



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

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

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

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 9 February 2024

Language: English

Classification: Public

Prosecution submission of Rule 109(c) chart and witness and exhibit lists and related request for Rule 102(1)(b) disclosure with confidential Annexes 1-3

Specialist Prosecutor's Office

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1. Pursuant to Rule 109(c) of the Rules¹ and the Framework Decision,² the Specialist Prosecutor's Office ('SPO') hereby files the Rule 109(c) chart.³ The chart, which is a supplementary tool intended to assist the parties and the Trial Panel,⁴ should be considered in conjunction with, *inter alia*, the disclosed materials, prior Legal Workflow categorisation, and Rule 95(4) filings.
2. In addition, as indicated at the time the SPO filed its Pre-Trial Brief,⁵ pursuant to Rule 95(4)(a), the SPO hereby files: i) the list of witnesses the SPO intends to call or otherwise rely upon at trial ('Witness List') with the information required by Rule 95(4)(b);⁶ and (ii) the list of proposed exhibits the SPO intends to present at trial ('Exhibit List').⁷
3. In light of the joinder of KSC-BC-2023-10 ('Case 10') and KSC-BC-2023-11 ('Case 11'),⁸ the SPO has also provisionally included items previously disclosed pursuant to Rules 102(1)(a) and 102(1)(b) in Case 11 (but not yet Case 10). These items appear as items 162 through 167 on the Exhibit List. Noting the continuation of the Case 10 record, and discontinuation of the Case 11 record, and the Pre-Trial Judge's indication that further guidance will follow on the practical implementation of the joinder,⁹ the SPO requests

¹ 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.

² Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2023-10/F00076, 24 October 2023, Confidential, paras 91, 122(o).

³ Annex 1.

⁴ References to and placement of materials in the chart are not intended to be exhaustive and are not binding on the disclosing party or future Trial Panel in terms of how the referenced material is ultimately used or relied upon. *See* Rules 137(2), 139.

⁵ Submission of Prosecution Pre-Trial Brief with confidential Annex 1, KSC-BC-2023-10/F00159, 2 February 2024, Confidential, para.2, fn.2.

⁶ Annex 2.

⁷ Annex 3.

⁸ Decision on Request for Joinder and Amendment of the Indictment, KSC-BC-2023/10/F00161 ('Joinder Decision').

⁹ Joinder Decision, KSC-BC-2023/10/F00161, para.57.

authorisation to (re-)disclose these items in the Case 10 record pursuant to Rules 102(1)(a) and 102(1)(b) to ensure complete disclosure within the joint case file.

4. Finally, in accordance with the Framework Decision,¹⁰ Articles 39(1) and (3) of the Law,¹¹ and Rules 102(1), (2) and (4) and 112, the SPO requests the Pre-Trial Judge to authorise the SPO to disclose certain limited additional evidentiary materials ('Further Materials') pursuant to Rule 102(1)(b).

5. The Further Materials consist of the forensic image of a phone seized from Haxhi SHALA (the 'SHALA Phone') as well as extracts of records, including text messages and call log records, taken from the forensic image of the SHALA Phone.¹² The SHALA Phone was seized from SHALA on the date of his arrest, 11 December 2023, and subsequently reviewed pursuant to a court order. The analysis of the SHALA Phone that led to the Further Materials being generated had not been completed on 15 December 2023, the deadline for disclosures under Rule 102(1)(b). The Further Materials have been translated as necessary and prepared for disclosure to the Defence.

6. Considering these circumstances, the stage of proceedings, and overall scope of the case, including the number of witnesses and Rule 102(1)(b) materials previously disclosed, no prejudice arises from this request.¹³ As noted in the Framework Decision,

¹⁰ Framework Decision, KSC-BC-2023-10/F00076, paras. 45, 54.

¹¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'), Art.21(6). All references to 'Article' or 'Articles' herein are to the Law, unless otherwise specified.

¹² 118613-118613, SPOE00346746-00346750 RED, SPOE00346743-00346745 RED.

¹³ See *Specialist Prosecutor v. Thaçi et al.*, Decision on Prosecution Request to Amend the Exhibit List and Related Matters, KSC-BC-2020-06/F01352, 8 March 2023 ('8 March 2023 Decision'), paras 29, 31; *Specialist Prosecutor v. Thaçi et al.*, Decision on Thaçi's Appeal against "Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures", KSC-BC-2020-06/IA019/F00006, 12 July 2022 ('Appeal Decision'), paras 21, 23, fn.48 (citing case law from international criminal tribunals, which consider, in favour of amendment, even when trial is still in its early stages); see also *Specialist Prosecutor v. Thaçi et al.*, Decision on Prosecution Request to Add Five Items Relating to Expert Witness to the Exhibit List, KSC-BC-2020-06/F01544, 23 May 2023 ('23 May 2023 Decision'), para.11.

the SPO had openly noted that its investigation was ongoing and further investigative steps would be taken into early 2024, which would necessitate the ongoing disclosure of Rule 102(1)(b) material.¹⁴ The Further Materials are limited, concern relevant material that is probative of the charges, and their prompt disclosure will allow for timely and effective Defence preparations.¹⁵ In the absence of any prejudice, the Pre-Trial Judge should authorise the SPO to disclose the Further Materials pursuant to Rule 102(1)(b).

7. Subject to the Pre-Trial Judge's approval of this request, and in order to provide maximum notice, the SPO has provisionally included the Further Materials on the Exhibit List as items 168 through 170.

8. The annexes are filed as confidential to safeguard previously authorised protective measures.

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At The Hague, the Netherlands

¹⁴ Framework Decision, KSC-BC-2023-10/F00076, paras 53, 55.

¹⁵ See 8 March 2023 Decision, KSC-BC-2020-06/F01352, paras 29, 31; Appeal Decision, KSC-BC-2020-06/IA019/F00006, para.21. See also 23 May 2023 Decision, KSC-BC-2020-06/F01544, para.11.