



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: 12 November 2024

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Public redacted version of
Order Setting out the Briefing Schedule for Submissions Regarding Items to be Used During Examination of Witnesses

To be notified to:

Specialist Prosecutor
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TRIAL PANEL I (Panel) hereby renders this order setting out the briefing schedule for submissions regarding items to be used during examination of witnesses.

I. PROCEDURAL BACKGROUND

1. On 15 and 21 December 2023, the Specialist Prosecutor's Office (SPO) disclosed the [REDACTED] to the Defence of Sabit Januzi (Januzi Defence), Ismet Bahtijari (Bahtijari Defence) and Haxhi Shala (Shala Defence) (collectively, Defence).¹ On 19 April 2024, [REDACTED] said evidence was disclosed to the Defence.² On the same day, the SPO also disclosed the [REDACTED] (collectively, Impugned Items).³
2. On 16 February 2024, the SPO filed its list of exhibits which included the [REDACTED].⁴
3. On 25 April and 13 May 2024, respectively, the Januzi Defence indicated that it would challenge the admissibility of the Impugned Items on the basis that they were "obtained by means of a violation of the Law, the Rules and of standards of international human rights law".⁵ Likewise, the Shala Defence requested the Pre-Trial Judge to rule on the admissibility of the Impugned Items (Shala Request) arguing, *inter*

¹ KSC-BC-2023-10, [REDACTED]; KSC-BC-2023-11, [REDACTED].

² KSC-BC-2023-10, [REDACTED].

³ KSC-BC-2023-10, [REDACTED] See KSC-BC-2023-10, [REDACTED].

⁴ KSC-BC-2023-10, F00177/A03, Specialist Prosecutor, *Annex 3 to Submission of Prosecution Pre-Trial Brief, witness and exhibit lists and Rule 109(c) chart*, 16 February 2024, confidential.

⁵ KSC-BC-2023-10, F00270, Januzi Defence, *Reply to Prosecution Filing F00266* (Filing F00270), 25 April 2024, confidential, para. 2(b); A public redacted version was submitted on 4 October 2024, F00270/RED. F00285, Januzi Defence, *Update re Objections to Evidence and Disclosure*, 13 May 2024, strictly confidential, para. 1(b). A public redacted version was submitted on 4 October 2024, F00285/RED.

alia, that said items “were obtained in violation of international human rights standards”.⁶

4. On 17 May 2024, the SPO requested the Pre-Trial Judge to deny the Shala Request at this stage of the proceedings and indicated that it would respond at the appropriate time (SPO Response).⁷

5. On 25 May 2024, the Shala Defence replied to the SPO Response.⁸

6. On 5 July 2024, the SPO filed an amended list of exhibits which include further [REDACTED].⁹

7. On 4 September 2024, the present case was transmitted to the Panel.¹⁰

8. On 21 and 25 October 2024, the SPO indicated that it intends to introduce the Impugned Items through the SPO witnesses.¹¹

9. On 24 October 2024, the Panel decided that the trial shall open on 14 November 2024, and that the SPO presentation of evidence shall commence on 9 December 2024.¹²

⁶ KSC-BC-2023-10, F00287, Shala Defence, *Request for a finding of inadmissibility of Items disclosed under Rule 102 of the Rules*, 13 May 2024, confidential, para. 16. A public redacted version was submitted on 1 October 2024, F00287/RED2.

⁷ KSC-BC-2023-10, F00295, Specialist Prosecutor, *Prosecution response to F00287*, 17 May 2024, public.

⁸ KSC-BC-2023-10, F00303, Shala Defence, *Reply to Prosecution Response to F00287*, 25 May 2024, public.

⁹ KSC-BC-2023-10, F00374/A01, Specialist Prosecutor, *Annex 1 to Prosecution submission of amended exhibit list*, 5 July 2024, confidential.

¹⁰ KSC-BC-2023-10, F00486, Pre-Trial Judge, *Decision Transmitting the Case File to Trial Panel I*, 4 September 2024, public, with Annex 1, confidential, and Annex 2, public.

¹¹ KSC-BC-2023-10, F00544, Specialist Prosecutor, *Prosecution reply to Defence submissions on witness preparation*, 21 October 2024, confidential, para. 5. A public redacted version was submitted on 23 October 2024, F00544/RED; F00560, Specialist Prosecutor, *Prosecution reply to Januzi Consolidated Response to Prosecution Motions for Admission of Evidence*, 25 October 2024, confidential, para. 4. A public redacted version was submitted on 30 October 2024, F00560/RED.

¹² KSC-BC-2023-10, F00559, Trial Panel I, *Decision on the date for the commencement of the trial*, 24 October 2024, public.

10. On 6 November 2024, the Panel adopted the decision on the submission and admissibility of non-oral evidence (Framework Decision on Admission of Evidence).¹³

11. On 11 November 2024, the Panel issued the decision on the conduct of proceedings (Conduct of Proceedings).¹⁴

II. APPLICABLE LAW

12. The Panel notes Articles 21(6), 40(2) and (6)(h) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 9 and 138 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules).

III. ANALYSIS

13. The Panel recalls its approach set out in the Framework Decision on Admission of Evidence according to which, notwithstanding the Panel's general approach to defer consideration of the standard Rule 138(1) admissibility criteria to the judgment stage, the Panel is required to render decisions on admissibility prior to its assessment of the evidence for the purposes of the trial judgment when exclusionary rules apply, notably Rule 138(2) of the Rules. Evidence declared inadmissible shall not be considered by the Panel for the purposes of the trial judgment, pursuant to Rule 139(1) of the Rules.¹⁵

¹³ KSC-2023-10, F00583, Trial Panel I, *Decision on the submission and admissibility of non-oral evidence*, 6 November 2024, public.

¹⁴ KSC-BC-2023-10, F00586, Trial Panel I, *Decision on the conduct of the proceedings*, 11 November 2024, public.

¹⁵ Framework Decision on Admission of Evidence, para. 23.

A. IMPUGNED ITEMS

14. At the outset, the Panel recalls that the Impugned Items comprise the:

- (i) [REDACTED];
- (ii) [REDACTED];
- (iii) [REDACTED];
- (iv) [REDACTED];
- (v) [REDACTED];
- (vi) [REDACTED];
- (vii) [REDACTED]; and
- (viii) [REDACTED].

15. The Panel notes that the SPO declared its intention to introduce the Impugned Items through its witnesses, who are foreseen to start testifying on 9 December 2024.¹⁶ In turn, early on in the proceedings, the Januzi and Shala Defence have made it clear that they seek to have them declared inadmissible. In the view of the Panel, it is imperative that the Parties know with certainty whether the Impugned Items can be used during the examination of the SPO witnesses so that they can prepare for the hearings accordingly. As a result, in order to allow the Panel to take an informed decision on the (in)admissibility of the Impugned Items prior to the commencement of the testimonies of the two SPO witnesses, it is necessary to set forth the briefing schedule for submissions in this regard.

16. Considering the SPO's intention to introduce the Impugned Items through the witnesses, the Panel understands that the SPO will include them in the list of

¹⁶ The Panel understands that the SPO may elect not to tender all Impugned Items, as reflected in this paragraph.

material to be used for the examination of the SPO witnesses.¹⁷ In anticipation of the SPO's communication of said list, and given that some of the Defence teams have already formulated or described their challenge of the Impugned Items in past filings, the Panel orders the Defence to set forth their challenge(s) to the Impugned Items, if they so wish, by no later than **Tuesday, 19 November 2024 at 12:00**.¹⁸ The SPO is ordered to respond by no later than **Monday, 25 November 2024 at 12:00**. Lastly, the Defence is ordered to reply, if they so wish, by no later than **Thursday, 28 November 2024 at 16:00**.

17. The Panel intends to hand down a decision on the challenges regarding the Impugned Items before the commencement of the examination of the witnesses, by **Wednesday, 4 December 2024**. The Panel underlines that the decision on the (in)admissibility of the Impugned Items is without prejudice to any argument or information the Panel may further receive as a result of [REDACTED].

B. OTHER MATERIAL TO BE USED DURING EXAMINATION OF SPO WITNESSES

18. As set out above, the Impugned Items will be part of the material the SPO intends to use during the examination of one or both witnesses. Mindful of the procedure and time limits set out in the Conduct of Proceedings regarding the use of material during the examination of witnesses,¹⁹ the Panel wishes to streamline the submissions on the (in)admissibility challenge and the use of other material, to the extent possible. As a result, notwithstanding the time limits established in the Conduct of Proceedings, the Panel orders the SPO to communicate its list of material, other than the Impugned Items, to be used during the examination of the witnesses via e-mail, by no later than **Monday, 25 November 2024, at 16:00**. The

¹⁷ Conduct of Proceedings, paras 48-50.

¹⁸ In the view of the Panel, since the anticipated Defence challenge(s) concern the audio recording and related transcriptions, the Panel seeks the Parties' submissions on the Impugned Items as a whole.

¹⁹ Conduct of Proceedings, paras 48-50.

Defence is ordered to notify any objections to the use of such material within three (3) working days of the notification of the list, i.e. no later than **Thursday, 28 November 2024 at 16:00**. Responses to the objections, if any, shall be submitted within two (2) working days from the notification of said objection(s), to the Panel and all other Parties, i.e. no later than **Monday, 2 December 2024**. No reply will be entertained. The Panel will rule on any objections before the relevant items are used.²⁰

IV. DISPOSITION

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

- a. **ORDERS** the Defence to present their challenge(s) to the Impugned Items (paragraph 14 (i)-(viii)), if they so wish, by no later than **Tuesday, 19 November 2024, at 12:00**, with the SPO response and Defence replies, if any, to follow as set out in paragraph 16; and
- b. **ORDERS** the SPO to communicate via email its list of material, other than the Impugned Items, to be used during the examination of the witnesses by no later than **Monday, 25 November 2024, at 16:00**, with the Defence objections to be notified no later than **Thursday, 28 November 2024, at 16:00**, with any responses to the objections, if any, **within two (2) working days** from the notification of said objection(s), i.e. no later than **Monday, 2 December 2024**.

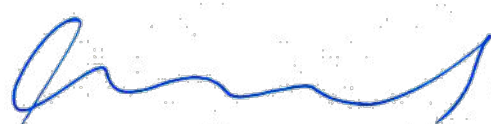
²⁰ Conduct of Proceedings, para. 50.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Tuesday, 12 November 2024

At The Hague, the Netherlands.