



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

In: **KSC-BC-2023-10**
Specialist Prosecutor v. Sabit Januzi and Ismet Bahtijari
KSC-BC-2023-11
Specialist Prosecutor v. Haxhi Shala

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

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 13 December 2023

Language: English

Classification: Public

Prosecution request for joinder

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Article 39(9) of the Law¹ and Rule 89(1) of the Rules,² the Specialist Prosecutor's Office ('SPO') requests the joinder of the Indictments confirmed in KSC-BC-2023-10 ('Case 10')³ and KSC-BC-2023-11 ('Case 11')⁴ (collectively, the 'Indictments'). Joinder is warranted as the same Accused participated in the alleged crimes, the crimes and charges are based on the same facts, and the crimes and charges form and are part of a series of alleged crimes of the same character and conduct.⁵ Accordingly, the SPO anticipates tendering the same evidence at trial in both cases, such that judicial economy demands the consolidation of the Indictments into a single Indictment that may be adjudicated in a single trial before the same panel. Moreover, because Cases 10 and 11 are in pre-trial proceedings, joinder will not prejudice the rights of the Accused.

II. SUBMISSIONS

2. Though satisfaction of only a single factor under Rule 89(1) is required to justify joinder, all three factors for permissible joinder are satisfied for the Indictments.

A. THE SAME ACCUSED PARTICIPATED IN THE ALLEGED CRIMES

3. First, the same individuals are charged in the Indictments with having participated

¹ Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ Indictment, KSC-BC-2023-10/F00010/A01, 4 October 2023, Strictly Confidential ('Case 10 Confirmed Indictment'). The SPO notes that it has filed a request to amend the Case 10 Confirmed Indictment. See Prosecution request for leave to amend the Indictment with strictly confidential Annex 1 and public Annex 2, KSC-BC-2023-10/F00098, 10 November 2023, Amended Indictment, KSC-BC-2023-10/F00098/A01, 10 November 2023, Strictly Confidential ('Case 10 Amended Indictment'). For ease of reference, the Case 10 Confirmed Indictment and Case 10 Amended Indictment are collectively referred to herein as the 'Case 10 Indictment.'

⁴ Indictment, KSC-BC-2023-11/F00007/A01, 6 December 2023, Confidential ('Case 11 Indictment').

⁵ Rule 89(1)(a)-(c).

in the alleged crimes: Haxhi Shala, Sabit Januzi and Ismet Bahtijari. The Case 10 Indictment identifies Shala as 'Co-Perpetrator 1,' while both Januzi and Bahtijari are named as co-perpetrators in the Case 11 indictment.

B. THE CRIMES AND CHARGES ARE BASED ON THE SAME FACTS

4. Second, the crimes and charges are based on the same facts. The Case 10 Indictment charges Sabit Januzi and Ismet Bahtijari and the Case 11 Indictment charges Haxhi Shala with the same criminal offences based on the same set of underlying factual allegations, including specifically allegations that they coordinated and made approaches to a protected witness on 5 April 2023 and 12 April 2023.⁶

C. THE CRIMES AND CHARGES FORM OR ARE PART OF A SERIES OF ALLEGED CRIMES OF THE SAME OR A SIMILAR CHARACTER OR CONDUCT

5. Third, the crimes and charges are part of a series of alleged crimes of the same or a similar character and conduct. As alleged in the Indictments, the Accused coordinated together to prevent a protected witness from testifying in KSC proceedings, an effort which culminated in, *inter alia*, the 5 April 2023 and 12 April 2023 approaches to a protected witness. Thus, the alleged crimes occurred in series and were of the same and similar character and conduct.

D. THE COURT SHOULD EXERCISE ITS DISCRETION TO JOIN THE INDICTMENTS

6. Joinder of the Indictments in Cases 10 and 11 would be entirely consistent with past practice at other criminal tribunals and would serve a number of important purposes,

⁶ See Case 10 Confirmed Indictment, KSC-BC-2023-10/F00010/A01, paras 3-28, 30; Case 10 Amended Indictment, KSC-BC-2023-10/F00098/A01, paras 3-28, 30; Case 11 Indictment, KSC-BC-2023-11/F00002/A01, paras 2-28, 30.

including: (i) promoting judicial economy; (ii) avoiding evidence duplication; (iii) minimising hardship to witnesses; (iv) ensuring consistency in verdicts; (v) avoiding conflicts of interests that may cause serious prejudice to the Accused; and (vi) interest of justice.⁷ Indeed, the European Court of Human Rights has found that the proper administration of justice may be best served by the joint and parallel progression of cases involving charges which are interdependent and closely linked.⁸

7. Moreover, because the proceedings in both Cases 10 and 11 are at the pre-trial stage, there will be no prejudice to the rights of the Accused. Indeed, joinder would serve the Accused' interests in having the same evidence tendered to a single tribunal without the risks of conflicts of interests, potentially conflicting disclosure rulings and other serious prejudice that may attend separate trials. In this regard, the SPO highlights the recent Order⁹ of the Pre-Trial Judge in Case 11 noting that relevant filings have been transferred to Case 10 case file that may be material for the preparation of the defence in Case 11.¹⁰

⁷ See, e.g., ICTR, *Prosecutor v. Nyramasuhuko et al.*, Case No. ICTR-98-42-A, Judgment, 14 December 2015, para. 71; ICC, *Prosecutor v. Gbagbo & Prosecutor v. Blé Goudé*, Case Nos. ICC-02/11-01/11 and ICC-02/11-02/11, Decision on Prosecution request to join the case of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* and related matters, 11 March 2015 ('Gbagbo and Blé Goudé Decision'), para.51; ICTY, *Prosecutor v. Gotovina* and *Prosecutor v. Čermak & Markač*, Case Nos. IT-01-45-AR73.1, IT-03-73-AR73.1, and IT-03-73-AR73.2, Decision on Interlocutory Appeals against the Trial Chamber's Decision to Amend the Indictment and for Joinder, 25 October 2006, para.17. The factors cited above have been considered by other tribunals, which tribunals have also assessed the joinder of cases involving the 'same transaction,' as set forth in the rule governing joinder for the IRMCT and distinct from Rule 89(1). See, e.g., Gbagbo and Blé Goudé Decision, Case Nos. ICC-02/11-01/11 and ICC-02/11-02/11, para.49.

⁸ See e.g., ECtHR, *Boddaert v. Belgium*, Application No. 12919/87, Judgment (Merit and Just Satisfaction), 12 October 1992, paras 37-39; ECtHR, *Coëme and Others v. Belgium*, Application Nos 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, Judgment, 22 June 2000, paras 139-140 (finding the charges against the accused to be interdependent and joinder to be consistent with both expeditiousness and the proper administration of justice).

⁹ Decision Setting the Date for the Initial Appearance of Haxhi Shala and Related Matters, KSC-BC-2023-11/F00014, 12 December 2023, ('Order').

¹⁰ Order, KSC-BC-2023-11/F00014, para.21.

E. RELATED CONSIDERATIONS

8. To date the Pre-Trial Judge has issued a number of decisions in Case 10 that have assisted in the smooth conduct of proceedings, and fulfilment of obligations, particularly related to disclosure. The Pre-Trial Judge should consider adopting these Decisions,¹¹ into the joint case *mutatis mutandis* to ensure the continued smooth conduct of proceedings, and ensure consistency and coherence. Doing so does not prejudice the parties, as the number of Decisions is limited, the SPO and the Case 10 accused have already had the opportunity to make submissions in relation to those Decisions, and Shala will have the opportunity to do so in respect of his circumstances through his response to this filing.

9. As indicated above, the SPO has submitted the confirmed Case 11 Indictment, and a request to amend the Case 10 Indictment is currently pending. If the instant request for joinder is approved, the SPO proposes to submit a new consolidated indictment and Rule 86(3)(b) outline that would align the charges and facts.¹²

III. CONCLUSION

10. For the foregoing reasons, the Pre-Trial Judge should grant joinder of the Indictments.

¹¹ See e.g., Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2023-10/F00067, 24 October 2023, Confidential; Public Annex 1 to Framework Decision, KSC-BC-2023-10/F00076/A01, 24 October 2023, Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant ('Decisions').

¹² Which may also obviate the need for a separate ruling on the currently pending amendment request.

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Wednesday, 13 December 2023

At The Hague, the Netherlands