

**ANNEX 1 to**

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

**Public redacted version of ANNEX 2 to Submission of Indictment for confirmation and related requests, KSC-BC-2023-11/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>SHALA</b> set forth below constituted serious threats to [REDACTED] ('Witness 1').</p> <p>In particular, <b>SHALA</b> made serious threats against Witness 1 through, <i>inter alia</i>: directing, co-ordinating and/or otherwise participating in individual approaches to and meetings with Witness 1 in coordination with Sabit JANUZI and Ismet BAHTIJARI; attempting to induce Witness 1 to withdraw from testifying; confirming to Witness 1 that he or [REDACTED] if Witness 1 testified; and offering Witness 1 'help' if he withdrew his testimony.</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, <b>SHALA</b> called JANUZI,<sup>3</sup> [REDACTED],<sup>4</sup> and then, approximately two hours later, BAHTIJARI, [REDACTED],<sup>5</sup> also called JANUZI.<sup>6</sup></p> <p>Approximately three hours after BAHTIJARI called JANUZI, BAHTIJARI called Witness 1.<sup>7</sup> [REDACTED] answered, and BAHTIJARI asked for Witness 1.<sup>8</sup> [REDACTED] said that he was napping and asked if he should be awoken, and BAHTIJARI responded in the negative.<sup>9</sup></p> <p>Approximately half an hour later, BAHTIJARI arrived at the home of Witness 1.<sup>10</sup> BAHTIJARI informed Witness 1, in sum and substance, that he had not come for a good purpose and added an Albanian phrase generally meaning that his purpose was a bad one.<sup>11</sup> BAHTIJARI said he had been sent by <b>SHALA</b> to deliver the message that Witness 1 was a harmful witness against [REDACTED] and Witness 1 should withdraw his testimony.<sup>12</sup></p> <p>Specifically, BAHTIJARI told Witness 1 that <b>SHALA</b> had recently approached him at a café, and <b>SHALA</b> told BAHTIJARI, in sum and substance, to go and tell Witness 1 that ‘they’ have heard that Witness 1 is a witness with harmful evidence against [REDACTED]</p>
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<sup>3</sup> SPOE00339009-00339013, p.SPOE00339011 (Call Log #3).

<sup>4</sup> 112906-TR-AT Part 1 Revised 1-ET, p.14.

<sup>5</sup> 112906-TR-AT Part 1 Revised 1-ET, 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-AT Part 1 Revised 1-ET, pp.24-25.

<sup>9</sup> 112906-TR-AT Part 1 Revised 1-ET, pp.24-25.

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

<sup>11</sup> 112906-TR-AT Part 1 Revised 1-ET, p.22; 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-AT Part 1 Revised 1-ET, pp.22-24; Official Note, 112769-112772, para.5; *see also* 116623-01-TR-AT-ET, pp.3-4, 7.

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

	<p>and that he should withdraw.<sup>13</sup> Witness 1 believed that <b>SHALA</b>'s message instructing Witness 1 to withdraw his testimony actually originated from [REDACTED].<sup>14</sup></p> <p>BAHTIJARI appeared nervous and uncomfortable to Witness 1.<sup>15</sup> Witness 1 asked BAHTIJARI whether they had told BAHTIJARI that they would [REDACTED] if Witness 1 testified, and BAHTIJARI kept his head down and replied in the affirmative.<sup>16</sup> By 'they,' Witness 1 was referring to <b>SHALA</b>, [REDACTED], and [REDACTED].</p> <p>Witness 1 then told BAHTIJARI to tell [REDACTED] and [REDACTED] that if he were to go to The Hague, he would 'fuck' 'their mothers' and to tell them that if Witness 1 saw them, that Witness 1 would kill them if they did not kill Witness 1 first.<sup>17</sup></p> <p>BAHTIJARI 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 BAHTIJARI visited.<sup>20</sup></p> <p>As a result of this visit, Witness 1 became very concerned for the safety [REDACTED], including whether he would be able to [REDACTED] against [REDACTED].<sup>21</sup></p>
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<sup>13</sup> 112906-TR-AT Part 1 Revised 1-ET, pp.22-24; Official Note, 112769-112772, para.5.

<sup>14</sup> 112906-TR-AT Part 1 Revised 1-ET, pp.22-23; Official Note, 112769-112772, para.6.

<sup>15</sup> 112906-TR-AT Part 1 Revised 1-ET, pp.13, 22; Official Note, 112769-112772, para.7.

<sup>16</sup> Official Note, 112769-112772, para.8. *See also* 112906-TR-AT Part 1 Revised 1-ET, pp.13, 22-24 (different wording); *see also* 116623-01-TR-AT-ET, p.28.

<sup>17</sup> 112906-TR-AT Part 1 Revised 1-ET, p.13; 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-AT Part 1 Revised 1-ET, p.27; Official Note, 112769-112772, para.13.

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

	<p>Shortly after BAHTIJARI's visit to Witness 1 and then throughout the evening of 5 April 2023, <b>SHALA</b> and JANUZI and JANUZI and BAHTIJARI had numerous text and phone contacts:</p> <ol style="list-style-type: none"> <li>i. First, JANUZI called <b>SHALA</b> three times over the span of an hour with no answer, before sending <b>SHALA</b> a text message asking him to call.<sup>22</sup> <b>SHALA</b> then called JANUZI, which JANUZI missed, and then JANUZI called back and connected with <b>SHALA</b>.<sup>23</sup></li> <li>ii. Almost immediately after his call with <b>SHALA</b>, JANUZI called BAHTIJARI.<sup>24</sup></li> <li>iii. A short time later, <b>SHALA</b> texted JANUZI, writing, 'Tomorrow, Sabit,' to which JANUZI responded, 'Ok, I will let them know.'<sup>25</sup> <b>SHALA</b> almost immediately replied, 'Wait a bit more,' and, within seconds, <b>SHALA</b> called JANUZI.<sup>26</sup> <b>SHALA</b> and JANUZI then discussed meeting in person over text messages, with JANUZI 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 <b>SHALA</b> to arrange a meeting, JANUZI called BAHTIJARI three times without answer and also sent BAHTIJARI 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> BAHTIJARI ultimately called JANUZI back several times, connecting briefly each time.<sup>29</sup></p> <p>v. Within an hour of BAHTIJARI's last call to JANUZI, <b>SHALA</b> called JANUZI,<sup>30</sup> and then JANUZI called BAHTIJARI.<sup>31</sup></p> <p>vi. Finally, a short time later, <b>SHALA</b> sent two text messages to JANUZI, writing 'come out' and 'where are you'.<sup>32</sup></p> <p>In the following days, <b>SHALA</b> and JANUZI 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, JANUZI sent a series of text messages to [REDACTED] ('Person 1'), [REDACTED], to ask if Person 1 could arrange a meeting between JANUZI and Witness 1.<sup>34</sup> A short time later, JANUZI and Person 1 connected on an audio call.<sup>35</sup></p> <p>Later on 12 April 2023, Person 1 informed Witness 1 that JANUZI wanted to get in touch with him and gave Witness 1 JANUZI's phone number.<sup>36</sup> Within the hour, Witness 1 spoke</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-AT Part 1 Revised 1-ET, pp.6, 16; 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>to JANUZI by telephone—after many years of having no contact with JANUZI.<sup>37</sup> JANUZI 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, JANUZI called <b>SHALA</b>.<sup>39</sup></p> <p>After arriving at Witness 1’s home, JANUZI told Witness 1 that <b>SHALA</b> had sent him to follow up from BAHTIJARI’s meeting with Witness 1 to see how things stood with Witness 1 as a result of that meeting.<sup>40</sup> JANUZI initially indicated that he had sent BAHTIJARI<sup>41</sup> and then confirmed that the request had originated with <b>SHALA</b>.<sup>42</sup></p> <p>Specifically, JANUZI confirmed that BAHTIJARI met with <b>SHALA</b> after the April 5 meeting, and that <b>SHALA</b> had told JANUZI he did not know how things stood as a result of the April 5 meeting.<sup>43</sup> JANUZI brought up the issue of Witness 1’s testimony and that he was a witness against [REDACTED].<sup>44</sup> JANUZI conveyed a message from <b>SHALA</b> that if Witness 1 agreed not to testify, then he and others would help Witness 1 for helping them.<sup>45</sup> <b>SHALA</b> had offered any kind of help.<sup>46</sup></p>
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<sup>37</sup> 112906-TR-AT Part 1 Revised 1-ET, pp.6-7, 13-14; Official Note, 113310-113320, pp.113310-113315.

<sup>38</sup> 112906-TR-AT Part 1 Revised 1-ET , p.7.

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

<sup>40</sup> 112906-TR-AT Part 1 Revised 1-ET , pp.7-8, 10-11, 20-21; 116623-01-TR-AT-ET, pp.4-10.

<sup>41</sup> 116623-01-TR-AT-ET, p.3.

<sup>42</sup> 116623-01-TR-AT-ET, p.4.

<sup>43</sup> 116623-01-TR-AT-ET, pp.6, 26.

<sup>44</sup> 116623-01-TR-AT-ET, pp.5, 7, 9, 31.

<sup>45</sup> 116623-01-TR-AT-ET, pp.7, 9.

<sup>46</sup> 116623-01-TR-AT-ET, p.7.

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

	<p>Witness 1 expressed his concern that [REDACTED] or others [REDACTED].<sup>47</sup> Witness 1 also recounted to JANUZI the [REDACTED] that he received through BAHTIJARI.<sup>48</sup></p> <p>Witness 1 did not confirm or deny being a witness.<sup>49</sup> Witness 1 told JANUZI that if <b>SHALA</b> offered him 200,000 euros, they would have a deal.<sup>50</sup></p> <p>JANUZI told Witness 1 that he would tell <b>SHALA</b><sup>51</sup> and ‘them’<sup>52</sup> what Witness 1 had said. JANUZI said that he does not speak on the phone about these matters and would return with an answer to Witness 1’s request.<sup>53</sup> JANUZI added that if ‘they’ wanted to lower tensions, they should reward Witness 1.<sup>54</sup></p> <p>After the meeting, JANUZI called <b>SHALA</b>.<sup>55</sup> Less than an hour later, <b>SHALA</b> called JANUZI.<sup>56</sup></p> <p>As a result of this meeting, Witness 1 was further concerned [REDACTED].<sup>57</sup></p> <p><i>Following the Approaches</i></p>
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<sup>47</sup> 116623-01-TR-AT-ET, p.21.

<sup>48</sup> 116623-01-TR-AT-ET, p.28

<sup>49</sup> 112906-TR-AT Part 1 Revised 1-ET , p.10

<sup>50</sup> 116623-01-TR-AT-ET, pp.21, 25, 26.

<sup>51</sup> 116623-01-TR-AT-ET, pp.45-46.

<sup>52</sup> 116623-01-TR-AT-ET, p.27.

<sup>53</sup> 116623-01-TR-AT-ET, pp.45-46.

<sup>54</sup> 116623-01-TR-AT-ET, p.47.

<sup>55</sup> SPOE00339009-00339013, p.SPOE00339011 (Call Log #17).

<sup>56</sup> SPOE00339009-00339013, p.SPOE00339011 (Call Log #18).

<sup>57</sup> 112906-TR-AT Part 1 Revised 1-ET, p.27.



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

	<p>On 4 October 2023, JANUZI gave a voluntary interview to the SPO, wherein he denied having taken any criminal action but also confirmed several pieces of inculpatory information.<sup>58</sup> Most notably, JANUZI confirmed that he had met with Witness 1 at the approximate time and place indicated above;<sup>59</sup> that he had had discussions with BAHTIJARI,<sup>60</sup> <b>SHALA</b>,<sup>61</sup> and Witness 1<sup>62</sup> about Witness 1's witness status with the KSC; and that he had contacted at least one [REDACTED] in an effort to arrange a meeting with Witness 1.<sup>63</sup></p> <p>Directly after giving this interview, JANUZI [REDACTED],<sup>64</sup> met in person with <b>SHALA</b>.<sup>65</sup></p> <p>On 5 October 2023, BAHTIJARI gave a voluntary post-arrest interview to the SPO, wherein he denied having taken any criminal action but also confirmed several pieces of inculpatory information.<sup>66</sup> Most notably, BAHTIJARI confirmed that he had met with Witness 1 at the place and approximate time indicated above, at around the same time he met with <b>SHALA</b>.<sup>67</sup></p>
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<sup>58</sup> 116063-TR-ET Parts 1-4.

<sup>59</sup> 116063-TR-ET Part 1, pp.16-18.

<sup>60</sup> 116063-TR-ET Part 1, pp.18-24, 30, 36; 116063-TR-ET Part 2, pp. 6-7; 116063-TR-ET Part 3, pp. 6-7.

<sup>61</sup> 116063-TR-ET Part 1, pp.27-32; 116063-TR-ET Part 3, pp. 9-10.

<sup>62</sup> 116063-TR-ET Part 1, pp.25-27, 29, 33-35, 37; 116063-TR-ET Part 2, pp. 3,5; 116063-TR-ET Part 3, pp. 11-13; 116063-TR-ET Part 4, pp.3-6.

<sup>63</sup> 116063-TR-ET Part 2, pp. 7-9.

<sup>64</sup> 116063 TR ET Part 1, p.1.

<sup>65</sup> 116158-01.

<sup>66</sup> 116065 TR ET Part 1.

<sup>67</sup> 116065 TR ET Part 1, pp. 9-11, 13-14.

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>68</sup></p>	<p>Through the serious threats described above in Count 1, element (1), <b>SHALA</b> attempted to obstruct KSC proceedings.</p> <p>In particular, <b>SHALA</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]; the expenditure of SPO resources to investigate the events</p>
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<sup>68</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

	recounted in the Indictment and this Rule 86(3)(b) Outline; and the expenditure of KSC/SPO time and resources to take new security-related measures, [REDACTED]. <sup>69</sup>  <i>See</i> Count 1, element (1).
(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))	The actions of <b>SHALA</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.  <i>See</i> Count 1, elements (1)-(2).
(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>70</sup>	<b>SHALA</b> has 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.  As evidenced by his actions and statements, including his directing, co-ordinating and/or otherwise participating in approaches to and meetings with Witness 1 and his 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>SHALA</b> was aware of his acts and desired their commission. Alternatively, these factors show that <b>SHALA</b> was

<sup>69</sup> *See e.g.* 112768-112768, 112769-112772, 113310-113320, 113181-113182, 113354-113355, 113356-113356, and 113434-113436.

<sup>70</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>aware that a prohibited consequence can occur as a result of his act or omission and he 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>71</sup> which by common action <sup>72</sup> (KCC Article 401(2))	<p><b>SHALA</b> participated in a group of persons, composed of himself, JANUZI, BAHTIJARI, 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))	<p><i>See</i> Count 1, elements (1)-(2).</p>
(3) The offence was committed against a judge, a prosecutor, an official of a court, prosecution officer or a	<p><i>See</i> Count 1, elements (1)-(3).</p>

<sup>71</sup> *See* KCC Article 13(12) (a group is comprised of three or more persons).

<sup>72</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, a promise of a gift or any other form of benefit (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>73</sup> (KCC Article 387)</p>	<p><b>SHALA</b> sought to induce Witness 1 withdraw his testimony.</p> <ul style="list-style-type: none"> <li>i. On 5 April 2023, BAHTIJARI, at <b>SHALA</b>'s direction, approached Witness 1 and (i) told Witness 1 that Witness 1 should withdraw his testimony in KSC proceedings,<sup>74</sup> and (ii) confirmed to Witness 1 that failure to do so could result in Witness 1 [REDACTED].<sup>75</sup></li> <li>ii. On 12 April 2023, JANUZI, at <b>SHALA</b>'s direction, approached Witness 1 to follow up after BAHTIJARI's earlier approach and to relay the offer that <b>SHALA</b> and unnamed others would help Witness 1 if he agreed to withdraw his testimony.<sup>76</sup></li> <li>iii. Before and after approaching Witness 1, JANUZI and BAHTIJARI communicated and coordinated with each other and <b>SHALA</b>.</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>SHALA</b>'s acts demonstrate <b>SHALA</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 his actions and statements, including directing, co-ordinating and/or otherwise participating in individual approaches to and meetings with Witness 1 and his attempts to induce Witness 1 to withdraw his testimony, and by words and actions that</p>

<sup>73</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>74</sup> 112906-TR-AT Part 1 Revised 1-ET, pp.23-25; Official Note, 112769-112772, para.5.

<sup>75</sup> Official Note, 112769-112772, para.8. *See also* 112906-TR-AT Part 1 Revised 1-ET, pp.10, 13, 23 (different wording).

<sup>76</sup> 112906-TR-AT Part 1 Revised 1-ET, pp.7-8, 9-11, 20-21; 116623-01-TR-AT-ET, pp.4-5, 7, 9.

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

and accession to its occurrence <sup>77</sup> (KCC Article 21)	constituted implicit and explicit threats against Witness 1 [REDACTED], <b>SHALA</b> was aware of his act and desired its commission. Alternatively, these factors show that <b>SHALA</b> was aware that a prohibited consequence can occur as a result of his act or omission and he acceded to its occurrence.  <i>See</i> Count 1, element (4).
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<sup>77</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

<b>MODE(S) OF LIABILITY</b>	
<b>LEGAL ELEMENTS</b>	<b>REFERENCE(S) TO EVIDENCE</b>
<b>Commission</b>	
(1) Commission (KCC Article 17(1))	<b>SHALA</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>78</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>SHALA</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>78</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

<p>(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))</p>	<p><i>See</i> Commission, element (2).</p>
<p><b>Co-perpetration</b></p>	
<p>(1) Two or more persons (KCC Article 31)</p>	<p><b>SHALA</b> undertook the actions set out above together or in conjunction with two or more persons.</p> <p><i>See</i> Count 1, elements (1)-(3), Count 2, elements (1)-(3), and Count 3, elements (1)-(2).</p>
<p>(2) An express or implied agreement to commit a crime (KCC Article 31)<sup>79</sup></p>	<p><b>SHALA</b> undertook the actions set out above with an expressed or implied agreement to commit a crime/crimes charged in the Indictment.</p> <p><i>See</i> Count 1, elements (1)-(3), Count 2, elements (1)-(4), and Count 3, elements (1)-(2).</p>
<p>(3) Participation in the commission of a criminal offence or substantial contribution to its commission in any other way (KCC Article 31)</p>	<p><b>SHALA</b> participated in the commission of the crimes as charged in the Indictment or substantially contributed to the commission of the crimes.</p> <p><i>See</i> Count 1, elements (1)-(3), Count 2, elements (1)-(4), and Count 3, elements (1)-(2).</p>

<sup>79</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>SHALA</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>SHALA</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>80</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>80</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>81</sup> in committing a criminal offence (KCC Article 33(1))	<b>SHALA</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>82</sup>	<i>See</i> Commission, element (2).

<sup>81</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>82</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).