



**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:** 4 March 2025

**Language:** English

**Classification:** Public

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**Prosecution clarification**

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**Specialist Prosecutor's Office**

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1. Noting the Panel's remarks in the Decision,<sup>1</sup> the Specialist Prosecutor's Office ('SPO') hereby files this clarification of the record. The SPO's submissions were not intended, in any sense, to constitute a disregard of the Panel's finding.<sup>2</sup> Rather, the sole matter being addressed was whether the issue in question met the standard for leave to appeal, such that leave could be granted for it to be considered by the Court of Appeals at that time.

2. As indicated in the Withdrawal,<sup>3</sup> the SPO considered that one of the mandatory requirements for leave to appeal - that is, whether *immediate* resolution of the matter by the Court of Appeals may materially advance the proceedings<sup>4</sup> - was no longer met.<sup>5</sup> As such, the SPO withdrew its request for leave to appeal on the matter. The reason the SPO considered the standard not to be met was because (i) of the stage of the proceedings, which meant that an interlocutory appeal at that time would likely have delayed issuance of the decision on the plea agreements, which were otherwise ripe for adjudication;<sup>6</sup> and (ii) no concrete issue had in fact crystallised at that time, in the sense that it was unknown whether any party would even seek to appeal any aspect of the decision on the plea agreements.<sup>7</sup> Naturally, when making the withdrawal, the SPO preserved its position for

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<sup>1</sup> Reasons for the Decision on the Plea Agreements, KSC-BC-2020-10/F00693, 27 February 2025 ('Decision'), paras 11-12.

<sup>2</sup> *Contra*. Decision, KSC-BC-2020-10/F00693, para.12.

<sup>3</sup> Prosecution notice of withdrawal of filing F00621, KSC-BC-2020-10/F00631, 17 December 2024 ('Withdrawal').

<sup>4</sup> Rule 77(2).

<sup>5</sup> Withdrawal, KSC-BC-2020-10/F00631, para.2.

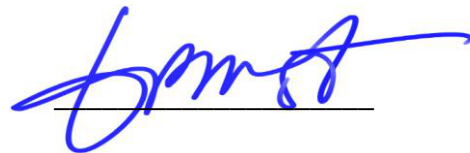
<sup>6</sup> The Withdrawal was filed on 17 December 2024, in advance of the plea hearings scheduled to be held on 18-19 December 2024 (*see* Public redacted version of Decision Setting the Agenda for Hearings on Plea Proceedings, Requesting Submissions, and on Related Matters, KSC-BC-2020-10/F00626, 13 December 2024, para.21); *see also* para.13 (which indicated that the issues raised by the request for leave to appeal would, if leave were to be granted, prevent the issuance of a decision until the matters had been resolved by the Court of Appeals).

<sup>7</sup> *See* Withdrawal, KSC-BC-2020-10/F00631, para.2 (last sentence, including referring to 'as relevant').

if or when an appropriate opportunity arose for the matter to be considered by the Court of Appeals.<sup>8</sup>

3. As such, the SPO wishes to assure the Panel that – far from seeking to disregard the Panel’s findings, or to undermine functioning – the Withdrawal had been intended to facilitate proper adherence to the applicable framework, so that issues need only be considered by the Court of Appeals if and when it is timely to do so, and in a manner that comports with any relevant pre-requisites.

**Word count: 491**



**Kimberly P. West**

**Specialist Prosecutor**

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At The Hague, the Netherlands

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<sup>8</sup> Withdrawal, KSC-BC-2020-10/F00631, para.2. Noting that the issue in question relates to the scope of permissible appeals against a decision which has the full force and effect of a final judgement (Rule 94(8)), it would fall squarely within the competence of the Court of Appeals to determine.