



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:** 22 February 2024

**Language:** English

**Classification:** Public

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**Prosecution response to 'Defence Preliminary Motions on Behalf of Haxhi Shala'**

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## I. INTRODUCTION

1. The Defence Motion<sup>1</sup> should be dismissed. Contrary to Defence submissions, the Indictment<sup>2</sup> pleads the material facts necessary to fulfil the elements of the alleged crimes with sufficient specificity to enable the Accused to understand the case against him and prepare a defence.<sup>3</sup> The Motion relies on confused extrapolations from the plain language of the law in order to seek evidentiary details which need not be pleaded in the Indictment and have been or will be provided in accordance with the relevant framework.

## II. SUBMISSIONS

### A. THE PARTICULARS SOUGHT BY SHALA ARE NOT LEGALLY REQUIRED

2. Shala apparently takes issue with Witness 1's legal characterisation as a 'Potential Information Provider', as that term is defined in the Confirmation Decisions<sup>4</sup> in relation to Article 387 of the Kosovo Criminal Code,<sup>5</sup> and makes vague and general complaints about the 'scope' and 'content' of Witness 1's 'information' and 'testimony'.<sup>6</sup>

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<sup>1</sup> Defence Preliminary Motions on Behalf of Haxhi Shala, KSC-BC-2023/10/F00166, 9 February 2024 ('Motion').

<sup>2</sup> Annex 1 to Submission of confirmed Indictment, KSC-BC-2023/11/F00007/A01, 6 December 2023, Confidential ('Indictment').

<sup>3</sup> See *Specialist Prosecutor v. Thaçi et al.*, Public Redacted Version of Decision on Defence Motions Alleging Defects in the Form of the Indictment, KSC-BC-2020-06/F00413/RED, 22 July 2021, para.40; see also *Specialist Prosecutor v. Thaçi et al.*, Decision on Motion Alleging Defects in the Form of the Amended Indictment, KSC-BC-2020-06/F00895, 22 July 2022, para.19; *Specialist Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of Decision on Defence Preliminary Motions, KSC-BC-2020-07/F00147/RED, 8 March 2021 (Case 07 Decision), para.46.

<sup>4</sup> Public Redacted Version of Decision on the Confirmation of the Indictment, KSC-BC-2023/10/F00008/RED, 2 October 2023 ('Case 10 Confirmation Decision'), para.30; Public Redacted Version of Decision on the Confirmation of the Indictment, KSC-BC-2023/11/F00005/RED, 4 December 2023 ('Case 11 Confirmation Decision'), para.30 (collectively, the 'Confirmation Decisions')

<sup>5</sup> 2019 Kosovo Criminal Code, Law No. 06/L-074 ('KCC').

<sup>6</sup> Motion, KSC-BC-2023/10/F00166, paras 17-18.

3. The legally required specificity related to the defined term of Potential Information Provider - that such person must be identifiable either as an individual or, at least, as a member of a clearly identifiable category<sup>7</sup> - is clearly met. Witness 1 is an identified individual who is appropriately pled as a person who has provided or is likely to provide information to the SITF, SPO and/or KSC panel about crimes or offences falling under KSC jurisdiction.<sup>8</sup>

4. Second, contrary to what is submitted in the Motion,<sup>9</sup> accurately setting out the elements of the charge of Intimidation During Criminal Proceedings, as contained in KCC Article 387, does not create uncertainty. The Motion appears to confuse the fact that there are three (alternate) limbs of KCC Article 387 to submit that there must be different 'statements' corresponding to each limb, based on a series of conjectures.<sup>10</sup> Indeed, the Defence appears to merely be taking issue with and/or seeking guidance on the language of KCC Article 387 itself,<sup>11</sup> rather than with the Indictment.

5. The exact nature of the 'information' possessed by Witness 1 is not a detail required to be pled in the Indictment. Rather, the Indictment (i) accurately describes the conduct of the Accused, including their attempts to get Witness 1 to refrain from providing evidence in KSC proceedings;<sup>12</sup> and (ii) the legal characterisation of such conduct as constituting, *inter alia*, Intimidation During Criminal Proceedings contrary to KCC Article

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<sup>7</sup> See Case 10 Confirmation Decision, KSC-BC-2023/10/F00008/RED, para.30; Case 11 Confirmation Decision, KSC-BC-2023/11/F00005/RED, para.30; *Specialist Prosecutor v. Gucati and Haradinaj*, Trial Judgment, KSC-BC-2020-07/F00611, 18 May 2022, para. 113.

<sup>8</sup> Indictment, KSC-BC-2023/11/F00007/A01, para.3.

<sup>9</sup> Motion, KSC-BC-2023/10/F00166, paras 18, 22-23.

<sup>10</sup> Motion, KSC-BC-2023/10/F00166, paras 22-23.

<sup>11</sup> Motion, KSC-BC-2023/10/F00166, paras 22-23. The SPO is unable to fully decipher what the defence is arguing in the first sentence of para.22 of the Motion, but the paragraph proceeds to appear to seek a circular confirmation as to whether the qualifier of obstruction of criminal proceedings attaches to the third limb of KCC Article 387.

<sup>12</sup> Indictment, KSC-BC-2023/11/F00007/A01, paras 5-17.

387.<sup>13</sup> Both the charge and the underlying conduct are clearly, accurately and adequately pled.

B. THE PARTICULARS SOUGHT BY SHALA ARE NOT MATERIAL FACTS BUT HAVE NONETHELESS BEEN PROVIDED

6. The particulars sought by Shala are not material facts that require pleading in the Indictment.<sup>14</sup> The level of specificity that Shala receives from the Indictment alone is more than sufficient to enable him to understand the case against him and prepare a defence.

7. Nonetheless, while all material facts have been pleaded with sufficient detail in the Indictment, Shala has also already received and will continue to receive further evidentiary details supporting the material facts. Evidentiary details have been provided in the Rule 86(3)(b) Outline,<sup>15</sup> the Confirmation Decisions, the Pre-Trial Brief (and related materials),<sup>16</sup> and disclosed materials. The Rule 86(3)(b) outline, supporting disclosed materials, and Pre-Trial Brief each provide further information about the nature of the testimony the Accused believed that Witness 1 would provide to the KSC.<sup>17</sup> The combined information provided through these documents and the Indictment ensures the ability of Shala to fully prepare and the fairness of these proceedings.

### III. CONCLUSION

8. For all of these reasons, the Motion should be dismissed.

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<sup>13</sup> Indictment, KSC-BC-2023/11/F00007/A01, paras 21, 30.

<sup>14</sup> See supra para.5; See generally Case 07 Decision, KSC-BC-2020-07/F00147/RED, para.69.

<sup>15</sup> Annex 2 to Submission of Indictment for confirmation and related requests, KSC-BC-2023/11/F00002, 20 November 2023, Confidential ('Rule 86(3)(b) Outline').

<sup>16</sup> Submission of Prosecution Pre-Trial Brief, witness and exhibit lists, and Rule 109(c) Chart with confidential Annexes 1-4, KSC-BC-2023-10/F00177, 16 February 2024.

<sup>17</sup> For example Rule 86(3)(b) Outline, KSC-BC-2023/11/F00002/A02, pp.2-3, 6-7.

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**Kimberly P. West**

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Thursday, 22 February 2024

At The Hague, the Netherlands