



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: 12 February 2024

Language: English

Classification: Public

Prosecution submissions for status conference

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Sabit Januzi

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Counsel for Ismet Bahtijari

Felicity Gerry

Counsel for Haxhi Shala

Toby Cadman

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 Judge.

II. SUBMISSIONS

A. DISCLOSURE

2. With the exception of certain limited additional evidentiary material stemming from the SPO's ongoing investigation, as described below, the SPO can confirm that it has completed its disclosures within the deadlines set forth in the Framework Disclosure Decisions,² including the disclosure of Rule 102(1)(b)³ materials by 15 December 2023 and 19 January 2024.⁴

3. Regarding disclosure related to outstanding investigative steps, the SPO has already requested disclosure pursuant to Rule 102(1)(b) of the forensic image of a phone seized from Haxhi Shala, as well as extracts of records, including text messages and call log records, taken from the forensic image of this phone.⁵ The SPO is prepared to disclose these items to each of the Accused immediately once authorised.

4. Any further disclosures related to recently authorized and/or pending investigative measures, discussed further below, will be disclosed as they are identified and processed, subject to court authorisation.

¹ Order Setting the Date for Status Conference and for Submissions, KSC-BC-2023-10/F00163, 8 February 2024 ('Order').

² *Specialist Prosecutor v. Januzi and Bahtijari*, Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2023-10/F00076, 24 October 2023, Confidential; *Specialist Prosecutor v. Shala*, Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2023-11/F00023, 19 December 2023, Confidential (collectively, the 'Framework Disclosure Decisions').

³ 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.

⁴ Order, KSC-BC-2023-10/F00163, paras 12, 14(1), 14(3).

⁵ See Prosecution submission of Rule 109(c) chart and witness and exhibit lists and related request for Rule 102(1)(b) disclosure, KSC-BC-2023-10/F00164, 9 February 2024, paras 4-7.

5. With respect to Rule 102(3) material, thus far two of the three accused, Shala and Sabit Januzi, have requested disclosure of all items listed on the detailed notice (less those already disclosed). At this time, the SPO envisages limited, if any, challenges to materiality and, as previously indicated,⁶ the majority of the Rule 102(3) material currently identified will not require redactions.

6. Consistent with its ongoing obligations, the SPO is continuing its review for purposes of identifying any further material falling within Rule 103. If new exculpatory material is identified, it will be immediately disclosed.

7. At this time, the SPO does not anticipate making any requests under Rule 107.

8. In line with the representations made above, the SPO has not faced difficulties in meeting the disclosure calendar set out in the Framework Disclosure Decisions. Noting the continuation of the Case 10 record and the discontinuation of the Case 11 record, as well as the Pre-Trial Judge's indication that further guidance will follow regarding the practical implementation of the joinder,⁷ the SPO will continue to take any steps necessary related to its filings, disclosures and any other related matters to ensure efficient joinder of the cases.

B. TRANSLATION

9. The SPO is not facing difficulties regarding the translation of evidentiary material at this time. However, the SPO is currently operating at full capacity in completing necessary transcriptions and/or translations.

⁶ Prosecution submissions for third status conference, KSC-BC-2023-10/F00126, 12 October 2023 Confidential, para.4.

⁷ Public Redacted Version of Decision on Request for Joinder and Amendment of the Indictment, KSC-BC-2023/10/F00161/RED, 8 February 2024, paras 56-57.

C. INVESTIGATION AND NEXT STEPS

10. The SPO is in a position to file an updated pre-trial brief this week, noting that only minimal (and largely formal) changes are required from that previously filed in Case 10 to reflect the joinder of the cases.⁸

11. The SPO has made substantial progress with its ongoing investigation but there remain certain steps outstanding,⁹ which the SPO will execute as expeditiously as possible.

D. POINTS OF AGREEMENT

12. On 5 February 2024, the SPO circulated to all accused via *inter partes* email a list of proposed agreed facts. Counsel for Januzi and Ismet Bahtijari responded on 6 February 2024, indicating that they are unable to engage on these or other issues because they are not currently undertaking further work on behalf of the accused they represent. The SPO stands ready to enter into discussions on these matters with counsel for all of the accused.

⁸ Pre-Trial Brief, Annex 1 to Submission of Prosecution Pre-Trial Brief, KSC-BC-2023/10/F00159/A01.

⁹ See in particular Decision KSC-BC-2023-10/F00151, Decision KSC-BC-2023-10/F00155, and request KSC-BC-2023-10/F00143.

E. TRANSMISSION OF THE CASE FILE AND TRIAL READINESS

13. Noting the relatively straightforward nature of the case, the SPO does not oppose the transmission of the case file to the Trial Panel by 3 May 2024, pursuant to Rule 72 regarding expedited proceedings. The SPO could be ready for trial shortly thereafter.

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Kimberly P. West

Specialist Prosecutor

Monday, 12 February 2024

At The Hague, the Netherlands.