



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

In: **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: 14 December 2023

Language: English

Classification: Public

Prosecution submissions for first status conference

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to the Order,¹ the Specialist Prosecutor's Office ('SPO') hereby provides written submissions on the agenda items identified by the Pre-Trial Judge² and related matters.³

2. The SPO anticipates being in a position to provide complete witness and exhibit lists, having already fulfilled related Rule 102(1)(b)⁴ disclosures, by 2 February 2024,⁵ subject only to any applicable protective measures and provided that pretrial proceedings are otherwise nearing completion.

II. SUBMISSIONS

A. GENERAL QUESTIONS

3. A limited number of investigative steps are pending related to this case that may run into January 2024. Depending on the outcome of those limited steps, there is a likelihood that further evidence will be disclosed. Nonetheless, the SPO does not currently foresee this impacting the speedy conduct of proceedings. At the same time, the overall investigative work of the SPO will continue throughout the proceedings, and therefore additional evidence relevant to this case may be obtained. In that event, the evidence will be disclosed to the Defence, subject to any necessary protective measures and pursuant to the applicable provisions.

4. The SPO anticipates presenting documentary evidence at trial, including, for example, records from seized mobile telephones, call data records, transcripts of statements, and official notes from witness contacts. Greater detail regarding the amount of evidence is provided below.

¹ Order Setting the Date for the First Status Conference and for Submissions, KSC-BC-2023-11/F00017, 13 December 2023 ('Order').

² Annex 1 to the Order, KSC-BC-2023-11/F00017/A01.

³ Order, KSC-BC-2023-11/F00017, paras 20-21.

⁴ 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.

⁵ This is in line with the due date for the Pre-Trial Brief in KSC-BC-2023-10 ('Case 10').

5. The SPO relied upon two witnesses for the purpose of the Confirmed Indictment, and currently intends to present their testimony at trial. The SPO currently anticipates including these two witnesses on the list of witnesses for the purpose of trial, but it may include others to the extent necessary to authenticate documentary evidence it intends to rely upon at trial.

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

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

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

| | |
|--|-----------|
| Total number of items | 32 |
| Total number of pages | 485 |
| Number of witness statements ⁶ | 2 |
| Number of statements obtained from the Accused | 3 |
| Number of reports | 7 |
| Number of transcripts | 12 |
| Number of audio/video material | 1 |
| Approximate length of audio- visual material | 2 minutes |
| Number of photographs | 0 |
| Number of objects | 0 |
| Number of other documents | 7 |

7. Translation into Albanian of certain supporting material to the Confirmed Indictment has been completed.

⁶ Each statement is contained in a transcript.

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

9. Subject to the resolution of the request for protective measures and adoption of protocols governing the handling of confidential information and contact with witnesses of the opposing Party,⁸ and considering the upcoming court recess, the SPO will disclose Rule 102(1)(a) materials by not later than 11 January 2024, which reflects the thirty (30) day period prescribed by the Rules.⁹

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

10. In addition to the material falling under Rule 102(1)(a), the SPO intends to disclose material under Rule 102(1)(b). The SPO is in the process of reviewing materials that may constitute Rule 102(1)(b) materials. The SPO expects to be ready to disclose all such materials to the Defence by 19 January 2024, or in any case, no later than 30 days prior to the opening of the Specialist Prosecutor's case.

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

12. The SPO notes that images of the seized mobile telephones of the Accused and his co-perpetrators identified in the Confirmed Indictment will be made available to the Accused and is currently available for collection by the Defence.

⁷ See below para. 24.

⁸ Prosecution request for protective measures and related request, KSC-BC-2023-11/F00009, 11 December 2023, Strictly Confidential and Ex Parte.

⁹ Rule 102(1)(a).

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

14. Some of the Rule 102(1)(b) materials may require redactions, which the SPO anticipates will be applied consistent with forthcoming decisions from the Pre-Trial Judge concerning the applicable redaction framework and protective measures.¹⁰

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

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

16. The SPO anticipates providing the Defence with detailed notice of material falling within the scope of Article 21(6)¹¹ and Rule 102(3) by 26 January 2024.¹² The items in the Rule 102(3) notice will comprise any other residual, relevant information, after the items to be presented at trial¹³ and potentially exculpatory items¹⁴ have been disclosed. The scope of Rule 102(3) material is necessarily impacted by, and to a large extent dependent upon, the witnesses and evidence intended to be presented at trial. At this time, the items currently identified are less than 50, although the SPO's review is ongoing.

¹⁰ See below para. 24.

¹¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ('Law'). Reference herein to 'Article(s)' are to 'Articles' of the Law, unless otherwise indicated.

¹² This is in line with that analogous due date in Case 10.

¹³ Rule 102(1)(b).

¹⁴ Rule 103.

17. The majority of the Rule 102(3) material currently identified will not require redactions.

E. RULE 103: EXCULPATORY EVIDENCE

18. The SPO is continuing its review of Rule 103 material within its custody, control, or actual knowledge, and following application of any required redactions it shall immediately disclose any such material. At this time, approximately 14 items have been identified which are being prepared for immediate disclosure.

F. RULE 107: PROTECTED MATERIAL

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

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

G. PROCEDURE FOR DISCLOSURE OF EVIDENCE

21. The SPO can apply the indicated case-specific subcategorises in Legal Workflow for material falling under Rule 102(1)(a) and (b) and Rule 104(1), (5) and (6) of the Rules at the time of disclosure of each batch of such material. The SPO has no further proposals in this regard.

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

23. As to the form of the Rule 109(c) chart, the SPO proposes the adoption of the chart format used in the *Januzi and Bahtijari*, *Gucati and Haradinaj* and *Shala* cases.¹⁵ As the Rule 86(3) evidentiary outline provides extensive analysis in relation to Rule 102(1)(a) material, the SPO's Rule 109(c) chart should be limited to any Rule 102(1)(b) material.

H. REDACTION REGIME

24. The SPO agrees to adopting the redaction regime outlined in the 'Framework Decision on Disclosure of Evidence and Related Matters' in KSC-BC-2023-10.¹⁶

Word count: 1,433



Kimberly P. West

Specialist Prosecutor

Thursday, 14 December 2023

At The Hague, the Netherlands.

¹⁵ *Januzi and Bahtijari* Framework Decision, KSC-BC-2023-11/F00076, para.90 (adopting the *Gucati and Haradinaj* and *Shala* chart format).

¹⁶ See Order, KSC-BC-2023-10/F00022, para.20. See also *Januzi and Bahtijari* Framework Decision, KSC-BC-2023-11/F00076, paras 96-109.