



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

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

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

Registrar: Dr Fidelma Donlon

Date: 2 October 2023

Language: English

Classification: **Strictly Confidential and *Ex Parte***

**Public Redacted Version of the
Decision on the Confirmation of the Indictment**

Acting Deputy Specialist Prosecutor

Ward Ferdinandusse

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rule 86 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 11 September 2023, the Specialist Prosecutor's Office ("SPO") filed before the Pre-Trial Judge: (i) the "Submission of Indictment for confirmation and related requests" ("SPO Submission of Indictment"); (ii) the indictment against Sabit Januzi ("Mr Januzi") and Ismet Bahtjari ("Mr Bahtjari", collectively "Suspects") ("Indictment"); (iii) the outline of the evidence in support of the Indictment; (iv) a request for their arrest and transfer to the Specialist Chambers' ("SC") Detention Facilities; and (v) a request for search and seizure and related requests.²

II. SUBMISSIONS

2. In the Indictment, the SPO contends that Messrs Januzi and Bahtjari between at least 5 April and 12 April 2023, by serious threat and by the common action of a group of persons in which both participated, obstructed or attempted to obstruct an official person, that is, a judge, a prosecutor, an official of a court, a prosecution officer or a person authorised by the court and prosecution office, in performing official duties.³ The SPO further contends that, in co-perpetration with other individuals including [REDACTED] ("Co-Perpetrator 1"), Messrs Januzi and

¹ KSC-BC-2023-10, F00001, President, *Decision Assigning a Pre-Trial Judge*, 11 September 2023, confidential.

² KSC-BC-2023-10, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Requests*, 11 September 2023, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*. See also F00006, Pre-Trial Judge, *Decision Authorising Searches and Seizures and Special Investigative Measures*, 25 September 2023, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential. Corrected versions of the Annexes were submitted on 26 September 2023.

³ Indictment, para. 5.

Bahtjari coordinated as a group and individually approached [REDACTED] (“Witness 1”) to induce him to withdraw evidence or refrain from providing evidence in official proceedings before the SC.⁴

3. The SPO submits that on 5 April 2023 (“First Approach”), after calling and verifying that Witness 1 was at home, Mr Bahtjari went to the Witness 1’s home and told him, on behalf of Co-Perpetrator 1, that he should withdraw his testimony.⁵ According to the SPO, when Witness 1 asked if [REDACTED] if Witness 1 testified, Mr Bahtjari replied in the affirmative.⁶ The SPO contends that both before and after the First Approach, Messrs Januzi and Bahtjari and Co-Perpetrator 1 engaged in numerous telephone contacts.⁷

4. The SPO further submits that on 12 April 2023 (“Second Approach”), Mr Januzi went to Witness 1’s home, told him that Co-Perpetrator 1 had sent Mr Bahtjari during the First Approach, and that he, Mr Januzi, followed up on the latter’s visit to find out what Witness 1 planned to do and how the matter of his testimony could be addressed.⁸ According to the SPO, Witness 1 told Mr Januzi that he did not want to deal with this matter anymore and to put a stop to it; Mr Januzi is alleged to have said that he would tell “them” what Witness 1 had said.⁹

5. The SPO further avers that both before and after the Second Approach Mr Januzi and Co-Perpetrator 1 talked over the telephone.¹⁰

6. According to the SPO, as a result of the First Approach and the Second Approach, Witness 1 became concerned for his safety and that of his family.¹¹

⁴ Indictment, paras 4, 6.

⁵ Indictment, para. 8.

⁶ Indictment, para. 9.

⁷ Indictment, paras 7, 12-13.

⁸ Indictment, para. 14.

⁹ Indictment, para. 15.

¹⁰ Indictment, paras 14, 16.

¹¹ Indictment, paras 11, 17.

7. Lastly, the SPO avers that Messrs Januzi and Bahtjari: (i) created serious fears and concerns for Witness 1, who has provided or is likely to provide information to the Special Investigative Task Force (“SITF”), SPO and/or to any SC Panel about any crimes or offences falling under the SC jurisdiction, thereby constituting a strong disincentive for that person to provide (further) information about any such crimes; (ii) threatened the SC/SPO’s ability to effectively investigate and prosecute crimes, including by obtaining and securing relevant witness evidence; and (iii) diverted SPO resources and time to address actual and potential consequences to Witness 1 and his family in connection with official SC proceedings.¹² Regarding the impact on SC/SPO time and resources, the SPO refers to the involvement of multiple SC/SPO staff in otherwise unnecessary additional contacts with Witness 1, the expenditure of SPO resources to investigate the events, and the expenditure of SC/SPO time and resources to take new security-related measures.¹³

8. The SPO submits that based on the supporting material, there is a well-grounded suspicion that through the actions and omissions described above Messrs Januzi and Bahtjari are individually criminally responsible for having committed, attempted to commit, alone, in co-perpetration, and/or in agreement, and/or assisted in, between at least 5 April and 12 April 2023, the offences of: (i) obstructing official persons in performing official duties by serious threat (Count 1), pursuant to Articles 17, 28, and 401(1) and (5) of the 2019 Kosovo Criminal Code, Law No. 06/L-074 (“KCC”), and Articles 15(2) and 16(3) of the Law; (ii) obstructing official persons in performing official duties by participating in the common action of a group (Count 2), pursuant to Articles 17, 28, 31, 32(1)-(3), 33, 35, and 401(2) and (5) of the KCC, and Articles 15(2) and 16(3) of the Law; and

¹² Indictment, para. 18.

¹³ Indictment, para. 19.

(iii) intimidation during criminal proceedings (Count 3), pursuant to Articles 17, 28, and 387 of the KCC, and Articles 15(2) and 16(3) of the Law.¹⁴

9. In light of the above, the SPO requests the Pre-Trial Judge to confirm the Indictment and order the temporary non-disclosure of the Indictment, related documents and information to Messrs Januzi and Bahtjari and the public until further order.¹⁵

III. APPLICABLE LAW

A. REVIEW OF INDICTMENT

10. Article 39(1) and (2) of the Law and Rule 86(4) of the Rules provide that the Pre-Trial Judge shall have the power to review an indictment. Pursuant to Article 39(2) of the Law and Rule 86(4) and (5) of the Rules, if satisfied that a well-grounded suspicion has been established by the Specialist Prosecutor, the Pre-Trial Judge shall confirm the indictment. If the Pre-Trial Judge is not so satisfied, the indictment or charges therein shall be dismissed. Rule 86(5) of the Rules provides that the Pre-Trial Judge must render a reasoned decision.

11. Pursuant to Rule 86(3) of the Rules, an indictment must set forth the name and particulars of the suspect and a concise statement of the facts of the case and of the crime(s) with which the suspect is charged, in particular the alleged mode of liability in relation to the crimes charged. The indictment shall be filed together with supporting material, i.e. evidentiary material supporting the facts underpinning the charges and a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation.

¹⁴ Indictment, paras 29, 30.

¹⁵ SPO Submission of Indictment, para. 32.

12. Upon confirmation of any charge(s) of the indictment, Rule 86(6) of the Rules provides that the suspect shall have the status of an Accused and the Pre-Trial Judge may issue any other decisions or orders provided for in Article 39(3) of the Law.

13. Rule 86(8) and (10) of the Rules provides that the Registrar shall retain and prepare certified copies of the confirmed indictment bearing the seal of the Specialist Chambers, and notify the President of the confirmed indictment.

B. OFFENCES UNDER ARTICLE 15(2) OF THE LAW AND MODES OF LIABILITY

14. As provided in Article 3(2) of the Law, the SC adjudicate in accordance with, *inter alia*, the Constitution of Kosovo, the Law, provisions of Kosovo law expressly incorporated in the Law, and international human rights law.

15. Pursuant to Articles 6(2) and 15(2) of the Law, the SC has jurisdiction over specific offences against the administration of justice, as set out in the KCC, when they relate to the official proceedings and officials of the SC and the SPO.¹⁶

16. For offences set out in Article 15(2) of the Law, Article 16(3) of the Law provides that, for the purpose of individual criminal responsibility, Articles 8-10, 17, 21-24, 27-37 of the 2019 KCC shall apply.

C. MAINTAINING CONFIDENTIALITY

17. Article 39(11) of the Law stipulates that the Pre-Trial Judge may, where necessary, provide for the protection of victims and witnesses.

¹⁶ It is recalled that when the specific 2012 KCC provisions, set forth in Articles 15 and 16 of the Law, are replaced, the Law must be interpreted, by virtue of Article 64 of the Law, as relating to the analogous provisions of the successor legislation. In the present instance, the provisions listed in Articles 6(2) and 15(2) of the Law were renumbered, *see also* KSC-BC-2020-07, F00147/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Defence Preliminary Motions* ("Case 07 Preliminary Motion Decision"), 8 March 2021, public, para. 30; F00074/RED, Pre-Trial Judge, *Public Redacted Version of the Decision on the Confirmation of the Indictment* ("Case 07 Confirmation Decision") 11 December 2020, public, para. 13; F00057, Single Judge, *Decision on Defence Challenges* ("Case 07 Defence Challenges Decision"), 27 October 2020, public, para. 24.

18. Rule 85(4) of the Rules provides that all documents and information submitted by the SPO to the Pre-Trial Judge during investigation shall remain at the least confidential and *ex parte*, subject to Rule 102 of the Rules.

19. Rule 88 of the Rules provides that the indictment shall be made public upon confirmation by the Pre-Trial Judge. However, in exceptional circumstances, upon a showing of good cause, the Pre-Trial Judge may order the temporary non-disclosure of the indictment, related documents or information to the public until further order. The indictment shall in any case be made public, with redactions, where necessary, no later than the Accused's initial appearance. The SPO may disclose an indictment or part thereof to the authorities of a Third State or another entity, if deemed necessary for the purposes of an investigation or prosecution.

20. Rule 102(1)(a) of the Rules provides that the SPO shall make available to the Accused, as soon as possible, but at least within 30 days of the initial appearance of the Accused, the supporting material to the indictment submitted for confirmation, as well as all statements obtained from the Accused.

21. Rule 105(1) of the Rules provides that the SPO may apply to the Panel for interim non-disclosure of the identity of a witness or victim participating in the proceedings until appropriate protective measures have been ordered.

IV. JURISDICTION

22. Based on the information provided by the SPO, and without prejudice to subsequent determinations on this matter, the Pre-Trial Judge finds that, pursuant to Articles 6(2) and 15(2) of the Law, the SC have jurisdiction over the offences of intimidation during criminal proceedings and obstructing official persons in performing official duties, with respective reference to Articles 387 and 401 of the

KCC, as they relate to SC official proceedings and officials.¹⁷ Notably, the offences under Counts 1-3 of the Indictment concern events allegedly occurred between at least 5 April and 12 April 2023 and, hence, fall within SC temporal jurisdiction.¹⁸

V. LEGAL REQUIREMENTS

A. NATURE AND SCOPE OF THE REVIEW

1. Nature of the Review

23. The Pre-Trial Judge recalls his interpretation of the nature of the indictment review process and will only elaborate the salient issues.¹⁹

24. Regarding the evidentiary threshold applicable at this stage, the Pre-Trial Judge recalls that, while falling short of the certainty of a proven fact, determining the existence of well-grounded suspicion²⁰ nevertheless requires a conviction on the part of the Pre-Trial Judge, beyond mere theory or suspicion, that: (i) the offences have indeed occurred; and (ii) the suspect committed or participated in the commission of the offence(s) through the alleged mode(s) of liability. The Pre-Trial Judge bases such findings on concrete and tangible supporting material, demonstrating a clear line of reasoning underpinning the charges in the indictment. In so doing, the Pre-Trial Judge evaluates the supporting material holistically, without scrutinising each item of evidentiary material in isolation.²¹

¹⁷ See also Case 07 Defence Challenges Decision, paras 23-26; Case 07 Confirmation Decision, para. 22; Case 07 Preliminary Motion Decision, paras 28-34.

¹⁸ See also Case 07 Defence Challenges Decision, paras 25-26.

¹⁹ Case 07 Confirmation Decision, paras 26-28.

²⁰ According to Article 19.1.12 of the Kosovo Criminal Procedure Code of 2022, No. 08/L-032, well-grounded suspicion is reached when the evidence “would satisfy an objective observer that a criminal offense has occurred and the defendant has committed the offense”.

²¹ Similarly, Case 07 Confirmation Decision, para. 30 with further references to case law.

2. Scope of the Review

25. The Pre-Trial Judge recalls his interpretation of the scope of the indictment review process.²² This interpretation equally applies in the present case and, thus, the Pre-Trial Judge incorporates it by way of reference.

B. ELEMENTS OF OFFENCES

1. Intimidation During Criminal Proceedings

26. Article 387 of the KCC provides that whoever uses force or serious threat, or any other means of compulsion, a promise of a gift or any other form of benefit to induce another person to refrain from making a statement or to make a false statement or to otherwise fail to state true information to the police, a prosecutor or a judge, when such information relates to the obstruction of criminal proceedings shall be punished by a fine of up to one hundred and twenty-five thousand (125,000) EUR and by imprisonment of two (2) to ten (10) years.²³

(a) Material elements

27. The offence of intimidation during criminal proceedings, within the meaning of Article 387 of the KCC, is committed (i) through the use of force, serious threat, any other means of compulsion, a promise of a gift or any other form of benefit (ii) directed at any person making or likely to make a statement or provide information to the police, a prosecutor or a judge.²⁴

²² Case 07 Confirmation Decision, paras 31-32. *See also* KSC-BC-2020-05, F00008/RED, Pre-Trial Judge, *Public Redacted Version of Decision on the Confirmation of the Indictment Against Salih Mustafa*, 5 October 2020, public, paras 38-39, with further references to case law.

²³ *See* Case 07 Confirmation Decision, paras 58-65; F00611/RED, Trial Panel II, *Public Redacted Version of the Trial Judgment* (“Case 07 Trial Judgment”), 18 May 2022, public, paras 109, 112-115, 119-124; KSC-CA-2022-01, F00114, Court of Appeals Panel, *Appeal Judgment* (“Case 07 Appeal Judgment”), 2 February 2023, public, paras 221, 224-226.

²⁴ *Similarly*, Case 07 Confirmation Decision, para. 58; Case 07 Trial Judgment, para. 109.

28. Article 387 of the KCC proscribes any conduct that may have (or is expected by the perpetrator to have) an impact or influence on the statement or information to be given by the person.²⁵

29. Article 387 of the KCC does not delimit what constitutes force, serious threat, compulsion or other means of commission.²⁶ Accordingly, “force” may include any form of physical violence or intoxication²⁷ exerted upon a person.²⁸ A “serious threat” is understood equally broadly and may include any serious threat of harmful action, including for example threats to use force or to inflict serious harm on the health, well-being, safety, security or privacy of a person.²⁹ Compulsion refers to any act of constraining or coercing a person.³⁰

30. Article 387 of the KCC covers any witness or potential witness, or other information provider to police or prosecutorial and judicial authorities (“Potential Information Provider”). Within the SC legal framework, Potential Information Provider means any person who has or is likely to provide information to the SITF, the SPO and/or to any SC Panel about any crimes or offences falling under SC jurisdiction.³¹ Specifically, a witness is a person “whom the SITF/SPO met and obtained information from, including in the form of an interview”; a “potential witness” is a person “from whom the SPO is seeking to obtain, including through other organisations, information, including in the form of an interview”.³² Such

²⁵ *Similarly*, Case 07 Confirmation Decision, para. 59.

²⁶ *Similarly*, Case 07 Confirmation Decision, para. 60.

²⁷ *See* Article 113(15) of the KCC.

²⁸ *Similarly*, Case 07 Confirmation Decision, para. 60; Case 07 Trial Judgment, para. 112; KSC-SC-2023-01, F00021, Panel of the Supreme Court Chamber, *Decision on Requests for Protection of Legality* (“Case 07 Principle of Legality Decision”), 18 September 2023, public, para. 60.

²⁹ *See similarly* Case 07 Appeal Judgment, para. 224; Case 07 Confirmation Decision, para. 60.

³⁰ *Similarly*, Case 07 Confirmation Decision, para. 60; Case 07 Trial Judgment, para. 112.

³¹ *Similarly*, Case 07 Confirmation Decision, para. 61; Case 07 Trial Judgment, para. 113; Case 07 Appeal Judgment, para. 223.

³² *See* Case 07 Trial Judgment, paras 511-512; Annex 2 to Case 07 Trial Judgment, definitions of “Witnesses” and “Potential Witnesses”, pp. 5, 8.

person must be identifiable either as an individual or, at least, as a member of a clearly identifiable category to the SITF, SPO and/or SC Panel.³³

31. By its wording (“[w]hoever uses force or serious threat [...] to induce”), Article 387 of the KCC does not require proof of consequence, namely that the force or serious threat did in fact induce a person to refrain from making a statement, make a false statement or fail to state true information.³⁴ In fact, contrary to Article 386 of the KCC,³⁵ which lays emphasis on the result of the perpetrator’s action, Article 387 of the KCC places emphasis on the perpetrator’s criminal conduct.³⁶ This interpretation also comports best with the purpose of the provision to protect the information of witnesses and other information providers and, more generally, the integrity of criminal proceedings, by penalising perpetrators who intend to influence a witness.³⁷

(b) Mental elements

32. The perpetrator must have acted with direct or eventual intent, within the meaning of Article 21 of the KCC.³⁸

³³ *Similarly*, Case 07 Trial Judgment, para. 113.

³⁴ *Similarly*, Case 07 Appeal Judgment, para. 229; Case 07 Trial Judgment, paras 115, 121; Case 07 Confirmation Decision, para. 62.

³⁵ Article 386 of the KCC stipulates that whoever, by any means of compulsion or bribe, with intent, *inter alia* (i) causes any person to make a false statement, provide a false document or conceal a material fact in an official proceeding (paragraph 1.1) or (ii) induces a witness or an expert to decline to give or to give a false statement in court proceedings (paragraph 1.7) is guilty of the offence of obstruction of evidence or official proceedings. The wording in said provision (“causes”, “induces”) makes it clear that it applies to situations where the perpetrator actually causes or induces a person to make a false statement, conceal a material fact or decline to give a statement. For a discussion on the *lex specialis* relationship between Articles 387 and 386 of the KCC, *see* Case 07 Principle of Legality Decision, para. 62.

³⁶ *Similarly*, Case 07 Appeal Judgment, para. 229.

³⁷ *Similarly*, Case 07 Confirmation Decision, para. 62, with further references to case law; Case 07 Trial Judgment, para. 115; Case 07 Appeal Judgment, para. 229. *See also* Case 07 Principle of Legality Decision, para. 41.

³⁸ *Similarly*, Case 07 Confirmation Decision, para. 63; Case 07 Trial Judgment, para. 124.

33. For direct intent, the perpetrator must have acted with awareness of, and desire for, using force, serious threat, any other means of compulsion, a promise of a gift or any other form of benefit in order to induce a person to refrain from making a statement, provide a false statement or fail to state true information to the police, a prosecutor or a judge.³⁹

34. For eventual intent, the perpetrator must have acted with the awareness that, as a result of his or her acts or omissions, a person might refrain from making a statement, provide a false statement or fail to state true information to the police, a prosecutor or a judge, and the perpetrator acceded to the occurrence of that result.⁴⁰

35. There is no requirement that the perpetrator must be aware of the truthfulness of the information to be provided by the Potential Information Provider under the third alternative of intimidation.⁴¹

2. Obstructing Official Persons in Performing Official Duties

(a) Obstruction of official persons by force or serious threat

36. Article 401(1) of the KCC provides that whoever, by force or serious threat, obstructs or attempts to obstruct an official person in performing official duties or, using the same means, compels him or her to perform official duties shall be punished by imprisonment of three (3) months to three (3) years.⁴²

37. Article 401(5) of the KCC stipulates that “when the offense [in Article 401(1)] is committed against a judge, a prosecutor, an official of a court, prosecution officer or a person authorized by the court and prosecution office, a police officer, a military officer, a customs officer or a correctional officer during the exercise of their

³⁹ *Similarly*, Case 07 Confirmation Decision, para. 64; Case 07 Trial Judgment, para. 121.

⁴⁰ *Similarly*, Case 07 Confirmation Decision, para. 65; Case 07 Trial Judgment, para. 121.

⁴¹ *See* Case 07 Appeal Judgment, para. 264.

⁴² *See* Case 07 Confirmation Decision, paras 66-73; Case 07 Trial Judgment, paras 139, 144-149, 150, 152-155; Case 07 Appeal Judgment, paras 278-285, 290-292.

official functions the perpetrator shall be punished by imprisonment of one (1) to five (5) years”.⁴³

(i) Material element

38. The offence of obstructing an official person in performing official duties, within the meaning of Article 401(1) of the KCC, is committed (i) through the use of force or serious threat resulting in the (ii) obstruction or attempted obstruction of an official person in performing official duties, or the compelling of that person to perform official duties.⁴⁴

39. Article 401(1) of the KCC does not define what constitutes “force” or a “serious threat”. However, their meaning is comparable to that under Article 387 of the KCC, thus including any serious threat of harmful action and not only a threat to use force.⁴⁵

40. Furthermore, Article 401(1) of the KCC does not require that the force or the serious threat be directed against the official person.⁴⁶ Rather, the force or serious threat may be directed against one or more other persons, as long as it results in the (attempted) obstruction of an official person in performing official duties.⁴⁷ This is in line with the rationale of the offence, which is to ensure that official duties are not obstructed, directly or indirectly; in other words, the provision is not designed to protect official persons as such, but rather to protect them in the unimpeded

⁴³ See Case 07 Confirmation Decision, para. 69; Case 07 Trial Judgment, paras 140, 149, 150, 152-155.

⁴⁴ Similarly, Case 07 Confirmation Decision, para. 67; Case 07 Trial Judgment, para. 141.

⁴⁵ See *supra* para. 29 (Intimidation During Criminal Proceedings); Similarly, Case 07 Confirmation Decision, para. 68; Case 07 Trial Judgment, para. 144; Case 07 Appeal Judgment, paras 278-280 (as pointed out by the Court of Appeal Panel, such interpretation is also consistent with the interpretation of the term given by Kosovo courts).

⁴⁶ Similarly, Case 07 Confirmation Decision, para. 68; Case 07 Trial Judgment, para. 146; Case 07 Appeal Judgment, para. 282; Case 07 Principle of Legality Decision, paras 40, 48.

⁴⁷ Similarly, Case 07 Confirmation Decision, para. 68; Case 07 Trial Judgment, para. 146; Case 07 Appeal Judgment, para. 282; Case 07 Principle of Legality Decision, para. 48.

exercise of their official duties.⁴⁸ Under this light, a threat against (potential) witnesses may have the capacity to obstruct official persons in the exercise of their official duties.⁴⁹

41. Article 113(2) of the KCC defines an “official person” as, *inter alia*, any person who is entrusted with the actual performance of certain official duties or works. Within the SC legal framework, such an “official person” would be any person authorised to act on behalf of the SC or SPO, including a judge, a prosecutor, an investigator or any other SC or SPO official (“SC/SPO Official”). By virtue of Article 401(5) of the KCC, the offence is committed in an aggravated form where it is directed against, *inter alia*, a judge, a prosecutor, an official of a court, a prosecution officer or a person authorised by the court and prosecution office. Accordingly, where the offence under Article 401(1) of the KCC is committed against an SC/SPO Official, the requirements of the aggravated form are met. For the purposes of Article 401(1) of the KCC and within the SC legal framework, the “official duties” of an SC/SPO Official relate to any responsibility or work within the context of official proceedings of the Specialist Chambers, including SPO investigations (“SC Proceedings”).⁵⁰

42. The term “obstruct” means to prevent, impede, hinder, or delay the motion, passage, or progress of something.⁵¹ In the context of SC Proceedings, obstruction would entail impeding, hindering or delaying the work of SC/SPO Officials.⁵²

43. For the purposes of the offence under Article 401(1) and (5) of the KCC, both in its basic and aggravated form, the use of force or serious threat need not be simultaneous with the exercise of official duties. Rather, it can occur at any moment

⁴⁸ See Case 07 Appeal Judgment, para. 282; Case 07 Principle of Legality Decision, para. 47.

⁴⁹ See Case 07 Appeal Judgment, para. 282; Case 07 Principle of Legality Decision, para. 48.

⁵⁰ Similarly, Case 07 Confirmation Decision, para. 69.

⁵¹ Similarly, Case 07 Confirmation Decision, para. 70; Case 07 Trial Judgment, para. 145.

⁵² Similarly, Case 07 Confirmation Decision, para. 70; Case 07 Trial Judgment, paras 146-148.

in time other than when the official person is actively exercising a particular duty, with a view to obstructing the performance of an expected or ongoing official duty.⁵³

(ii) Mental element

44. The perpetrator must have acted with direct or eventual intent, within the meaning of Article 21 of the KCC.⁵⁴

45. For direct intent, the perpetrator must have acted with awareness of, and desire for, using force or serious threat in order to obstruct an official person in performing official duties.⁵⁵

46. For eventual intent, the perpetrator must have acted with the awareness that, as a result of his or her acts or omissions, the official person might be obstructed in the performance of official duties, and the perpetrator acceded to the occurrence of that result.⁵⁶

(b) Obstruction of official persons by common action of a group

47. Article 401(2) of the KCC provides that whoever participates in a group of persons which by common action obstructs or attempts to obstruct an official person in performing official duties or, using the same means, compels him or her to perform official duties shall be punished by a fine or by imprisonment of up to three (3) years.⁵⁷

⁵³ *Similarly*, Case 07 Trial Judgment, para. 148; Case 07 Appeal Judgment, paras 282-283; Case 07 Principle of Legality Decision, para. 49.

⁵⁴ *Similarly*, Case 07 Confirmation Decision, para. 71; Case 07 Trial Judgment, paras 152, 155.

⁵⁵ *Similarly*, Case 07 Confirmation Decision, para. 72; Case 07 Trial Judgment, para. 153.

⁵⁶ *Similarly*, Case 07 Confirmation Decision, para. 73; Case 07 Trial Judgment, paras 154-155.

⁵⁷ Case 07 Confirmation Decision, paras 74-76, 78-80; Case 07 Trial Judgment, paras 156, 158, 161-164, 172, 175-178; Case 07 Appeal Judgment, paras 301-308.

(i) Material element

48. The offence of obstructing an official person in performing official duties, within the meaning of Article 401(2) of the KCC, is committed (i) through participation in a group of persons which by common action (ii) obstructs or attempts to obstruct an official person in performing official duties.⁵⁸

49. Article 113(12) of the KCC clarifies that a “group” consists of three or more persons.⁵⁹ As to the group’s common action, Article 401(2) of the KCC does not delimit its contours. Accordingly, common action may include any activity jointly undertaken by the group members.⁶⁰ Crucially, Article 401(2) of the KCC penalises any conduct of the perpetrator, who partakes in the group, that contributes to or enables in some other form the common action; it does not require that the actions of *each* participant in the group contribute directly to the obstructive purpose.⁶¹

50. All other material elements of this offence are identical with those discussed above under Article 401(1) of the KCC.⁶²

(ii) Mental element

51. The perpetrator must have acted with direct or eventual intent, within the meaning of Article 21 of the KCC.⁶³ Within the group, one perpetrator may act with direct intent, while another perpetrator may participate with eventual intent. Article 401(2) of the KCC does not require that all persons in the group participate with the same form of intent.⁶⁴

⁵⁸ *Similarly*, Case 07 Confirmation Decision, para. 74; Case 07 Trial Judgment, para. 158.

⁵⁹ *Similarly*, Case 07 Confirmation Decision, para. 75; Case 07 Trial Judgment, para. 161.

⁶⁰ *Similarly*, Case 07 Confirmation Decision, para. 75; Case 07 Trial Judgment, para. 162.

⁶¹ *Similarly*, Case 07 Trial Judgment, para. 163; Case 07 Appeal Judgment, para. 307.

⁶² *See supra* paras 41-42 (Obstructing Official Persons by Force or Serious Threat).

⁶³ *Similarly*, Case 07 Confirmation Decision, para. 78; Case 07 Trial Judgment, para. 175.

⁶⁴ *Similarly*, Case 07 Trial Judgment, para. 178.

52. For direct intent, the perpetrator must have acted with awareness of, and desire for, participating in a group in order to obstruct by common action an official person in performing official duties.⁶⁵

53. For eventual intent, the perpetrator must have acted with the awareness that, as a result of participation in a group, the official person might be obstructed by common action in the performance of official duties, and the perpetrator acceded to the occurrence of that result.⁶⁶

(c) Relationship between Article 401(1) and (2) of the KCC

54. As regards the relationship between Articles 401(1) and 401(2) of the KCC, although it is not a matter for determination at this stage of the proceedings, the Pre-Trial Judge recalls the Court of Appeals Panel's findings that the relationship between the two forms of obstruction foreseen in paragraphs (1) and (2) of Article 401 of the KCC is one of subsidiarity, "where one provision (Article 401(2) of the KCC) 'is only applicable if it is not possible to apply the other' (Article 401(1) of the KCC)".⁶⁷

C. MODES OF LIABILITY

55. In accordance with Article 16(3) of the Law and Articles 17, 21, 28, 31, 33 and 35 of the KCC, the Specialist Prosecutor pleads the following modes of liability: commission, attempt, co-perpetration, agreement to commit criminal offence, and assistance.⁶⁸

⁶⁵ *Similarly*, Case 07 Confirmation Decision, para. 79; Case 07 Trial Judgment, para. 176.

⁶⁶ *Similarly*, Case 07 Confirmation Decision, para. 80; Case 07 Trial Judgment, para. 177.

⁶⁷ Case 07 Appeal Judgment, para. 308.

⁶⁸ Indictment, paras 24-28, 30.

56. The objective elements of these modes of liability are set out below. As regards their respective subjective element, these modes of liability require direct or eventual intent, within the meaning of Article 21 of the KCC.⁶⁹

1. Commission

57. Commission, within the meaning of Article 17(1) of the KCC, requires that the perpetrator physically carries out the objective elements of an offence, or omits to act when required to do so under the law.⁷⁰

2. Co-Perpetration

58. Co-perpetration, within the meaning of Article 31 of the KCC, requires that (i) two or more persons jointly (ii) participate in or substantially contribute in any other way to the commission of an offence.⁷¹

59. Joint commission does not require a previous agreement on the commission of the offence.⁷² To infer the existence of an agreement it suffices that the actions of the co-perpetrators are concerted in the course of committing the offence.⁷³

60. Article 31 of the KCC does not delimit what constitutes participation in or substantial contribution to the commission of the offence. In any event, each person participating in or substantially contributing to the offence must fulfil one or more of the required material elements of that offence.⁷⁴

⁶⁹ *Similarly*, Case 07 Confirmation Decision, para. 82; Case 07 Trial Judgment, paras 181, 187, 196, 199, 202.

⁷⁰ *Similarly*, Case 07 Confirmation Decision, para. 83; Case 07 Trial Judgment, para. 180.

⁷¹ *Similarly*, Case 07 Confirmation Decision, para. 84; Case 07 Trial Judgment, para. 185.

⁷² *Similarly*, Case 07 Confirmation Decision, para. 85; Case 07 Trial Judgment, para. 186. *See also* Kosovo, Supreme Court, *S.H.*, PAII-KZII-2/2016, [Judgment](#), 20 September 2016, para. 58.

⁷³ *Similarly*, Case 07 Confirmation Decision, para. 85; Case 07 Trial Judgment, para. 186. *See also* Kosovo, Court of Appeals, *S.G. et al.*, PAKR 966/2012, [Judgment](#), 11 September 2013, para. 74.

⁷⁴ *Similarly*, Case 07 Confirmation Decision, para. 86. *See also* Kosovo, Supreme Court, *S.H.*, PAII-KZII-2/2016, [Judgment](#), 20 September 2016, para. 58.

61. Co-perpetration cannot be applied in relation to the offence under Count 2 (Article 401(2) of the KCC), as the material elements of that offence—obstructing an official person in performing official duties *by common action of a group of persons*—already entail joint commission. Each participant in such a group acts as an individual perpetrator.⁷⁵

3. Assistance

62. Assistance, within the meaning of Article 33(1) of the KCC, requires that the person assists the perpetrator in the commission of a criminal offence.⁷⁶

63. Pursuant to Article 33(2) of the KCC, such assistance includes, but is not limited to: giving advice or instruction on how to commit a criminal offence; making available the means to commit a criminal offence; creating conditions or removing the impediments to the commission of a criminal offence; or promising in advance to conceal evidence of the commission of a criminal offence, the perpetrator or identity of the perpetrator, the means used for the commission of a criminal offence, or the profits or gains which result from the commission of a criminal offence.

4. Agreement to Commit a Criminal Offence

64. An agreement to commit a criminal offence, within the meaning of Article 35 of the KCC, requires that (i) the perpetrator agrees with one or more other persons to commit a criminal offence and (ii) one or more of these persons undertakes any substantial act towards the commission of the criminal offence.⁷⁷

65. Pursuant to Article 35(2) of the KCC, a “substantial act towards the commission of a crime” need not be a criminal act, but must amount to a substantial

⁷⁵ *Similarly*, Case 07 Confirmation Decision, para. 87.

⁷⁶ *Similarly*, Case 07 Confirmation Decision, para. 91; Case 07 Trial Judgment, para. 195.

⁷⁷ *Similarly*, Case 07 Confirmation Decision, para. 93; Case 07 Trial Judgment, para. 198.

preparatory step towards the commission of the criminal offence which the persons have agreed to commit.⁷⁸

5. Attempt

66. Attempt, within the meaning of Article 28 of the KCC, requires that the perpetrator takes action towards the commission of an offence, but the action is not completed or the elements of the intended offence are not fulfilled.⁷⁹

67. Article 28 of the KCC does not further delimit what constitutes taking action towards the commission of the offence. In any case, such action must amount to more than preparatory acts, which are separately provided for in Article 27 of the KCC. Accordingly, a perpetrator attempts the commission of an offence when he or she has intentionally begun to execute the offence by fulfilling one or more of the material elements of the offence.⁸⁰

68. Pursuant to Article 28(2) of the KCC, an attempt to commit a criminal offence is penalised only if (i) the punishment for the committed offence is three or more years or (ii) it is expressly so provided for by law. Accordingly, attempt may be punishable in relation to the offences under Counts 1-3.

VI. CHARGES

69. Before examining the supporting material in relation to each charge and determining whether a well-grounded suspicion has been established against the Suspects, the Pre-Trial Judge notes that the SPO has complied with the requirements under Rule 86(3) of the Rules by submitting: (i) the Indictment; (ii) evidentiary material supporting the facts underpinning the charges; and (iii) a

⁷⁸ *Similarly*, Case 07 Confirmation Decision, para. 94.

⁷⁹ *Similarly*, Case 07 Confirmation Decision, para. 95; Case 07 Trial Judgment, para. 201.

⁸⁰ *Similarly*, Case 07 Confirmation Decision, para. 96; Case 07 Trial Judgment, para. 201.

detailed outline demonstrating the relevance of each item of evidentiary material to each allegation.

A. THE OFFENCES CHARGED

1. Intimidation During Criminal Proceedings (Count 3)

70. In the Indictment, the SPO contends that Messrs Januzi and Bahtjari used and attempted to use serious threat, or any other means of compulsion, a promise of a gift or any other form of benefit to induce Witness 1 to refrain from making a statement or to make a false statement or to otherwise fail to state true information to the police, a prosecutor or a judge, when such information relates to obstruction of criminal proceedings.⁸¹

(a) Material Elements

(i) Attribution of Relevant Telephone Numbers

71. Before turning to the material elements of the offence, the Pre-Trial Judge recalls that he has previously found that telephone number [REDACTED] may be attributed to Mr Januzi given that this number is registered to Mr Januzi's previously seized mobile telephone.⁸² The Pre-Trial Judge also recalls that he has previously found that telephone number [REDACTED] may be attributed to Mr Bahtjari noting that this telephone number is registered to Mr Bahtjari's previously seized mobile telephone.⁸³ The Pre-Trial Judge lastly finds that telephone number [REDACTED] may be attributed to Co-Perpetrator 1 having noted that Co-

⁸¹ Indictment, paras 21-23.

⁸² [REDACTED]. See also F00348, Single Judge, *Decision Authorising Search and Seizure and Related Measures*, 3 May 2023, strictly confidential and *ex parte*, para. 20, with Annex 1, strictly confidential.

⁸³ [REDACTED]. See also KSC-BC-2018-01, F00342, Single Judge, *Decision Authorising Search and Seizure and Related Measures* ("Bahtjari & [REDACTED] Search & Seizure Decision"), 28 April 2023, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential.

Perpetrator 1 is listed under the name “[REDACTED]” in Mr Januzi’s previously seized mobile telephone.⁸⁴

(ii) First Approach

72. Regarding the material elements of the offence, the supporting material shows that, on 5 April 2023, at 10h32, Co-Perpetrator 1 called Mr Januzi [REDACTED]⁸⁵ for 45 seconds,⁸⁶ and, approximately two hours later, i.e. at 12h13, Mr Bahtjari, [REDACTED],⁸⁷ also known as “Shema”,⁸⁸ called Mr Januzi for around one minute via Facebook Messenger.⁸⁹

73. The supporting material then shows that approximately three hours after Mr Bahtjari had called Mr Januzi, i.e. at 15h10, Mr Bahtjari called Witness 1 for one minute via Facebook Messenger.⁹⁰ During the call, Mr Bahtjari asked [REDACTED] whether Witness 1 was there.⁹¹ [REDACTED] responded that Witness 1 was sleeping and asked whether Witness 1 should be awoken, to which Mr Bahtjari replied not to wake him up.⁹²

74. The supporting material further indicates that, approximately half an hour after his brief conversation with [REDACTED], Mr Bahtjari arrived at the home of Witness 1.⁹³ Mr Bahtjari told Witness 1 that he had not come “for good”, followed

⁸⁴ SPOE00339028-00339032, pp. SPOE00339029-SPOE00339030. *See also* [REDACTED]. *See* Bahtjari & [REDACTED] Search & Seizure Decision.

⁸⁵ 112906-TR-ET Part 1, p. 12, line 19.

⁸⁶ SPOE00339009-00339013, p. SPOE00339011 (Call Log #3).

⁸⁷ 112906-TR-ET Part 1, p. 4, lines 13-18.

⁸⁸ 112769-112772, p. 112769; 112906-TR-ET Part 1, p. 12, lines 6-8.

⁸⁹ SPOE00339014-00339017, p. SPOE 00339016 (Call Log #1-2); SPOE00339033-00339038, pp. 00339037 (Call Log #1), SPOE00339038 (Chat #1).

⁹⁰ SPOE00339024-00339027, p. SPOE00339026 (Call Log #1-2); 113310-113320, p. 113320. *See also* 112909-TR-ET Part 1, p. 5, line 5.

⁹¹ 112906-TR-ET Part 1, pp. 21, line 14 to p. 22, line 1; 112909-TR-ET Part 1, p. 4, lines 6-25.

⁹² 112906-TR-ET Part 1, p. 22, lines 1-4; 112769-112772, p. 112769, para. 3; 112909-TR-ET Part 1, p. 4, line 25 to p. 5, line 3.

⁹³ 112769-112772, p. 112770, para. 4.

by an Albanian phrasing meaning “I have something to do for the evil”.⁹⁴ Mr Bahtjari informed Witness 1 that Co-Perpetrator 1 (also known as “[REDACTED]”)⁹⁵ had sent him to tell Witness 1 that: (i) they know that Witness 1 will be a witness in the case against Rexhep Selimi (“Mr Selimi”); (ii) Witness 1 possesses damaging evidence against Mr Selimi; and (iii) Witness 1 should withdraw his testimony in said case.⁹⁶ Witness 1 responded that he was not afraid and that it was his business whether he would testify or not, if he were to be summonsed to do so.⁹⁷ The Pre-Trial Judge observes that, according to the supporting material, members of the family of Witness 1 [REDACTED] were present during the conversation with Mr Bahtjari.⁹⁸

75. Moreover, the supporting material reveals that Mr Bahtjari told Witness 1 that, prior to the First Approach, Co-Perpetrator 1 had approached Mr Bahtjari at a café which Mr Bahtjari frequents, located between Fushticë and Komoran, in Kosovo.⁹⁹ During that encounter, Co-Perpetrator 1 said to Mr Bahtjari that Witness 1 is a witness in the case against Mr Selimi and to tell Witness 1 to withdraw his testimony.¹⁰⁰ The supporting material suggests that this statement refers to Witness 1’s testimony believed to have been or to be provided to the SPO or in SC Proceedings.

⁹⁴ 112769-112772, p. 112770, para. 5. *See also* 112906-TR-ET Part 1, p. 19, lines 23-25; 112909-TR-ET Part 1, p. 5, lines 18-19 (“I’ve come here to bring you something, a bad message”).

⁹⁵ 112768-112768, p. 112768, para. 2.

⁹⁶ 112906-TR-ET Part 1, p. 5, lines 3-5, p. 7, lines 14-15, p. 19, line 12 to p. 21, line 7 (p. 20, line 25 “So I understand that I will be influential against him”); 112769-112772, p. 112770, para. 5; 112768-112768, p. 112768, para. 2; 112769-112772, p. 112770, para. 5. *See also* 112909-TR-ET Part 1, p. 6, lines 22-23, p. 8, lines 9-11.

⁹⁷ 112768-112768, p. 112768, para. 2.

⁹⁸ 112769-112772, p. 112771, para. 12; 112909-TR-ET Part 1, p. 6, lines 13-16, p. 8, line 4.

⁹⁹ 112769-112772, p. 112770, paras 5-6; 113354-113355, p. 113355, para. 8.

¹⁰⁰ 112769-112772, p. 112770, para. 5 (According to Witness 1, Co-Perpetrator 1 told Mr Bahtjari “Go and tell [REDACTED] that he’s Selimi’s weakness and tell him to withdraw”); 112906-TR-ET Part 1, p. 20, line 20 (“So I [Witness 1] understand that I [Witness 1] will be influential against him”). *See also* 112906-TR-ET Part 1, p. 20, lines 2-3.

76. According to the supporting material, Witness 1 asked Mr Bahtjari whether Co-Perpetrator 1 warned that if Witness 1 testified against Mr Selimi, “they” would [REDACTED].¹⁰¹ Witness 1 indicated to the SPO that “they” refers to Co-Perpetrator 1 and [REDACTED].¹⁰² Mr Bahtjari replied in the affirmative.¹⁰³ The supporting material further indicates that Witness 1 stated to Mr Bahtjari to inform the individuals who had sent Mr Bahtjari that if said individuals come for him, Witness 1 will be ready for them.¹⁰⁴ In this context, according to Witness 1: (i) [REDACTED]; and (ii) [REDACTED], and Co-Perpetrator 1 are responsible for the message that Witness 1 should withdraw his testimony against Mr Selimi.¹⁰⁵ The supporting material reveals that Mr Bahtjari appeared to feel uncomfortable throughout the visit.¹⁰⁶

77. Furthermore, the supporting material shows that, after the discussion, Mr Bahtjari left the house of Witness 1 and walked down the street towards a Volkswagen Golf vehicle waiting approximately 200 meters away.¹⁰⁷ The supporting material further shows that Mr Bahjtari and two men, who were standing near the vehicle, got into the vehicle; a fourth man was in the driver’s

¹⁰¹ 112906-TR-ET Part 1, p. 8, lines 23-24, p. 11, lines 21-22, p. 20, lines 2-4; *see also* p. 11, lines 13-17; 112769-112772, p. 112770, para. 8. *See also* 112909-TR-ET Part 1, p. 6, lines 2-3, p. 8, lines 4-6.

¹⁰² 112769-112772, p. 112770, para. 8. *See also* 112906-TR-ET Part 1, p. 11, lines 13-17.

¹⁰³ 112906-TR-ET Part 1, p. 8, lines 23-25 (“So Ismet was saying that at - at the first time he met them, he said, ‘When I asked him do they want to [REDACTED], and he moved his head and said, “Yes, yes.”’”), p. 20, lines 4-5 (“And I asked him, ‘So they’ve asked me that they will [REDACTED]?’ And he confirmed saying, ‘Yes, yes.’”, p. 21, lines 7-12; p. 22, line 17 to p. 23, line 2 (“So, yes, he said yes, move the head up and down, meaning that, yeah, he - I was [REDACTED]”); 112769-112772, p. 112770, para. 8. *See also* 112909-TR-ET Part 1, p. 6, lines 3-4, p. 6, lines 5-6.

¹⁰⁴ [REDACTED].

¹⁰⁵ 112769-112772, p. 112770, paras 6, 9. *See also* 112906-TR-ET Part 1, p. 23, lines 7-25.

¹⁰⁶ *See* 112906-TR-ET Part 1, p. 11, line 20 to p. 12, line 1 (“So he was – felt embarrassed, somehow”); 112769-112772, p. 112770, para. 7 (“During their discussion at [Witness 1]’s home, Bahtjari appears nervous and uncomfortable and kept his head down and avoided eye contact with [Witness 1]”, para. 10 (“After the discussion finished, Bahtjari looked nervous”).

¹⁰⁷ 112769-112772, p. 112771, para. 11. *See also* 112909-TR-ET Part 1, p. 9, lines 7-10.

seat.¹⁰⁸ According to the supporting material, these men were likely watching the home of Witness 1 during the visit of Mr Bahtjari to Witness 1.¹⁰⁹

78. In addition, as detailed below, the supporting material reveals that, after the First Approach, on the same day, Co-Perpetrator 1 and Mr Januzi, and separately, Mr Januzi and Mr Bahtjari, engaged in multiple contacts via mobile telephone, WhatsApp, and Facebook Messenger.

79. The supporting material shows that Mr Januzi called on 5 April 2023 Co-Perpetrator 1 three times over the span of an hour with no answer at 16h53, 16h54, and 17h44, before sending Co-Perpetrator 1 a text message at 19h47 asking him to call him back.¹¹⁰ Co-Perpetrator 1 then attempted to call via WhatsApp Mr Januzi (19h56), and subsequently Mr Januzi called back (19h58) and talked to Co-Perpetrator 1 for two minutes and 54 seconds.¹¹¹ Almost immediately after his call with Co-Perpetrator 1, namely at 20h02, Mr Januzi made a brief audio call via Facebook Messenger to Mr Bahtjari (34 seconds).¹¹² A short time later, at 20h22, Co-Perpetrator 1 sent a WhatsApp message to Mr Januzi, saying, “Tomorrow, Sabit”, to which Mr Januzi responded two minutes later, “Ok, I will let them know”.¹¹³ According to the supporting material, Co-Perpetrator 1 replied via WhatsApp at 20h24, “Wait a bit more”, and, within seconds, Co-Perpetrator 1 called via WhatsApp Mr Januzi and talked for 46 seconds.¹¹⁴ Co-Perpetrator 1 and Mr Januzi then discussed meeting in person over WhatsApp messages, with

¹⁰⁸ 112769-112772, p. 112771, para. 11.

¹⁰⁹ 112769-112772, p. 112771, para. 11.

¹¹⁰ SPOE00339009-00339013, p. SPOE00339011 (Call Log #4-6), p. SPOE00339012 (Chat #1); SPOE00339028-00339032, p. SPOE00339032 (Chat #2) (“Call me when you finish *Iftar*”).

¹¹¹ SPOE00339009-00339013, pp. SPOE00339011 (Call Log #7-8), SPOE00339012 (Chats #2-3); SPOE00339028-00339032, p. SPOE00339032 (Chat #3).

¹¹² SPOE00339014-00339017, pp. SPOE00339016 (Call Log #3), SPOE00339017 (Chat #2).

¹¹³ SPOE00339009-00339013, p. SPOE00339012 (Chats #4-5); SPOE00339028-00339032, p. SPOE00339032 (Chats #4-5).

¹¹⁴ SPOE00339009-00339013, p. SPOE00339012 (Chats #6-7), SPOE00339011 (Call Log #9); SPOE00339028-00339032, p. SPOE00339032 (Chat #6).

Mr Januzi at one point indicating that the meeting must be at or close to his home because he did not have his car (messages between 20h39 and 20h40).¹¹⁵ This was followed by a short call (26 seconds) via WhatsApp from Co-Perpetrator 1 to Mr Januzi at 20h40.¹¹⁶

80. The supporting material further reveals that, shortly after messaging via WhatsApp Co-Perpetrator 1 to arrange a meeting, Mr Januzi called via Facebook Messenger Mr Bahtjari three times without answer (20h45, 20h47, 20h49) and also sent Mr Bahtjari two Facebook Messenger messages at 20h47 and 20h50, respectively, writing “Hello” and “Hello Shem”.¹¹⁷ Mr Bahtjari called via Facebook Messenger Mr Januzi at 20h51 and 20h59, connecting for one minute and for 37 seconds, respectively.¹¹⁸ At 20h59, Mr Januzi also sent via Facebook Messenger the number “[REDACTED]” to Mr Bahtjari,¹¹⁹ Mr Bahtjari then called Mr Januzi at 21h01 (15 seconds), using the mobile telephone number he had just received from the latter.¹²⁰ Mr Januzi briefly called (11 seconds) Co-Perpetrator 1 (21h40) via mobile telephone.¹²¹ Five minutes later (21h45), Mr Januzi briefly called (10 seconds) Mr Bahtjari.¹²² Between 21h38 and 21h58, Co-Perpetrator 1 sent two WhatsApp messages to Mr Januzi, writing “come out” and “where are you”.¹²³ The timing, sequence, and frequency of the above-mentioned communications, as evidenced in the supporting material, strongly suggest that the contacts between Mr Januzi and Co-Perpetrator 1, on the one hand, and between Mr Januzi and

¹¹⁵ SPOE00339009-00339013, p. SPOE00339012 (Chats #8-15); SPOE00339028-00339032, p. SPOE00339032 (Chats #7-14).

¹¹⁶ SPOE00339009-00339013, p. SPOE00339011 (Call Log #10).

¹¹⁷ SPOE00339014-00339017, pp. SPOE00339016 (Call Log #4-6), SPOE00339017 (Chats #3-7); SPOE00339033-00339038, p. SPOE00339038 (Chats #3-7).

¹¹⁸ SPOE00339014-00339017, p. SPOE00339016 (Call Log #7-10), SPOE00339017 (Chats #8-9); SPOE00339033-00339038, p. SPOE00339038 (Chats #8-9).

¹¹⁹ SPOE00339014-00339017, p. SPOE00339017 (Chat #10). *See supra* para. 71.

¹²⁰ SPOE00339014-00339017, p. SPOE00339016 (Call Log #10).

¹²¹ SPOE00339009-00339013, p. SPOE00339011 (Call Log #11).

¹²² SPOE00339014-00339017, p. SPOE00339016 (Call Log #11).

¹²³ SPOE00339028-00339032, p. SPOE00339032 (Chats #15-16); SPOE00339009-00339013, p. SPOE00339012-00339013 (Chats #17-18).

Mr Bahtjari, on the other hand, concerned Mr Bahtjari's visit to Witness 1 to deliver the message from Co-Perpetrator 1 that Witness 1 should withdraw his testimony against Mr Selimi.

81. The supporting material further indicates that, in the following days, the Suspects and Co-Perpetrator 1 remained in contact: (i) on 6 April 2023, Mr Januzi called Co-Perpetrator 1 at 15h37 for 47 seconds;¹²⁴ shortly thereafter, Mr Januzi called Mr Bahtjari at 15h56 for one minute and 42 seconds;¹²⁵ and, at 20h39, Mr Januzi called Co-Perpetrator 1 via WhatsApp for one minute and 50 seconds, after Co-Perpetrator 1 sent him a WhatsApp message "Hey? Bit";¹²⁶ and (ii) on 9 April 2023, Co-Perpetrator 1 called Mr Januzi via WhatsApp at 16h42 for one minute and 50 seconds;¹²⁷ Mr Januzi also attempted to call Mr Bahtjari at 16h44 and 16h45; and, lastly, Mr Januzi called Co-Perpetrator 1 via WhatsApp at 19h17 for one minute and 34 seconds.¹²⁸

(iii) Second Approach

82. Similar to the sequence of events related to the First Approach, the supporting material shows that the Second Approach was equally preceded by a series of preparatory contacts among the Suspects as well as Co-Perpetrator 1. Specifically, the supporting material indicates that on 12 April 2023, between 17h53 and 17h56, Mr Januzi sent a series of messages via Facebook Messenger to a [REDACTED] of Witness 1 ("Relative"), asking him to arrange a meeting between Mr Januzi and a person referred to as "[REDACTED]", while specifying that he did not "want to tell everyone".¹²⁹ The Pre-Trial Judge infers, from the circumstances occurred on

¹²⁴ SPOE00339009-00339013, p. SPOE00339011 (Call Log #12).

¹²⁵ SPOE00339014-00339017, p. SPOE00339016 (Call Log #12).

¹²⁶ SPOE00339009-00339013, p. SPOE00339011 (Call Log #13).

¹²⁷ SPOE00339009-00339013, p. SPOE00339011 (Call Log #14).

¹²⁸ SPOE00339009-00339013, p. SPOE00339011 (Call Log #15).

¹²⁹ SPOE00339018-00339023, p. SPOE00339022 (Chats #9-20).

12 April 2023 and leading to the Second Approach, that [REDACTED] is in fact Witness 1. This is confirmed by Witness 1 himself, who stated that Mr Januzi contacted Relative 1 on 12 April 2023 for the purpose of getting in touch with the witness.¹³⁰ According to the supporting material, the messages between Mr Januzi and Relative 1 were followed by an audio call of two minutes via Facebook Messenger shortly thereafter between the two.¹³¹

83. The supporting material further indicates that on the same day (12 April 2023) Mr Januzi's request was executed by the Relative, who informed Witness 1 of Mr Januzi's intention to meet, and gave Witness 1 Mr Januzi's telephone number, after which Witness 1 contacted Mr Januzi at 21h23 and 21h41.¹³² In the course of one of these two calls, Mr Januzi informed Witness 1 that he would come to visit "in half an hour or one hour".¹³³ The supporting material also indicates that within a few minutes from the second call between Witness 1 and Mr Januzi, the latter called Co-Perpetrator 1 and talked for one minute and 20 seconds.¹³⁴

84. Based on the supporting material, upon arrival at Witness 1's home, Mr Januzi confirmed that Co-Perpetrator 1 had sent Mr Bahtjari on 5 April 2023, and that "they couldn't understand what was your [Witness 1] instruction after that [encounter]. So they sent me [Mr Januzi] in order to get it accurately [...] how things stand" and "how can we go forward with this".¹³⁵ According to Witness 1, "they" means Co-Perpetrator 1, [REDACTED] "[b]ecause everything against me originated in them. There have been many ambushes set up against me".¹³⁶

¹³⁰ 112906-TR-ET Part 1, p. 6, lines 4, 22.

¹³¹ SPOE00339018-00339023, p. SPOE00339023 (Chat #21).

¹³² 112906-TR-ET Part 1, p. 6, line 17 to p. 7, line 1; p. 15, line 17; 113310-113320, pp. 113310-113315 (specifically p. 113313 at the bottom, where the call to Mr Januzi at 21h23 is visible); 112909-TR-ET Part 1, p. 9, lines 21-22, in which W04891 corroborates Witness 1's account that the Relative came in person to give Mr Januzi's phone number.

¹³³ 112906-TR-ET Part 1, p. 7, lines 3-5.

¹³⁴ SPOE00339009-00339013, p. SPOE00339011 (Call Log #16).

¹³⁵ 112906-TR-ET Part 1, p. 7, lines 14-16; p. 18, lines 15-18.

¹³⁶ 112906-TR-ET Part 1, p. 18, line 20 to p. 19, line 8.

Moreover, according to Witness 1, the conversation between Mr Januzi and Witness 1 took place while the family was present in the house.¹³⁷

85. The supporting material evinces that in response to the follow-up by Mr Januzi, Witness 1 stated that he did not “want to deal with this anymore. Put a stop to it”, to which Mr Januzi replied that he would convey this message to Co-Perpetrator 1.¹³⁸

86. As a result of the First Approach and the Second Approach, Witness 1 informed the SPO that he became concerned for the safety of [REDACTED], including whether he would be able to defend his family [REDACTED].¹³⁹ As regards the seriousness of the security concerns of Witness 1, the supporting material makes reference to one instance when Witness 1 had sent [REDACTED] outside his home to greet Mr Januzi, as Witness 1 thought that “somebody else might have come before him, set up there, and I came out, they could have just [REDACTED]”.¹⁴⁰

87. Lastly, and consistent with the pattern found in relation to the First Approach, the supporting material reveals that after the Second Approach, Mr Januzi called Co-Perpetrator 1 at 22h52 and that less than an hour later, Co-Perpetrator 1 called Mr Januzi, at 23h34.¹⁴¹

(iv) Conclusion

88. The Pre-Trial Judge finds on the basis of the material provided by the SPO that, in the context of the First Approach and the Second Approach, Messrs Bahtjari and Januzi tried, jointly with or on behalf of Co-Perpetrator 1, on two separate occasions, within days of each other, to dissuade Witness 1 from testifying in

¹³⁷ 112906-TR-ET Part 1, p. 16, line 23 to p. 17, line 7. *See also* 112909-TR-ET Part 1, p. 10, lines 9-22.

¹³⁸ 112906-TR-ET Part 1, p. 9, line 24 to p. 10, line 7.

¹³⁹ 112906-TR-ET Part 1, p. 24, lines 12-14; 112769-112772, p. 112771, para. 13.

¹⁴⁰ 112906-TR-ET Part 1, p. 24, lines 7-11.

¹⁴¹ SPOE00339009-00339013, p. SPOE00339011 (Call Logs #17-18).

SC Proceedings, [REDACTED]. The Pre-Trial Judge also finds that the fact that (i) the First Approach and the Second Approach took place at the home of Witness 1 [REDACTED], (ii) Mr Bahtjari was accompanied by three men, who waited outside the home of Witness 1 during the First Approach, and (iii) the Suspects referred to each other as well as to Co-Perpetrator 1 during said approaches, reinforced the threatening and intimidating nature of the messages delivered to Witness 1 to withdraw his testimony against Mr Selimi. Moreover, the Pre-Trial Judge is persuaded that Witness 1 has or is likely to provide information to the SITF/SPO and/or any SC Panel about any crimes or offences falling under the SC jurisdiction.

89. Considering the above, the Pre-Trial Judge finds that the acts and statements of Messrs Bahtjari and Januzi during the First Approach and the Second Approach created a serious threat to use force or to inflict serious harm on the well-being, safety, security or privacy of Witness 1 and/or his family. Furthermore, the Pre-Trial Judge finds that such actions were undertaken to induce Witness 1 to refrain from testifying in SC Proceedings.

90. Conversely, the Pre-Trial Judge notes that the SPO does not plead, nor does it present any supporting material to establish that Messrs Bahtjari and Januzi, jointly with or on behalf of Co-Perpetrator 1, used a promise of a gift or any other form of benefit to dissuade Witness 1 from testifying in SC Proceedings.¹⁴² Likewise, there is no pleading in the Indictment nor indication in the supporting material suggesting that Messrs Bahtjari and Januzi omitted certain acts with the aim to induce Witness 1 to refrain from testifying in SC Proceedings.¹⁴³ Accordingly, these factual allegations are not confirmed and the Indictment shall be amended accordingly.¹⁴⁴

¹⁴² Indictment, para. 21.

¹⁴³ Indictment, paras 21, 24, 25, 26, 27, 29.

¹⁴⁴ See *infra* para. 149 of this decision.

(b) Mental Elements

91. Regarding the mental elements of the offence, the supporting material reveals the deliberate, coordinated, and repeated manner, in which Mr Januzi and Mr Bahtjari, by serious threat, attempted to induce Witness 1 to refrain from testifying in SC Proceedings.

92. More specifically, the supporting material shows that Mr Bahtjari: (i) engaged in numerous and successive communications with Mr Januzi ahead and after the First Approach; (ii) directly contacted Witness 1 via Facebook Messenger – although they are seldom in contact with each other¹⁴⁵ – in order to arrange the meeting where he delivered the message from Co-Perpetrator 1; (iii) turned up at the home of Witness 1, after making sure that Witness 1 was in fact at home; during the First Approach (iv) directly told Witness 1 that, according to Co-Perpetrator 1, Witness 1 is a witness in the case against Mr Selimi and that he should withdraw his testimony in that case; (v) outrightly revealed to Witness 1 that he was instructed by Co-Perpetrator 1 to convey said message to Witness 1; and (vi) when prompted by Witness 1, confirmed that [REDACTED] if he did not withdraw his testimony.

93. Concerning Mr Januzi, the supporting material shows that Mr Januzi: (i) engaged in communications with both Co-Perpetrator 1 and Mr Bahtjari ahead and after the First Approach and the Second Approach; (ii) showed up at the home of Witness 1, although he is not a regular visitor to Witness 1;¹⁴⁶ (iii) explicitly told Witness 1 that he was visiting him to follow-up on Mr Bahtjari's 5 April 2023 visit, thereby showing that Mr Januzi had direct knowledge of the 5 April 2023 visit and its purpose; (iv) explicitly stated that Witness 1's position as to whether he would withdraw his potential testimony was not clear after the First Approach and that he had been sent by Co-Perpetrator 1 to clarify Witness 1's position in that respect; and

¹⁴⁵ 112769-112772, p. 112771, para. 15; 112909-TR-ET Part 1, p. 5, lines 9-10, p. 7, line 13.

¹⁴⁶ 112906-TR-ET Part 1, p. 12, lines 12-21. *See also* 112909-TR-ET Part 1, p. 10, lines 10-11.

(v) stated to Witness 1 that he would convey the witness's position that he did not want to deal with this situation anymore and that it should stop.

94. Taking into consideration their actions during the First Approach and the Second Approach, the Pre-Trial Judge finds on the basis of the material provided by the SPO that Messrs Bahtjari and Januzi were aware of and intended to use serious threat to induce Witness 1 to refrain from making a statement, provide a false statement or fail to state true information to the SC in the context of SC Proceedings, within the meaning of Article 387 of the KCC.

(c) Conclusion

95. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that the offence of intimidation during criminal proceedings within the meaning of Article 387 of the KCC and Article 15(2) of the Law was committed by Messrs Januzi and Bahtjari between at least 5 April and 12 April 2023.

2. Obstructing Official Persons in Performing Official Duties – by Serious Threat (Count 1)

96. In the Indictment, the SPO alleges that Messrs Januzi and Bahtjari, by serious threat, in the context of the First Approach and the Second Approach, obstructed or attempted to obstruct an official person, that is a judge, a prosecutor, an official of a court, prosecution officer or a person authorised by the court and prosecution office, in performing official duties in the framework of proceedings before the SC.¹⁴⁷

(a) Material Elements

¹⁴⁷ Indictment, paras 5-20.

97. Regarding the material elements of the offence, the Pre-Trial Judge takes note of and relies on the intimidation allegations and related supporting material.¹⁴⁸ The relevant facts are summarised shortly in what follows.

98. The Pre-Trial Judge recalls that the acts and statements of Messrs Bahtjari and Januzi during the First Approach and the Second Approach, as described in Count 3,¹⁴⁹ amount to a serious threat.

99. More specifically, the Pre-Trial Judge recalls that, according to the supporting material, Messrs Bahtjari and Januzi carried out the approaches, jointly with or on behalf of Co-Perpetrator 1, against Witness 1, at his home and [REDACTED]; Mr Bahtjari was accompanied by three men who waited outside the residence of Witness 1 during the First Approach, and both Suspects made reference to each other as well as Co-Perpetrator 1 during the approaches, which, as held above, reinforced the threatening and intimidating nature of the messages delivered to Witness 1.¹⁵⁰ As a result of the First Approach and the Second Approach, Witness 1 became concerned for the safety of [REDACTED], including whether he would be able to defend his family [REDACTED].¹⁵¹

100. In addition to the aforementioned, the supporting material shows that in order to ensure the safety of Witness 1 and his family, as well as Witness 1's ability to testify, the SPO: (i) intensified its contacts with Witness 1 due to the increased security concerns of Witness 1;¹⁵² (ii) assigned staff to investigate the First Approach and the Second Approach;¹⁵³ and (iii) allocated resources to take new security-related measures, [REDACTED].¹⁵⁴

¹⁴⁸ See *supra* paras 70 *et seq.*

¹⁴⁹ See *supra* paras 72-89 and supporting material referenced therein.

¹⁵⁰ See *supra* para. 88.

¹⁵¹ See *supra* para. 86 and supporting material referenced therein.

¹⁵² See 112769-112772, p. 112769, paras 1-2, p. 112771, paras 13, 16, p. 112772, para. 18; 113181-113182, p. 113181, paras 1-2; 113354-113355; 113356-113356; 113434-113436.

¹⁵³ See 113181-113182, p. 113182, para. 3; 113310-113320, p. 113310, paras 1-2.

¹⁵⁴ See 113181-113182, p. 113181, paras 1-2; 113354-113355; 113356-113356.

101. In the view of the Pre-Trial Judge, Messrs Bahtjari and Januzi's aforementioned acts and statements engendered a serious threat to use force or to inflict serious harm on the well-being, safety, security or privacy of Witness 1 and/or his family.

102. Bearing in mind the impact of the serious threat on Witness 1 and/or his family members, the Pre-Trial Judge is of the view that the serious threat generated by the Suspects' aforementioned acts and statements could, in principle, hinder and/or delay the work of SC/SPO Officials, namely SPO prosecutors and investigators, as well as SC staff members, in the context of SC Proceedings.¹⁵⁵ For instance, as a result of the serious threat, Witness 1 might decide that he does no longer wish to cooperate with and provide evidence to the SPO, which, in turn, could hinder or delay the SPO's presentation of evidence in a trial before the SC.

103. In this regard, the Pre-Trial Judge observes that, according to the SPO, Messrs Bahtjari and Januzi obstructed or attempted to obstruct SC proceedings by: (i) creating serious fears and concerns for Witness 1 and his family, thereby constituting a strong disincentive for that person to provide (further) information about any crimes under the jurisdiction of the SC; (ii) threatening the ability of the SPO and the SC to effectively investigate and prosecute crimes, including obtaining relevant evidence from potential witnesses; and (iii) thus compelling the SPO and the SC to divert resources and time to address actual and potential consequences to Witness 1 and his family.¹⁵⁶

104. The Pre-Trial Judge accepts that securing the testimony of a witness who no longer wishes to interact with the SPO or who has been frightened as a result of the serious threat generated by the Suspects' aforementioned acts and statements, may raise particular challenges for the SPO, [REDACTED]. However, in the view of the Pre-Trial Judge, the SPO has not (i) demonstrated any concrete and actual

¹⁵⁵ See *similarly* Case 07 Trial Judgment, para. 647.

¹⁵⁶ Indictment, para. 18.

impediment to its investigations that could be imputed to the conduct of the Suspects; (ii) pointed to any act that the SC/SPO was prevented, hindered or delayed in performing as part of their work in SC proceedings; or (iii) demonstrated that, as a result of the diversion of resources and time, the SPO was prevented from or delayed in carrying out its regular investigative functions.¹⁵⁷ The Pre-Trial Judge also considers that the use of resources by investigative or prosecutorial authorities to respond to criminal activity undermining their work is the normal and expected course of action, and is not necessarily evidence of obstruction.¹⁵⁸ Finally, the Pre-Trial Judge is not persuaded that the diversion of SPO or SC resources, as supported by investigative notes provided by the SPO,¹⁵⁹ was so significant that it led to the obstruction of the work of SC/SPO Officials in the context of SC Proceedings.

105. Considering the above, the Pre-Trial Judge finds that the supporting material does not demonstrate that there is a well-grounded suspicion that Messrs Bahtjari and Januzi's acts and statements obstructed the work of SC/SPO Officials in the context of SC Proceedings.

106. Nevertheless, the Pre-Trial Judge recalls that the offence under Article 401(1) and (5) of the KCC can also be committed if the perpetrator only attempts to obstruct an official person in performing official duties.¹⁶⁰ In this regard, the Pre-Trial Judge recalls that he has already found that the Suspects' acts and statements amount to a serious threat within the meaning of Article 401(1) of the KCC, which in principle could result in the obstruction of the work of SC/SPO Officials, in particular SPO prosecutors and investigators, in the context of SC Proceedings.¹⁶¹ Accordingly, the Suspects fulfilled one of the material elements of the present offence amounting to an attempted form of this offence.

¹⁵⁷ See *similarly* Case 07 Trial Judgment, paras 651, 653.

¹⁵⁸ See *similarly* Case 07 Trial Judgment, para. 654.

¹⁵⁹ See *supra* footnote numbers 152-154.

¹⁶⁰ See *supra* para. 68.

¹⁶¹ See *supra* paras 101-102.

107. For these reasons, the Pre-Trial Judge finds that Messrs Bahtjari and Januzi's acts and statements amounted to attempted obstruction of the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings, within the meaning of Article 401(1) and (5) of the KCC.

(b) Mental Elements

108. Regarding the mental elements of the offence, the supporting material demonstrates the deliberate, coordinated, and repeated manner, in which the Suspects, by serious threat, attempted to obstruct the work of SC/SPO Officials in the context of SC Proceedings.

109. As held above, (i) both Messrs Januzi and Bahtjari engaged in numerous and successive communications ahead and after the First Approach and the Second Approach;¹⁶² (ii) both Messrs Januzi and Bahtjari reached out to Witness 1 and separately visited Witness 1 at his home – although they are not regularly in contact with Witness 1;¹⁶³ (iii) during the First Approach, Mr Bahtjari overtly attempted to induce Witness 1 to refrain from testifying in SC Proceedings [REDACTED];¹⁶⁴ (iv) Mr Bahtjari appeared uncomfortable during the First Approach, thereby signalling knowledge that he was delivering a threatening and intimidating message to the witness; (v) Mr Januzi explicitly told Witness 1 that he was visiting him to follow-up on the First Approach, thereby showing that Mr Januzi had direct knowledge of the First Approach and its purpose; and (vi) Mr Januzi directly told Witness 1 that he had been sent by Co-Perpetrator 1 to clarify whether Witness 1 would withdraw his testimony in SC Proceedings, and that he would convey the witness's position.¹⁶⁵

¹⁶² See *supra* paras 72, 78-82, 87 and supporting material referenced therein.

¹⁶³ See *supra* paras 73, 82-83, 92-93 and supporting material referenced therein.

¹⁶⁴ See *supra* paras 74, 76 and supporting material referenced therein.

¹⁶⁵ See *supra* paras 84-85 and supporting material referenced therein.

110. In the Pre-Trial Judge's assessment, Messrs Januzi and Bahtjari's statements and acts during the First Approach and the Second Approach translate into a direct intent to obstruct the work of the SPO/SC Officials within the context of SC Proceedings: they show that the Suspects acted with awareness of, and desire for, using the serious threat conveyed through the First Approach and the Second Approach, to deter Witness 1 from cooperating with the SPO/SC, thus, ultimately, obstructing the presentation of witness evidence by SPO/SC Officials, in particular SPO prosecutors and investigators. In the alternative, the Pre-Trial Judge finds that, on the basis of the supporting material, the Suspects were aware that, as a result of the Suspects' coordinated and concerted efforts, Witness 1 would be deterred from cooperating with the SPO/SC, and, this would, ultimately, obstruct the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings. They nevertheless acceded to this possible occurrence.

(c) Conclusion

111. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that the offence of obstructing official persons in performing official duties within the meaning of Article 401(1) and (5) of the KCC and Article 15(2) of the Law was attempted to be committed, by serious threat, by the Suspects, between at least 5 April and 12 April 2023.

3. Obstructing Official Persons in Performing Official Duties – by Common Action of a Group (Count 2)

112. In the Indictment, the SPO alleges that in the context of the First Approach and the Second Approach, Messrs Januzi and Bahtjari, by the common action of a group of persons, in which both participated, obstructed or attempted to obstruct an official person, that is a judge, a prosecutor, an official of a court, a prosecution

officer or a person authorised by the court and prosecution office, in performing official duties in the framework of proceedings before the SC.¹⁶⁶

(a) Material Elements

113. Regarding the material elements of the offence, the Pre-Trial Judge recalls that a “group” as foreseen under Article 113(12) of the KCC, must consist of at least three persons.¹⁶⁷ In the case at hand, the Pre-Trial Judge finds that the supporting material indicates that Messrs Januzi and Bahtjari formed a group comprising at least them and Co-Perpetrator 1. Moreover, the Pre-Trial Judge finds on the basis of the material provided by the SPO that the Suspects and Co-Perpetrator 1’s actions indicate a joint endeavour to dissuade Witness 1 from testifying in SC Proceedings. The supporting material reveals, in particular, that the Suspects and Co-Perpetrator 1 coordinated between each other on several occasions between at least 5 April and 12 April 2023. This is evident from the following considerations.

114. First, the supporting material shows that prior to the First Approach, Co-Perpetrator 1 met with Mr Bahtjari at a public café and told Mr Bahtjari to deliver the message to Witness 1 that he should withdraw his testimony in SC Proceedings.¹⁶⁸

115. Second, the supporting material shows that during the First Approach, Mr Bahtjari made an explicit reference to Co-Perpetrator 1 as the source of the intimidating message against Witness 1; whereas during the Second Approach, Mr Januzi made an equally explicitly reference to Co-Perpetrator 1 as well as to Mr Bahtjari and the First Approach.¹⁶⁹ This demonstrates in the view of the Pre-Trial Judge that both the First Approach and the Second Approach were part of the same joint effort to convince Witness 1 to withdraw his testimony in SC Proceedings and

¹⁶⁶ Indictment, paras 5-20.

¹⁶⁷ See *supra* para. 49.

¹⁶⁸ See *supra* para. 75 and supporting material referenced therein.

¹⁶⁹ See *supra* paras 74, 84-85 and supporting material referenced therein.

that both approaches originated from Co-Perpetrator 1 and were executed by Mr Januzi and Mr Bahtjari.

116. Third, the supporting material shows that both before and after the First Approach and the Second Approach, Mr Januzi and Co-Perpetrator 1, on the one hand, and Mr Januzi and Mr Bahtjari, on the other hand, engaged in numerous and successive exchanges both in messaging applications and over the telephone.¹⁷⁰ The Pre-Trial Judge is of the view that the timing, sequence, and frequency of said communications is further indicative of Co-Perpetrator 1, Messrs Januzi and Bahtjari's concerted effort to dissuade Witness 1 from testifying in SC Proceedings.

117. Fourth, the supporting material shows that Co-Perpetrator 1 acted as the conveyor of instructions to both Messrs Januzi and Bahtjari; whereas Messrs Januzi and Bahtjari were tasked with the delivery of the message to Witness 1 that he should withdraw his testimony in SC Proceedings, which they personally executed during the First Approach and the Second Approach, as well as to report back on the outcome of the First Approach and the Second Approach.¹⁷¹ In the view of the Pre-Trial Judge, the division of tasks among Co-Perpetrator 1 and the Suspects is also reflective of the joint and coordinated nature of their actions.

118. Considering the above, the Pre-Trial Judge is satisfied that Messrs Januzi and Bahtjari participated in a group which, by common action, obstructed or attempted to obstruct the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings, through a joint endeavour aimed at inducing Witness 1 to refrain from testifying in SC Proceedings.

119. Furthermore, the Pre-Trial Judge recalls that he found under Count 1 that the SPO failed to establish that the acts and statements of the Suspects obstructed the work of the SPO/SC Officials, in particular SPO prosecutors and investigators,

¹⁷⁰ See *supra* paras 72, 78-82, 87 and supporting material referenced therein.

¹⁷¹ See *supra* paras 72-87 and supporting material referenced therein.

within the context of SC Proceedings, within the meaning of Article 401(1) and (5) of the KCC.¹⁷² Given that the alleged obstruction under Count 1 relies on the same acts and statements of Messrs Januzi and Bahtjari as pleaded under Count 2, the Pre-Trial Judge considers that the above findings also apply for the present count. As a result, the Pre-Trial Judge finds that the SPO failed to establish that the acts and statements of the Suspects obstructed the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings within the meaning of Article 401(2) and (5) of the KCC.

120. Notwithstanding this, the offence under Article 401(2) and (5) of the KCC can also be committed if the obstruction of an official person in performing official duties has only been attempted.¹⁷³ In this regard, the Pre-Trial Judge recalls that he has already established that Messrs Januzi and Bahtjari participated in the common action of a group, within the meaning of Article 401(2) of the KCC, which, in principle, could result in the obstruction of the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings.¹⁷⁴ Accordingly, the Suspects fulfilled one of the material elements of the present offence, amounting to an attempted form of this offence.

121. For these reasons, the Pre-Trial Judge finds that the participation of Messrs Januzi and Bahtjari in a group's common action amounted to attempted obstruction of the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings, within the meaning of Article 401(2) and (5) of the KCC.

(b) Mental Elements

¹⁷² See *supra* para. 105.

¹⁷³ See *supra* para. 68.

¹⁷⁴ See *supra* para. 118.

122. Regarding the mental element of the offence, the Pre-Trial Judge recalls that he found under Count 1 that (i) Messrs Januzi and Bahtjari, by deterring Witness 1 through the First Approach and the Second Approach from cooperating with the SPO/SC, acted with awareness of, and desire for, obstructing the work of the SPO/SC Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings; or (ii) in the alternative, that the Suspects were aware that, as a result of their coordinated and concerted efforts, Witness 1 would be deterred from cooperating with the SPO/SC, and, this would, ultimately, obstruct the work of the SPO/SC Officials, within the context of SC Proceedings, and the Suspects' acceded to this possible occurrence.¹⁷⁵ Given that the alleged intent to obstruct under Count 1 relies on the same acts and statements of the Suspects as pleaded under Count 2, the Pre-Trial Judge considers that the above findings also apply for the present count, in respect of Messrs Januzi and Bahtjari. In addition, the Pre-Trial Judge finds on the basis of the supporting material that Messrs Januzi and Bahtjari's conduct demonstrate that both Suspects intended to participate in the common action of a group to achieve their obstructive purpose.

(c) Conclusion

123. Having examined the supporting material as a whole in relation to the aforementioned requirements, the Pre-Trial Judge finds that there is a well-grounded suspicion that the offence of obstructing official persons in performing official duties within the meaning of Article 401(2) and (5) of the KCC and Article 15(2) of the Law was attempted to be committed, by the Suspects, between at least 5 April and 12 April 2023.

¹⁷⁵ See *supra* paras 108-110.

B.THE MODES OF LIABILITY CHARGED

1. Commission

124. In the Indictment, the SPO alleges that Messrs Januzi and Bahtjari committed the offences under Counts 1-3 pursuant to Article 17 of the KCC and Article 16(3) of the Law.¹⁷⁶

125. Regarding the objective and subjective elements of the Suspects' physical commission of the aforementioned offences, the Pre-Trial Judge refers to the above findings in Counts 1-3.¹⁷⁷

126. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that Messrs Januzi and Bahtjari committed the offence under Count 3, within the meaning of Articles 17 and 21 of the KCC and Article 16(3) of the Law. However, as held above,¹⁷⁸ the Pre-Trial Judge finds that the Indictment and supporting material do not demonstrate that there is a well-grounded suspicion that Messrs Januzi and Bahtjari committed, within the meaning of Articles 17 and 21 of the KCC and Article 16(3) of the Law, the offences under Counts 1-2.

2. Co-Perpetration

127. The SPO further alleges that, alternatively to their responsibility for commission and attempt, the Suspects co-perpetrated the offences under Counts 1-3 by participating in the commission of the criminal offences, pursuant to Article 31 of the KCC and Article 16(3) of the Law.¹⁷⁹

¹⁷⁶ Indictment, paras 25, 29-30.

¹⁷⁷ See *supra* paras 72-89, 91-94, 97-107, 108-110, 113-121, 122 and supporting material referenced therein.

¹⁷⁸ See *supra* paras 105, 119.

¹⁷⁹ Indictment, paras 27, 29-30.

128. Concerning Count 2, the Pre-Trial Judge recalls the inapplicability of this mode of liability to the form of obstruction under Article 401(2) of the KCC,¹⁸⁰ and therefore will not assess the Suspects' liability under Article 31 of the KCC and Article 16(3) of the Law.¹⁸¹

129. Regarding the objective elements of this mode of liability, the Pre-Trial Judge finds that the supporting material indicates that, as described in relation to Counts 1-3,¹⁸² the Suspects acted in a concerted manner, each participating in or substantially contributing to the commission of the offences enshrined in Count 1 and Count 3, considering that they coordinated between each other on multiple occasions between at least 5 April and 12 April 2023 and that they personally executed the First Approach and the Second Approach.

130. Regarding the subjective element of this mode of liability, the Pre-Trial Judge refers to the above findings in Counts 1 and 3.¹⁸³

131. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that Messrs Januzi and Bahtjari co-perpetrated the offences under Count 1 and Count 3, within the meaning of Articles 21 and 31 of the KCC and Article 16(3) of the Law.

3. Assistance

132. The SPO further alleges that, alternatively to their responsibility under the above modes of liability, Messrs Januzi and Bahtjari provided assistance to each other, Co-perpetrator 1 and other persons in the commission of the offences under Counts 1-3, pursuant to Article 33 of the KCC and Article 16(3) of the Law.¹⁸⁴

¹⁸⁰ See *supra* para. 61.

¹⁸¹ See *infra* para. 147.

¹⁸² See *supra* paras 72-89, 97-107, 113-121 and supporting material referenced therein.

¹⁸³ See *supra* paras 91-94, 108-110 and supporting material referenced therein.

¹⁸⁴ Indictment, paras 28-30.

133. Regarding the objective elements of this mode of liability, the Pre-Trial Judge finds that the supporting material indicates that Messrs Januzi and Bahtjari assisted one another as well as at least Co-Perpetrator 1, in the commission of the (attempted) offences under Counts 1-3. In this respect, the Pre-Trial Judge recalls his findings that Messrs Bahtjari and Januzi coordinated with each other as well as with Co-Perpetrator 1 both before and after the First Approach and the Second Approach, directly executed the intimidating approaches against Witness 1 at his private residence and in the presence of family members, and made reference to each other as well as Co-Perpetrator 1, thus reinforcing the threatening nature of the messages delivered to Witness 1.¹⁸⁵

134. Regarding the subjective elements of this mode of liability, the aforementioned acts demonstrate the Suspects' direct intention of giving advice and instructions on how to commit the offences under Counts 1-3, creating the conditions for, as well as removing the impediments to, the commission of the offences under Counts 1-3.

135. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that Messrs Januzi and Bahtjari assisted in the commission of the offences under Counts 1-3, within the meaning of Articles 21 and 33 of the KCC and Article 16(3) of the Law.

4. Agreement to Commit Criminal Offences

136. The SPO further alleges that, alternatively to their responsibility under the above modes of liability, the Suspects entered into an agreement to commit the offences under Counts 1-3 and one or more of the persons who were party to that agreement undertook substantial acts towards the commission of such offences, pursuant to Article 35 of the KCC and Article 16(3) of the Law.¹⁸⁶

¹⁸⁵ See *supra* paras 72-88.

¹⁸⁶ Indictment, paras 27, 29-30.

137. Regarding the objective elements of this mode of liability, the Pre-Trial Judge recalls his findings that both before and after the First Approach and the Second Approach, Messrs Bahtjari and Januzi, as well as Co-Perpetrator 1, engaged in numerous exchanges both in messaging applications and over the phone.¹⁸⁷ Moreover, prior to the First Approach, Co-Perpetrator 1 met with Mr Bahtjari at a public café and told Mr Bahtjari to deliver the message to Witness 1 that he should withdraw his testimony in the SC Proceedings.¹⁸⁸ In this light, the Pre-Trial Judge recalls that during the First Approach, Mr Bahtjari made an explicit reference to Co-Perpetrator 1 as the source of the intimidating message against Witness 1; whereas during the Second Approach, Mr Januzi made an equally explicitly reference to Co-Perpetrator 1 as well as to Mr Bahtjari and the First Approach. When assessing the context, number, and frequency of the communications between Messrs Bahtjari, Januzi and Co-Perpetrator 1, together with the references that they made to each other when approaching Witness 1, the Pre-Trial Judge infers that there existed an agreement between at least these three persons to commit the offences charged under Counts 1-3, and that each of them took substantial preparatory steps towards the commission of the offences, for which the Pre-Trial Judge refers to his findings under Counts 1-3.¹⁸⁹

138. Regarding the subjective element of this mode of liability, the Pre-Trial Judge also refers to the above findings in Counts 1-3.¹⁹⁰

139. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that Messrs Januzi and Bahtjari agreed to commit the offences under Counts 1-3 and undertook substantial acts towards their commission, within the meaning of Articles 21 and 35 of the KCC and Article 16(3) of the Law.

¹⁸⁷ See *supra* paras 72-73, 78-82, 87.

¹⁸⁸ See *supra* para. 75.

¹⁸⁹ See *supra* paras 72-89, 97-107, 113-121 and supporting material referenced therein.

¹⁹⁰ See *supra* paras 91-94, 108-110, 122 and supporting material referenced therein.

5. Attempt

140. Lastly, the SPO alleges that, in addition or alternatively to their responsibility under the above modes of liability, Messrs Januzi and Bahtjari attempted the commission of the offences under Counts 1-3, pursuant to Article 28 of the KCC and Article 16(3) of the Law.¹⁹¹

141. With regard to Count 3, having found that there is a well-grounded suspicion that Messrs Januzi and Bahtjari committed the offence under said count, within the meaning of Articles 17 and 21 of the KCC and Article 16(3) of the Law,¹⁹² the Pre-Trial Judge does not find it necessary to assess the liability of Messrs Januzi and Bahtjari under Article 28 of the KCC and Article 16(3) of the Law.¹⁹³

142. With respect to Counts 1 and 2, regarding the objective elements of this mode of liability, the Pre-Trial Judge finds that the supporting material indicates that the Suspects at the least took action towards the commission of the offences under Counts 1 and 2 by coordinating amongst themselves and Co-Perpetrator 1 and beginning to execute them in the First Approach and the Second Approach, thus fulfilling one or more of their material elements. As regards the specific acts in which the Suspects engaged, the Pre-Trial Judge refers to the findings under Counts 1 and 2.¹⁹⁴

143. Regarding the subjective element of this mode of liability, the Pre-Trial Judge refers to the above findings in Counts 1-2.¹⁹⁵

144. Having examined the supporting material as a whole, the Pre-Trial Judge finds that there is a well-grounded suspicion that Messrs Januzi and Bahtjari

¹⁹¹ Indictment, paras 26, 29-30.

¹⁹² See *supra* para. 126.

¹⁹³ See *infra* para. 148.

¹⁹⁴ See *supra* paras 97-107, 113-121 and supporting material referenced therein.

¹⁹⁵ See *supra* paras 108-110, 122 and supporting material referenced therein.

attempted to commit the offences under Counts 1-2, within the meaning of Articles 21 and 28 of the KCC and Article 16(3) of the Law.

C. AMENDMENT OF INDICTMENT

145. The Pre-Trial Judge notes that the SPO charged the modes of liability of commission, attempt, co-perpetration, agreement to commit the criminal offence, and assistance across all counts, based on the combined reading of paragraphs 29 and 30 of the Indictment. However, the Pre-Trial Judge finds that some pleadings in the legal characterisation of the offences under paragraph 30 of the Indictment are missing the appropriate legal reference or are otherwise stating superfluous legal provisions.

146. Under Count 1: references to Articles 21, 31, 33 and 35 of the KCC are missing and thus shall be included to reflect the correct legal characterisation of the modes of liability pleaded by the SPO in the Indictment.

147. Under Count 2: (i) reference to Article 31 of the KCC is superfluous and shall be deleted, as an element of joint commission is already encapsulated in Article 401(2) of the KCC;¹⁹⁶ (ii) reference to Article 32(1)-(3) of the KCC concerning incitement shall be deleted, as the SPO does not plead this mode of liability anywhere in its Indictment; and (iii) reference to Article 21 of the KCC shall be added.

148. Under Count 3: (i) references to Articles 21, 31, 33, and 35 of the KCC are missing and thus shall be included to reflect the correct legal characterisation of the modes of liability pleaded by the SPO in the Indictment; and (ii) reference to Article 28 of the KCC shall be deleted, as attempt is not confirmed.

149. Lastly, the Pre-Trial Judge recalls that no allegation has been put forward, and no supporting material has been presented, suggesting that the Suspects, jointly

¹⁹⁶ See *supra* para. 128.

with or on behalf of Co-Perpetrator 1, used a promise of a gift or any other form of benefit or omitted certain acts with the aim to dissuade Witness 1 from testifying in SC Proceedings.¹⁹⁷ Accordingly, the SPO shall delete those references in paragraphs 21, 24, 25, 26, 27, and 29 of the Indictment.

VII. RELATED REQUESTS FOR MAINTAINING CONFIDENTIALITY

150. As a general rule, Rule 88(1) of the Rules provides that an indictment shall be made public upon confirmation. Further, pursuant to Rules 95(1) and (2)(b) and 102(1)(a) of the Rules, any disclosure of material, including the names of witnesses and victims, will take place after the initial appearance of the Accused, against whom an indictment has been confirmed. In exceptional circumstances, however, pursuant to Rules 88(2) and 105(1) of the Rules, the SPO may apply for the temporary non-disclosure of the indictment, related documents, and the identities of victims and witnesses to continue after confirmation of the indictment or initial appearance of the Accused, as the case may be. It is highlighted that Rule 105(1) measures are provisional in nature, allowing for the protection of vulnerable witnesses and victims until such time as a request for protective measures has been decided.

151. The Pre-Trial Judge refers to the aforementioned findings that the Suspects intimidated Witness 1 through their actions between at least 5 April and 12 April 2023;¹⁹⁸ and as a result of the aforementioned acts, they attempted to hinder and/or delay the work of SC/SPO Officials, in particular SPO prosecutors and investigators, within the context of SC Proceedings.¹⁹⁹ The Pre-Trial Judge therefore concludes that the Suspects have an incentive to obstruct the proceedings and,

¹⁹⁷ See *supra* para. 90.

¹⁹⁸ See *supra* paras 72-95 (Count 3).

¹⁹⁹ See *supra* paras 97-123 (Counts 1-2).

based on their resolve to intimidate Witness 1 and to interfere with SC proceedings, may commit further similar offences.

152. In light of the above, the Pre-Trial Judge finds that the SPO has demonstrated good cause justifying exceptional circumstances that allow, pursuant to Rule 88(2) of the Rules, the temporary non-disclosure to the public of the SPO Submission of Indictment with its annexes ("Related Documents"). The Pre-Trial Judge also finds that the SPO has demonstrated exceptional circumstances, pursuant to Rule 105(1) of the Rules, justifying interim non-disclosure of the identities of witnesses and victims, as applicable, until appropriate protective measures have been ordered.

153. Upon arrest of Messrs Januzi and Bahtjari and transfer to the SC custody, the Indictment, as confirmed in the present decision ("Confirmed Indictment"), shall be made public,²⁰⁰ with redactions, as appropriate, after it has been served on the Accused, as per Rule 87(1) of the Rules. The Accused shall be served with the strictly confidential (redacted) Confirmed Indictment pursuant to Rules 87(1) and 105(1) of the Rules. Notwithstanding the confidentiality of the Confirmed Indictment, pursuant to Rule 88(3) of the Rules, the SPO or the Registrar may disclose the (redacted) version or parts of the Confirmed Indictment to authorities of Kosovo, a Third State or another entity, if deemed necessary for the purposes of an investigation or prosecution.

154. The non-disclosure of the Related Documents and supporting material to the Confirmed Indictment shall be maintained until further order of the Pre-Trial Judge, as provided in Rule 88(2) of the Rules. However, the supporting material shall be made available to the Accused with redactions, as appropriate, no later than 30 days after his initial appearance, in accordance with Rules 102(1)(a) and 105(1) of the Rules.

²⁰⁰ For the purposes of this decision, public shall mean all persons, organisations, entities, Third States, clients, associations and groups, including the media, other than the judges of the Specialist Chambers (and their staff), the Registry, the SPO, and the Accused.

VIII. DISPOSITION

155. For the above reasons, the Pre-Trial Judge hereby:

- a. **CONFIRMS** the following charges against Messrs Januzi and Bahtjari:
 - i. intimidation during criminal proceedings, punishable under Articles 17, 21, 31, 33, 35, and 387 of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 3);
 - ii. attempting to obstruct, by serious threat, official persons, including SPO prosecutors and investigators in performing official duties, punishable under Articles 17, 21, 28, 31, 33, 35, and 401(1) and (5) of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 1); and
 - iii. attempting to obstruct, by common action of a group, official persons, including SPO prosecutors and investigators in performing official duties, punishable under Articles 17, 21, 28, 33, 35, and 401(2) and (5) of the KCC, by virtue of Articles 15(2) and 16(3) of the Law (Count 2);
- b. **ORDERS** the Specialist Prosecutor to amend paragraphs 21, 24, 25, 26, 27, 29, and 30 of the Indictment, as set out in paragraphs 145-149 of the present decision;
- c. **ORDERS** the Specialist Prosecutor to submit, by **Thursday, 5 October 2023**, the indictment as confirmed in the present decision, which shall be considered the strictly confidential Confirmed Indictment;

- d. **AUTHORISES** the Specialist Prosecutor to redact any identifying information of witnesses and victims, as applicable, or confidential information from the Related Documents, the Confirmed Indictment, and supporting material, and assign and use provisional pseudonyms to these witnesses and victims, as applicable;
- e. **ORDERS** the Specialist Prosecutor to submit a strictly confidential (redacted) Confirmed Indictment, by **Thursday, 5 October 2023**;
- f. **ORDERS** the Registrar to serve on the Accused, in consultation with the SPO, the strictly confidential (redacted) Confirmed Indictment as soon as practicable after his arrest and transfer to SC custody;
- g. **ORDERS** the Specialist Prosecutor to submit a public (redacted) version of the Confirmed Indictment as soon as practicable after the Accused's arrest and transfer to SC custody;
- h. **AUTHORISES** the Specialist Prosecutor and the Registrar to disclose the strictly confidential (redacted) Confirmed Indictment or parts thereof to authorities of Kosovo, a Third State or another entity, if deemed necessary for the purposes of an investigation or prosecution;
- i. **ORDERS** the non-disclosure of the Related Documents and supporting material until further order;
- j. **REQUESTS** the Specialist Prosecutor to provide, by **Monday, 9 October 2023**, strictly confidential and *ex parte* written submissions, if any, as to the proposed redactions to be applied to this decision, in order to make it available to the Defence and the public; and
- k. **ORDERS** the Specialist Prosecutor to submit a request for protective measures, if any, in relation to victims and witnesses, as applicable,

identified in the Confirmed Indictment, Related Documents and supporting material, by **Thursday, 12 October 2023**.



Judge Nicolas Guillou

Pre-Trial Judge

Dated this Monday, 2 October 2023

At The Hague, the Netherlands.