



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

**In:** KSC-BC-2023-10  
**Specialist Prosecutor v. Sabit Januzi and Ismet Bahtjari**

**Before:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Prosecutor's Office

**Date:** 11 October 2023

**Language:** English

**Classification:** Public

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**Prosecution submissions for first status conference**

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**Specialist Prosecutor's Office**

Ward Ferdinandusse

**Duty Counsel for Sabit Januzi**

Thomas Gillis

**Duty Counsel for Ismet Bahtjari**

Hendrik Sytema

## I. INTRODUCTION

1. Pursuant to the Order,<sup>1</sup> the Specialist Prosecutor's Office ('SPO') hereby provides written submissions on the agenda items identified by the Pre-Trial Judge<sup>2</sup> and related matters.<sup>3</sup>

2. Certain of the information provided is necessarily provisional at this time. Nonetheless, the SPO anticipates being in a position to provide complete witness and exhibit lists, and to have fulfilled related Rule 102(1)(b)<sup>4</sup> disclosures, by 26 January 2024, subject only to any applicable protective measures and provided that pretrial proceedings are otherwise nearing completion.

## II. SUBMISSIONS

### A. GENERAL QUESTIONS

3. A limited number of investigative steps are pending related to this case. Depending on the outcome of those limited steps, there is a likelihood that further evidence will be disclosed. Nonetheless, the SPO does not currently foresee this impacting the speedy conduct of proceedings and is working towards completing any remaining investigative steps during the pendency of pre-trial proceedings. At the same time, the overall investigative work of the SPO will continue throughout the proceedings, and therefore additional evidence relevant to this case may be obtained. In that event, the evidence will be disclosed to the Defence, subject to any necessary protective measures and pursuant to the applicable provisions.

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<sup>1</sup> Order Setting the Date for the First Status Conference and for Submissions, KSC-BC-2023-10/F00022, 9 October 2023 ('Order').

<sup>2</sup> Annex 1 to the Order, KSC-BC-2023-10/F00022/A01.

<sup>3</sup> Order, KSC-BC-2023-10/F00022, paras 21-23.

<sup>4</sup> 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.

4. The SPO anticipates presenting documentary evidence at trial, including, for example, records from seized mobile telephones, call data records, transcripts of statements, and official notes from witness contacts.

5. In addition, subject to the outcome of further investigate steps being undertaken by the SPO, the SPO currently anticipates including up to three witnesses on its witness list for trial, but it may include others to the extent necessary to authenticate documentary evidence it intends to rely upon at trial.

#### B. RULE 102(1)(A): SUPPORTING MATERIAL TO THE CONFIRMED INDICTMENT

6. Table A provides, to the extent possible, the details requested by the Pre-Trial Judge regarding the breakdown of Rule 102(1)(a) material:

**Table A. Rule 102(1)(a) Material**

Total number of items	25 <sup>5</sup>
Total number of pages	161
Number of witness statements <sup>6</sup>	2
Number of statements obtained from the Accused	3
Number of reports	14
Number of audio/video material	0
Total number of hours/minutes of audio-visual material	0
Number of photographs	0
Number of objects	0
Number of other documents	6

<sup>5</sup> Statements provided to the SPO by the Accused on 4 and 5 October 2023 are still in the process of being transcribed. The total numbers of items, pages, and transcripts listed in this table do not yet include these transcripts. *See below* para.9.

<sup>6</sup> Each statement is contained in a transcript.

7. Translation into Albanian of certain supporting material to the Confirmed Indictment has been completed. In addition, the SPO intends to disclose one or more revised versions of the transcriptions and translations included in the indictment supporting materials.

8. Some of the Rule 102(1)(a) materials require limited standard redactions, which the SPO anticipates will be applied consistent with forthcoming decisions from the Pre-Trial Judge concerning the applicable redaction framework and protective measures.<sup>7</sup> The detailed outline submitted with the indictment does not require redactions for the purposes of disclosure to the Defence on a strictly confidential basis.

9. The SPO interviewed both Accused as suspects and the transcription of the recordings of both interviews into English and Albanian is currently underway and anticipated to be finalised soon.<sup>8</sup> Subject to resolution of a forthcoming request for protective measures and adoption of protocols governing the handling of confidential information and contact with witnesses of the opposing Party,<sup>9</sup> the SPO will disclose Rule 102(1)(a) materials by 8 November 2023, which marks the expiry of the thirty (30) day period prescribed by the Rules.<sup>10</sup>

#### C. RULE 102(1)(B): ADDITIONAL MATERIAL INTENDED FOR USE AT TRIAL

10. In addition to the material falling under Rule 102(1)(a), the SPO intends to disclose further material under Rule 102(1)(b). The SPO is in the process of reviewing additional materials that may constitute Rule 102(1)(b) materials, and while it is not possible to provide an accurate estimate of volume at this time, the SPO expects to be ready to disclose all such materials to the Defence by 26 January 2024, or in any case, no later than 30 days prior to the opening of the Specialist Prosecutor's case.

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<sup>7</sup> See *below* para.25.

<sup>8</sup> One of the Accused's interview is composed of four (4) items in video format (3 hours 15 minutes 51 seconds) and the other is composed of one (1) item in video format (55 minutes 42 seconds).

<sup>9</sup> This request will be filed by 12 October 2023, which is the applicable deadline set by the Pre-Trial Judge.

<sup>10</sup> Rule 102(1)(a).

11. Currently, the SPO anticipates that the additional Rule 102(1)(b) material will include documentary evidence, such as records from seized mobile telephones, audio/visual material, and call data records. The Rule 102(1)(b) material currently in the SPO's possession has been translated where needed.

12. The SPO anticipates that it may yet obtain additional evidence that would constitute Rule 102(1)(b) material. Any additional materials may require translation, and the SPO expects that the translation process would be completed within the proposed timeline for the disclosure of material under Rule 102(1)(b).

13. Some of the Rule 102(1)(b) materials may require redactions, which the SPO anticipates will be applied consistent with forthcoming decisions from the Pre-Trial Judge concerning the applicable redaction framework and protective measures.<sup>11</sup>

14. With respect to Rule 102(1)(b) material, the SPO will endeavour to disclose all materials referred to in witness statements simultaneously with the related statements. The SPO will further endeavour to disclose witness statements and their respective translations in the same disclosure batch to the extent that such an approach will not cause undue delays to the disclosure process.

#### D. RULE 102(3): EVIDENCE MATERIAL TO THE PREPARATION OF THE DEFENCE AND OBTAINED FROM OR BELONGING TO THE ACCUSED

15. The SPO anticipates providing the Defence with detailed notice of material falling within the scope of Article 21(6)<sup>12</sup> and Rule 102(3) by 23 February 2024. The items in the Rule 102(3) notice will comprise any other residual, relevant information, after the items to be presented at trial<sup>13</sup> and potentially exculpatory items<sup>14</sup> have been disclosed. The scope of Rule 102(3) material is necessarily impacted by, and to a large

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<sup>11</sup> See below para. 25.

<sup>12</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ('Law'). Reference herein to 'Article(s)' are to 'Articles' of the Law, unless otherwise indicated.

<sup>13</sup> Rule 102(1)(b).

<sup>14</sup> Rule 103.

extent dependent upon, the witnesses and evidence intended to be presented at trial. It is therefore not possible to provide an accurate estimate of volume at this time.

16. The SPO notes that images of the seized mobile telephones of the Accused and Co-Perpetrator 1, as named in the Confirmed Indictment, will be made available to the Accused at or around the time the SPO makes its disclosure of Rule 102(1)(a) material.

17. While the SPO generally agrees with the disclosure and redaction regime adopted in the *Shala* case,<sup>15</sup> including in relation to Rule 102(3), the SPO requests modification of the default timeline for the SPO to file materiality challenges.<sup>16</sup> In other cases, five days has previously proven to be an unmanageable deadline. Considering that assessments of protective measures and materiality, while distinct issues, nevertheless overlap to some degree, the deadlines for any protective measures and materiality challenges should be the same, namely, two weeks from the Defence request for materials on the Rule 102(3) notice.<sup>17</sup>

#### E. RULE 103: EXCULPATORY EVIDENCE

18. The SPO is continuing its review of Rule 103 material within its custody, control, or actual knowledge, and following application of any required redactions it shall immediately disclose any such material.

#### F. RULE 107: PROTECTED MATERIAL

19. At this time, Rule 107 clearances are unnecessary for material which the SPO currently anticipates tendering into evidence at trial in this case.

20. The SPO will promptly inform the Pre-Trial Judge should any further material relevant to the case be identified which falls under Rule 107 restrictions.

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<sup>15</sup> Subject to appropriate modifications in light of the circumstances of this case, including as set out in these submissions.

<sup>16</sup> *Specialist Prosecutor v. Pjetër Shala*, Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-04/F00033, 30 April 2021 (*'Shala Framework Decision'*), para.53.

<sup>17</sup> *Shala Framework Decision*, KSC-BC-2020-04/F00033, para.53.

## G. PROCEDURE FOR DISCLOSURE OF EVIDENCE

21. With regard to case-specific categorisation in Legal Workflow for material falling under Rule 102(1)(a) and (b) and Rule 104(1), (5), and (6), given the circumstances of this case, specifically, the relatively limited volume of material to be disclosed as compared to other KSC cases and in particular the nature of the disclosed material, which is such that many individual items are likely to fall under most or all charged counts and modes of liability, the SPO's position is that the proposed framework would both delay the disclosure process and potentially cause confusion during the review process. Marking each item under such a framework would not only be time consuming, but also provide limited or no utility to the Accused or their counsel.

22. Nevertheless, should the Defence find sub-categorisation of some of the Rule 109(c) categories to be of assistance, the SPO will endeavour to find a mutually agreeable solution.

23. The SPO would further agree to provide and be provided with a consolidated disclosure chart within 15 days from the filing of any Pre-Trial Briefs. The preparation and completion of a consolidated disclosure chart is a detailed process requiring a fully finalised Pre-Trial Brief, as analysis required to generate the chart would be drawn from that brief. A short delay between the filing of the Pre-Trial Brief and the submission of the chart would minimise any risk of oversight or error.

24. As to the form of the Rule 109(c) chart, the SPO proposes the adoption of the chart format used in the *Gucati and Haradinaj* and *Shala* cases.<sup>18</sup> As the Rule 86(3) evidentiary outline provides extensive analysis in relation to Rule 102(1)(a) material, the SPO's Rule 109(c) chart should be limited to any Rule 102(1)(b) material.

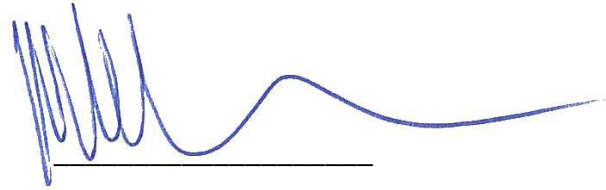
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<sup>18</sup> *Shala* Framework Decision, KSC-BC-2020-04/F00033, para.73 (adopting the *Gucati and Haradinaj* chart format).

## H. REDACTION REGIME

25. The SPO agrees to adopting the redaction regime outlined in the 'Framework Decision on Disclosure of Evidence and Related Matters' in KSC-BC-2020-04.<sup>19</sup>

**Word count: 1,758**



**Ward Ferdinandusse**

**Acting Deputy Specialist Prosecutor**

Wednesday, 11 October 2023

At The Hague, the Netherlands.

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<sup>19</sup> See Order, KSC-BC-2023-10/F00022, para.21. See also *Shala* Framework Decision, KSC-BC-2020-04/F00033, paras 75-91.