

**ANNEX 1 to**

**Prosecution submission of public redacted version of the Rule 86(3)(b) Outline**

**Public redacted version of ANNEX 2 to Submission of Indictment for  
confirmation and related requests, KSC-BC-2023-10/F00002/A02**

Public

Strictly Confidential and *Ex Parte*  
Rule 86(3)(b) Outline

LEGAL ELEMENTS	REFERENCE(S) TO EVIDENCE
<b>CRIMES</b>	
<b>1. Criminal Offence Against Public Order</b>	
<b>Count 1: Obstructing official persons in performing official duties, by force or serious threat</b>	
(1) Whoever, by force or serious threat (KCC <sup>1</sup> Article 401(1)) <sup>2</sup>	<p>The actions of <b>Sabit JANUZI</b> and <b>Ismet BAHTJARI</b> set forth below constituted serious threats to [REDACTED] ('Witness 1').</p> <p>In particular, <b>JANUZI</b> and <b>BAHTJARI</b> made serious threats against Witness 1 through, <i>inter alia</i>: making individual approaches to Witness 1 in coordination with each other and [REDACTED] ('Co-Perpetrator 1'); attempting to induce Witness 1 to withdraw from testifying; and confirming to Witness 1 that he or [REDACTED] may be [REDACTED] if Witness 1 testified.</p> <p><i>First Approach</i></p>

<sup>1</sup> Criminal Code of the Republic of Kosovo, Code No.06/L-074 (2019) ('KCC').

<sup>2</sup> The term 'serious threat' should be understood broadly as encompassing not only a threat to use force, but also any serious threat of harmful action other than the use of force, *i.e.* 'threat to inflict serious harm on the health, well-being, safety, security or privacy of a person' (see *The Prosecutor v. Hysni Gucati and Nasim Haradinaj* ('Gucati & Haradinaj'), Public Redacted Version of the Trial Judgement, KSC-BC-2020-07/F00611/RED, 18 May 2022 ('Gucati & Haradinaj Trial Judgment'), para.144; *Gucati & Haradinaj*, Appeal Judgment, KSC-CA-2022-01/F00114, 2 February 2023 ('Gucati & Haradinaj Appeal Judgment'), paras 278-280).

Strictly Confidential and *Ex Parte*  
Rule 86(3)(b) Outline

	<p>On 5 April 2023, Co-Perpetrator 1 called <b>JANUZI</b>,<sup>3</sup> [REDACTED],<sup>4</sup> and then, approximately two hours later, <b>BAHTJARI</b>, [REDACTED],<sup>5</sup> also called <b>JANUZI</b>.<sup>6</sup></p> <p>Approximately three hours after <b>BAHTJARI</b> called <b>JANUZI</b>, <b>BAHTJARI</b> called Witness 1.<sup>7</sup> [REDACTED] answered, and <b>BAHTJARI</b> asked for Witness 1.<sup>8</sup> [REDACTED] said that he was napping and asked if he should be awoken, and <b>BAHTJARI</b> responded in the negative.<sup>9</sup></p> <p>Approximately half an hour later, <b>BAHTJARI</b> arrived at the home of Witness 1.<sup>10</sup> <b>BAHTJARI</b> informed Witness 1, in sum and substance, that he had not ‘come for good’ and added an Albanian phrase meaning ‘I have something to do for the evil.’<sup>11</sup> <b>BAHTJARI</b> said he had been sent by Co-Perpetrator 1 to deliver the message that Witness 1 was ‘[REDACTED]’s weakness’ and Witness 1 should withdraw his testimony.<sup>12</sup></p> <p>Specifically, <b>BAHTJARI</b> told Witness 1 that Co-Perpetrator 1 had recently approached him at a café, and Co-Perpetrator 1 told <b>BAHTJARI</b>, in sum and substance, ‘Go and tell [Witness 1] that [Witness 1 is] [REDACTED]’s weakness and tell [Witness 1] to</p>
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<sup>3</sup> SPOE00339009-00339013, p.SPOE00339011 (Call Log #3).

<sup>4</sup> 112906-TR-ET Part 1, p.12.

<sup>5</sup> 112906-TR-ET Part 1, p.4.

<sup>6</sup> SPOE00339014-00339017, p.SPOE00339016 (Call Log #1-2); SPOE00339033-00339038, pp.SPOE00339037 (Call Log #1), SPOE00339038 (Chats #1).

<sup>7</sup> SPOE00339024-00339027, p.SPOE00339026 (Call Log #1-2); Official Note, 113310-113320, p.113320.

<sup>8</sup> 112906-TR-ET Part 1, pp.21-22.

<sup>9</sup> 112906-TR-ET Part 1, pp.21-22.

<sup>10</sup> Official Note, 112769-112772, para.4.

<sup>11</sup> 112906-TR-ET Part 1, p.19; Official Note, 112769-112772, para.5. Any quotations in this Rule 86(3)(b) Outline are translations of Albanian to English and subject to revision.

<sup>12</sup> 112906-TR-ET Part 1, pp.19, 21; Official Note, 112769-112772, para.5.

Strictly Confidential and *Ex Parte*  
Rule 86(3)(b) Outline

	<p>withdraw.<sup>13</sup> Witness 1 believed that Co-Perpetrator 1's message instructing Witness 1 to withdraw his testimony actually originated from [REDACTED].<sup>14</sup></p> <p><b>BAHTJARI</b> appeared nervous and uncomfortable to Witness 1.<sup>15</sup> Witness 1 asked <b>BAHTJARI</b>, 'Have they told you if I don't withdraw they will [REDACTED]?' and 'Will they [REDACTED] if I testify?' <b>BAHTJARI</b> kept his head down and replied, 'Yes, yes.'<sup>16</sup> By 'they,' Witness 1 was referring to Co-Perpetrator 1, [REDACTED], and [REDACTED].</p> <p>Witness 1 then told <b>BAHTJARI</b>, 'Tell [REDACTED], [REDACTED], that if The Hague calls me, I will fuck all their mothers' and 'Tell them if I see them in front of me I will kill them if they don't kill me first.'<sup>17</sup></p> <p><b>BAHTJARI</b> then left Witness 1's house and walked down the street towards a car waiting approximately 200 meters away.<sup>18</sup> Two men entered the car, with a third person in the driver's seat.<sup>19</sup> Witness 1 concluded that these persons were outside watching his home while <b>BAHTJARI</b> visited.<sup>20</sup></p> <p>As a result of this visit, Witness 1 became very concerned for the safety of [REDACTED], including whether he would be able to [REDACTED] against [REDACTED].<sup>21</sup></p>
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<sup>13</sup> 112906-TR-ET Part 1, pp.19-21; Official Note, 112769-112772, para.5.

<sup>14</sup> 112906-TR-ET Part 1, pp.19, 21; Official Note, 112769-112772, para.6.

<sup>15</sup> 112906-TR-ET Part 1, pp.11-12; Official Note, 112769-112772, para.7.

<sup>16</sup> Official Note, 112769-112772, para.8. *See also* 112906-TR-ET Part 1, pp.11, 21 (different wording).

<sup>17</sup> 112906-TR-ET Part 1, pp.11-12; Official Note, 112769-112772, para.9.

<sup>18</sup> Official Note, 112769-112772, para.11.

<sup>19</sup> Official Note, 112769-112772, para.11.

<sup>20</sup> Official Note, 112769-112772, para.11.

<sup>21</sup> 112906-TR-ET Part 1, p.24; Official Note, 112769-112772, para.13.

Strictly Confidential and *Ex Parte*  
Rule 86(3)(b) Outline

	<p>Shortly after <b>BAHTJARI</b>'s visit to Witness 1 and then throughout the evening of 5 April 2023, Co-Perpetrator 1 and <b>JANUZI</b> and <b>JANUZI</b> and <b>BAHTJARI</b> had numerous text and phone contacts:</p> <ol style="list-style-type: none"> <li>i. First, <b>JANUZI</b> called Co-Perpetrator 1 three times over the span of an hour with no answer, before sending Co-Perpetrator 1 a text message asking him to call.<sup>22</sup> Co-Perpetrator 1 then called <b>JANUZI</b>, which <b>JANUZI</b> missed, and then <b>JANUZI</b> called back and connected with Co-Perpetrator 1.<sup>23</sup></li> <li>ii. Almost immediately after his call with Co-Perpetrator 1, <b>JANUZI</b> called <b>BAHTJARI</b>.<sup>24</sup></li> <li>iii. A short time later, Co-Perpetrator 1 texted <b>JANUZI</b>, writing, 'Tomorrow, Sabit,' to which <b>JANUZI</b> responded, 'Ok, I will let them know.'<sup>25</sup> Co-Perpetrator 1 almost immediately replied, 'Wait a bit more,' and, within seconds, Co-Perpetrator 1 called <b>JANUZI</b>.<sup>26</sup> Co-Perpetrator 1 and <b>JANUZI</b> then discussed meeting in person over text messages, with <b>JANUZI</b> at one point indicating that the meeting must be at or close to his home because he did not have his car.<sup>27</sup></li> <li>iv. Shortly after texting with Co-Perpetrator 1 to arrange a meeting, <b>JANUZI</b> called <b>BAHTJARI</b> three times without answer and also sent <b>BAHTJARI</b> two text</li> </ol>
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<sup>22</sup> SPOE00339009-00339013, pp.SPOE00339011 (Call Log #4-6), SPOE00339012 (Chats #1); SPOE00339028-00339032, p.SPOE00339032 (Chats #2).

<sup>23</sup> SPOE00339009-00339013, pp.SPOE00339011 (Call Log #7-8), SPOE00339012 (Chats #2-3); SPOE00339028-00339032, p.SPOE00339032 (Chats #3).

<sup>24</sup> SPOE00339014-00339017, pp.SPOE00339016 (Call Log #3), SPOE00339017 (Chats #2).

<sup>25</sup> SPOE00339009-00339013, p.SPOE00339012 (Chats #4-5); SPOE00339028-00339032, p.SPOE00339032 (Chats #4-5).

<sup>26</sup> SPOE00339009-00339013, pp.SPOE00339011 (Call Log #9), SPOE00339012 (Chats #6-7); SPOE00339028-00339032, p.SPOE00339032 (Chats #6).

<sup>27</sup> SPOE00339009-00339013, p.SPOE00339012 (Chats #8-15); SPOE00339028-00339032, p.SPOE00339032 (Chats #7-14).

Strictly Confidential and *Ex Parte*  
Rule 86(3)(b) Outline

	<p>messages.<sup>28</sup> <b>BAHTJARI</b> ultimately called <b>JANUZI</b> back several times, connecting briefly each time.<sup>29</sup></p> <p>v. Within an hour of <b>BAHTJARI</b>'s last call to <b>JANUZI</b>, Co-Perpetrator 1 called <b>JANUZI</b>,<sup>30</sup> and then <b>JANUZI</b> called <b>BAHTJARI</b>.<sup>31</sup></p> <p>vi. Finally, a short time later, Co-Perpetrator 1 sent two text messages to <b>JANUZI</b>, writing 'come out' and 'where are you'.<sup>32</sup></p> <p>In the following days, Co-Perpetrator 1 and <b>JANUZI</b> remained in contact, including speaking by phone at least four times between 6 April and 9 April 2023.<sup>33</sup></p> <p><i>Second Approach</i></p> <p>On 12 April 2023, <b>JANUZI</b> sent a series of text messages to [REDACTED] ('Person 1'), [REDACTED], to ask if Person 1 could arrange a meeting between <b>JANUZI</b> and Witness 1.<sup>34</sup> A short time later, <b>JANUZI</b> and Person 1 connected on an audio call.<sup>35</sup></p> <p>Later on 12 April 2023, Person 1 informed Witness 1 that <b>JANUZI</b> wanted to get in touch with him and gave Witness 1 <b>JANUZI</b>'s phone number.<sup>36</sup> Within the hour, Witness 1</p>
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<sup>28</sup> SPOE00339014-00339017, pp.SPOE00339016 (Call Log #4-6), SPOE00339017 (Chats #3-7); SPOE00339033-00339038, p.SPOE00339038 (Chats #2-7).

<sup>29</sup> SPOE00339014-00339017, p.SPOE00339016 (Call Log #7-10), SPOE00339017 (Chats #8-9); SPOE00339033-00339038, p.SPOE00339038 (Chats #8-9).

<sup>30</sup> SPOE00339009-00339013, p.SPOE00339011 (Call Log #11).

<sup>31</sup> SPOE00339014-00339017, p.SPOE00339016 (Call Log #11).

<sup>32</sup> SPOE00339009-00339013, p.SPOE00339012-00339013 (Chats #17-18); SPOE00339028-00339032, p.SPOE00339032 (Chats #15-16).

<sup>33</sup> SPOE00339009-00339013, pp.SPOE00339011 (Call Log #12-15), SPOE00339012 (Chats #19-22); SPOE00339028-00339032, p.SPOE00339032 (Chats #17).

<sup>34</sup> SPOE00339018-00339023, p.SPOE00339022-00339023 (Chats #1-25).

<sup>35</sup> SPOE00339018-00339023, p.SPOE00339023 (Chats #21).

<sup>36</sup> 112906-TR-ET Part 1, pp.6-7, 15; Official Note, 113310-113320, pp.113310-113315. *See also* 112909-TR-ET Part 1, p.9.

Strictly Confidential and *Ex Parte*  
Rule 86(3)(b) Outline

	<p>spoke to <b>JANUZI</b> by telephone—after many years of having no contact with <b>JANUZI</b>.<sup>37</sup> <b>JANUZI</b> said that he would come to Witness 1's place to meet within an hour.<sup>38</sup></p> <p>Within minutes of speaking to Witness 1, <b>JANUZI</b> called Co-Perpetrator 1.<sup>39</sup></p> <p>After arriving at Witness 1's home, <b>JANUZI</b> told Witness 1 that Co-Perpetrator 1 had sent <b>BAHTJARI</b> to Witness 1 but 'they' were not sure how things stood with Witness 1 as a result of that meeting.<sup>40</sup> <b>JANUZI</b> continued by saying that 'they' had sent <b>JANUZI</b> to speak with Witness 1 to determine 'how can we go forward with this' and/or 'deal with this.'<sup>41</sup></p> <p>Witness 1 told <b>JANUZI</b> that he did not 'want to deal with this anymore. Put a stop to it.' <b>JANUZI</b> responded that he would tell 'them' what Witness 1 had said.<sup>42</sup> Witness 1 inferred that the 'they' and 'them' referred to by <b>JANUZI</b> during the meeting were references to Co-Perpetrator 1.<sup>43</sup></p> <p>After the meeting, <b>JANUZI</b> called Co-Perpetrator 1.<sup>44</sup> Less than an hour later, Co-Perpetrator 1 called <b>JANUZI</b>.<sup>45</sup></p> <p>As a result of this meeting, Witness 1 was further concerned [REDACTED].<sup>46</sup></p>
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<sup>37</sup> 112906-TR-ET Part 1, pp.6-7, 12; Official Note, 113310-113320, pp.113310-113315.

<sup>38</sup> 112906-TR-ET Part 1, pp.6-7.

<sup>39</sup> SPOE00339009-00339013, p.SPOE00339011 (Call Log #16).

<sup>40</sup> 112906-TR-ET Part 1, pp.7, 18.

<sup>41</sup> 112906-TR-ET Part 1, pp.7, 9, 17-19.

<sup>42</sup> 112906-TR-ET Part 1, pp.9-10.

<sup>43</sup> 112906-TR-ET Part 1, p.10.

<sup>44</sup> SPOE00339009-00339013, p.SPOE00339011 (Call Log #17).

<sup>45</sup> SPOE00339009-00339013, p.SPOE00339011 (Call Log #18).

<sup>46</sup> 112906-TR-ET Part 1, pp.24-25.

Strictly Confidential and *Ex Parte*  
Rule 86(3)(b) Outline

<p>(2) Obstructs or attempts to obstruct an official person in performing official duties (KCC Article 401(1))<sup>47</sup></p>	<p>Through the serious threats described above in Count 1, element (1), <b>JANUZI</b> and <b>BAHTJARI</b> obstructed or attempted to obstruct KSC proceedings.</p> <p>In particular, <b>JANUZI</b> and <b>BAHTJARI</b> (i) created serious fears and concerns for a person, Witness 1, who has or is likely to provide information to the SITF, SPO and/or to any KSC Panel about any crimes or offences falling under KSC jurisdiction, thereby constituting a strong disincentive for that person to provide (further) information about any crimes under KSC jurisdiction; (ii) threatened the KSC/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 [REDACTED] in connection with official KSC proceedings.</p> <p>Regarding the impact on KSC/SPO time and resources, these include: the involvement of multiple KSC/SPO staff in otherwise unnecessary additional contacts with Witness 1 in order to ensure [REDACTED] and ability to testify; the expenditure of SPO resources to investigate the events recounted in the Indictment and this Rule 86(3)(b) Outline; and the</p>
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<sup>47</sup> The term 'obstruct' means 'to prevent, impede, hinder, or delay the motion, passage, or progress of something' (*see Gucati & Haradinaj Trial Judgment, para.145*).

In the context of the KSC proceedings, the term 'official person' is to be understood broadly as 'any person authorised to act on behalf of the SC or SPO, including a judge, prosecutor, an investigator or any other SC or SPO official' (*see Gucati & Haradinaj Trial Judgment, para.146; Gucati & Haradinaj Appeal Judgment, paras 281-282*).

The use of serious threat can occur also 'at a moment in time other than when the official person is actively exercising a particular duty' (*see Gucati & Haradinaj Trial Judgment, para.148; Gucati & Haradinaj Appeal Judgment, para.283*).

The force or serious threat does not need to be directed against the official person only but also against another person, or an object (*see Gucati & Haradinaj Trial Judgment, para.146; Gucati & Haradinaj Appeal Judgment, para.282*).

The term 'official duty' or 'official function' within the meaning of Article 401(1) and (5) of the KCC should be understood as 'any responsibility or work of an SC or SPO official within the context of official proceedings, including SPO investigations' (*see Gucati & Haradinaj Trial Judgment para.147; Gucati & Haradinaj Appeal Judgment, para.284*).



Strictly Confidential and *Ex Parte*  
Rule 86(3)(b) Outline

	<p>expenditure of KSC/SPO time and resources to take new security-related measures, [REDACTED].<sup>48</sup></p> <p><i>See</i> Count 1, element (1).</p>
<p>(3) The offence was committed against a judge, a prosecutor, an official of a court, prosecution officer or a person authorized by the court and prosecution office, or a police officer during the exercise of their official functions (KCC Article 401(5))</p>	<p>The actions of <b>JANUZI</b> and <b>BAHTJARI</b>, that is, the serious threats to Witness 1, were directed against KSC/SPO officials, including Judges, Prosecutors, Investigators, and other staff members, during an exercise of their official functions, specifically in the framework of the KSC's ongoing court proceedings, and SPO investigations.</p> <p><i>See</i> Count 1, elements (1)-(2).</p>
<p>(4) Awareness of, and desire to commit, the act, or awareness that a prohibited consequence can occur as a result of the act or omission and accession to its occurrence (KCC Article 21)<sup>49</sup></p>	<p><b>JANUZI</b> and <b>BAHTJARI</b> had the requisite intent and knowledge for the crimes of (i) by serious threat, obstructing official persons in performing official duties, and (ii) participating in a group of persons which by common action obstructed or attempted to obstruct an official person in performing official duties.</p> <p>As evidenced by their actions and statements, including their individual approaches to Witness 1 and attempts to induce Witness 1 to withdraw his testimony, and by words and actions that constituted implicit and explicit threats against Witness 1 [REDACTED], <b>JANUZI</b> and <b>BAHTJARI</b> were aware of their act and desired its commission. Alternatively, these factors show that <b>JANUZI</b> and <b>BAHTJARI</b> were aware that a</p>

<sup>48</sup> *See e.g.* 112768-112768, 112769-112772, 113310-113320, 113181-113182, 113354-113355, 113356-113356, and 113434-113436.

<sup>49</sup> The Article 401(1) or (5) offences can be committed either with direct or eventual intent. Attempted form of Article 401(1) and (5) offence can be perpetrated also with eventual intent (*see Gucati & Haradinaj* Trial Judgment, paras 152-155; *Gucati & Haradinaj* Appeal Judgment, paras 291-292).

Strictly Confidential and *Ex Parte*  
Rule 86(3)(b) Outline

	<p>prohibited consequence can occur as a result of their act or omission and they acceded to its occurrence.</p> <p><i>See</i> Count 1, elements (1)-(3).</p>
<b>Count 2: Obstructing official persons in performing official duties, by participating in the common action of a group</b>	
(1) Participation in a group, <sup>50</sup> which by common action <sup>51</sup> (KCC Article 401(2))	<p><b>JANUZI</b> and <b>BAHTJARI</b> participated in a group of persons, composed of Co-Perpetrator 1, <b>JANUZI</b>, <b>BAHTJARI</b>, and others, whose common action obstructed or attempted to obstruct one or more official persons in performing official duties.</p> <p><i>See</i> Count 1, elements (1)-(2).</p>
(2) Obstructs or attempts to obstruct an official person in performing official duties (KCC Article 401(2))	<i>See</i> Count 1, elements (1)-(2).
(3) The offence was committed against a judge, a prosecutor, an official of a court, prosecution officer or a	<i>See</i> Count 1, elements (1)-(3).

<sup>50</sup> *See* KCC Article 13(12) (a group is comprised of three or more persons).

<sup>51</sup> *See* Commentaries on the Criminal Law of the Socialist Autonomous Province of Kosovo, Article 185; Stojanović and Perić, Commentary of the Criminal Code of Serbia and Montenegro, 1996, in *Commentaries of the Articles of Criminal Code of Serbia*, Article 215, p.291 (the 'joint' or common action is not limited to force, threat, or any other specific type of action).

Strictly Confidential and *Ex Parte*  
Rule 86(3)(b) Outline

<p>person authorized by the court and prosecution office, or a police officer during the exercise of their official functions (KCC Article 401(5))</p>	
<p>(4) Awareness of, and desire to commit, the act, or awareness that a prohibited consequence can occur as a result of the act or omission and accession to its occurrence (KCC Article 21)</p>	<p><i>See</i> Count 1, element (4).</p>
<p><b>2. Criminal Offence Against the Administration of Justice and Public Administration</b></p>	
<p><b>Count 3: Intimidation during criminal proceedings</b></p>	
<p>(1) The use of force or serious threat, or any other means of compulsion (KCC Article 387)</p>	<p><i>See</i> Count 1, element (1).</p>

Strictly Confidential and *Ex Parte*  
Rule 86(3)(b) Outline

<p>(2) 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 and such information relates to obstruction of criminal proceedings<sup>52</sup> (KCC Article 387)</p>	<p><b>JANUZI</b> and <b>BAHTJARI</b> sought to induce Witness 1 withdraw his testimony.</p> <ul style="list-style-type: none"> <li>i. On 5 April 2023, <b>BAHTJARI</b> approached Witness 1 and (i) told Witness 1 that Witness 1 should withdraw his testimony in KSC proceedings,<sup>53</sup> and (ii) confirmed to Witness 1 that failure to do so could result in Witness 1 [REDACTED].<sup>54</sup></li> <li>ii. On 12 April 2023, <b>JANUZI</b> approached Witness 1 to follow up after <b>BAHTJARI</b>'s earlier approach and to learn how things stood with Witness 1 with regard to Witness 1's testimony.<sup>55</sup></li> <li>iii. Before and after approaching Witness 1, <b>JANUZI</b> and <b>BAHTJARI</b> communicated and coordinated with each other and Co-Perpetrator 1.</li> </ul> <p><i>See</i> Count 1, elements (1)-(3).</p>
<p>(3) Awareness of, and desire to commit, the act, or awareness that a prohibited consequence can occur as a result of the act or omission</p>	<p><b>JANUZI</b>'s and <b>BAHTJARI</b>'s acts and omissions demonstrate <b>JANUZI</b>'s and <b>BAHTJARI</b>'s intent to intimidate Witness 1 and to induce Witness 1 to withdraw evidence or refrain from providing evidence in KSC official proceedings.</p> <p>As evidenced by their actions and statements, including their individual approaches to Witness 1 and attempts to induce Witness 1 to withdraw his testimony, and by words and actions that constituted implicit and explicit threats against Witness 1 [REDACTED],</p>

<sup>52</sup> The catalogue of persons to be induced, pursuant to Article 387, encompasses not only witnesses and victims participating in criminal proceedings, but also 'any other person whose evidence is sought by prosecutorial authorities in the framework of their investigations', and 'a person likely to provide evidence to the SITF, SPO or to an SC Panel about crimes or offences falling under SC jurisdiction.' Additionally, Article 387 does not require proof of consequence or result (*see Gucati & Haradinaj* Trial Judgment, paras 113, 115, 121; *Gucati & Haradinaj* Appeal Judgment, paras 226, 229, 244).

<sup>53</sup> 112906-TR-ET Part 1, pp.19-21; Official Note, 112769-112772, para.5.

<sup>54</sup> Official Note, 112769-112772, para.8. *See also* 112906-TR-ET Part 1, pp.11, 21 (different wording).

<sup>55</sup> 112906-TR-ET Part 1, pp.7, 9, 17-19.

Strictly Confidential and *Ex Parte*  
Rule 86(3)(b) Outline

and accession to its occurrence <sup>56</sup> (KCC Article 21)	<p><b>JANUZI</b> and <b>BAHTJARI</b> were aware of their act and desired its commission. Alternatively, these factors show that <b>JANUZI</b> and <b>BAHTJARI</b> were aware that a prohibited consequence can occur as a result of their act or omission and they acceded to its occurrence.</p> <p><i>See</i> Count 1, element (4).</p>
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<sup>56</sup> The offence under Article 387 can be committed with either direct or eventual intent (*see Gucati & Haradinaj* Trial Judgment, paras 119-124; *Gucati & Haradinaj* Appeal Judgment, paras 261-262).

Strictly Confidential and *Ex Parte*  
Rule 86(3)(b) Outline

MODE(S) OF LIABILITY	
LEGAL ELEMENTS	REFERENCE(S) TO EVIDENCE
<b>Commission</b>	
(1) Commission (KCC Article 17(1))	<b>JANUZI</b> and <b>BAHTJARI</b> committed the crimes charged in the Indictment. <i>See</i> Count 1, element (1), Count 2, element (1), and Count 3, element (1).
(2) Awareness of, and desire to commit, the act, or awareness that a prohibited consequence can occur as a result of the act or omission and accession to its occurrence (KCC Articles 17(1) and 21)	<i>See</i> Count 1, element (4), Count 2, element (4), and Count 3, element (3).
<b>Attempt</b>	
(1) Taking of action toward the commission of an offence, but the action is not completed or the elements of the intended offence are not fulfilled (KCC Article 28(1)) <sup>57</sup>	Insofar as it is ultimately found that any of the charged crimes were not completed or the elements of the intended offences were not fulfilled, <b>JANUZI</b> and <b>BAHTJARI</b> took actions toward the commission of the crimes. <i>See</i> Count 1, elements (1)-(3), Count 2, elements (1)-(3), and Count 3, elements (1)-(2).

<sup>57</sup> Pursuant to Article 28(2), '[a]n attempt to commit a criminal offense for which a punishment of three or more years may be imposed shall be punishable. An attempt to commit any other criminal offense shall be punishable only if expressly provided for by law.'

Strictly Confidential and *Ex Parte*  
Rule 86(3)(b) Outline

(2) Awareness of, and desire to commit, the act, or awareness that a prohibited consequence can occur as a result of the act or omission and accession to its occurrence (KCC Articles 21 and 28(1))	<i>See</i> Commission, element (2).
<b>Co-perpetration</b>	
(1) Two or more persons (KCC Article 31)	<b>JANUZI</b> and <b>BAHTJARI</b> undertook the actions set out above together or in conjunction with two or more persons.  <i>See</i> Count 1, elements (1)-(3), Count 2, elements (1)-(3), and Count 3, elements (1)-(2).
(2) An express or implied agreement to commit a crime (KCC Article 31) <sup>58</sup>	<b>JANUZI</b> and <b>BAHTJARI</b> undertook the actions set out above with an expressed or implied agreement to commit a crime/crimes charged in the Indictment.  <i>See</i> Count 1, elements (1)-(3), Count 2, elements (1)-(4), and Count 3, elements (1)-(2).
(3) Participation in the commission of a criminal offence or substantial contribution to its commission in any other way (KCC Article 31)	<b>JANUZI</b> and <b>BAHTJARI</b> participated in the commission of the crimes as charged in the Indictment or substantially contributed to the commission of the crimes.  <i>See</i> Count 1, elements (1)-(3), Count 2, elements (1)-(4), and Count 3, elements (1)-(2).

<sup>58</sup> *See* Kosovo, Supreme Court, *Prosecutor v. S.H.*, PAII-KZII-2/2016, Judgment, 20 September 2016 ('S.H. Supreme Court Judgment'), para.58 (Co-perpetration, as defined in Article 31, is broad; it requires an express or implied agreement to commit a crime, and participation in or 'substantial contribution' thereto).

Strictly Confidential and *Ex Parte*  
Rule 86(3)(b) Outline

(4) Awareness of, and desire to commit, the act, or awareness that a prohibited consequence can occur as a result of the act or omission and accession to its occurrence (KCC Article 21)	<i>See</i> Count 1, element (4), Count 2, element (4), and Count 3, element (3).
<b>Agreement to commit a criminal offense</b>	
(1) Two or more persons (KCC Article 35(1))	<b>JANUZI and BAHTJARI</b> undertook the actions set out above together or in conjunction with two or more persons.  <i>See</i> Count 1, elements (1)-(3), Count 2, elements (1)-(3), and Co-perpetration, element (1).
(2) An agreement to commit a criminal offence (KCC Article 35(1))	<b>JANUZI and BAHTJARI</b> undertook the actions set out above with an expressed or implied agreement to commit a crime/crimes charged in the Indictment.  <i>See</i> Count 1, elements (1)-(3), Count 2, elements (1)-(3), and Co-perpetration, element (2).
(3) Any substantial act towards the commission of the criminal offence (KCC Article 35(1)) <sup>59</sup>	<i>See</i> Co-perpetration, element (3).
(4) Awareness of, and desire to commit, the act, or awareness that a prohibited consequence can occur as a result of	<i>See</i> Commission, element (2).

<sup>59</sup> Pursuant to Article 35(2), 'the term "substantial act towards the commission of a crime", need not be a criminal act, but shall be a substantial preparatory step towards the commission of the crime which the persons have agreed to commit.'



Strictly Confidential and *Ex Parte*  
Rule 86(3)(b) Outline

the act or omission and accession to its occurrence (KCC Article 21)	
<b>Assistance</b>	
(1) The provision of assistance <sup>60</sup> in committing a criminal offence (KCC Article 33(1))	<b>JANUZI</b> and <b>BAHTJARI</b> provided assistance in the commission of the crimes charged in the Indictment including in one or more of the ways set out above.  <i>See</i> Co-perpetration, element (3).
(2) Awareness of, and desire to commit, the act, or awareness that a prohibited consequence can occur as a result of the act or omission and accession to its occurrence (KCC Articles 21 and 33(1)) <sup>61</sup>	<i>See</i> Commission, element (2).

<sup>60</sup> Pursuant to KCC Article 33(2), assistance in committing a criminal offence includes, but is not limited to: giving advice or instruction on how to commit a criminal offense; making available the means to commit a criminal offense; creating conditions or removing the impediments to the commission of a criminal offense; or, promising in advance to conceal evidence of the commission of a criminal offense, the perpetrator or identity of the perpetrator, the means used for the commission of a criminal offense, or the profits or gains which result from the commission of a criminal offense.

<sup>61</sup> Nikola and Lazarević, Commentary on the Criminal Code of Serbia, 5th Edition, 1995, in *Commentaries of the Articles of Criminal Code of Serbia*, Article 24, p.78 (a person must be aware that his conduct concretely assists the perpetrator in the commission of the offence and his assistance must in fact facilitate the commission of the act).