



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

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
Judge Roland Dekkers
Judge Gilbert Bitti
Judge Vladimir Mikula, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 11 November 2024

Language: English

Classification: Public

Public redacted version of 'Prosecution response to Defence Witness Lists'

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Sabit Januzi

Jonathan Elystan Rees

Counsel for Ismet Bahtijari

Felicity Gerry

Counsel for Haxhi Shala

Toby Cadman

I. INTRODUCTION

1. Pursuant to the Oral Order,¹ and Rules 119(2) and (3), and 138(1) of the Rules,² the Specialist Prosecutor's Office ('SPO') hereby responds to Defence submissions regarding their Witness Lists.³

II. SUBMISSIONS

2. The Defence's discretion in selecting and presenting its evidence is not unlimited, and the Panel may intervene in order to exclude irrelevant evidence and ensure the fair and expeditious conduct of the trial.⁴ Evidence that is divorced from the facts and circumstances of this case, repetitive,⁵ or otherwise irrelevant to the charges against the Accused⁶ would not be conducive to the efficiency of proceedings⁷ or assist the Panel in ascertaining the truth.⁸

3. The onus is on the calling Party to demonstrate, with clarity and specificity, that the proposed evidence is relevant and fits into that Party's case.⁹ Demonstration of

¹ See Transcript (Trial Preparation Conference), 8 October 2024 ('Oral Order'), pp.371-372.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ BAHTIJARI witness list and notice of expert evidence, KSC-BC-2023-10/F00576, 4 November 2024, Confidential ('Bahtijari Witness List'); Januzi Witness List, KSC-BC-2023-10/F00578, 4 November 2024, Confidential ('Januzi Witness List'); ANNEX 1 to Submission of List of Witnesses and Related Information, KSC-BC-2023-10/F00581/A01, 6 November 2024, Confidential ('Shala Witness List') (collectively 'Witness Lists').

⁴ See Rule 138(1); See also Rule 119(3); See *Prosecutor v Shala*, Transcript (Defence Preparation Conference), 25 August 2023, pp.2428-2431; ICC, *Prosecutor v. Bemba et al.*, ICC-01/05-01/13, Decision on Relevance and Propriety of Certain Kilolo Defence Witnesses, 4 February 2016, para.6; ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-AR73.7, Decision on Defendants' appeal against 'Décision portant attribution du temps à la Défense pour la présentation des moyens à décharge', 1 July 2008, para.25.

⁵ See Rule 127(1).

⁶ See Rule 119(3).

⁷ See Rule 143(4).

⁸ See Rule 143(4).

⁹ See *Prosecutor v. Gucati and Haradinaj*, Decision on Prosecution Requests in Relation to Proposed Defence Witnesses, KSC-BC-2020-07/F00470, 3 December 2021 ('Case 07 Decision'), para.41.

relevance requires more than a tenuous or remote connection to the facts and circumstances of a case.¹⁰

A. SHALA WITNESS LIST

4. As a preliminary matter, the SPO notes that the summary provided regarding the intended testimony of Shala's witnesses – comprising just one substantive sentence for each witness - is insufficient to assist the SPO, or Panel, in understanding what either witness will in fact testify to. Shala should be ordered to refile the notice, providing the necessary information.¹¹ The SPO reserves the right to file further submissions upon receipt of the updated notice.

5. Shala indicates that one of the witnesses appearing on his Witness List will be providing expert testimony.¹² As such, the SPO reserves the right to address the suitability of this witness pursuant to the framework of Rule 149, as appropriate.

6. However, the SPO already notes that the expert's proposed testimony lacks connection to any specific issue in the case¹³ and the proposed scope of his testimony would serve to effectively usurp the function of the Panel as the ultimate arbiter of fact.¹⁴ The Panel should remove this witness from the list of witnesses, as such general

¹⁰ Case 07 Decision, KSC-BC-2020-07/F00470, para.41.

¹¹ See *Prosecutor v Shala*, Transcript (Defence Preparation Conference), 25 August 2023, pp.2428-2431; *Prosecutor v Shala*, Public redacted version of 'Prosecution additional submissions on Defence witness summaries', KSC-BC-2020-04/F00624/RED ('Case 04 SPO Submissions'), 25 August 2023.

¹² Shala Witness List, KSC-BC-2023-10/F00581/A01, p.3.

¹³ Shala Witness List, KSC-BC-2023-10/F00581/A01, p.3.

¹⁴ See *Prosecutor v. Ntaganda*, ICC-01/04-02/06-1159, Decision on Defence preliminary challenges to Prosecution's expert witnesses, 9 February 2016, paras 8-9; *Prosecutor v. Popović et al.*, IT-05-88A, Judgement, 30 January 2015, para.375; *Prosecutor v. Karemera et al.*, ICTR-98-44-T, Decision on Prosecution motion for reconsideration of the decision on prospective experts Guichaoua, Nowrojee and Des Forges, or for certification, 16 November 2007, paras 13-14. See, *similarly*, Annex to Order on the Conduct of Proceedings, KSC-BC-2020-7/F00314, 17 September 2021, para.89.

information will not assist the Panel in establishing the facts of the case and in its determination of the truth.¹⁵

7. Shala also indicates that there is a possibility that he will request that a maximum of two further witnesses testify, but that information on them pursuant to Rule 119(2) is not yet available.¹⁶ The Panel should direct Shala to comply with the Oral Order and provide the relevant information that he does have, that is, at a minimum, information relating to the proposed content of the testimony.

B. JANUZI WITNESS LIST

8. As a preliminary matter, the SPO notes that the summary provided regarding the intended testimony of Januzi's witnesses – comprising either just one substantive sentence for each witness, or a bare reference to the entire pre-trial brief - is insufficient to assist the SPO, or Panel, in understanding what any of the proposed witnesses will in fact testify to. Januzi should be ordered to refile the notice, providing the necessary information.¹⁷ The SPO reserves the right to file further submissions upon receipt of the updated notice.

9. The proposed testimony of one witness appears, from what little information has been provided,¹⁸ to relate to either unproven or cumulative allegations of historical illegal conduct the relevance of which is not apparent.

10. Moreover, Januzi is in possession of [REDACTED], which includes at least one of his referenced allegations,¹⁹ rendering the proposed testimony not only of no apparent

¹⁵ See e.g., *Prosecutor v Shala*, Transcript (Defence Preparation Conference), 25 August 2023, p.2430-31.

¹⁶ Haxhi Shala Submission of List of Witnesses and Related Information, KSC-BC-2023-10/F00581, para.1.

¹⁷ See *Prosecutor v Shala*, Transcript (Defence Preparation Conference), 25 August 2023, pp.2428-2431; *Prosecutor v Shala*, Case 04 SPO Submissions, KSC-BC-2020-04/F00624/RED.

¹⁸ Januzi Witness List, KSC-BC-2023-10/F00578, para.4(d).

¹⁹ [REDACTED].

relevance but also cumulative.²⁰ As such, this witness should be removed from the list of witnesses.

C. BAHTIJARI WITNESS LIST

11. Bahtijari indicates that three witnesses will be providing expert medical testimony.²¹ As such, the SPO reserves the right to address the suitability of these witnesses pursuant to the framework of Rule 149, as appropriate.

12. Given the amount of proposed medical expert testimony, witnesses that would provide non-expert medical testimony²² should be removed from the list of witnesses as their proposed evidence is repetitive of other witnesses better suited to give that testimony.²³ This applies even to otherwise relevant evidence.²⁴

13. Similarly, Bahtijari notices thirteen (13) witnesses who will testify either exclusively or primarily about [REDACTED].²⁵ This is excessive and repetitive, and of very little relevance to the charges, and the Panel should direct Bahtijari to select only the witnesses best suited to give such testimony, and have the rest removed from the list of witnesses.

III. CLASSIFICATION

14. This filing is filed as confidential pursuant to Rule 82(4). The SPO does not object to its reclassification as public.

²⁰ See e.g., *Prosecutor v Shala*, Transcript (Defence Preparation Conference), 25 August 2023, p.2430, lines 22-25 - p.2431, lines 10-16.

²¹ Bahtijari Witness List, KSC-BC-2023-10/F00576, paras 6(c)-(e). The SPO notes that two of the noticed experts appear to only be provisionally listed, and would not in fact testify if the other expert does.

²² Bahtijari Witness List, KSC-BC-2023-10/F00576, paras 6(a), (d).

²³ See e.g., *Prosecutor v Shala*, Transcript (Defence Preparation Conference), 25 August 2023, p.2430, lines 22-25 - p.2431, lines 10-16.

²⁴ Case 07 Decision, KSC-BC-2020-07/F00470, para.44.

²⁵ Bahtijari Witness List, KSC-BC-2023-10/F00576, paras 6(f)-(k).

IV. CONCLUSION

15. For the foregoing reasons, the SPO respectfully requests the above specified relief from the Panel.

Word count: 1,267



Kimberly P. West

Specialist Prosecutor

Monday, 11 November 2024

At The Hague, the Netherlands