



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: 23 January 2025

Language: English

Classification: Public

Prosecution submissions pursuant to Order F00642

Specialist Prosecutor's Office

Kimberly P. West

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Counsel for Ismet Bahtijari

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Counsel for Haxhi Shala

Toby Cadman

1. All relevant evidence has been disclosed to the Panel, along with a detailed Rule 86(3)(b) Outline filed alongside the Confirmed Amended Indictment,¹ and with the pre-trial brief of the Specialist Prosecutor's Office ('SPO'), which identifies in detail (with citations to individual items of evidence) how the SPO would deploy that evidence at trial to prove its case.² Much of this evidence has in fact already been tendered to the Panel.³ The Panel therefore has before it all relevant evidence necessary to satisfy itself that the agreed factual basis is supported by independent evidence, should it choose to conduct such an assessment.

2. It is noted, however, that the factual basis agreed between parties is - in and of itself - sufficient to establish guilt pursuant to Rule 94(5), and indeed constitutes the best evidence of the crimes to which the Accused have pleaded guilty.⁴ The Panel may properly accept the guilty pleas and the plea agreements on the basis of these statements alone. There is no suggestion that the agreed facts do not encompass all necessary elements – on the contrary, the Panel's intention in Order F00642 appears to

¹ ANNEX 4 to Prosecution submission of confirmed amended Indictment, KSC-BC-2023-10/F00379/A04, 10 July 2024 ('Rule 86(3)(b) Outline'); ANNEX 3 to Prosecution submission of confirmed amended Indictment, KSC-BC-2023-10/F00379/A03, 10 July 2024 ('Confirmed Amended Indictment').

² ANNEX 1 to Prosecution submission of further public redacted version of 'ANNEX 1 to Submission of Prosecution Pre-Trial Brief, witness and exhibit lists, and Rule 109(c) chart,' KSC-BC-2023-10/F00644/A01, 17 January 2025.

³ See Public redacted version of 'Prosecution motion for admission of documentary evidence,' KSC-BC-2023-10/F00529/RED, 15 October 2024 ('Documentary Evidence Motion'); ANNEX 1 to Documentary Evidence Motion, KSC-BC-2023-10/F00529/A01, Confidential, 15 October 2024; Public redacted version of 'Prosecution motion for admission of electronic evidence,' KSC-BC-2023-10/F00532/RED, 15 October 2024 ('Electronic Evidence Motion'); ANNEX 1 to Electronic Evidence Motion, KSC-BC-2023-10/F00532/A01, Confidential, 15 October 2024; Public redacted version of 'Prosecution motion for admission of evidence of Witness 1 and W04891 pursuant to Rule 154,' KSC-BC-2023-10/F00540/RED, 18 October 2024 ('Witness Evidence Motion'); Witness 1: Annex 1 to Witness Evidence Motion, KSC-BC-2023-10/F00540/A01, Confidential, 18 October 2024; W04891: Annex 2 to Witness Evidence Motion, KSC-BC-2023-10/F00540/A02, Confidential, 18 October 2024.

⁴ The instant case involves a very straightforward and limited fact pattern, such that the Accused were well positioned to directly attest to all necessary facts in connection with the recent plea proceedings.

be simply to consider evidence which underlies those already agreed facts.⁵ Nor is there is any dispute, inconsistency or uncertainty regarding the agreed facts.

3. In these circumstances, nothing in Rule 94 necessitates the submission or consideration of additional evidence. Indeed, the exercise envisaged runs contrary to the widely recognised benefits of achieving fair and efficient resolution of proceedings through plea agreements, by introducing unnecessary delay and additional, unwarranted, procedural hurdles. Moreover, engaging in a further assessment of the factual basis only now, after the Accused have already changed their pleas in open court, appears potentially to be both procedurally problematic and prejudicial.

4. ICTY chambers – applying analogous provisions – have, as a matter of course, accepted plea agreements and guilty pleas based on the factual basis statements of the Accused and incorporated references to the indictment.⁶ Independent indicia have in practice been sought only where there existed some discrepancy between the facts alleged in the relevant portions of the indictment and those which formed part of the factual basis for the guilty plea⁷ - which is not the case here.

⁵ Order for Submission of Evidentiary Material, KSC-BC-2023-10/F00642, 16 January 2025 ('Order F00642' or 'Order'), paras 7-8.

⁶ See, e.g., ICTY, *Prosecutor v. Babić*, IT-03-72-A, Judgement on Sentencing Appeal, 18 July 2005, para.86 ('In the case of a plea agreement, a Trial Chamber enters its finding of guilt on the basis of the facts agreed by the parties, as set out in the indictment and in the statement of facts'); ICTY, *Prosecutor v. Deronjić*, IT-06-61-T, Sentencing Judgement, 30 March 2004, para.19 (plea agreement based on indictment and separate factual basis); ICTY, *Prosecutor v. Nikolić*, IT-02-60/1-S, Public Transcript of Hearing, 2 December 2003, p.1684 ('A written factual basis for the crime and for Mr. Nikolić's participation in it was filed with the plea agreement. The factual basis and the indictment, which Mr. Nikolić acknowledged to be true, forms the factual basis upon which the Trial will determine sentence'); ICTY, *Prosecutor v. Banović*, IT-02-65/1-S, Sentencing Judgement, 28 October 2003, paras 13-14; *Prosecutor v. Prosecutor v. Sikirica et al.*, IT-95-8-S, Sentencing Judgement, 13 November 2001, paras 13-15.

⁷ ICTY, *Prosecutor v. Deronjić*, IT-02-61-A, Judgement on Sentencing Appeal, 20 July 2005, para.16 ('Because the Trial Chamber found discrepancies with the Factual Basis, it was appropriate and indeed necessary under the plain language of Rule 62bis(iv) of the Rules for the Trial Chamber to look beyond the Plea Agreement Package to other evidence as "independent indicia" in order to satisfy itself that there was a sufficient factual basis for the guilty plea.'). Even where trial chambers did ask the parties for their representations as to independent indicia of guilt beyond the established factual basis, the chambers accepted the parties' in-court representations and then went on to accept the plea agreement and guilty plea during the course of the same proceeding—without asking to review the evidence that

5. Indeed, the ICTY cases cited in the Order⁸ - *Češić* and *Nikolić* - are consistent with the routine practice outlined above in that the issue of further evidence was raised only for the purposes of sentencing after the trial chambers had already accepted the plea agreements and guilty pleas at issue.⁹

6. Finally, noting also that the Pre-Trial Judge already conducted a thorough review of the evidential basis at the point of confirming the original indictments,¹⁰ a further such exercise appears wholly unwarranted in the circumstances.

7. The Panel should confirm the plea agreements and guilty pleas on their own terms, and already has access to relevant evidence – including previously tendered evidence – to further satisfy itself of the veracity of those facts should it wish to do so.

Word count: 1,115



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Thursday, 23 January 2025

At The Hague, the Netherlands

had been referenced by the parties (*Prosecutor v. Češić*, IT-95-10/1-PT, Public Transcript of Hearing, 8 October 2003, pp.91-92).

⁸ See Order, KSC-BC-2023-10/F00642, para.8 fn.12 (citing ICTY, *Prosecutor v. Češić*, IT-95-10/1-S, Sentencing Judgement, 11 March 2004 ('*Češić*'), paras 5, 14; *Prosecutor v. Nikolić*, IT-02-60/1-S, Sentencing Judgement, 2 December 2003 ('*Nikolić*'), para.52).

⁹ See *Češić*, IT-95-10/1-S, paras 4-5, 14; *Nikolić*, IT-02-60/1-S, paras 12-15.

¹⁰ Corrected Version of Public Redacted Version of the Decision on the Confirmation of the Indictment, KSC-BC-2023-10/F00008/RED/COR, 2 October 2023; Public Redacted Version of the Decision on the Confirmation of the Indictment, KSC-BC-2023-11/F00005/RED, 4 December 2023; Public Redacted Version of Decision on the Confirmation of Amendments to the Indictment and Related Matters, KSC-BC-2023-10/F00377/RED, 8 July 2024.