

13. The following constitute the Panel’s initial directions on the conduct of the proceedings. Issues left unaddressed in the present decision and which require the Panel’s intervention will be dealt with in the course of the trial. Generally, the Panel

¹⁵ KSC-BC-2023-10, F00576, Bahtijari Defence, *BAHTIJARI witness list and notice of expert evidence*, 4 November 2024, confidential. A public redacted version was filed on 5 November 2024, F00576/RED; F00578, Januzi Defence, *Januzi Witness List*, 4 November 2024, confidential; F00581, Shala Defence, *Haxhi Shala Submission of List of Witnesses and Related Information*, 6 November 2024, public, with Annex 1, confidential.

¹⁶ KSC-BC-2023-10, F00583, Trial Panel I, *Decision on the submission and admissibility of non-oral evidence*, 6 November 2024, public.

¹⁷ Framework Decision on Evidence, paras 8-9.

has not addressed issues already regulated in the Kosovo Specialist Chambers' (SC) legal framework or in the relevant Practice Directions and Registry Instructions.

A. ATTENDANCE OF THE ACCUSED

14. The Defence teams, as applicable, are ordered to inform the Panel, the SPO, the Registry and the other Defence teams *via* e-mail through the Registry's Court Management Unit (CMU) whether an accused intends not to be physically present in the courtroom at least two (2) working days prior to the start of the hearing. As regards hearings that start on a Monday, the Defence teams, as applicable, are ordered to provide their notice at the latest by the preceding Thursday, at 9:30. As regards hearings that start on Tuesday, the Defence teams, as applicable, are ordered to provide their notice at the latest by the preceding Friday, at 09:30. The Panel stresses that it is only in case of an unforeseen illness on the day of the scheduled hearing that an accused will be allowed, on an exceptional basis, to attend the proceedings *via* video-link from the detention facilities without a prior notice of at least two (2) working days.

15. In this regard, the Panel notes that participation through video-link from the detention facilities or from within the SC's premises does not prejudice the Accused, insofar as they will be able to follow the proceedings and communicate with their Counsel who will be present in the courtroom. The present directions are without prejudice to the power of the Panel to order the Accused to attend in person any hearing where the Panel considers their physical presence necessary or when the rules impose such a presence.

16. The Registry shall make all necessary arrangements to set up the video-link as well as a direct line of communication between the Accused and Counsel in the courtroom.

B. ORDER OF PRESENTATION OF EVIDENCE

17. In accordance with Rule 127(2) of the Rules, evidence at trial in this case shall be presented in the following sequence:

- (i) evidence called by the SPO;
- (ii) evidence called by the Defence;
- (iii) evidence called by the Panel pursuant to Rule 132 of the Rules, if any;
- (iv) SPO evidence in rebuttal, with leave of the Panel; and
- (v) Defence evidence in rejoinder, with leave of the Panel.

18. The Panel recalls that it invited the Defence to engage in *inter partes* communications in order to reach an agreement on the order of presentation of their respective cases.¹⁸ In this regard, the Panel instructs the Defence to inform the Panel whether such an agreement has been made at the latest by **Tuesday, 17 December 2024, at 16:00**.

C. LENGTH OF PRESENTATION OF EVIDENCE

19. The following directions concern the presentation of evidence called by the SPO. The Panel will issue directions regarding the presentation of evidence by the Defence at a later stage of the proceedings.

1. Allocation of Time to the SPO

20. The SPO has indicated that it intends to rely on two witnesses at trial, whose prior written statements it sought to introduce pursuant to Rule 154.¹⁹ The SPO

¹⁸ See KSC-BC-2023-10, Transcript of Hearing, 7 October 2024, public, p. 325, lines 9-15.

¹⁹ Rule 154 Motion, paras 1-2, 29.

estimated that it needs 6 hours to examine its witnesses if its Rule 154 Motion was granted²⁰ and 12 hours if not.²¹

21. Taking into account the Panel's decision dismissing the Rule 154 Motion as well as the limited factual and evidentiary scope of this case, the Panel is of the view that the estimate of 12 hours provided by the SPO is excessive. Therefore, the Panel sets 9 hours as the time available to the SPO to present its case.²² Should the SPO require more time for the overall presentation of its case, it shall seek leave from the Panel sufficiently in advance. The Panel expects the SPO to respect the time limit set by the Panel for its examination of the witnesses and to inform the Panel at the earliest opportunity if it needs less time than the time allocated by the Panel.

22. In addition, the Panel instructs CMU to inform the Panel and the Parties *via* e-mail:

- (i) at the end of each witness's direct examination, how much time the SPO has effectively used; and
- (ii) at the end of each evidentiary block, how much time the SPO has used, in total, for its examination of all witnesses called to testify up to that point.

2. Allocation of Time to the Defence

23. The Panel, bearing in mind that there are three Accused in this case resulting potentially in overlaps in questioning, considers it appropriate to allocate to each Defence team for the cross-examination of each SPO witness 75 per cent of the time effectively used by the SPO for its chief-examination of said witness.²³ Should the

²⁰ Annex 1 to SPO Submissions, p. 2.

²¹ KSC-BC-2023-10, F00177/A02, Specialist Prosecutor, *Annex 2 to Submission of Prosecution Pre-Trial Brief, witness and exhibit lists, and Rule 109(c) chart*, 16 February 2024, confidential, p. 2.

²² However, *see* paras 29, 43-45 below.

²³ However, *see* paras 29, 43, 45 below.

Defence require more time for the questioning of a witness, it shall seek leave from the Panel as soon as possible.

D. EVIDENTIARY BLOCKS AND WITNESS ORDER

24. The Panel sets 9 December to 12 December 2024 and 16 December to 20 December 2024 as hearing dates for the first evidentiary block, subject to any further decision of the Panel. The Panel further decides to organise an additional (fourth) session (16:30-18:00) for the hearings of the week of 9 December to 12 December 2024.²⁴

25. Further evidentiary blocks will be communicated at the appropriate time *via* CMU. While evidentiary blocks will be set in consultation with the Parties and the Registry, the Panel expects the Parties to be ready to proceed with the case if witnesses are available to testify.

26. Having taken note of the SPO's confirmed order of appearance of its witnesses,²⁵ the Panel directs the SPO, should said order change due to unforeseen circumstances, to immediately inform the Panel, the Registry and the Defence.

27. In addition, the Panel orders the Defence to file an overall order of testimony of their respective witnesses at the latest by **Friday, 20 December 2024, at 16:00**. The Panel further directs the Defence to file an updated order of appearance of their respective witnesses for each evidentiary block at least 30 days before the start of each block.²⁶ Should the order of witnesses change thereafter, due to unforeseen

²⁴ In this regard, *see* fn 27 below.

²⁵ SPO Submissions, para. 26.

²⁶ The deadline set in this decision is without prejudice to the calling Party's obligation to provide the Witness Protection and Support Office (WPSO) with a complete Witness Information Form for each witness as soon as practicable and, in any event, no later than 35 working days prior to the day the witness is required to testify; KSC-BD-42/Rev3, Registry Instruction, [WPSO Guidelines on Services to Witnesses Appearing Before the Specialist Chambers](#), 27 September 2024, Section 4(1).

circumstances, the relevant Defence team shall immediately inform the SPO, the other Defence teams, the Registry and the Panel.

E. EFFECTIVE USE OF COURTROOM TIME

28. The Parties shall organise their presentation of evidence in a manner that maximises the use of available courtroom time.²⁷ To the extent possible and foreseeable, courtroom days shall not be left unused.

29. Questioning must always be conducted in the most efficient manner possible. The Parties shall focus their questioning on eliciting evidence that goes to the constitutive elements of the offences and modes of liability charged, or other facts essential to the determination of the guilt or innocence of the Accused, matters that go to the credibility or reliability of the evidence, and sentencing in case of a conviction. Where questioning is deemed inefficient, it will be restricted, even if such questioning does not exceed the time estimated and/or allocated.²⁸ The Panel will not tolerate testimonies on facts irrelevant to the charges. The Parties also have a responsibility to ensure that witnesses remain focused in their answers.

30. Further, the Parties shall always be prepared to continue with the case, even if less time than estimated is required for a particular witness. If several witnesses are scheduled to testify in a given week or evidentiary block, unless otherwise indicated, the Panel expects to immediately continue with the examination of the next witness after the examination of the previous witness is concluded.

²⁷ A regular court day is divided into three sessions of one and a half hours with breaks between the sessions (09:30-11:00; 11:30-13:00; 14:30-16:00). A fourth session (16:30-18:00) may be organised by the Panel, where necessary.

²⁸ Rule 143(4) of the Rules.

31. When scheduling their witnesses, the Parties shall take into account the time allocated to the other Parties for their questioning, as well as any possible questioning by the Panel.

32. Furthermore, mindful of the SPO's submissions,²⁹ and with a view to ensuring the efficient and expeditious conduct of the proceedings, the Panel urges the Parties to avoid raising any issue(s) in court that could unnecessarily delay the progress of the proceedings, unless the issue(s) in question has a direct bearing on the forthcoming testimony of a witness or other legitimate purposes are advanced. In particular, the Parties shall, before approaching the Panel, engage in *inter partes* consultations with a view to resolving amongst themselves any issue(s) arising from the proceedings. Additionally, before raising any issue(s) in court, the Parties shall provide, at least 24 hours in advance, a written or oral notice to the Panel and the other Parties of their intention to do so. Said notification shall include a concise statement of the following: (i) the issue in question; (ii) the status of the Parties' discussions; and (iii) the relief sought, the legal basis therefor as well as any relevant documents and corresponding ERN to be used when raising the issue.

F. EXAMINATION BY VIDEO-CONFERENCE AND EXAMINATION AWAY FROM
THE TRIAL VENUE

33. The Panel considers that in person testimony and testimony by video conference pursuant to Rule 144 of the Rules are equal options to give live testimony under the SC's legal framework.

34. The Panel notes that the SPO does not intend to request for the testimony of its witnesses to be conducted *via* video-conference. The Defence is directed to file any requests for testimony to be conducted under Rule 144 of the Rules when filing their

²⁹ SPO submissions, paras 40-41.

overall order of testimony of their respective witnesses and at the latest by **Friday, 20 December 2024 at 16:00**, so as to allow for the necessary practical arrangements to be made. The Defence shall indicate, when filing the updated order of appearance of witnesses, as specified in paragraph 27 above, whether a witness is envisaged to testify via video-conference.

35. The Parties are given a certain degree of flexibility in deciding whether they wish for witnesses to appear in person or by video-conference and making the appropriate request to the Panel in this regard. This is however subject to countervailing considerations, including the logistical burdens on the Registry and the Panel's obligation under Article 40(2) of the Law to ensure that the trial is fair, expeditious and conducted with due regard for the protection of victims and witnesses. Furthermore, it is of utmost importance that the venue chosen for the conduct of the testimony by video-conference is conducive to the giving of truthful and open testimony and to the safety, physical and psychological well-being, dignity and privacy of the witness, as provided in Rule 144(2) of the Rules. Consequently, the Panel reserves its right to reassess the mode of testimony proposed by the calling Party and to decide otherwise whenever it considers this to be necessary.

36. As regards the examination of witnesses away from the trial venue, pursuant to Rule 145 of the Rules, the Parties are directed to file any requests for testimony to be conducted under the aforementioned rule at the earliest opportunity, as soon as the witness's inability to appear becomes apparent, so as to allow for the necessary practical arrangements to be made.

G. IN-COURT PROTECTIVE AND SPECIAL MEASURES

37. The Panel recalls that both SPO witnesses have been granted in-court protective measures.³⁰

38. In addition, the Panel recalls that it ordered the Defence to file any requests for in-court protective measures for the witnesses they intend to call, at the latest, when filing their (final) list of witnesses.³¹ Any additional Defence requests for in-court protective measures shall be made when filing their overall order of testimony of their respective witnesses and at the latest by **Friday, 20 December 2024 at 16:00**.

39. With regard to special measures under Rule 80(4)(c) of the Rules, the Panel shall determine the need for any such measures following receipt of the vulnerability assessment made by WPSO.³²

H. ORDER AND MODE OF QUESTIONING OF WITNESSES

40. In accordance with Rule 127(3) of the Rules, witnesses shall be examined in the following order:

(i) witnesses called by the SPO shall be first examined by the SPO, and then cross-examined by the Defence;

³⁰ KSC-BC-2023-10, F00087, Pre-Trial Judge, *Decision on Prosecution Notice Concerning Protective Measures and Related Request*, 2 November 2023, strictly confidential and *ex parte*; a confidential redacted version was issued on the same day, F00087/CONF/RED; F00131, Pre-Trial Judge, *Decision on Prosecution Request for Protective Measures for Rule 102(1)(b) Material*, 13 December 2023, confidential; KSC-BC-2023-11, F00029, Pre-Trial Judge, *Decision on Prosecution Request for Protective Measures and Related Request*, 11 January 2024, strictly confidential and *ex parte*; a confidential redacted version was issued on the same day, F00029/CONF/RED.

³¹ See KSC-BC-2023-10, Transcript of Hearing, 8 October 2024, confidential, from p. 370, line 23 to p. 372, line 17.

³² The Panel will issue further guidance in its decision on witness familiarisation.

(ii) witnesses called by the Defence shall first be examined by the Defence team that is the calling Party, followed by the remaining Defence teams, and then cross-examined by the SPO; and

(iii) witnesses called by the Panel *proprio motu* shall first be questioned by the Panel, then by the SPO, and finally by the Defence.

41. The Panel directs the Defence teams to co-ordinate amongst themselves with respect to the order with which they will conduct the (cross-) examination of each witness. The Defence shall inform the Panel whether such an agreement has been made at the latest one (1) week before the appearance of a witness.

42. In accordance with Rule 127(3) of the Rules, the Panel may allow redirect examination as deemed necessary. Moreover, the Panel may, at any stage, put any question to a witness. Furthermore, before the questioning of a witness, the Presiding Judge may give him or her the possibility to present a free narration of the events he or she has been called to testify about. Such a possibility may also be given to a witness during or after questioning by a Party, at the Presiding Judge's discretion.

43. The examination of witnesses is to be carried out in accordance with Rule 143 of the Rules. The necessity or propriety of any particular question will be dealt with on a case-by-case basis, noting the Panel's and the Presiding Judge's powers pursuant to Article 40(2) and (6) of the Law and Rule 143(4) of the Rules.

44. When resorting to Rule 154 of the Rules, the Panel expects the calling Party to streamline its questioning considerably, in light of the fact that this provision allows for the formal submission of the witness's written statement(s) and/or transcript(s) in lieu of direct examination.

45. Furthermore, all questioning shall be conducted in a focused, precise and succinct manner. The Parties are strongly encouraged to avoid long and compound questions. As provided also above, questioning must always be conducted in the most

efficient manner possible. In accordance with the Presiding Judge's powers under Rule 143(4) of the Rules, where questioning is deemed inefficient, it will be restricted.³³ The Parties shall, in principle, examine witnesses by way of neutral questioning. Leading and closed questions may only be permissible when they are conducive to the expeditiousness of the proceedings and the determination of the truth, under the control of the Presiding Judge pursuant to Rule 143(4) of the Rules.

46. Any objections raised to a question must be limited to the purposes set out in Rule 143(4) of the Rules. Furthermore, considering the *proprio motu* powers of the Presiding Judge under the aforementioned rule, the Parties shall raise objections only when absolutely necessary. Any objections must be raised with the Panel at the time a question is asked and be brief and specific, explaining how the objection relates to the purposes set out in Rule 143(4) of the Rules. The Party making an objection has the responsibility to:

- (i) request going into private or closed session before presenting it, if necessary, and to inform the Panel of the reasons for doing so; and
- (ii) indicate, before making any substantive submission on its objection, whether it is appropriate to discuss the reasons for objecting in the presence of the witness, so as to provide the Presiding Judge with an opportunity to decide if the matter is best dealt with in the absence of the witness. The Presiding Judge will decide on a case-by-case basis on any objections.

47. The Registry shall inform the Panel, *via* e-mail, one (1) day in advance of each witness's scheduled testimony, whether the witness speaks and/or understands English.

³³ See para. 29 above.

I. USE OF MATERIAL DURING THE QUESTIONING OF WITNESSES

48. At least eight (8) working days before the commencement of a witness's testimony, unless otherwise instructed, the calling Party shall:

- (i) release in Legal Workflow a presentation queue containing the material to be used during its examination of the witness; and
- (ii) provide the Panel, CMU and the non-calling Parties with a list, *via* e-mail, enumerating said material.³⁴

49. The list shall indicate:

- (i) any passages intended to be used within any document longer than two (2) pages;³⁵
- (ii) the ERN number under which the material can be found in Legal Workflow;
- (iii) the date of disclosure and corresponding disclosure package(s);
- (iv) whether it intends to submit the material into evidence; and
- (v) whether the material may be broadcasted to the public. Identification evidence – such as photographs of the Accused or of the alleged crime site – shall, in principle, not be broadcasted to the public.

50. The above-mentioned list is solely for notice purposes and does not constitute the formal submission of any document. Any objection(s) to the use of such material shall be notified within three (3) working days from the notification of the list, *via* e-mail, to the Panel and all other Parties.³⁶ Responses to the objections, if any, shall

³⁴ The calling Party shall provide this material at the latest by 16:00 on the day that the deadline expires.

³⁵ The Panel clarifies that, with respect to a witness's written (prior) statement(s) and/or transcript(s) of evidence, the Parties do not need to indicate, when submitting their list, the exact passages to be used with the witness.

³⁶ Any objection(s) shall be communicated to the Panel at the latest by 16:00 on the day that the deadline expires.

be submitted within two (2) working days from the notification of the objection(s), *via* e-mail, to the Panel and all other Parties.³⁷ Replies will not be entertained. The Panel will rule on any objections before the item is used.

51. At least three (3) workings day before the commencement of a witness's testimony, the non-calling Parties shall:

(i) provide the Panel, CMU and all other Parties with a list, *via* e-mail, enumerating the material to be used during their respective questioning of that witness, containing the information set out in paragraph 49 above; and

(ii) release in Legal Workflow a presentation queue containing said material, provided that they were not included in the presentation queue of the calling or another Party.³⁸

52. Any objection(s) to the use of such material shall be notified, *via* e-mail, to the Panel and all other Parties within two (2) working days of the notification of the list.³⁹ Responses to the objections, if any, shall be submitted, *via* e-mail, to the Panel and all other Parties before the end of the examination of the witness by the calling Party. Replies will not be entertained. The Panel will rule on any objections before the item is used.

53. As a general rule, the Parties may only use during their questioning of a witness material which has been disclosed and notified in Legal Workflow. If the material has not been previously disclosed, the Parties shall:

³⁷ Any responses shall be communicated to the Panel at the latest by 16:00 on the day that the deadline expires.

³⁸ The non-calling Parties shall provide this material at the latest by 16:00 on the day that the deadline expires.

³⁹ Any objection(s) shall be communicated to the Panel at the latest by 16:00 on the day that the deadline expires.

- (i) promptly disclose the material in Legal Workflow at the latest when providing their list(s) of material to be used, as directed in paragraphs 48 and 51;
- (ii) include said material in their list of material(s) to be used and in their presentation queue, in accordance with paragraphs 48 and 51; and
- (iii) seek leave from the Panel to use such material, indicating why the material has not been disclosed before. The request for leave shall be made *via* e-mail to the Panel, copying CMU and all other Parties, when providing the list(s) of material to be used. Any objections shall be made following the time limits set in paragraphs 50 and 52. The Panel will rule on the request prior to the material's intended use.

54. When referring to any material during a witness's testimony, including written (prior) statement(s) and/or transcript(s) of evidence given by the witness, the questioning Party shall:

- (i) clearly identify such material by the relevant ERN number (ERN range, where applicable) and indicate the relevant page and/or paragraph number(s);
- (ii) where transcripts are concerned, the questioning Party shall also identify the specific line(s) being quoted or referred to; and
- (iii) call up the material on the screen and indicate whether it may be broadcasted to the public. Where both an English and an Albanian version exist, both versions shall be called up.

55. As regards the use of speech in audio-visual material during hearings, the Party intending to use such material shall indicate the ERN number of the corresponding English language transcript.⁴⁰ The court interpreters shall be sufficiently informed of

⁴⁰ KSC-BC-2023-10, F00033, Pre-Trial Judge, *Decision on Working Language*, 12 October 2023, public, paras 14, 16; KSC-BC-2023-11, F00019, Pre-Trial Judge, *Decision on Working Language*, 14 December 2023, public, paras 14, 16.

which part of the transcript corresponds to which part of the audio-visual material being played. In such situations, the interpreters will read out only the relevant part of the provided English transcript into the record and are not required to directly interpret the audio-visual material. Should the Parties disagree with the accuracy of the transcription read out in court, they may request corrections in accordance with the procedure established in the Registry Instruction on Requesting Translation, Interpretation and Verification Services.⁴¹

56. Finally, the Parties shall ensure that the material they wish to use during the questioning of a witness does not contain any identifying information of other witnesses benefitting from protective measures. The Panel directs the Parties, in case they wish to use an item containing such information, to apply to it the appropriate redactions in order to protect the identity of witnesses and related confidential information.

J. PUBLICITY OF THE PROCEEDINGS AND USE OF PRIVATE AND/OR
CLOSED SESSIONS

57. At the outset, the Panel underlines that the Parties shall at all times respect and take all necessary care to protect the confidentiality of information, notably the identity of protected witnesses or any confidential information that may reveal their identity and whereabouts, in accordance with the Law, the Rules, the orders and decisions of the Panel and of the Pre-Trial Judge, the Code of Professional Conduct for Counsel and Prosecutors Before the Kosovo Specialist Chambers, as well as any other applicable provisions.⁴²

⁴¹ KSC-BD-14/COR, Registrar, [Registry Instruction on Requesting Translation, Interpretation and Verification Services](#), 30 May 2019, public.

⁴² See, *inter alia*, Article 12 of the Code of Professional Conduct for Counsel and Prosecutors Before the Kosovo Specialist Chambers.

58. The Parties may refer to matters subject to confidentiality during open session hearings and in public written submissions strictly in a manner that does not reveal the information protected by the confidential classification.

59. Insofar as possible, witness testimony shall be given in public.⁴³ Furthermore, to the extent possible, the Parties are directed to group identifying questions together to avoid repeated recourse to private and/or closed session. Requests and their justification for private and/or closed session shall be made in a neutral and objective way, if possible, referring to the topics that will be covered. The justification shall be given either in public session, if possible, or otherwise at the beginning of the private or closed session requested. It is the responsibility of the questioning Party to request moving back to public session when the reasons necessitating a private or closed session are no longer present. The aforementioned is without prejudice to the Panel's assessment during a witness's testimony as to whether private or closed sessions are necessary.

K. IN-COURT REDACTIONS

60. Requests by the Parties made during a hearing to redact part of what was inadvertently said in public session should be made via e-mail, so as not to attract undue attention to any confidential information. The e-mail shall be sent directly to the Panel's e-mail address, copying the Court Officer and representatives of the other Parties present in the courtroom.⁴⁴ The request must clearly identify the word(s) to be redacted and the timestamp(s), page(s), and line number(s) of the real-time transcript. Such requests must be made as soon as possible, and no later than 15 minutes after the information was revealed. The Parties present in the courtroom shall have five (5)

⁴³ Article 21(2) of the Law.

⁴⁴ The Parties shall consult *inter partes* and inform each other which member(s) of their respective teams shall be copied on such e-mail communication.

minutes to object, if they so wish. Subsequently, the Presiding Judge will rule on the request.

61. CMU shall communicate the Panel's e-mail address to the Parties before the opening of the case.

62. Should the Parties consider it necessary, they may also request the Panel to go into private session and make an oral request for the issuance of a redaction order, identifying the word(s) to be redacted and the timestamp(s), page(s), and line number(s) of the real-time transcript.

63. The Parties' agreement on any redaction is not binding on the Panel and the aforementioned procedure is without prejudice to the Panel's *proprio motu* power to decide on the need for any redactions. Moreover, due to the impracticability of making a detailed assessment during or shortly after a hearing, any applied in-court redactions are also without prejudice to a subsequent revised assessment by the Presiding Judge.

L. SELF-INCRIMINATION BY A WITNESS

64. The Parties shall, where foreseeable, give notice about potential requests for assurances pursuant to Rule 151(3) of the Rules. Noting that the presentation of evidence will commence on **Monday, 9 December 2024**, the Panel sets the deadline for any such requests pertaining to witnesses called by the SPO to **Monday, 25 November 2024**. The Defence shall provide such notice at the latest 14 days before the testimony of a witness.

65. The Registry shall make all necessary arrangements for the provision of independent legal advice to witnesses who may be at risk of incriminating themselves

during their testimony.⁴⁵ This is without prejudice to the Panel's assessment of whether assurances pursuant to Rule 151(3) of the Rules will be granted.

66. Counsel advising a witness who may be at risk of self-incrimination shall seize the Panel, sufficiently in advance, of any application for assurances under Rule 151(3) of the Rules, if required. The Parties shall be notified of such an application and the SPO shall, as soon as possible and no less than two (2) working days prior to the testimony of the witness concerned, provide its views *ex parte* pursuant to Rule 151(3) of the Rules, so as to allow the Panel to rule on the matter before the commencement of the witness's testimony. The advising Counsel shall be responsible for informing the witness, *inter alia*, of the provisions of Article 15(2) of the Law and Rule 65 of the Rules.

M. EXPERT WITNESSES

67. The Panel recalls that expert witness reports or parts thereof may be admitted into evidence without calling the experts to testify in person if the opposing Party accepts the reports or parts thereof, as provided in Rule 149(3) of the Rules. However, if the opposing Party does not accept the reports or parts thereof or wishes to cross-examine the expert witnesses, the experts shall be called to testify in person, as provided in Rule 149(2) and (4) of the Rules.

68. When examining the expert witnesses, in order to ensure the efficiency of the proceedings, the calling Party shall streamline their questioning and avoid eliciting information that is already available in the witnesses' reports and that would be repetitive. The calling Party shall focus their questioning on clarifying and complementing the witnesses' reports, as necessary. Following its examination of each

⁴⁵ See also Rule 151(4) and (6) of the Rules.

expert witness, the calling Party shall seek the admission of the witness's reports and any associated material, orally, in court.

69. The Panel will decide on the admissibility of the expert reports following the experts' testimonies and questioning, as provided in Rule 149(4) of the Rules.

70. The procedure set out in Section III.H above in relation to the order and mode of questioning of witnesses shall, unless otherwise ordered, apply *mutatis mutandis* to the examination of expert witnesses.

N. RULES 153-155 OF THE RULES

71. The Panel recalls that Rules 153 and 154 of the Rules are useful tools to expedite and streamline the proceedings.⁴⁶

72. The Panel recalls that it ordered the Defence to indicate, when filing their (final) list of witnesses, whether they intend to file any requests under Rules 153-155 of the Rules.⁴⁷ Corresponding deadlines for the filing of said requests will be set by the Panel at a later stage of the proceedings.

O. AGREED FACTS

73. The Panel takes note of the points of agreement between the SPO and the Bahtijari Defence and Shala Defence respectively.⁴⁸

⁴⁶ Decision on Trial Preparation Conferences, para. 17. *See also* KSC-BC-2020- 05, F00169, Trial Panel I, [Decision on the submission and the admissibility of evidence](#), 25 August 2021, public, para. 29.

⁴⁷ *See* KSC-BC-2023-10, Transcript of Hearing, 8 October 2024, confidential, from p. 370, line 23 to p. 372, line 17.

⁴⁸ KSC-BC-2023-10, F00296, Specialist Prosecutor, *Notification of Agreed Facts and Points of Law*, 17 May 2024, public, paras 5-6, with Annexes 1-2, confidential.

P. FACTS OF COMMON KNOWLEDGE

74. The Panel directs the SPO to file any request under Rule 157(1) of the Rules, if it so wishes, by **Wednesday, 20 November 2024**.

Q. SUBMISSIONS ON SENTENCING PROCEDURE

75. In accordance with Rule 159(6) of the Rules, the Panel orders the SPO and the Defence to file, by no later than **Monday, 25 November 2024**, submissions as to whether, in the event any of the Accused is found guilty of one or more offence(s) charged, the Panel should determine the appropriate sentence with the pronouncement of the Trial Judgment, or should proceed in accordance with Rules 162 and 164 of the Rules. The Parties shall also make submissions on whether they have additional evidence that they wish to submit for the purpose of sentencing, including whether they wish to call witnesses for this purpose. This is without prejudice to the Panel's determination of whether any of the Accused is guilty or not guilty of one or more offence(s) charged.

R. SUBMISSION OF FILINGS

76. The Panel reminds the Parties to abide by the time limits set by the Panel on any given matter. In case the Parties cannot meet the prescribed deadlines, they shall, without exception, submit a properly motivated request pursuant to Rule 9(5) of the Rules, seeking an extension of time.

77. The Panel further reminds the Parties of Article 40 of the Practice Direction on Files and Filings on the structure and content of submissions which reads as follows:

Submissions in first instance proceedings shall contain the following, where appropriate and unless otherwise directed:

a. An introduction containing: (i) the legal basis for the Submission with specific reference to the relevant provisions of the Law, Rules and/or applicable case-law;

and (ii) as applicable, a summary of the ruling or relief sought and of the grounds in support of the request, or whether the ruling or relief sought is supported or opposed;

b. A concise outline of the relevant procedural history and facts, including a chronology, where appropriate;

c. All relevant legal and factual arguments, with specific reference to the applicable law relied upon;

d. A conclusion with a concise statement of the ruling or relief sought or whether the ruling or relief sought is supported or opposed, as applicable; and

e. An annex containing a list of the authorities referred to in the Submission and copies of these authorities in accordance with Article 32, where appropriate.⁴⁹

78. The Panel urges the Parties to abide by those requirements for any future request, and further also to the requirements as to the formatting style for submissions as provided for in Article 30 of the Practice Direction on Files and Filings.⁵⁰

79. The Panel will exercise its discretion to dismiss filings that are not filed in compliance with the Practice Direction on Files and Filings and within the prescribed time limits.

80. Finally, as regards specifically filings with more than three (3) annexes, the Panel directs the Parties to include first, as Annex 1, a table of contents listing all annexes attached to the core filing, with a brief description of the content of each annex, including any relevant witness codes and/or ERN numbers.

S. RECLASSIFICATION OF FILINGS AND TRANSCRIPTS

81. Mindful of the principle of publicity of the proceedings, the Panel gives the following directions on the reclassification of filings and transcripts.

⁴⁹ KSC-BD-15, Registrar, [Registry Practice Direction on Files and Filings before the Kosovo Specialist Chambers](#), 17 May 2019, public.

⁵⁰ See also, KSC-BC-2023-10, F00538, Trial Panel I, *Decision on the "Bahtijari request for material to be disclosed to expert"*, 17 October 2024, strictly confidential and *ex parte*, para. 8. A public redacted version was issued on 29 October 2024, F00538/RED.

82. As provided in Rule 82(3) of the Rules, when making a filing classified confidential or strictly confidential, the Parties and the Registry, as the case may be, shall state the reasons for such classification. The filing Party or, where applicable, the Registry shall also indicate when it does not object to the reclassification of the filing.

83. The Parties and the Registry shall file public and/or confidential redacted versions, as the case may be, preferably and to the extent possible, at the same time as the original filing, or otherwise within three (3) days after the original filing was made. Where the basis for the original classification no longer exists, the filing Party or, where applicable, the Registry shall request reclassification, as provided in Rule 82(5) of the Rules.⁵¹

84. Further, with a view to respecting the principle of publicity while upholding the protective measures for witnesses, the Panel considers it appropriate to order the Parties and the Registry⁵² to undertake on a rolling basis, following the completion of each evidentiary block, a revision of the transcripts of trial hearings. The Parties and the Registry shall liaise with each other and make joint submissions, in a consolidated filing, within two (2) weeks of the completion of each evidentiary block, on whether existing redactions could be lifted and/or transcripts reclassified as public.⁵³ They shall provide the reasons why the redaction/classification is no longer necessary, which should be sufficiently detailed and specific to enable the Panel's determination. Importantly, the Panel directs the Parties and the Registry, when making submissions, to conduct a diligent review of the transcripts in order to give full effect to the principle of publicity as well as the protective measures in place, and to ensure that their proposals are consistent within and across transcripts. In addition, the Parties and the

⁵¹ Decision on Trial Preparation Conferences, para. 31.

⁵² To the extent that portions of the transcripts concern the role and functioning of the Registry, in particular WPSO.

⁵³ This applies to all future evidentiary blocks, whether they have been scheduled at this point or not.

Registry shall ensure that they do not request to apply redactions to or reclassify as confidential transcripts or parts thereof that are already public.

85. Should the Parties and the Registry disagree on discrete portions of any transcript, they shall specify this in their submissions and provide reasons for their disagreement. The Panel will ultimately decide on the lifting of redactions and/or reclassification of the transcripts, pursuant to Rules 80(1) and 84(1) of the Rules.

T. COMMUNICATION WITH THE PANEL

86. The Panel stresses that, unless instructed otherwise, the Parties are to include any requests, including requests for extension of time limits, responses/replies, challenges, observations and indications formally on the record through filings. In principle, only logistical issues are to be communicated by the Parties in e-mails *via* CMU.⁵⁴

V. DISPOSITION

87. For the above-mentioned reasons, the Panel hereby:

- a. **ADOPTS** the above directions concerning the conduct of the proceedings;
- b. **INSTRUCTS** the Parties and the Registry, as the case may be, to comply with the deadlines set out above; and
- c. **SETS** hearing dates for the first evidentiary block, as specified in paragraph 24 of the present decision.

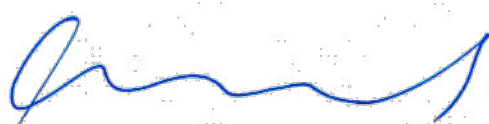
⁵⁴ Decision on Trial Preparation Conferences, paras 5-6.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Monday, 11 November 2024

At The Hague, the Netherlands.