

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 Counsel for Haxhi Shala

Date: 24 January 2025

Language: English

Classification: Public

Haxhi Shala Submissions regarding Evidentiary Material

Specialist Prosecutor
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Dr. Felicity Gerry
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Counsel for Haxhi Shala
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I. INTRODUCTION

1. The Defence for Mr Haxhi Shala (“Haxhi Shala Defence”) hereby makes a submission in regard to the evidentiary material which Trial Panel I of the Kosovo Specialist Chambers (“Trial Panel”) ordered to be submitted in the Order for Submission of Evidentiary Material which it issued on 16 January 2025 (“Order”).¹

II. PROCEDURAL BACKGROUND

2. On 10 July 2024 the Specialist Prosecutor’s Office (“SPO”) submitted the Confirmed Amended Indictment (“Indictment”)² and an Outline³ pursuant to Rule 86(3)(b) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rule 86(3)(b) Outline” and “Rules”)⁴.
3. On 6 December 2024 the SPO filed a revised version of the Plea Agreement (“Plea Agreement”) between Haxhi Shala (“Accused”), through his Specialist

¹ KSC-BC-2023-10/F00642.

² KSC-BC-2023-10/F00379, Prosecution submission of confirmed amended Indictment, Confidential Annex 1 (The Public Redacted Version is in Annex 2).

³ KSC-BC-2023-10/F00379, Prosecution submission of confirmed amended Indictment, Confidential Annex 2. (The Public Redacted Version is in Annex 4.)

⁴ KSC-BD-03/Rev3/2020.

Counsel, and the SPO.⁵ The principal factual basis for the Accused's admission of guilt is set forth in Annex 1; and in paragraph 5 the Accused and the SPO agreed that if the Prosecution were to proceed with evidence, the facts and allegations as set out in paragraphs 8-9, 11, 14-18, and 24 (sub-paragraphs i(i), ii, and iii) of the Indictment would be proven beyond reasonable doubt, and that those facts were true and correct and not disputed by the Accused.

III. APPLICABLE LAW

4. Rule 94(5)(e) of the Rules provides that a Trial Panel may approve the plea agreement, if it is satisfied that "there is sufficient factual basis establishing the essential facts that are required to prove the crime and the participation of the Accused."
5. Rule 86(3)(b) of the Rules provides that the Indictment shall be filed with supporting material which includes "a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation, with particular reference to the conduct of the suspect with respect to the alleged crime(s)".

⁵ KSC-BC-2023-10/F00618, URGENT Prosecution submissions on plea agreements and sentencing, 6 December 2024, confidential, Annex 1 (reclassified as Public on 17 December 2024).

IV. SUBMISSIONS

6. In the context of Rule 94(5)(e) of the Rules, the Trial Panel noted in the Order the factual basis agreed to by the Parties, as set out in the Plea Agreement.⁶
7. The Panel held that in order to determine whether the requirement of Rule 94(5)(e) of the Rules was met, it found it necessary to examine whether the factual basis agreed to by the Parties was also supported by evidence and, to this end, it ordered the Parties to submit the evidentiary material they deemed relevant to its assessment under Rule 94(5)(e) of the Rules, as well as observations, indicating why the evidence in question was relevant.⁷
8. The facts and allegations agreed to the Plea Agreement⁸ are supported by the Rule 86(3)(b) Outline which contains evidentiary statements on which those facts and allegations are based together with citations of evidentiary material. The Defence submits that the Plea Agreement and the evidentiary material cited in the Rule 86(3)(b) Outline satisfy the requirements of Rule 94(5)(e) of the Rules.
9. The Defence notes that the evidentiary material is not supported by oral testimony and no inferences should be drawn from it as to the validity of any other facts that the SPO has alleged in these proceedings.

Word Count: [585 words]

⁶ Plea Agreement, para. 7.

⁷ Plea Agreement, para. 8.

⁸ Plea Agreement, para. 5 and Annex 1.



Toby Cadman

Specialist Counsel

24 January 2025

At Abu Dhabi, United Arab Emirates