



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2023-10

**The Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and
Haxhi Shala**

Before: Pre-Trial Judge

Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 19 March 2024

Language: English

Classification: PUBLIC

**Public Redacted Version of
Decision on Motion Challenging the Form of the Confirmed Indictment**

Specialist Prosecutor

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(1) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 97(1)(b) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules") hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 4 December 2023, the Pre-Trial Judge confirmed the indictment against Haxhi Shala ("Mr Shala" or "Accused") ("Confirmation Decision").² On the same day, the Pre-Trial Judge issued an arrest warrant for the Accused and ordered his transfer to the Detention Facilities of the Specialist Chambers ("SC") in The Hague, the Netherlands.³
2. On 6 December 2023, the Specialist Prosecutor's Office ("SPO") submitted the indictment, as confirmed by the Pre-Trial Judge ("Confirmed Indictment").⁴
3. On 11 December 2023, the Accused was arrested in Kosovo.⁵ The next day, the Accused was transferred to the SC Detention Facilities.⁶

¹ KSC-BC-2023-10, F00001, President, *Decision Assigning a Pre-Trial Judge*, 11 September 2023, public; KSC-BC-2023-11, F00001, President, *Decision Assigning a Pre-Trial Judge*, 20 November 2023, public.

² KSC-BC-2023-11, F00005, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 4 December 2023, confidential. A public redacted version was filed on 30 January 2024, F00005/RED.

³ KSC-BC-2023-11, F00006, Pre-Trial Judge, *Decision on Request for Warrant of Arrest and Transfer Order*, 4 December 2023, confidential, with Annexes 1-2, confidential. A public redacted version of the decision was filed on 22 December 2023, F00006/RED. Public redacted versions of the annexes were filed on 28 February 2024, F00006/RED/A01 and F00006/RED/A02.

⁴ KSC-BC-2023-11, F00007, Specialist Prosecutor, *Submission of Confirmed Indictment*, 6 December 2023, strictly confidential and *ex parte*, with Annex 1, confidential. A public redacted version was filed on 12 December 2023, F00013/A01.

⁵ KSC-BC-2023-11, F00008, Registrar, *Notification of Arrest of Haxhi Shala Pursuant to Rule 55(4)*, 11 December 2023, public.

⁶ KSC-BC-2023-11, F00011, Registrar, *Notification of Reception of Haxhi Shala in the Detention Facilities of the Specialist Chambers*, 12 December 2023, public, with Annex 1, strictly confidential and *ex parte*. A public redacted version of Annex 1 was filed on 15 December 2023, F00021/A01. See also F00015, Registrar, *Report on the Arrest and Transfer of Haxhi Shala to the Detention Facilities*, 13 December 2023,

4. On 8 February 2024, the Pre-Trial Judge joined the case of *The Specialist Prosecutor v. Haxhi Shala* (KSC-BC-2023-11) (“Case 11”) with the case of *The Specialist Prosecutor v. Sabit Januzi and Ismet Bahtijari* (KSC-BC-2023-10) (Case 10).⁷ The Pre-Trial Judge, *inter alia*, considered that the joint case would proceed on the basis of the confirmed indictments in Case 10 and Case 11.⁸
5. On 9 February 2024, the Defence for Mr Shala (“Defence”) filed a preliminary motion challenging the form of the Confirmed Indictment (“Motion”).⁹
6. On 22 February 2024, the SPO responded to the Motion (“Response”).¹⁰
7. On 27 February 2024, the Defence replied to the Response (“Reply”).¹¹

II. SUBMISSIONS

A. MOTION

8. The Defence submits that the requirements set forth in Articles 21(4)(a) and 38(4) of the Law as well as Rule 86(3) of the Rules have not been met in relation to the information relevant to the Confirmed Indictment.¹²

confidential, with Annexes 1-3, strictly confidential and *ex parte*. Confidential redacted versions of Annexes 1-3 were filed on 15 December 2023, F00022/A01, F00022/A02, F00022/A03.

⁷ KSC-BC-2023-10, F00161, Pre-Trial Judge, *Decision on Request for Joinder and Amendment of the Indictment* (“Decision on Joinder”), 8 February 2024, confidential. A public redacted version was filed on the same day, F00161/RED; KSC-BC-2023-11, F00041, Pre-Trial Judge, *Decision on Request for Joinder and Amendment of the Indictment*, 8 February 2024, confidential. A public redacted version was filed on the same day, F00041/RED.

⁸ Decision on Joinder, para. 55.

⁹ KSC-BC-2023-10, F00166, Defence, *Defence Preliminary Motions on Behalf of Haxhi Shala*, 9 February 2024, public.

¹⁰ KSC-BC-2023-10, F00182, Specialist Prosecutor, *Prosecution Response to “Defence Preliminary Motions on Behalf of Haxhi Shala”*, 22 February 2024, public.

¹¹ KSC-BC-2023-10, F00190, Defence, *Reply to Prosecution Response to “Defence Preliminary Motions on Behalf of Haxhi Shala”*, 27 February 2024, public.

¹² Motion, para. 16.

9. First, the Defence takes issue with the SPO's description of Witness 1 as "a person who has provided or is likely to provide information to the Special Investigative Task Force ('SITF'), SPO, and/or to any KSC Panel about any crimes or offences falling under KSC jurisdiction".¹³ The Defence argues that the scope of the relevant information Witness 1 is alleged to possess is very broad and requires greater specificity ("First Alleged Defect").¹⁴

10. Second, the Defence claims that the SPO's allegations in support of the charge of intimidation during criminal proceedings punishable under Article 387 of the of the 2019 Kosovo Criminal Code, Law No. 06/L-074 ("KCC") (Count 3) require clarification.¹⁵

11. More specifically, the Defence submits that Article 387 of the KCC sets forth three alternate limbs, namely (i) "to refrain from making a statement", (ii) "to make a false statement", and (iii) "to otherwise fail to state true information".¹⁶ The Defence adds that the SPO's case is that the Accused acted in order to induce Witness 1 to take one of these three actions.¹⁷ The Defence further submits that, according to the interpretation upheld by the Supreme Court, which it argues is still subject to consideration before the Constitutional Court, the scope of the phrase "when such information relates to obstruction of criminal proceedings" in Article 387 of the KCC only qualifies the third limb or action of said Article, i.e. "to otherwise fail to state true information".¹⁸ The Defence argues in that context that, according to its reading of the Confirmed Indictment, the sole testimony which it is alleged that the Accused may have acted so as to induce Witness 1 "to otherwise fail to state" is true information related to obstruction of criminal

¹³ Motion, para. 17.

¹⁴ Motion, para. 17.

¹⁵ Motion, paras 18-23.

¹⁶ Motion, para. 21.

¹⁷ Motion, para. 21.

¹⁸ Motion, para. 21.

proceedings.¹⁹ The Defence affirms that, if its reading of the Confirmation Indictment accurately reflects the SPO's case, then, according to the Defence, the Confirmed Indictment lacks corresponding clarity as to what "statements" under the first and second limb of Article 387 of the KCC relate to.²⁰ The Defence avers that this uncertainty gives rise to a defect in the Confirmed Indictment ("Second Alleged Defence").²¹

12. For the foregoing reasons, the Defence requests that the Pre-Trial Judge order the SPO to submit an amended indictment addressing the defects identified above, or dismiss the Confirmed Indictment.²²

B. RESPONSE

13. The SPO submits that the Confirmed Indictment 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.²³

14. More specifically, as concerns the First Alleged Defect, the SPO maintains that 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 SC Panel about crimes or offences falling under SC jurisdiction.²⁴

15. As concerns the Second Alleged Defect, the SPO submits that the Defence appears to argue that since Article 387 of the KCC encompasses three alternate limbs, there must be three different "statements" corresponding to each limb.²⁵ According to the SPO, the Defence appears merely to be taking issue with and/or

¹⁹ Motion, para. 22.

²⁰ Motion, para. 23.

²¹ Motion, para. 23.

²² Motion, paras 1, 27.

²³ Response, paras 1, 3, 5-7.

²⁴ Response, paras 2-3.

²⁵ Response, para. 4.

seeking guidance on the language of Article 387 of the KCC itself, rather than with the Confirmed Indictment.²⁶ The SPO maintains that the exact nature of the “information” possessed by Witness 1 is not a detail required to be pled in the Confirmed Indictment.²⁷

16. Lastly, the SPO argues that the Rule 86(3)(b) Outline, supporting materials disclosed, and the pre-trial brief each provide further information about the nature of the testimony the Accused believed that Witness 1 would provide to the SC.²⁸

17. For these reasons, the SPO submits that the Motion should be dismissed.²⁹

C. REPLY

18. The Defence essentially reiterates its arguments presented in the Motion.³⁰ Moreover, the Defence argues that the receipt of further evidentiary details cannot remedy defects in the Confirmed Indictment.³¹

19. In addition, the Defence contends that the Response was filed outside the time limit applicable under Rule 76 of the Rules and requests, as a result, that the Pre-Trial Judge reject the Response.³²

²⁶ Response, para. 4.

²⁷ Response, para. 5.

²⁸ Response, para. 7.

²⁹ Response, paras 1, 8.

³⁰ Reply, paras 7-9, 12.

³¹ Reply, para. 10.

³² Reply, paras 11-12.

III. APPLICABLE LAW

A. PRELIMINARY MOTIONS

20. Pursuant to Article 39(1) of the Law, the Pre-Trial Judge shall have the power to rule on any preliminary motions, including challenges to the indictment.

21. Pursuant to Rule 97(1)(b) of the Rules, the Accused may file preliminary motions before the Pre-Trial Judge in accordance with Article 39(1) of the Law, which allege defects in the form of the indictment.

B. INDICTMENT

22. Pursuant to Article 21(4)(a) of the Law, the Accused shall be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.

23. Pursuant to Article 38(4) of the Law and Rule 86(3) of the Rules, an indictment must set forth the name and particulars of the suspect and a concise statement of the facts of the case and of the crime(s) with which the suspect is charged, in particular the alleged mode of liability in relation to the crimes charged. The indictment shall be filed together with supporting material, i.e. evidentiary material supporting the facts underpinning the charges and a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation.

IV. GENERAL STANDARDS PERTAINING TO THE FORM OF THE CONFIRMED INDICTMENT

A. SPECIFICITY AND CLARITY

24. The Pre-Trial Judge recalls that, in accordance with Articles 21(4)(a) and 38(4) of the Law, as well as Rule 86(3) of the Rules, an indictment must set forth with sufficient specificity and clarity the facts underpinning the charges and the crimes, including the modes of liability charged.³³ Such specificity and clarity must ensure that the indictment, as a stand-alone document,³⁴ provides an accused with sufficient information to understand clearly and fully the nature and cause of the charges against him, with a view to preparing an adequate defence.³⁵ An accused should accordingly not be required to consult other documents in order to understand and piece together the factual allegations underpinning the charges.³⁶

³³ KSC-BC-2020-06, IA012/F00015/RED, Court of Appeals, *Public Redacted Version of Decision on Defence Appeals Against Decision on Motions Alleging Defects in the Form of the Indictment* (“Case 06 Appeal Decision”), 22 August 2022, public, para. 17; KSC-BC-2020-04, IA004/F00008/RED, Court of Appeals, *Public Redacted Version of Decision on Pjetër Shala’s Appeal against Decision on Motion Challenging the Form of the Indictment* (“Case 04 Appeal Decision”), 22 February 2022, public, para. 15; KSC-BC-2020-04, F00089/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Motion Challenging the Form of the Indictment* (“Case 04 Preliminary Motion Decision”), 18 October 2021, public, para. 25; KSC-BC-2020-06, F00413/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Defence Motions Alleging Defects in the Form of the Indictment* (“Case 06 Preliminary Motions Decision”), 22 July 2021, public, para. 27; KSC-BC-2020-07, IA004/F00007, Court of Appeals Panel, *Decision on the Defence Appeals Against Decision on Preliminary Motions* (“Case 07 Appeal Decision”), 23 June 2021, public, para. 35; F00147, Pre-Trial Judge, *Public Redacted Version of Decision on Preliminary Motions* (“Case 07 Preliminary Motions Decision”), 8 March 2021, public, para. 38.

³⁴ Case 04 Preliminary Motion Decision, para. 25; Case 06 Preliminary Motions Decision, para. 27; Case 07 Preliminary Motions Decision, para. 38; KSC-BC-2020-04, F00003, *Order to the Specialist Prosecutor Pursuant to Rule 86(4) of the Rules*, 28 February 2020 (“Case 04 Rule 86(4) Order”), public, para. 11. *See also* Case 06 Appeal Decision, para. 17; Case 04 Appeal Decision, para. 15.

³⁵ Case 04 Preliminary Motion Decision, para. 25; Case 06 Preliminary Motions Decision, para. 27, with further references; Case 07 Appeal Decision, para. 36; Case 07 Preliminary Motions Decision, para. 38. *See also* Case 04 Rule 86(4) Order, paras 9, 11.

³⁶ Case 06 Appeal Decision, para. 17; Case 04 Preliminary Motion Decision, para. 25; Case 06 Preliminary Motions Decision, para. 27, with further references; Case 07 Appeal Decision, para. 49; Case 07 Preliminary Motions Decision, para. 38; Case 04 Rule 86(4) Order, para. 11. *See also* Case 04 Appeal Decision, para. 15.

25. Whether a fact underpins any particular charge and must accordingly be pleaded in the indictment with specificity cannot be decided in the abstract, but on a case-by-case basis, taking into account, *inter alia*, the nature and scale of the crimes charged, the circumstances of the case, the alleged proximity of the accused to the events and the mode of liability charged.³⁷ Nonetheless, in some instances, it cannot be excluded that certain details of the case, such as the number and identity of victims,³⁸ would remain obscure even after the end of the trial.³⁹ In any event, when determining whether an indictment fulfils the above conditions, the indictment must be considered as a whole and select paragraphs or phrases should be read in the context of the entire document.⁴⁰

26. Furthermore, a clear difference must be drawn between facts underpinning the charges, which must be pleaded as provided above, and evidence proffered to prove them.⁴¹ The indictment need not set out the evidence by which the facts underpinning the charges are to be proven.⁴² Such evidence will be disclosed according to the relevant provisions.⁴³ Any disputes as to issues of fact are for determination at trial and not via preliminary motions relating to the form of the

³⁷ Case 06 Appeal Decision, para. 20; Case 04 Preliminary Motion Decision, para. 26; Case 06 Preliminary Motions Decision, para. 28, with further references; Case 07 Appeal Decision, paras 38, 42; Case 07 Preliminary Motions Decision, para. 39; Case 04 Rule 86(4) Order, para. 15.

³⁸ Case 04 Preliminary Motion Decision, para. 26; Case 06 Preliminary Motions Decision, para. 28, with further references; Case 07 Preliminary Motions Decision, para. 39.

³⁹ Case 04 Preliminary Motion Decision, para. 26; Case 06 Preliminary Motions Decision, para. 28, with further references; Case 07 Preliminary Motions Decision, para. 39.

⁴⁰ Case 06 Appeal Decision, para. 17; Case 04 Appeal Decision, para. 18; Case 04 Preliminary Motion Decision, para. 26; Case 06 Preliminary Motions Decision, para. 28, with further references; Case 07 Appeal Decision, para. 56; Case 07 Preliminary Motions Decision, para. 39.

⁴¹ Case 06 Appeal Decision, para. 20; Case 04 Appeal Decision, para. 19; Case 04 Preliminary Motion Decision, para. 27; Case 06 Preliminary Motions Decision, para. 29, with further references; Case 07 Appeal Decision, para. 38; Case 07 Preliminary Motions Decision, para. 40.

⁴² Case 06 Appeal Decision, para. 20; Case 04 Appeal Decision, paras 19, 32; Case 04 Preliminary Motion Decision, para. 27; Case 06 Preliminary Motions Decision, para. 29, with further references; Case 07 Appeal Decision, para. 38; Case 07 Preliminary Motions Decision, para. 40.

⁴³ Case 04 Appeal Decision, para. 19.

indictment.⁴⁴ At any rate, the SC legal framework ensures that, in addition to the disclosure process, further evidentiary details are provided early on to the accused in the Rule 86(3)(b) Outline, the Confirmation Decision, and the submissions under Rule 95(4) of the Rules.⁴⁵

27. Lastly, challenges concerning the legal elements of a crime or a mode of liability do not constitute challenges to the form of the indictment, but are matters to be addressed at trial.⁴⁶

B. PARTICULARS

28. When alleging that the accused personally carried out the acts underlying the crime(s) charged, it is necessary to set out, as far as possible, and with “the greatest precision”:⁴⁷ the identity of the victim(s); the place and approximate date of the alleged acts; the manner and means by which they were committed and the related mental element.⁴⁸

29. On the other hand, where an accused is not alleged to have directly carried out the crime or where, by their nature, the crimes are directed against a group or collectivity of people, the accused must be provided with as much detailed information as possible regarding: the places, times, and approximate number of

⁴⁴ Case 04 Preliminary Motion Decision, para. 26; Case 06 Preliminary Motions Decision, para. 29, with further references; Case 07 Preliminary Motions Decision, para. 40.

⁴⁵ See Rules 86(3), (5) and 95(4) of the Rules; Case 04 Preliminary Motion Decision, para. 27; Case 06 Preliminary Motions Decision, para. 29, with further references; Case 07 Preliminary Motions Decision, para. 40.

⁴⁶ Case 04 Appeal Decision, para. 32; Case 04 Preliminary Motion Decision, para. 28; Case 06 Preliminary Motions Decision, para. 30, with further references.

⁴⁷ Case 04 Preliminary Motion Decision, para. 29; Case 06 Preliminary Motions Decision, para. 31, with further references; Case 04 Rule 86(4) Order, para. 16. See also Case 06 Appeal Decision, para. 18; Case 04 Appeal Decision, paras 17, 27; Case 07 Appeal Decision, para. 43.

⁴⁸ Case 04 Appeal Decision, para. 26, with further references; Case 04 Preliminary Motion Decision, para. 29; Case 06 Preliminary Motions Decision, para. 31, with further references; Case 04 Rule 86(4) Order, para. 16.

victims; the necessary particulars to make out the elements of the offences, such as the accused's alleged conduct giving rise to criminal responsibility including the contours of the common plan or purpose, its implementation as well as the accused's contribution thereto; the related mental element; and the identities of any alleged co-perpetrators, if known.⁴⁹

30. Open-ended statements in respect of the facts underpinning the charges (such as "including, but not limited to") are not permitted,⁵⁰ unless they are exceptionally necessary given the circumstances of the case or the nature and scale of the offences and they do not create ambiguity as regards the charged offences.⁵¹ The information must be set out with precision and comprehensively, without diffusion.⁵² Moreover, when a certain category pertaining to the facts underpinning the charges is defined, and the word "including" is used to provide a list of non-exhaustive examples falling within such category, the use of the word "including" is permitted.⁵³ Where, however, a certain category is not defined, and only refers to a list of non-exhaustive examples falling within such category, preceded by the word "including", such use of the word "including" is not permitted, as it would impermissibly allow the scope of the corresponding category to be expanded at trial.⁵⁴

⁴⁹ Case 04 Preliminary Motion Decision, para. 30; Case 06 Preliminary Motions Decision, para. 32, with further references; Case 07 Appeal Decision, para. 45; Case 07 Preliminary Motions Decision, para. 41; Case 04 Rule 86(4) Order, para. 17.

⁵⁰ Case 06 Appeals Decision, para. 185; Case 04 Preliminary Motion Decision, para. 34; Case 06 Preliminary Motions Decision, para. 39, with further references; Case 07 Appeals Decision, para. 84; Case 07 Preliminary Motions Decision, para. 44; Case 04 Rule 86(4) Order, para. 17.

⁵¹ Case 06 Appeals Decision, para. 185; Case 04 Preliminary Motion Decision, para. 34; Case 06 Preliminary Motions Decision, para. 39, with further references; Case 07 Appeals Decision, para. 84; Case 07 Preliminary Motions Decision, para. 44.

⁵² Case 04 Preliminary Motion Decision, para. 34; Case 06 Preliminary Motions Decision, para. 39, with further references; Case 04 Rule 86(4) Order, para. 10.

⁵³ Case 06 Appeals Decision, para. 185; Case 04 Preliminary Motion Decision, para. 34; Case 06 Preliminary Motions Decision, para. 39.

⁵⁴ Case 04 Preliminary Motion Decision, para. 34; Case 06 Preliminary Motions Decision, para. 39.

31. Alternative formulations such as “and/or” are permitted as long as they pertain to evidentiary material to be determined at trial,⁵⁵ and do not create ambiguity as regards the charged offences or modes of liability.⁵⁶

C. DEFECTIVE INDICTMENT

32. An indictment is defective when it fails to plead the facts underpinning the charges or it does so in an insufficient or unclear manner, creating ambiguity as regards the pleaded charges, including the modes of liability, and thus impairing the Defence’s ability to prepare.⁵⁷

33. The Pre-Trial Judge accordingly notes that the aforementioned findings will inform and guide the ensuing assessment of the alleged concrete deficiencies of the Confirmed Indictment.

V. DISCUSSION

A. PRELIMINARY ISSUE

34. As regards the Defence argument of the Response’s untimeliness,⁵⁸ the Pre-Trial Judge recalls that, pursuant to Rule 76 of the Rules, any response to a motion shall be filed within ten (10) days of the motion. The Single Judge also recalls that, pursuant to Rule 9(2) of the Rules, time limits start running from the first working day after the notification of the relevant filing. The Pre-Trial Judge

⁵⁵ Case 04 Preliminary Motion Decision, para. 35; Case 07 Preliminary Motions Decision, para. 45, with further references.

⁵⁶ Case 04 Preliminary Motion Decision, para. 35; Case 07 Preliminary Motions Decision, para. 45, with further references.

⁵⁷ Case 06 Appeal Decision, paras 18-19; Case 04 Appeal Decision, para. 15; Case 04 Preliminary Motion Decision, para. 36; Case 06 Preliminary Motions Decision, para. 40, with further references; Case 07 Appeal Decision, para. 38; Case 07 Preliminary Motions Decision, para. 46.

⁵⁸ See *supra* para. 19.

notes that the Motion was filed on Friday, 9 February 2024, at 22:57 hours, and notified on the next working day,⁵⁹ i.e. on Monday, 12 February 2024, at 09:58 hours, and that, accordingly, the time limit started running from Tuesday, 13 February 2024. Noting that the Response was submitted on Thursday, 22 February 2024, at 10:48 hours, the Pre-Trial Judge finds that it was submitted within ten (10) days of the notification of the Motion, as provided under the Rules. The Pre-Trial Judge thus dismisses the Defence's challenge to the timeliness of the Response.

B. MOTION

35. The Pre-Trial Judge notes that both the First Alleged Defect and the Second Alleged Defect concern the charge of intimidation during criminal proceedings punishable under Article 387 of the KCC (Count 3).

36. The Pre-Trial Judge recalls that Article 387 of the KCC provides that whoever uses force or serious threat, or any other means of compulsion, a promise of a gift or any other form of benefit 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, when such information relates to the obstruction of criminal proceedings shall be punished by a fine of up to one hundred and twenty-five thousand (125,000) EUR and by imprisonment of two (2) to ten (10) years.⁶⁰

37. As concerns the First Alleged Defect, the Pre-Trial Judge observes that Count 3 of the Confirmed Indictment pleads that Witness 1, the individual targeted by the intimidation efforts undertaken by the Accused, is [REDACTED].⁶¹ The Pre-Trial

⁵⁹ See Article 16 of the Practice Direction on Files and Filings (KSC-BD-15, Registry Practice Direction, *Files and Filings before the Kosovo Specialist Chambers*, 17 May 2019).

⁶⁰ See Confirmation Decision, para. 26 and references therein.

⁶¹ Confirmed Indictment, para. 3.

Judge also notes that the Confirmed Indictment specifies that Witness 1 is “a person who has provided or is likely to provide information to the Special Investigative Task Force (‘SITF’), SPO, and/or to any KSC Panel about any crimes or offences falling under KSC jurisdiction”.⁶² The Pre-Trial Judge considers that the Confirmed Indictment identifies with sufficient precision the person the Accused is alleged to have sought to induce, within the meaning Article 387 of the KCC.⁶³ In the view of the Pre-Trial Judge, any further information, such as the exact nature or content of the information or material the Accused believed Witness 1 would provide to the SITF, SPO and/or SC, is a matter to be developed at trial.

38. As regards the Second Alleged Defect, the Pre-Trial Judge observes that the Defence appears to argue that the Confirmed Indictment fails to clearly or sufficiently specify to what proceedings the alternate actions set forth in Article 387 of KCC, which the Accused allegedly sought to induce Witness 1 to undertake, relate to.⁶⁴ The Pre-Trial Judge notes that the so-called actions are as follows: (i) “to refrain from making a statement”, (ii) “to make a false statement”, and (iii) “to otherwise fail to state true information”. The Pre-Trial Judge further observes that the Defence supports its argument by piecing together different paragraphs or fragments of sentences from the Confirmed Indictment and by making inferences or conjectures as to the SPO’s interpretation of Article 387 of the KCC.⁶⁵

39. The Pre-Trial Judge recalls that, in determining whether an accused was adequately put on notice of the nature and cause of the charges against him, the indictment must be considered as a whole and select paragraphs read in the

⁶² Confirmed Indictment, para. 3.

⁶³ See Confirmation Decision, para. 30; Case 07 Trial Judgment, para. 113.

⁶⁴ See *supra* paras 10-11.

⁶⁵ See Motion, paras 18-23.

context of the entire document.⁶⁶ The Pre-Trial observes that a plain reading of the Confirmed Indictment makes it clear that the Accused is alleged to have sought to induce Witness 1 “to withdraw evidence or refrain from providing evidence in KSC official proceedings” and that these actions correspond to one of the three alternate limbs set forth in Article 387 of the KCC.⁶⁷ The Pre-Trial Judge is of the view that the further information sought by the Defence, i.e. whether the information, evidence, or statement, the Accused believed Witness 1 would provide to the SITF, SPO and/or SC, relates to obstruction proceedings or other proceedings before the SC, do not constitute particulars necessary to make out the elements of the offence punishable under Article 387 of the KCC.⁶⁸

40. Moreover, to the extent that the Defence seeks guidance on the language of Article 387 of the KCC, i.e. as to whether the phrase “when such information relates to obstruction of criminal proceedings” qualifies the three alternate limbs or actions set forth in Article 387 of the KCC, the Pre-Trial Judge recalls that (i) interpretation has been given authoritatively in another case;⁶⁹ and (ii) challenges concerning the legal elements of an offence do not constitute challenges to the form of the indictment, but are matters to be addressed at trial.⁷⁰

41. In addition to the above, the Pre-Trial Judge also notes that, as foreseen under the SC legal framework,⁷¹ the Accused was provided early on with further evidentiary details concerning the content or nature of the testimony the Accused believed that Witness 1 would provide to the SITF, SPO and/or the SC, in the

⁶⁶ See *supra* para. 25.

⁶⁷ See Confirmed Indictment, paras 5, 7, 21, 22.

⁶⁸ See *supra* paras 28-29.

⁶⁹ See KSC-SC-2023-01, F00021, Supreme Court, *Decision on Requests for Protection of Legality*, 18 September 2023, public, paras 60-62 and references therein.

⁷⁰ See *supra* para. 27.

⁷¹ See *supra* para. 26.

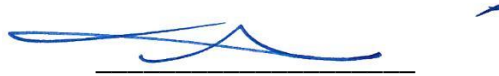
Rule 86(3)(b) Outline,⁷² the Confirmation Decision,⁷³ through the disclosure process,⁷⁴ and in the submissions under Rule 95(4) of the Rules.⁷⁵

42. In light of the foregoing, the Pre-Trial Judge finds that the Confirmed Indictment sets out with sufficient clarity and specificity the facts underpinning the charge of intimidation during criminal proceedings and provides the necessary particulars to make out the elements of this offence charged under Count 3.⁷⁶ Accordingly, the Pre-Trial Judges dismisses the Defence's challenges to the form of the Confirmed Indictment.

VI. DISPOSITION

43. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a. **REJECTS** the Motion.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Tuesday, 19 March 2024

At The Hague, the Netherlands.

⁷² See KSC-BC-2023-11, F00002/A02, Specialist Prosecutor, *Rule 86(3)(b) Outline*, 20 November 2023 (reclassified as confidential on 19 December 2023), confidential, pp. 2-3, 6-7.

⁷³ See Confirmation Decision, paras 73-75. The Pre-Trial Judge notes that the Confirmation Decision was made available to the Accused following its reclassification as confidential on 12 December 2023.

⁷⁴ See [REDACTED]; [REDACTED]. [REDACTED].

⁷⁵ See KSC-BC-2023-10, F00177, Specialist Prosecutor, *Submission of Prosecution Pre-Trial Brief, Witness and Exhibit lists, and Rule 109(c) Chart*, 16 February 2024, public, with Annexes 1-4, confidential.

⁷⁶ See *supra* paras 37, 39-40.