

1 Wednesday, 18 December 2024

2 [Open session]

3 [Plea Agreement Hearing]

4 [The accused entered the courtroom]

5 [The Accused Bahtijari appeared via videolink]

6 --- Upon commencing at 9.04 a.m.

7 PRESIDING JUDGE VELDT-FOGLIA: Good morning, and welcome inside  
8 and outside this courtroom.

9 Court Officer, could you call the case, please.

10 THE COURT OFFICER: Good morning, Your Honours. This is file  
11 KSC-BC-2023-10, The Specialist Prosecutor versus Sabit Januzi,  
12 Ismet Bahtijari, and Haxhi Shala. Thank you.

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

14 I would kindly ask the parties to introduce themselves, starting  
15 with the Specialist Prosecutor's Office. You have the floor.

16 MS. SHAHABUDDIN: Good morning. Tazneen Shahabuddin, Prosecutor  
17 for the Specialist Prosecutor's Office. I have with me my colleagues  
18 Prosecutor Josh Hafetz, Associate Prosecutor John Devaney, and behind  
19 us, Case Manager Line Pedersen.

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

21 Very well. I turn to the Defence. And could you kindly add to  
22 your introduction who of your team is participating remotely or is  
23 present in the courtroom and likewise for your clients.

24 We start with the Defence for Mr. Shala.

25 MR. CADMAN: Good morning, Your Honour. Toby Cadman,

1 Specialist Counsel for Mr. Haxhi Shala. I'm joined by Co-Counsel  
2 John Cubbon, Associate Isabella Kirwan, Investigator Admir Berisha,  
3 all present in the courtroom, as is Mr. Shala.

4 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you.

5 Then we proceed with the Defence for Mr. Januzi.

6 MR. REES: It's Jonathan Rees, King's Counsel, for Mr. Januzi.  
7 I am assisted by Co-Counsel Mr. Huw Bowden, who is in court; also by  
8 team member Mr. Muharem Halilaj, who is also in the front row. We  
9 are also assisted today by Elin Morgan, Zoe Laugharne, Sali Harmes  
10 and Lauren Chambers, who are in the row behind Mr. Cadman's team.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much, Defence  
12 counsel.

13 And now we turn to the counsel for Mr. Bahtijari. You have the  
14 floor.

15 MS. GERRY: [Microphone not activated].

16 Good morning to the Court and everyone in and around the Court.  
17 I am Felicity Gerry. I am here for Mr. Bahtijari, who is online and  
18 available to the Court. I am joined in court by co-counsel  
19 Marion Carrin and legal associate Yuqing Liu, and online by  
20 Phillipa Stafford, Cassandra Le Good, and Ismar Ridzalovic. Thank  
21 you.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

23 Okay. Then we proceed. The Panel intends to conduct the  
24 hearings today in public session.

25 The Panel reminds the parties that if there's any need to go

1 into private session, and, for instance, to respect the privacy of  
2 the accused or to avoid disclosing any confidential information. I  
3 expect the parties to seize the Panel immediately, and then we can  
4 decide on it.

5 The Panel has conveyed today's hearing to discuss and to hear  
6 the parties' submissions on various issues pertaining to the plea  
7 agreement proceedings.

8 I will first give a procedural background overview in this  
9 regard also for the purposes of the public.

10 On 21 October of this year, the Panel decided that the trial  
11 shall open on 14 November 2024. This is filing 559.

12 And on 11 November, the SPO and the Defence notified the Panel  
13 that they were in the final stages of concluding for each of the  
14 accused plea agreements. And this is filing 587.

15 On 12 November, following the request of the parties, the Panel  
16 adjourned the commencement of the trial in order to facilitate the  
17 completion of the plea agreements. This is filing 593.

18 On 13 November, the SPO informed the Panel that it entered into  
19 plea agreements with Mr. Shala, Mr. Januzi, and Mr. Bahtijari, and  
20 disclosed said agreements to the Panel. And this is filing 596/COR.

21 On 14 November, following the disclosure of the plea agreements,  
22 the Panel granted the request of the parties to suspend all previous  
23 set time limits for future filings, with the exception of the time  
24 limits pertaining to the review of the accused's detention. And this  
25 is filing 600.

1           On 29 November, the Panel issued the Decision on Matters Related  
2 to Plea Proceedings - this is filing 612, and hereafter I will refer  
3 to it as the Decision on Plea Proceedings - whereby it ordered the  
4 parties to: One, submit a revised version of each plea agreement  
5 complying with the requirements of Rule 94 of the Rules of Procedure  
6 and Evidence before the Kosovo Specialist Chambers; and to file  
7 written submissions addressing matters related to sentencing and  
8 present any information of evidence on sentencing, should they so  
9 wish.

10           The Panel further ordered the SPO to submit a revised  
11 indictment, taking into account the terms of the revised plea  
12 agreements. And we also decided to convene hearings on plea  
13 proceedings today and tomorrow.

14           On Friday, 6 December, the SPO filed its submissions on plea  
15 agreements and sentencing, including a revised version of each plea  
16 agreement. And on the same day, it also filed a revised indictment  
17 as ordered by the Panel.

18           Also on the same day, 6 December was a busy day, the Shala  
19 Defence, the Januzi Defence, and the Bahtijari Defence filed their  
20 respective submissions addressing matters related to sentencing and  
21 presenting relevant information and/or evidence as requested.

22           On Monday, 9 December, the SPO submitted a request, filing 621,  
23 asking the Panel to reconsider its decision on the plea proceedings,  
24 and that decision was decision 612, or, in the alternative, grant the  
25 SPO leave to appeal said decision. The Shala Defence and the

1 Bahtijari Defence responded to the SPO request on 12 and 13 December  
2 2024, respectively. And the Januzi Defence indicated it would not  
3 file a response. And the SPO indicated that it would not file a  
4 reply.

5 Last Friday, 13 December, the Panel issued a decision setting  
6 the agenda for today's hearing and ordered the reclassification of  
7 Mr. Shala's and Mr. Januzi's revised plea agreements in the interest  
8 of the publicity of proceedings. In the same decision, the Panel  
9 also ruled that Mr. Bahtijari's revised plea agreement would not be  
10 discussed in the present plea hearings because it still failed to  
11 comply with the requirements under Rule 94 of the Rules. This is  
12 filing 626.

13 On 16 December, so last Monday, the parties informed the Panel  
14 that it reached a new plea agreement with Mr. Bahtijari and submitted  
15 said agreement to the Panel. This is filing 628. The SPO and  
16 the Bahtijari Defence submit that the new plea agreement resolves the  
17 issues previously raised by the Panel and asked the latter, in the  
18 interest of advancing the proceedings expeditiously and  
19 simultaneously, to consider the new plea agreement and to schedule a  
20 plea hearing for Mr. Bahtijari on 18 December 2024.

21 And yesterday, the SPO filed a notice to withdraw its request  
22 bearing number 621 in which it sought reconsideration of the decision  
23 on plea proceedings or, in the alternative, leave to appeal said  
24 decision. And this is filing 631.

25 And, finally, also yesterday, the SPO submitted a further

1 revised indictment. And this is filing 630.

2 Very well. In light of these procedural developments, the Panel  
3 will proceed as follows. During the first session, the Panel will  
4 discuss matters which are of concern to all three accused and will  
5 then issue a number of oral orders.

6 After that, we will have two separate sessions to discuss the  
7 plea agreements of Mr. Shala, who is kind of hidden in the back, and  
8 Mr. Januzi, respectively, with the SPO to advance, to the extent  
9 possible, with the proceedings.

10 First, from 11.00 till 1.00, we will discuss Mr. Shala's plea  
11 agreement, which is filing 618, Annex 1. Followed by another session  
12 after the break, from half past 2.00 to half past 4.00, to discuss  
13 Mr. Januzi's plea agreement, which is filing 618, Annex 2, and filing  
14 632, Annex 1, with the Albanian translation.

15 During the two sessions, the Panel will ask Mr. Shala and  
16 Mr. Januzi to confirm, pursuant to Rule 94(5)(a) of the Rules, the  
17 following: Whether their respective Specialist Counsel have  
18 discussed with Mr. Shala and Mr. Januzi the terms of their respective  
19 plea agreements; whether Mr. Shala and -- yes -- no, no, Mr. Shala,  
20 maybe you could go a little bit more to the right. Yes, then I can  
21 see you. It's much better. Thank you.

22 Whether Mr. Shala and Mr. Januzi understand the terms of their  
23 respective plea agreements. Third, whether Mr. Shala and Mr. Januzi  
24 confirm the admission of the facts in respect of the charges  
25 contained in the respective plea agreements; whether Mr. Shala and

1 Mr. Januzi have agreed to the respective plea agreements voluntarily,  
2 without threats or coercion; and whether Mr. Shala and Mr. Januzi  
3 understand the consequences of their respective plea agreements and  
4 waive the right to be tried under the ordinary trial procedure.

5 The Panel will further ask Mr. Shala and Mr. Januzi to confirm  
6 that they wish to change the initial plea and enter a guilty plea for  
7 Counts 1 and 2 of the revised indictment of 6 December 2024, and I  
8 will come back to the status of this indictment later.

9 The Panel will also give the opportunity to the SPO, the Shala  
10 Defence, and the Januzi Defence to make additional oral submissions  
11 on sentencing, in addition to the ones already received in writing,  
12 as well as on any other matter relevant to the plea proceedings.

13 The Panel will further give the opportunity to Mr. Shala and to  
14 Mr. Januzi, should they so wish, to make a statement regarding the  
15 plea proceedings, including on the matters of guilt and sentencing.

16 Very well.

17 MR. REES: Your Honour, can I just mention one matter?

18 PRESIDING JUDGE VELDT-FOGLIA: Of course.

19 MR. REES: Your Honour said that later today you intend to ask  
20 Mr. Januzi if he wishes to change his plea by reference to the  
21 revised indictment that was submitted on 6 December. In fact, it  
22 should be the further revised indictment that's used for these  
23 purposes as submitted yesterday.

24 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel. I  
25 will get back to that -- to the status, as I just said, of this

1 indictment, and then we can further discuss it. I noted --

2 MR. REES: Very well.

3 PRESIDING JUDGE VELDT-FOGLIA: -- your observation.

4 Very well. Let us now turn to the preliminary matters.

5 At the outset, the Panel takes note of the SPO's withdrawal of  
6 its request bearing number 621 in which it sought reconsideration of  
7 the decision on plea proceedings or, in the alternative, leave to  
8 appeal said decision and, accordingly, will not address it further.

9 The Panel also informs the parties that even though the SPO  
10 withdrew its request, considering its late notice, together with  
11 other late submissions, the Panel will not issue a decision on the  
12 plea agreements at the end of this hearing, which will also continue  
13 tomorrow. A written decision on whether the Panel approves the plea  
14 agreements will be issued in due course following today and  
15 tomorrow's hearing as well as the Panel's assessment of whether  
16 additional written submissions or hearings are required.

17 The Panel finally informs the parties that an order on the  
18 submission of further revised plea agreements will also be issued in  
19 due course.

20 Next, as regards the SPO's submission on a further revised  
21 indictment, which is the filing bearing number 630, Annex 1, the  
22 Panel notes that said revised document was notified yesterday at 1524  
23 hours. In this light, the Panel will not consider it for the purpose  
24 of this hearing given that it was not submitted sufficiently in  
25 advance to allow the Panel adequate time for proper review and



1 consideration. The Panel will consider it in due course.

2 Therefore, the Panel finds that the indictment that is currently  
3 operative in this case, in line with the Panel's instructions at  
4 paragraphs 23 and 34(b) of the decision bearing number 612, is the  
5 one submitted by the SPO on 6 December 2024 with filing bearing  
6 number 619, Annex 1, and we will refer to it as --

7 MR. REES: [Microphone not activated].

8 PRESIDING JUDGE VELDT-FOGLIA: Wait, wait, wait. I am still  
9 talking. You cannot interrupt me. Thereafter, we will refer on to  
10 it as the 6 December 2024 indictment.

11 Before proceeding, and I will also give you the floor,  
12 Mr. Januzi -- Mr. Rees, don't worry, I will give you the floor.

13 Before proceeding, we ask, however, the parties to explain why  
14 paragraphs 11 and 19 of the 6 December 2024 indictment were deleted  
15 in the indictment submitted yesterday, which is filing 630, Annex 1,  
16 and whether, and if it does, to what extent, said deletion affects  
17 the charges as pled in the plea agreements.

18 I will first give the floor to -- no, I will do it otherwise.  
19 This question is there, but I will first give the floor to Mr. Rees  
20 because he has asked for it, and then I will also give the floor to  
21 the other two Defence counsels and to the SPO.

22 MR. REES: Yes, I can --

23 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, you have the  
24 floor.

25 MR. REES: So I can answer the first question as to why those

1 paragraphs were deleted very simply.

2 Your Honour ordered that the indictment be revised to reflect  
3 the content of the plea agreements. The plea agreements focus solely  
4 on intimidation by means of an offer of a benefit. Threat is no part  
5 of the plea agreements, neither is fear or concern being caused to  
6 the alleged witnesses.

7 The effect on the witnesses is not agreed and has not been  
8 proven against Mr. Januzi either. Therefore, once the 6 December  
9 revised indictment was submitted, we raised with the SPO that in our  
10 view it did not accord with the order to revise the indictment to  
11 reflect the content of the plea agreements.

12 There was then a prolonged period of constructive *inter partes*  
13 correspondence, which resulted eventually in the further revised  
14 indictment for the purposes of the plea agreements which was  
15 submitted and dated 17 December 2024. It's a document that, it is  
16 agreed between the parties, reflects the plea agreements.

17 It doesn't affect the plea agreement at all because it is  
18 consistent with the plea agreement for Mr. Januzi. I'll let my  
19 friends deal with the position of Mr. Shala and Mr. Bahtijari.  
20 Although, I can say this, that it's understood that all parties are  
21 in agreement that this reflects the plea agreements across all  
22 defendants' cases.

23 As far as the plea agreements go, the agreements were based upon  
24 agreed factual bases that are annexed to the plea agreements. You  
25 will see in those plea agreements, in the factual written bases, no

1 reference to any consequence of fear or concern on the part of the  
2 witnesses. Accordingly, it's our submission that the indictment that  
3 is relevant for the purposes of these plea agreements is the agreed  
4 revised indictment dated 17 December 2024.

5 PRESIDING JUDGE VELDT-FOGLIA: I hear your submission. And is  
6 there any consequence for the fact that you see that that should be  
7 the document we should be using today?

8 MR. REES: Yes, it is. And you should disregard the earlier  
9 revised indictment because that was submitted, as the SPO, quite  
10 fairly and appropriately, notified the Panel at the time it was  
11 submitted, that there were ongoing discussions taking place between  
12 the parties to reach an agreement.

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Rees. I will not  
14 enter into a discussion with you on this. However, allow me to note  
15 that we noted that there were ongoing discussions, and we also note  
16 that we received this further revised indictment yesterday late  
17 afternoon. So that's for the record.

18 MR. REES: And that is the consequence of much hard work on the  
19 part of the Prosecution team that sits opposite me, and I commend  
20 them for that and for the constructive spirit with which they entered  
21 into those discussions. It was the result of much hard work on our  
22 part as well to reach that situation.

23 Of course, we wish that we would have been in a position to have  
24 reached agreement sooner than we did. But given that the further  
25 revised indictment dated 17 December reflects the plea agreements,

1 the substance of which the Panel has had now for some time, I do,  
2 nevertheless, submit that given the Panel's, of course, adequate  
3 capacity to digest the contents of the plea agreements, that we  
4 proceed today with reference to the 17 December further revised  
5 indictment, and the previous revised indictment effectively be set  
6 aside.

7 PRESIDING JUDGE VELDT-FOGLIA: The last part we already noted,  
8 but thank you for this further addition. Thank you.

9 I will give the floor now to Defence counsel for Mr. Shala.

10 MR. CADMAN: Your Honour, it's a common position. Certainly,  
11 the position as far as Mr. Shala is concerned is that the 6 December  
12 indictment does not properly reflect what is set out in the plea  
13 agreement. The amendments that have been made that are now reflected  
14 in the 17 December indictment properly reflect the ongoing  
15 *inter partes* discussions that have taken place and properly reflect  
16 what Mr. Shala has agreed to.

17 It is our position equally that it is the 17 December indictment  
18 that should be proceeded with, not the 6 December indictment.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

20 MR. CADMAN: And I would only add that it is difficult to  
21 proceed further with these matters today unless and until the  
22 17 December indictment is considered by Your Honours to be the  
23 operative indictment for the purpose of these proceedings.

24 PRESIDING JUDGE VELDT-FOGLIA: That's a clear submission. Thank  
25 you.

1 Defence counsel for Mr. Bahtijari, you have the floor.

2 MS. GERRY: We agree with the submissions that have been made by  
3 Mr. Rees on behalf Mr. Januzi and by Mr. Cadman on behalf of  
4 Mr. Shala.

5 The indictment dated 17 December is an indictment on which  
6 notice was given which has been agreed. It is cooperative, it is  
7 sensible, it is a sensible resolution of the issues, it properly  
8 reflects the evidence, and it properly reflects the plea agreements.

9 As the Court has noted, it has had time since yesterday  
10 afternoon and has clearly recognised which paragraphs have been  
11 deleted. These proceedings should proceed on the indictment for  
12 17 December as we have all agreed and worked very hard to provide it  
13 for you for yesterday.

14 I must add that, of course, Mr. Bahtijari's position is that he  
15 should be released immediately, so any further delay is of a complete  
16 prejudice to his position. Thank you.

17 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

18 Is it your position, Defence counsel, that the only changes that  
19 are made to the further revised indictment are the paragraphs I just  
20 mentioned?

21 MS. GERRY: No, I --

22 PRESIDING JUDGE VELDT-FOGLIA: Okay.

23 MS. GERRY: -- was summarising what I was submitting.

24 PRESIDING JUDGE VELDT-FOGLIA: Okay. Then we are clear on that.  
25 Good.

1 The SPO, please. Madam Prosecutor, you have the floor.

2 MS. SHAHABUDDIN: We would agree with our colleagues'  
3 submissions, various Specialist Counsel, regarding how the filing of  
4 the further revised indictment came to be.

5 At the time that the SPO filed the 6 December revised  
6 indictment, it was our view that it was in line with the Panel's  
7 earlier decision on the plea proceedings in that it withdrew Count 1  
8 as well as relevant facts and allegations, taking into account the  
9 terms of the revised plea agreements.

10 However, we did share that indictment with Specialist Counsel  
11 before making the 6 December filing, which is why in the cover filing  
12 for that submission we noted that there would need to be further  
13 discussions in light of Specialist Counsel's assessment of what the  
14 same decision from the Panel, the decision on the plea proceedings,  
15 required on the further revised indictment. And so those  
16 conversations did continue diligently, and we were only able to reach  
17 an agreement yesterday, and then we filed the further revised  
18 indictment right away. So that's a little bit of the history there.

19 But it is also the strong position of the SPO, in accordance  
20 with what my colleagues have said, that the terms of the revised  
21 indictment, the further revised indictment provide no bar here to the  
22 acceptance by the Panel of the plea agreements from each of the three  
23 accused because the plea agreements refer to specific paragraphs and  
24 provisions of the amended indictment that was filed under filing 379  
25 on 10 July, and those provisions are not, in substance, changed at

1 all in either the 6 December revised indictment or in the further  
2 revised indictment submitted yesterday.

3 So for the purposes of the plea agreements and what the parties  
4 have agreed to in terms of the counts to which the accused propose to  
5 plead guilty, those aspects of the indictment remain unchanged and  
6 should not have any impact on the ability of the Panel to accept the  
7 plea agreements or to proceed under the agreements as written for the  
8 purposes of today's various hearings.

9 I want to make one further point which is that Your Honour  
10 referred to the 6 December revised indictment as the operative  
11 indictment. And I want to note that in submitting both the  
12 6 December revised indictment and the 17 December further revised  
13 indictment, the SPO was clear in making a submission that those  
14 indictments were only to take effect once the plea agreements had  
15 been accepted by the Panel for each of the accused and the guilty  
16 pleas actually taken, such that we are not put in a position where,  
17 for one reason or another, these guilty pleas do not end up resolving  
18 the case and then we are left with a revised indictment that was  
19 designed with that end in mind, and then we're put in a position of  
20 having to proceed to trial under such an indictment.

21 So I just wanted to make that note with regard to the operative  
22 indictment. It's our position that, as of today, until the guilty  
23 pleas are accepted and we're in a position to move to sentencing,  
24 that the operative indictment would remain the 10 July amended  
25 indictment.

1           PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor. We  
2 will have another round, and I started at my left-hand side, so  
3 that's how we will proceed.

4           So I will give again the floor to -- if necessary, of course, to  
5 the Defence counsels.

6           Mr. Rees, would you have anything to add in this respect?

7           MR. REES: No, it's clear that at the bar, all parties,  
8 Prosecution and Defence, are in accordance that the indictment that  
9 should be considered for the purposes of the plea agreement is the  
10 17 December 2024 indictment. It reflects accurately the plea  
11 agreements. The revised indictment of 6 December should be  
12 disregarded, and we should proceed in relation to the 17 December  
13 2024 indictment.

14          PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

15          Defence counsel for Mr. Shala, Mr. Cadman.

16          MR. CADMAN: I concur with what Mr. Rees has said and what the  
17 SPO has stated.

18          The only thing I would add is that it puts us in a slightly  
19 difficult position as to how we proceed with certain decisions not  
20 being made. I don't really see how we can proceed with submissions  
21 on sentencing, as we are required to do, until we know a decision has  
22 been taken as to whether the plea agreements have been accepted or  
23 not and under what indictment Mr. Shala in particular is going to be  
24 asked to enter a plea.

25          So, obviously, it's a matter for Your Honours to decide the



1 procedure, but I would certainly urge a decision has to be taken,  
2 first of all, in respect of the matters that have just been discussed  
3 before we can really take matters any further.

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.  
5 Defence counsel for Mr. Bahtijari.

6 MS. GERRY: Thank you. We agree with the submissions that have  
7 been made by everyone in the courtroom, and we particularly agree  
8 with the submissions made by Mr. Cadman that it does not make sense  
9 to proceed until we know the indictment is accepted and the plea  
10 agreements are accepted. So we would invite the Panel to retire and  
11 make a decision on that today, please.

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you.  
13 The floor is now for Madam Prosecutor.

14 MS. SHAHABUDDIN: Thank you. I have a slightly different take  
15 and just wish to clarify the position I articulated earlier.

16 We agree that in terms of a revised indictment we should proceed  
17 with the indictment that was filed yesterday. However, because each  
18 of the plea agreements refers specifically to the 10 July indictment  
19 and provisions and paragraphs contained therein, and because that  
20 will not change, and by design will not change whatever further  
21 revised indictments may be required, it's our position that there is  
22 no barrier to proceeding today with regard to further clarifying,  
23 entering into the colloquies that Your Honour proposed earlier with  
24 regard to the plea agreements that have been filed as between the SPO  
25 and each of the accused for the purposes of today's proceedings.

1           We can certainly -- we can represent that the plea agreement is  
2           a complete document that reflects the counts of the indictment to  
3           which each of the accused propose to plead guilty, the specific  
4           charges, and contain the factual bases that would be needed for  
5           Your Honours to be satisfied as to the guilt of each of the accused  
6           for those counts.

7           And so in that respect, we do differ as to how we think today  
8           should proceed.

9           PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor.

10          If views are sufficiently exchanged, I think it's more important  
11          to have everybody's view sufficiently represented here or submitted  
12          here. So I don't see anyone else asking the floor on this. Good.  
13          Very well.

14          I have still two oral orders that I would like to issue. And  
15          after that, the Panel will adjourn and we will discuss the issue that  
16          is laying before us, and we will come back after that with a ruling.  
17          I see nodding faces, so that's good. Very well. Yes.

18          The first oral order concerns the new plea agreement submitted  
19          by the SPO and the Bahtijari Defence last Monday on 16 December 2024,  
20          which is filing 628, Annex 1. And I have already given the  
21          procedural history with regard to this filing.

22          Having reviewed -- you cannot hear me?

23          MS. GERRY: [Microphone not activated].

24          PRESIDING JUDGE VELDT-FOGLIA: But maybe --

25          MS. GERRY: [Microphone not activated].

1           PRESIDING JUDGE VELDT-FOGLIA: But maybe it helps if you put on  
2 the -- yeah, thank you.

3           MS. GERRY: [Microphone not activated].

4           PRESIDING JUDGE VELDT-FOGLIA: But the microphone should be off.

5           MS. GERRY: [Microphone not activated].

6           PRESIDING JUDGE VELDT-FOGLIA: But we can put the sound louder.

7           MS. GERRY: [Microphone not activated].

8           PRESIDING JUDGE VELDT-FOGLIA: Okay. Very well. Yes. It's an  
9 oral order directed to the Bahtijari Defence, so, yes, important that  
10 you don't miss anything. Very well.

11           Having reviewed the new plea agreement, the Panel finds that  
12 said agreement complies with the requirements of Rule 94(2) of the  
13 Rules.

14           The Panel does find it appropriate to schedule a hearing on  
15 Thursday, 19 December 2024, at 1.00, subject to any decision the  
16 Panel may take today with regard to the outstanding questions to  
17 discuss Mr. Bahtijari's new plea agreement with the SPO in order to  
18 advance, to the extent possible, with the proceedings.

19           During this hearing, the Panel will follow the agenda set out in  
20 paragraph 20 of the decision bearing filing 626. Accordingly, the  
21 Bahtijari Defence is instructed to indicate whether Mr. Bahtijari  
22 intends to make any statement on the plea proceedings, including on  
23 the matters of guilt and sentencing, by today, Wednesday,  
24 18 December, at 6.00.

25           MS. GERRY: I can answer that now. He doesn't.

1           PRESIDING JUDGE VELDT-FOGLIA: Okay. For next time, just allow  
2 me to finish my oral order.

3           MS. GERRY: [Microphone not activated].

4           PRESIDING JUDGE VELDT-FOGLIA: I will tell when my oral order  
5 has finished. Then I -- for next time. I always say "this concludes  
6 my first oral order."

7           MS. GERRY: That's very helpful. Thank you very much.

8           PRESIDING JUDGE VELDT-FOGLIA: Furthermore, considering the  
9 nature of the hearing and the matters to be discussed therein, the  
10 Panel decides, pursuant to Article 40(2) of the Law, to hold said  
11 hearing in the presence of Mr. Bahtijari. More specifically, the  
12 Panel finds it appropriate to order Mr. Bahtijari to be present  
13 throughout the hearing of Thursday, 19 December 2024 in the  
14 courtroom.

15           Finally, in light of the submissions of the new plea agreement  
16 and the Panel's decision to proceed in discussing its terms with the  
17 accused during tomorrow's hearing, the Panel finds it appropriate to  
18 reclassify as public Mr. Bahtijari's new plea agreement.  
19 Accordingly, the Panel instructs the Registrar to reclassify as  
20 public Mr. Bahtijari's new plea agreement as soon as possible, which  
21 is filing 628 with Annex 1.

22           And this concludes the Panel's first oral ruling.

23           And let me say this. We all speak when we are given the floor.  
24 We don't step up and we start talking. We are given the floor and  
25 then we proceed talking.

1           There is a second order. The next oral order is on reparations.

2           The Panel notes the references made to reparations in the plea  
3 agreements and that some parties have reserved their rights to make  
4 further submissions on this issue. In this regard, the Panel recalls  
5 that no framework decision regarding victim participation was issued  
6 in this case, unlike in Case 04 and 05, in order to inform potential  
7 victims of their rights under the Law and the Rules.

8           In order to ensure any rights of any potential victims, and  
9 given the specificity of this case, the Panel orders the following.

10          As a first step, the Victims Participation Office, further  
11 referred to as VPO, should receive the -- and this is subject to our  
12 further ruling, the 6 December 2024 indictment, 619, Annex 1, and the  
13 Confirmation Decision of 2 October 2023, filing 8, and the Decision  
14 on the Confirmation of Amendments to the Indictment of 8 July 2024,  
15 which is filing 377. And to this end the Panel instructs the  
16 Registry to make available to these filings to the VPO. The VPO is  
17 refrain from disclosing to any person information subject to  
18 redactions in the public versions of these filings.

19          Given that the unredacted version of said indictment, the  
20 Confirmation Decision of 2 October, and the Decision on the  
21 Confirmation of Amendments to the Indictment of 8 July 2024 clearly  
22 indicate who potential victims might be, the Panel orders the SPO to  
23 share with the VPO, to the extent available, contact details of such  
24 persons so as to enable the VPO to reach out to them without delay in  
25 coordination with the Witness Protection and Support Office, if

1 necessary. Moreover, the SPO should provide the VPO with any other  
2 necessary information or recommendation related to the security of  
3 the applicants so that the VPO can exercise its functions fully and  
4 with due respect to the prevailing security considerations.

5 The VPO should ensure immediate reach-out to assist any  
6 would-be, because there's no clarity on that, of course, any would-be  
7 applicants with the application process. Only in the case there are  
8 applicants the VPO should send the report to the Panel, which  
9 includes a summary of the collection process of applications; the  
10 total number of applications received and the number of applications  
11 submitted; the number of direct and indirect victims whose  
12 applications have been submitted, and the type of documentation  
13 accepted to prove identity, kinship, and guardianship; the type of  
14 harm alleged and the type of documentation submitted to prove such  
15 harm; a summary of the protected measures requested and the VPO  
16 recommendations regarding such measure; and a summary of the VPO  
17 recommendation on admissibility, indicating the number of  
18 applications proposed to be admitted or rejected with a general  
19 description of the reasons for each group.

20 In the light of the limited scope of this case, the Panel orders  
21 the VPO to submit the above report by 20 January 2025 and indicate if  
22 it can be shared with parties, in accordance with Rule 113(2) of the  
23 Rules, so as to enable parties to respond, in accordance with  
24 Rule 113(3) of the Rules, by 27 January of next year.

25 The Panel notes that, pursuant to Rule 130(6) of the Rules,

1 applicants may appeal as a right of decision of this Panel denying  
2 their applications, and such appeals must be submitted before the  
3 Court of Appeals Panel within 14 days of the decision denying the  
4 application.

5 And this concludes the Panel's second oral ruling.

6 The Panel will now adjourn, take for now a 30-minute break to  
7 deliberate on the outstanding issue, and then we will come back.

8 The hearing is adjourned.

9 --- Recess taken at 9.49 a.m.

10 --- On resuming at 10.35 a.m.

11 PRESIDING JUDGE VELDT-FOGLIA: Welcome back. Very well.

12 The Panel has deliberated on the outstanding issue, and we will  
13 give an oral order.

14 Having considered the submissions of the parties on the matter  
15 of the further revised indictment submitted on 17 December 2024, the  
16 Panel decides to maintain its decision not to consider this  
17 indictment for the purposes of this hearing.

18 The Panel notes that the three plea agreements, as they stand,  
19 refer to the Confirmed Indictment of 10 July 2024. As a result, the  
20 Panel finds that there is no impediment to proceed to discuss the  
21 terms of the plea agreements on this basis. However, should the  
22 parties disagree on the basis I just outlined, the hearing will be  
23 adjourned and the Panel will issue further instructions in due  
24 course. If only one of the Defence teams would agree on this basis,  
25 the Panel will only proceed with that accused.

1 This is the oral order of the Panel.

2 And I will give the floor first to the Defence, and I propose  
3 that they can also liaise with their client. So we give permission  
4 for that. And then I will first give the Defence teams the floor,  
5 and then I will give the floor to the SPO.

6 MR. REES: Your Honour, can I ask for a clarification of one  
7 matter. At the outset today, Your Honour, when you went through how  
8 you envisaged the procedure to take place, you referred to the  
9 previous order, F00626, and the content in paragraph 20 thereof, in  
10 which you reminded us that the Panel will go through with each  
11 relevant defendant the questions that relate to Rules 94(5) (a) and  
12 (d) of the Rules, and then added that you would then ask them to  
13 confirm how they would plead by reference to the revised indictment  
14 of 6 December.

15 Do I take it from Your Honour's oral order that you no longer --  
16 the Panel no longer intends to ask the defendant how they intend to  
17 plead by reference to the revised indictment dated 6 December; and if  
18 that's right, whether Your Honour intends the Panel to ask the  
19 question as to how they intend to plead by reference to the specific  
20 paragraphs in the indictment as amended in July of this year, or  
21 simply not ask that question at all?

22 PRESIDING JUDGE VELDT-FOGLIA: Mr. Rees, would there be a  
23 preference of the Defence?

24 MR. REES: The preference of the Defence would be for, if that  
25 question is to be asked, it's to be asked by reference to the



1 17 December further revised indictment.

2 PRESIDING JUDGE VELDT-FOGLIA: Okay. That's clear. It is my  
3 understanding that we will -- or it should be the understanding that  
4 we will proceed on the basis of the plea agreements that you have  
5 submitted to the Panel. On that basis, we will proceed, and to the  
6 reference therein with a view to the questions we will be asking.

7 MR. REES: So, again, for clarification purposes, do I take it  
8 that Your Honour therefore does not intend the Panel to ask any of  
9 the defendants how they intend to plead by reference to an  
10 indictment?

11 PRESIDING JUDGE VELDT-FOGLIA: I will tell you how we will  
12 proceed. That we will ask these questions based on the plea  
13 agreement you have submitted to us. The questions you just said, we  
14 are going to ask them to your client based on the plea agreements as  
15 they are now submitted to the parties with reference to the 10 July  
16 2024.

17 MR. REES: And the specific paragraphs and only those  
18 paragraphs --

19 PRESIDING JUDGE VELDT-FOGLIA: Of course.

20 MR. REES: -- that are within the July indictment?

21 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, it is in no way  
22 the intention of this Panel to change anything during this hearing,  
23 when asking questions, with regard to what you have agreed with the  
24 SPO.

25 So if in paragraph 5 of your plea agreement on behalf of your

1 client you refer to paragraphs 8 and 9 and all the further  
2 paragraphs, that is what we are going to mention.

3 MR. REES: Yes.

4 PRESIDING JUDGE VELDT-FOGLIA: I'm not going to --

5 MR. REES: No other paragraph --

6 PRESIDING JUDGE VELDT-FOGLIA: -- mention 12. I'm not going to  
7 mention paragraph 19. If that's --

8 MR. REES: That's --

9 PRESIDING JUDGE VELDT-FOGLIA: It's very clear that we are not  
10 going to refer to that. And if we are going to refer to Count 2 and  
11 3 of the indictment, the Confirmed Indictment of 10 July 2024, which  
12 are -- in the revised indictment and in the further revised  
13 indictment are 1 and 2, it's still those counts. We are not changing  
14 anything.

15 So we would be saying 2 and 3, and you would know that in the  
16 revised and the further revised that would be 1 and 2. So there is  
17 no intention on this side to change anything in that regard.

18 MR. REES: No. Understood. And then for my part, we're in a  
19 position to proceed.

20 PRESIDING JUDGE VELDT-FOGLIA: You are in a position to proceed?

21 MR. REES: Yes.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

23 Then I give the floor to the Defence counsel for Mr. Shala.

24 Mr. Cadman, you have the floor.

25 MR. CADMAN: Well, Mr. Rees has asked the question I would have

1 asked. So as long as what's being put to Mr. Shala is what's  
2 contained in the plea agreement, and that's what he's being asked to  
3 confirm, then we are certainly ready to proceed.

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

5 Then we turn to Defence counsel for Mr. Bahtijari. You have the  
6 floor.

7 MS. GERRY: Yes. On behalf Mr. Bahtijari, we are in a position  
8 to proceed. And if he is well enough and it is possible, we would  
9 invite the Court for him to be here this afternoon as we understand  
10 that nobody's submissions will take the time that you have allowed,  
11 so we may have time to deal with his case as well today. Thank you.

12 PRESIDING JUDGE VELDT-FOGLIA: Thank you for your submissions,  
13 Defence counsel.

14 Madam Prosecutor, you have the floor.

15 MS. SHAHABUDDIN: Based on the proposal to proceed on the basis  
16 of the plea agreements and what is contained within the four corners  
17 of the plea agreements, it is still our position that we should  
18 proceed today as well with all -- with any hearings the Panel cares  
19 to hold today.

20 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you very much,  
21 Madam Prosecutor.

22 So we will proceed with the rest of the hearings as scheduled  
23 today. And we will proceed with your client's discussion regarding  
24 the plea agreements, Defence counsel for Mr. Bahtijari, tomorrow.

25 So for now we're going to adjourn for half an hour, then we will

1 come back. We will start with the discussion regarding the plea  
2 agreement of Mr. Shala. The presence of the other Defence teams,  
3 including their clients - here in the courtroom, Mr. Januzi, and by  
4 videolink, Mr. Bahtijari - is not required, but, of course, they may  
5 be present here.

6 And that is it for now. We see each other in half an hour.

7 The hearing is adjourned.

8 --- Recess taken at 10.46 a.m.

9 --- On resuming at 11.17 a.m.

10 PRESIDING JUDGE VELDT-FOGLIA: Very well. Welcome back. We  
11 will now begin with the plea hearing regarding Mr. Shala.

12 And for the record, I will ask who is present for this hearing  
13 again, and I will now start with the Defence for Mr. Shala.

14 Mr. Cadman, you have the floor. And you can also refer to this  
15 morning's presence if that is the case, but I leave it to you.

16 MR. CADMAN: Thank you, Your Honour. The composition of the  
17 Defence team for Mr. Shala is the same as this morning. My name is  
18 Toby Cadman. I'm Specialist Counsel. Mr. John Cubbon, who is  
19 co-counsel; Ms. Kirwan, associate; and Mr. Berisha, investigator.  
20 And Mr. Shala is present in the courtroom.

21 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you.

22 Then I will proceed with the Specialist Prosecutor's Office.  
23 Who is present?

24 MR. DEVANEY: Yes, good morning, Your Honour. I'm John Devaney,  
25 Associate Prosecutor. To my right is Tazneen Shahabuddin,

1 Prosecutor. To my left is Joshua Hafetz, also Prosecutor. And  
2 present behind me is Line Pedersen from our CMU.

3 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much. We also  
4 have two other Defence teams present.

5 I will first give the floor to the Defence for Mr. Januzi.  
6 Please.

7 MR. REES: Your Honour, there's no change from representation as  
8 per this morning's session.

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

10 And the Defence for Mr. Bahtijari. Defence counsel, you have  
11 the floor.

12 MS. GERRY: The appearances on behalf of Mr. Bahtijari are the  
13 same, but Mr. Bahtijari is not here. Thank you.

14 PRESIDING JUDGE VELDT-FOGLIA: Very well. We noted that.

15 Yes, then we will proceed.

16 Before we start, I would like to ask the Court Officer to  
17 provide Mr. Shala with copies of the English and the Albanian version  
18 of his plea agreement with the SPO, which is filing 618, Annex 1, as  
19 well as copies of the English and the Albanian version of the  
20 indictment of 10 July, filing 379, Annex 1, because that would assist  
21 us in some upcoming questions. And we might also be receiving it on  
22 the screen. Thank you very much.

23 For the record, I note that the plea agreement was entered  
24 between Mr. Shala and the SPO on 4 December 2024, and that the  
25 accused's Specialist Counsel is Toby Cadman.

1 Counsel, can you confirm this?

2 MR. CADMAN: I can confirm.

3 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

4 Mr. Shala, before we begin -- you may remain seated. Before we  
5 begin, I refer you to the document called "Plea Agreement," which has  
6 been submitted to the Panel as annex to filing 680, and we have  
7 provided you with a copy by the Court Officer. And I ask you to go  
8 to page 10. Could you go to page 10. And you see the numbering in  
9 the left upper side.

10 Madam Court Clerk, could you please assist Mr. Shala and assist  
11 him ...

12 MR. CADMAN: Your Honour, I think the page numbering is  
13 different in the Albanian version to the English version.

14 PRESIDING JUDGE VELDT-FOGLIA: Ah, but I would like to first go  
15 to the English version and then to the Albanian version, because in  
16 both versions I would like to confirm if that's his signature.

17 So we are talking about filing 618, Annex 1, and then page 10.  
18 And on the left side, is that your signature, Mr. Shala?

19 THE ACCUSED SHALA: [Microphone not activated].

20 PRESIDING JUDGE VELDT-FOGLIA: Can you put on your microphone?

21 THE ACCUSED SHALA: [Interpretation] Yes, it is my signature.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you. And then could you  
23 please go to page 22 of that same document. In the left upper side,  
24 is that your signature?

25 THE ACCUSED SHALA: Yes.

1 PRESIDING JUDGE VELDT FOGLIA: Thank you.

2 THE ACCUSED SHALA: [Interpretation] Yes, it is my signature.

3 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

4 Madam Court Clerk, thank you for your assistance.

5 I see the Prosecution standing. You have the floor.

6 MS. SHAHABUDDIN: Thank you, Your Honour. I just wanted to note  
7 that in addition to the two signatures confirmed by Mr. Shala, on  
8 page 10 of the document at paragraph 26, and at page 21 of the  
9 document just -- paragraph 24, continuing from the previous page,  
10 there are two additional signatures in case Your Honour wished to  
11 confirm --

12 PRESIDING JUDGE VELDT-FOGLIA: Yes.

13 MS. SHAHABUDDIN: -- those as well.

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor. I  
15 think it would be useful to confirm that, too. And that means that I  
16 will ask Madam Court Clerk if you can again assist Mr. Shala.

17 Mr. Shala, could you please go to page 10 and to the bottom. Is  
18 that also your signature?

19 THE ACCUSED SHALA: [No interpretation].

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you. And then we go to  
21 page 21 of the same document, halfway the page. On the left-hand  
22 side.

23 THE ACCUSED SHALA: [Interpretation] Yes, it is my signature.

24 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much to both of  
25 you.

1 Specialist Counsel, on the same pages we have just been  
2 referring to, and that is page 10 and page 11, can you confirm that  
3 both are your signatures?

4 MR. CADMAN: Yes, Your Honour.

5 PRESIDING JUDGE VELDT-FOGLIA: And then the same exercise for  
6 page 21 and 22.

7 MR. CADMAN: Yes, Your Honour.

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much. Then that  
9 is sorted.

10 Mr. Shala, I will be directing you during this hearing on  
11 several occasions to ask you questions.

12 Mr. Shala, as you know, and certainly your counsel is aware, the  
13 Panel may approve the plea agreement as concluded between the SPO and  
14 your counsel on your behalf if it is satisfied that certain  
15 conditions are met, and this is what Rule 94(5) of the Rules requires  
16 the Panel to do. Therefore, I will proceed to ask you some questions  
17 in order to verify that all conditions as set out in Rule 94(5) are  
18 met. Do you understand that?

19 THE ACCUSED SHALA: [Interpretation] Yes.

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

21 I will begin with Rule 94(5) under (a). In the plea agreement  
22 signed by you, it is indicated that you have discussed the terms of  
23 the plea agreement with your counsel and that you have entered the  
24 plea agreement after sufficient consultation with him. And I refer,  
25 and I won't read them out, but I refer to paragraphs 19 and 24 and 25



1 for your counsel.

2 Can you confirm, Mr. Shala, that this is the case?

3 THE ACCUSED SHALA: [Interpretation] Yes, that's correct. I  
4 consulted with a lawyer for everything, and we discussed everything.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Mr. Shala, this  
6 hearing will take a while. You may remain seated, and only on one  
7 occasion, and that will be when I will ask you if you will change  
8 your plea, I will ask you to stand up. But if you are answering the  
9 Panel, if you wish, you may remain seated.

10 THE ACCUSED SHALA: [No interpretation].

11 PRESIDING JUDGE VELDT-FOGLIA: Then I turn to Rule 94(5) under  
12 (b) and (c). In this context, I will go through the terms of the  
13 plea agreement in order to allow the Panel to assess that you  
14 understand the terms of the plea agreement so that you on the one  
15 hand you understand them and that on the other hand you agree to the  
16 terms of the plea agreement.

17 Mr. Shala, do you confirm that you have carefully reviewed with  
18 your counsel every part of the plea agreement in a language that you  
19 understand and that you understand the terms of the said agreement as  
20 specified in paragraph 24 of the plea agreement?

21 THE ACCUSED SHALA: [Interpretation] Yes, I understood it because  
22 it was given to me in my language as well.

23 PRESIDING JUDGE VELDT-FOGLIA: Okay. I will now turn more  
24 specifically to Rule 94(5)(c), which concerns the facts admitted by  
25 you, Mr. Shala, underlying the charges contained in the plea

1 agreement, and I will start with Annex 1 to your plea agreement which  
2 contains the Agreed Factual Basis.

3 In this Agreed Factual Basis, which is page 12 of filing 618,  
4 Annex 1, you have agreed to the following, and I will read it out to  
5 you, and I would like you afterwards to confirm if that is the case.

6 The defendant -- and for you, it's page 23 of the plea agreement  
7 that was given to you if you want to follow it also in reading.

8 [Trial Panel and Court Officer confers]

9 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated].

10 And for the record, the Agreed Factual Basis in English is at  
11 page 12, and in the Albanian version it's at page 23.

12 Have you it in front of you, Mr. Shala? No?

13 Madam Court Clerk, can you assist.

14 THE ACCUSED SHALA: [Microphone not activated].

15 PRESIDING JUDGE VELDT-FOGLIA: Mr. Shala, can you please switch  
16 off your microphone. And, Mr. Shala, when you want to talk to the  
17 Panel, please switch on your microphone, because if not, the  
18 translation will not come to us. Shall we agree on that?

19 THE ACCUSED SHALA: [Microphone not activated].

20 PRESIDING JUDGE VELDT-FOGLIA: Yeah, but then if you want me to  
21 understand you, you have to put on the microphone.

22 THE ACCUSED SHALA: [Interpretation] Certainly. I just tend to  
23 forget.

24 PRESIDING JUDGE VELDT-FOGLIA: I understand. I understand.  
25 It's just that I am very eager to hear what you are saying.

1           Very well. I will read out what has been agreed by you with the  
2 Specialist Prosecutor's Office:

3           "The Defendant Haxhi Shala accepts that he was part of a group  
4 which sought to induce Witness 1 to refrain from giving evidence  
5 before the Kosovo Specialist Chambers through the promise of a  
6 benefit. In particular, members of the group - acting at the  
7 direction of the Defendant Haxhi Shala - approached Witness 1 at his  
8 home on 5 and 12 April 2023, respectively. During the 5 April 2023  
9 approach, Ismet Bahtijari told Witness 1 that he should withdraw his  
10 testimony before the Kosovo Specialist Chambers. During the 12 April  
11 2023 approach, Sabit Januzi followed up on the first approach and  
12 relayed to Witness 1 an offer that the Defendant Haxhi Shala and  
13 others would help him if he withdrew his testimony. Before and after  
14 each of the 5 and 12 April 2023 approaches, the Defendant Haxhi Shala  
15 communicated and coordinated with other group members regarding their  
16 interactions with Witness 1."

17           Mr. Shala, do you confirm your agreement on the Agreed Factual  
18 Basis as I just read it out to you?

19           THE ACCUSED SHALA: [Interpretation] Yes.

20           PRESIDING JUDGE VELDT-FOGLIA: Thank you. I will proceed now to  
21 read out, because paragraph 5 of the plea agreement refers to them,  
22 paragraphs 8 and 9, 11, 14 till 18, and 24(i) under (i), (ii), and  
23 (iii) of the Confirmed Indictment of 10 July 2024 as referred to in  
24 the plea agreement.

25           And then for ease of reference, Mr. Shala, the document with the

1 number 379, yes, I will start with reading paragraph 8. Do you have  
2 in front of you, Mr. Shala, paragraph 8?

3 THE ACCUSED SHALA: [No interpretation].

4 PRESIDING JUDGE VELDT-FOGLIA: Very well. I will read it out  
5 for you. That's the most important thing. But I hope it assists you  
6 in order to follow us.

7 So paragraph 8 of the 10 July 2024 Confirmed Indictment reads as  
8 follows, and then I will continue with the other paragraphs:

9 "On 5 April 2023, Shala called Januzi. Bahtijari then also  
10 called Januzi."

11 Then we go to paragraph 9:

12 "Then, after calling and verifying that Witness 1 was at home,  
13 Bahtijari came to Witness 1's home. Bahtijari told Witness 1 that  
14 Shala had recently approached him and sent him to tell Witness 1 that  
15 he should withdraw his testimony."

16 Then we go to paragraph 11:

17 "Bahtijari left Witness 1's home and walked to a nearby car  
18 where two men were waiting, with a third person in the driver's  
19 seat."

20 And then we go to paragraphs 14 till 18. Still with me,  
21 Mr. Shala? Okay, I see you nodding. We note that.

22 "In the days ..."

23 We are now at paragraph 14:

24 "In the days that followed, Shala and Januzi, amongst others,  
25 remained in contact, including connecting by phone at least four

1 times between ... April and 9 April 2023.

2 "On 12 April 2023, shortly after calling Shala," this is  
3 paragraph 15, "Januzi went to Witness 1's home. At Witness 1's home,  
4 Januzi told Witness 1 that Shala had asked Januzi to follow-up on  
5 Bahtijari's visit and to find out what Witness 1 planned to do and  
6 how the matter of his testimony could be addressed."

7 Then we go to paragraph 16:

8 "Specifically, Januzi told Witness 1 that Shala had asked Januzi  
9 to convey the message that if Witness 1 withdrew his testimony, then  
10 Shala and unnamed others would provide him with 'help.' Witness 1  
11 responded that if Shala and/or the others brought him 200.000 euros,  
12 they would have a deal.

13 "Witness 1 did not confirm or deny being a witness. Januzi said  
14 he would tell 'them' what Witness 1 had said."

15 Then we go to paragraph 18. What I just read out was paragraph  
16 17.

17 "Shortly after his 12 April 2023 visit to Witness 1, Januzi  
18 again called Shala."

19 And then we go to paragraph 24(i) under (i) that reads as  
20 follows:

21 "On 5 April 2023, at Shala's direction, Bahtijari approached  
22 Witness 1 and told Witness 1 that Witness 1 should withdraw his  
23 testimony in KSC proceedings."

24 Then we go to paragraph 24(ii):

25 "On 12 April 2023, at Shala's direction, Januzi approached

1 Witness 1 to follow up after Bahtijari's earlier approach and to  
2 relay the offer that Shala and unnamed others would help Witness 1 if  
3 he agreed to withdraw his testimony."

4 And then the last paragraph I will be reading out, and you --  
5 according to paragraph 5 of the plea agreement, you agreed on,  
6 paragraph 24(iii):

7 "Before and after approaching Witness 1, Januzi and Bahtijari  
8 communicated and coordinated with each other and Shala."

9 This was the content of the paragraphs in the Confirmed  
10 Indictment of 10 July 2024 as mentioned in paragraph 5 of your plea  
11 agreement with the SPO. Okay.

12 I will now turn to paragraph 5 of the plea agreement, which  
13 states as follows, Mr. Shala:

14 "Haxhi Shala and the Prosecution," that's what you say in  
15 paragraph 5 of your plea agreement -- no, we have to wait to be sure  
16 that Mr. Shala has the right paragraph in front of him. Paragraph 5,  
17 filing 618. Do you have that in front of you? Yes? Okay.

18 I will read it out to you, Mr. Shala, and then I will ask you a  
19 question:

20 "Haxhi Shala and the Prosecution agree that if the Prosecution  
21 were to proceed with evidence, the facts and allegations as set out  
22 in [the] paragraphs," and I have just read them out to you, "8-9, 11,  
23 14-18, and 24 (subparagraphs i under (i), ii, and iii) of the  
24 Indictment dated 10 July 2024 would be proven beyond reasonable  
25 doubt, and that those facts are true and correct and not disputed by

1 Haxhi Shala."

2 Mr. Shala, do you confirm your agreement with this statement  
3 that I just read out to you?

4 THE ACCUSED SHALA: [Interpretation] Yes.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you. We note that.

6 Thank you, Madam Court Clerk, for your assistance. If I may ask  
7 you to remain some more there in order to assist Mr. Shala if needed.

8 I will now discuss with you, Mr. Shala, the nature of the  
9 charges.

10 Mr. Shala, the Panel also wants to ensure that you are fully  
11 aware of the charges contained in the plea agreement. And for that  
12 purpose, I will read out to you paragraphs 3, 8, and 9 of the plea  
13 agreement itself. We are now in filing 618, paragraph 3. Do you  
14 have that in front of you?

15 THE ACCUSED SHALA: [Interpretation] Yes, I do.

16 PRESIDING JUDGE VELDT-FOGLIA: Very well. Paragraph 3 reads as  
17 follows:

18 "Haxhi Shala agrees to admit guilt before the Trial Panel  
19 pursuant to Rule 94 of the Rules in relation to Counts Two (2) and  
20 Three (3) of the Indictment, dated 10 July 2024, to the extent they  
21 are alleging, in Count Two (2), obstructing official persons in  
22 performing official duties by participating in the common action of a  
23 group between at least 5 and 12 April 2023, punishable under [the]  
24 Kosovo Criminal Code ('KCC') Articles 17, 21, 28, 33, 35, and 401(2)  
25 and (5), and Articles 15(2) and 16(3) of the Law on the Specialist

1 Chambers and Specialist Prosecutor's Office," further referred to as  
2 "Law," "and, in Count Three (3), intimidation during criminal  
3 proceedings by means of a promise of a gift or any other form of  
4 benefit, between at least 5 and 12 April 2023, punishable under KCC  
5 Articles 17, 21, 31, 33, 35, and 387, and Articles 15(2) and 16(3) of  
6 the Law, including all [modalities] of liability alleged therein."

7 I will now continue with paragraph 8, Mr. Shala. It's a lot of  
8 reading and listening, but I must assure ourselves that you have  
9 taken due notice of them.

10 Paragraph 8 reads as follows:

11 "Haxhi Shala fully understands that he is admitting guilt in  
12 relation to Counts Two (2) and Three (3) of the Indictment," dated  
13 10 July 2024, "and specifically admitting his conduct as set forth in  
14 paragraphs 8-9, 11, 14-18, and 24 (subparagraphs i under (i), ii, and  
15 iii) of the Indictment and as further described in the Agreed Factual  
16 Basis."

17 And then paragraph 9:

18 "Haxhi Shala understands that if a trial were held, the  
19 Prosecution would be required to prove the following elements of  
20 Articles 21, 387, and 401(2) and (5), beyond reasonable doubt."

21 And I will now list the different elements of the counts.

22 "Count Two (2)

23 "Participation in a group which by common action," and reference  
24 to Kosovo Criminal Code Article 401(2).

25 "Obstructs or attempts to obstruct an official person in



1 performing official duties," and there's a reference to the same  
2 article.

3 "The offence was committed against a judge, a prosecutor, an  
4 official of a court, prosecution officer or a person authorised by  
5 the court and prosecution office, or a police officer during the  
6 exercise of their official functions," a reference to Article 401(5).

7 And lastly for this count:

8 "Awareness of, and desire to commit, the act, or awareness that  
9 a prohibited consequence can occur as a result of the act or omission  
10 and accession to its occurrence," with a reference to Article 21.

11 And then we go to Count 3, and then I will list again the  
12 elements that the Prosecution would be required to prove beyond  
13 reasonable doubt. First, under (a):

14 "The use of force or serious threat, or any other means of  
15 compulsion, a promise or a gift or any other form of benefit," with a  
16 reference to the KCC Article 387.

17 "To induce another person to refrain from making a statement or  
18 to make a false statement or to otherwise fail to state true  
19 information to the police, a prosecutor or a judge and such  
20 information relates to obstruction of criminal proceedings."

21 This is the KCC Article 387.

22 And lastly:

23 "Awareness of, or desire to commit, the act, or awareness that a  
24 prohibited consequence can occur as a result of the act or omission  
25 and accession to its occurrence," with a reference to the KCC Article

1 21.

2 Mr. Shala, after that I have read out these three paragraphs,  
3 can you confirm that you agree to the above charges?

4 THE ACCUSED SHALA: [Interpretation] Yes.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

6 Now as regards admission of guilt, I will read out paragraphs 3  
7 and 7 of the plea agreement.

8 Paragraph 3 was also read out before in the context of the  
9 nature of the charges. However, it's also relevant in this context.  
10 So, Mr. Shala, I will read out to you again paragraph 3, but it is  
11 necessary in the framework of the question I want to ask you.

12 "Haxhi Shala agrees" -- this is paragraph 3, "agrees to admit  
13 guilt before the Trial Panel pursuant to Rule 94 of the Rules in  
14 relation to Counts Two (2) and Three (3) of the Indictment, dated  
15 10 July 2024, to the extent they are alleging, in Count Two (2),  
16 obstructing official persons in performing official duties by  
17 participating in the common action of a group between at least 5 and  
18 12 April 2023, punishable under Kosovo Criminal Code ('KCC') Articles  
19 17, 21, 28, 33, 35, and 401(2) and (5), and Articles 15(2) and 16(3)  
20 of the Law on the Specialist Chambers and Specialist Prosecutor's  
21 Office ('Law'), and, in Count Three (3)," you agreed to admit guilt  
22 to "intimidation during criminal proceedings by means of a promise of  
23 a gift or any other form of benefit between at least 5 and 12 April  
24 2023, punishable under the KCC Articles 17, 21, 31, 33, 35, and 387,  
25 and Articles 15(2) and 16(3) of the Law, including all modes of

1 liability alleged therein."

2 Mr. Shala, do you agree, do you confirm your agreement on this  
3 point?

4 THE ACCUSED SHALA: [Interpretation] Yes.

5 PRESIDING JUDGE VELDT-FOGLIA: Noted. Thank you.

6 And then paragraph 7. Do you have that in front of you? Yes?  
7 Okay.

8 THE ACCUSED SHALA: [Interpretation] Yes.

9 PRESIDING JUDGE VELDT-FOGLIA: That's the English version.  
10 Okay. Very well.

11 "Haxhi Shala agrees to make an admission of guilt in relation to  
12 the charges identified at paragraph 3 above because he is in fact  
13 guilty and acknowledges his guilt and accepts full responsibility for  
14 his conduct as described in the Agreed Factual Basis."

15 Mr. Shala, do you confirm your agreement on this point?

16 THE ACCUSED SHALA: [Interpretation] Yes.

17 PRESIDING JUDGE VELDT-FOGLIA: Thank you. We formally ask you  
18 to enter a plea later on in this hearing.

19 Now, discussing still with you the terms of your plea agreement,  
20 we go to the sentence.

21 Mr. Shala, I read in paragraph 11 of the plea agreement that you  
22 agree on the imposition of a sentence of three years' imprisonment.  
23 And the plea agreement also states that, in exchange for your  
24 admission, the SPO will recommend to the Trial Panel a sentence of  
25 three years' imprisonment and recommend that Mr. Shala be given

1 credit for the time served in the custody of the KSC. And as per  
2 paragraph 16(c) of the plea agreement, the SPO also agrees to  
3 withdraw Count 1 against Mr. Shala.

4 Do you confirm that, Mr. Shala?

5 THE ACCUSED SHALA: [Interpretation] Yes.

6 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

7 Let me now turn to paragraph 12 of the plea agreement which  
8 concerns legal remedies.

9 As a preliminary remark, I recall that the SPO has withdrawn its  
10 request for reconsideration and/or leave to appeal of decision 612,  
11 which is filing 631, dated 16 December 2024. And as a result,  
12 paragraph 12 of the plea agreement is to be amended in order to  
13 conform to decision 612, and the Panel will issue the necessary order  
14 in due course. I wish, however, to ensure that you understand how  
15 this impacts your plea agreement and that you agree with this change.  
16 And you may, of course, confer with your lawyer before you give your  
17 answer.

18 I will first read out, Defence counsel, and then I will give you  
19 time to confer, and then we wait for the answer of Mr. Shala.

20 Mr. Shala, do you understand and agree that should the Panel  
21 approve the plea agreement and set a sentence which accords with the  
22 terms of the plea agreement, you will be precluded from pursuing  
23 appellate remedies against said decision?

24 May I finalise? Thank you. I will give ...

25 You will not move - that is the second point - to withdraw your

1 guilty plea or appeal your conviction pursuant to your guilty plea.

2 And I would like you to confirm that you understand and agree to  
3 both of the above points, Mr. Shala, and you may, of course, confer  
4 with your counsel before you give your answer.

5 Mr. Cadman, if you would like to confer with your client, I give  
6 you the opportunity.

7 [Specialist Counsel confer]

8 MR. CADMAN: Thank you, Your Honour. Mr. Shala is happy to  
9 answer your question now.

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

11 Mr. Shala, I would like you to confirm that you understand and  
12 agree to both of the above points I read out to you. You have the  
13 floor.

14 THE ACCUSED SHALA: [Interpretation] Yes, Your Honour. I  
15 understood them, and I confirm and agree with the agreement reached  
16 between my lawyer and the Prosecution Office. If the sentence is two  
17 years, I will abide by it. If it's three years, I will ...

18 PRESIDING JUDGE VELDT-FOGLIA: The agreement, as read out in  
19 paragraph 11, I will only read out what is written there: Agrees to  
20 the --

21 THE COURT OFFICER: The interpreter is on the English channel.

22 PRESIDING JUDGE VELDT-FOGLIA: We should have another channel,  
23 because we have switched to another language, not to English now.

24 I will repeat, Defence counsel. The agreement in the plea  
25 agreement is that Mr. Haxhi Shala agrees to the imposition of a

1 sentence of three years' imprisonment. If there is a  
2 misunderstanding on this, please confer with your client, because now  
3 I heard something about two years.

4 MR. CADMAN: Your Honour, perhaps I can explain. What Mr. Shala  
5 was trying to confirm is if there is a sentence up to three years, of  
6 course, it's agreed a sentence of three years. He wasn't suggesting  
7 that there's any change to the plea agreement. But, of course, any  
8 sentence that is up to three years, he would not be entitled to  
9 appeal that decision.

10 So it's not a misunderstanding that the plea agreement has  
11 changed. It's if he's sentenced to two years, two and a half years  
12 or three years, he would lose his right to appeal that decision.

13 PRESIDING JUDGE VELDT-FOGLIA: Very well. Is that sufficiently  
14 clarified from the side of -- for the Specialist Prosecutor's Office?

15 MR. DEVANEY: Yes, Your Honour.

16 PRESIDING JUDGE VELDT-FOGLIA: Very well. Then we may proceed.  
17 On the SPO's side, I note paragraph 16 of the plea agreement.  
18 Thank you, Madam Court Clerk.

19 The same preliminary remark I just read out with regard to the  
20 withdrawal of your request for reconsideration and leave to appeal  
21 applies to paragraph 16(b), under a, where still reference is made to  
22 that possible appeal or reconsideration. Very well.

23 Then we proceed to the following point, Mr. Shala. Under  
24 Rule 94(5)(c), the Panel must be satisfied that you entered the plea  
25 agreement from your own free will, Mr. Shala.

1           And I note that in paragraph 24 of the plea agreement, you state  
2           that -- and you can just listen to me. You don't have to -- and if  
3           you want to look at it, I can give you the reference. It's paragraph  
4           24, it's page 20, 21.

5           You have it in front of you, Mr. Shala? Very well. I see you  
6           nodding.

7           THE ACCUSED SHALA: [No interpretation].

8           PRESIDING JUDGE VELDT-FOGLIA: You state that "no one has  
9           threatened or forced me in any way to enter into this agreement," and  
10          you state "I entered into this plea agreement freely and  
11          voluntarily." Your counsel also submits in paragraph 19 that you  
12          "entered into this plea agreement freely and voluntarily (...) no  
13          threats were made," and that the only promise made to you are "those  
14          set forth in this Agreement."

15          Mr. Shala, could you confirm before this Panel that you have  
16          agreed to this plea agreement voluntarily, without threats or  
17          coercion?

18          THE ACCUSED SHALA: [Interpretation] Yes, Your Honour.  
19          Everything has been done out of my free will. I've done everything  
20          voluntarily.

21          PRESIDING JUDGE VELDT-FOGLIA: And you also understood what I  
22          just read out to you?

23          THE ACCUSED SHALA: [Interpretation] Yes.

24          PRESIDING JUDGE VELDT-FOGLIA: Thank you.

25          Let us now move to the next point. The Panel wants to confirm

1 that you, Mr. Shala, understand the consequences of the plea  
2 agreement, if that is the case, of course, and that you waive your  
3 right to be tried under the ordinary trial procedure, as per  
4 Rule 94(5)(d) of the Rules, by signing this plea agreement.

5 And on this point, Mr. Shala, there are several points I will  
6 walk you through.

7 First, I would like to read out paragraph 17(a) till (f) and  
8 paragraph 18(a) and (b) of the plea agreement. And I give you some  
9 time to look for those two paragraphs in filing 618. Do you have  
10 them in front of you?

11 THE ACCUSED SHALA: [Interpretation] Yes.

12 PRESIDING JUDGE VELDT-FOGLIA: Very well. These paragraphs  
13 summarise the rights you waive, you relinquish, and the rights you  
14 will still retain pursuant to the terms of the plea agreement. And I  
15 will read out to you first, Mr. Shala, which rights you will be  
16 giving up by virtue of this plea agreement, in whole or in part, and  
17 those are the following rights.

18 You are giving, up in whole or in part, the opportunity to  
19 exercise the following rights. Paragraph 17:

20 Under (a), you will be giving up the right to plead not guilty  
21 and to require the Prosecution to prove the charges in the indictment  
22 beyond reasonable doubt at a fair and impartial public trial;

23 The right to be tried in your presence, and to defend yourself  
24 through a Specialist Counsel at such trial;

25 The right to raise defences and grounds for excluding criminal



1 responsibility and to present admissible evidence at such trial,  
2 without prejudice to the right to make submissions and present  
3 evidence with regard to sentencing;

4 The right not to be compelled to testify against yourself or to  
5 confess guilt;

6 The right to examine, or to have examined, the witnesses against  
7 you and to obtain the attendance and examination of witnesses on your  
8 behalf under the same conditions as witnesses against you, without  
9 prejudice to your right to examine any witness that may be called to  
10 testify, and your right to call witnesses and have them examined on  
11 your behalf, at any proceedings with regard to sentencing; and

12 The right to pursue appellate remedies with regard to conviction  
13 or sentencing, as specified in paragraph 12 of the plea agreement,  
14 which I just read out.

15 Mr. Shala, can I have your confirmation that you understand this  
16 and that you waive these rights?

17 THE ACCUSED SHALA: [Interpretation] Yes, I've understood this  
18 paragraph.

19 PRESIDING JUDGE VELDT-FOGLIA: But that is not enough for me. I  
20 am happy that you -- it's important you understand it, but it's also  
21 important that you waive these rights, that you know that you will  
22 not be entitled to these rights.

23 THE ACCUSED SHALA: [Interpretation] Yes, I waive these rights  
24 with the condition that the plea agreement is fully respected.

25 PRESIDING JUDGE VELDT-FOGLIA: I don't know what that would

1 mean. I read this right out, and I would like to hear from your  
2 client that he waives his right in this respect, and I cannot -- I  
3 don't know what this condition would then mean.

4 MR. CADMAN: Perhaps I could just take two minutes or --

5 PRESIDING JUDGE VELDT-FOGLIA: Yes.

6 MR. CADMAN: -- one minute.

7 [Specialist Counsel confer]

8 MR. CADMAN: Your Honour, Mr. Shala understands. You can put  
9 your question again, and he will be able to respond.

10 PRESIDING JUDGE VELDT-FOGLIA: And also to clarify, this is all  
11 subject to the plea agreement being approved. So that will be the  
12 status of these rights.

13 Again, Mr. Shala, can I have your confirmation that you  
14 understand this and that you waive these rights?

15 THE ACCUSED SHALA: [Interpretation] Yes, I understand this and I  
16 waive those rights.

17 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Shala.

18 Second, pursuant to the terms of the plea agreement, Mr. Shala,  
19 which are paragraphs 18(a) and (b), is it understood that you retain  
20 all other rights, including, in particular, the right to be  
21 represented by Specialist Counsel at all stages of the proceedings  
22 and to communicate freely with such counsel in confidence; and the  
23 right to submit any information or evidence relevant for the  
24 determination of the sentence, pursuant to Rule 162(1) and (5) of the  
25 Rules? Do you understand that you will still have these rights?

1 THE ACCUSED SHALA: [Interpretation] Yes, I understand that.

2 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

3 Before I turn to ask Mr. Shala if he understands the  
4 consequences of the plea agreement and waiving his right to be tried  
5 under the ordinary procedure, I would like to give an opportunity to  
6 the SPO and to Defence counsel to make any other observations or  
7 submissions they deem relevant, including as regards Rule 94(5)(e)  
8 and (f) of the Rules, if they deem it relevant.

9 And, yes, I will first give the floor to the Specialist  
10 Prosecutor's Office and then to the Defence. Who can I give the  
11 floor of the Prosecution team? Madam Prosecutor.

12 MS. SHAHABUDDIN: With regard to the provisions under Rule 94(5)  
13 and the colloquy that went towards subparts (a) through (d), the SPO  
14 is satisfied that Mr. Shala has confirmed his understanding of the  
15 relevant provisions contained in the plea agreement and overall his  
16 understanding of the same agreement and his voluntary entry into that  
17 agreement.

18 The SPO would just observe, as is also provided in the plea  
19 agreement, that as to any additional submissions, the plea agreement  
20 is a complete document in that any and all terms agreed to between  
21 the parties are contained within it, and so no other provisions can  
22 be otherwise imported into the understanding between the parties  
23 besides what is written in the agreement itself.

24 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

25 And no further submissions with regard to the requirement if

1     there is sufficient factual basis establishing the essential facts  
2     that are required to prove the crime and the participation of the  
3     accused and the interests of justice, that they are duly taken into  
4     account?

5             MS. SHAHABUDDIN: No, Your Honour. Given the paragraphs that  
6     have been read into the record and the fact that Annex 1, the factual  
7     basis itself, has been read into the record, our understanding and  
8     position is that those requirements have been met.

9             PRESIDING JUDGE VELDT-FOGLIA: Thank you.

10            Now I turn to Defence counsel, and after that we will discuss  
11    the entering into a revised plea.

12            Defence counsel, you have the floor.

13            MR. CADMAN: Your Honour, as your question was limited to  
14    subparagraphs (e) and (f), I'll restrict my comments to those.

15            Nothing further needs to be added in terms of the factual basis  
16    and the test of -- interest of justice. We're satisfied with what  
17    has been read into the record. Mr. Shala accepts that and has made  
18    it quite clear that he accepts that. So I don't believe any further  
19    submissions would be necessary at this stage in relation to those  
20    specific points.

21            PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

22            Then we proceed.

23            Mr. Shala, having heard the submissions of the Specialist  
24    Prosecutor's Office and counsel, may I ask you to confirm again that  
25    you understand the terms and consequences of this plea agreement and

1 that you do not wish to change anything in the plea agreement that  
2 you have signed?

3 THE ACCUSED SHALA: [Interpretation] Yes, Your Honour. I am  
4 aware of the plea agreement. I understand it very well. It is in  
5 Albanian language as well. I've communicated with my counsel, and I  
6 fully agree with it. I also understand its consequences.

7 PRESIDING JUDGE VELDT-FOGLIA: Okay. And you don't wish to  
8 change anything of the plea agreement?

9 THE ACCUSED SHALA: [Interpretation] The lower the sentence, the  
10 better.

11 PRESIDING JUDGE VELDT-FOGLIA: But you agree with what we have  
12 discussed? I'm not laughing with you. It's a very serious matter.  
13 I want to have a clear answer.

14 THE ACCUSED SHALA: Yes.

15 PRESIDING JUDGE VELDT-FOGLIA: Do you want in a legal way --

16 THE ACCUSED SHALA: Yes.

17 PRESIDING JUDGE VELDT-FOGLIA: Our dreams are something  
18 different. But in a legal way, is there anything you want to change  
19 with regard to this plea agreement you have entered into with the  
20 Specialist Prosecution Office?

21 THE ACCUSED SHALA: [Interpretation] No, Your Honour. Everything  
22 is fine as far as I am concerned.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Then, Mr. Shala, I  
24 will ask you to enter your plea, and to this end, I kindly ask you to  
25 stand like we did also in pre-trial. Could you please stand?

1 Mr. Shala, during the Status Conference of 15 December 2023, you  
2 pleaded not guilty to the charges of obstructing official persons in  
3 performing official duties by participating in the common action of a  
4 group, under Count 2 of the Confirmed Indictment of 6 December 2023,  
5 and the charge of intimidation during criminal proceedings, under  
6 Count 3 of the Confirmed Indictment of 6 December. And this is  
7 filing bearing number Case 11, filing 7, Annex 1.

8 Are you ready to change your initial plea of not guilty?

9 Defence counsel -- yes, please?

10 THE ACCUSED SHALA: [Interpretation] At the time when I pleaded  
11 not guilty, I had never been interviewed by the SPO and was not fully  
12 informed what was it all about. Now I plead guilty to what I have  
13 agreed in the plea agreement.

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

15 Defence counsel, I take this as: Yes, I want to change my plea.

16 MR. CADMAN: In accordance with the terms of the plea agreement,  
17 yes --

18 PRESIDING JUDGE VELDT-FOGLIA: Yes.

19 MR. CADMAN: -- Your Honour.

20 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you.

21 Mr. Shala, I will proceed, because now I will read out to you --  
22 and please remain standing. I will read out to you and I will ask  
23 you if you plead guilty to what I read out to you.

24 So I will proceed to read out Counts 2 and 3 as reflected in the  
25 Confirmed Indictment of 10 July 2024 and ask you to enter a plea for

1 each one of them.

2 So Count 2: Obstructing official persons in performing official  
3 duties by participating in the common action of a group between at  
4 least 5 and 12 April 2023, a criminal offence against public order,  
5 punishable under Articles 17, 21, 28, 33, 35, and Article 401(2) and  
6 (5) of the Criminal Code of Republic of Kosovo of 2019 and Articles  
7 15(2) and 16(3) of the Law.

8 Mr. Shala, how do you plead, guilty or not guilty?

9 THE ACCUSED SHALA: [Interpretation] Guilty.

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

11 Then I proceed to Count 3, intimidation.

12 During criminal proceedings, between at least the 5th and 12th  
13 April 2023, a criminal offence against the administration of justice  
14 and public administration, punishable under Articles 17, 21, 31, 33,  
15 35, and 387 of the Criminal Code of the Republic of Kosovo of 2019  
16 and Articles 15(2) and 16(3) of the Law.

17 Mr. Shala, how do you plead, guilty or not guilty?

18 THE ACCUSED SHALA: [Interpretation] Guilty.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

20 We will now turn to the Defence.

21 You may be seated.

22 We will now turn to the Defence submissions on sentencing.

23 Mr. Shala, here I will have some questions which I will address  
24 to your counsel. You may, of course, confer with him, and please do  
25 let us know if there is anything unclear or difficult to follow.

1 I see you standing, Defence counsel?

2 MR. CADMAN: As you were addressing me, Your Honour, that's why  
3 I --

4 PRESIDING JUDGE VELDT-FOGLIA: Okay, I just -- I wanted still to  
5 formulate the questions, but thank you for that.

6 Defence counsel, the SPO submitted yesterday the criminal  
7 records of Mr. Shala, which is filing 629, Annex 1. Do you wish to  
8 respond to the Specialist Prosecutor and to the Panel on this? And  
9 if you would like to discuss it, should we then go into private  
10 session or not?

11 MR. CADMAN: Your Honour, I have raised this with Mr. Shala this  
12 morning. Obviously, these matters were disclosed to us yesterday,  
13 outside of the direction that Your Honours had given for any material  
14 that should be put before the Court for the purpose of sentencing, so  
15 it falls outside the deadline for which you had directed.

16 The other matter -- there are two matters that, as Your Honours  
17 will see, involve suspended sentences. Now --

18 PRESIDING JUDGE VELDT-FOGLIA: Do you want us to go into private  
19 session?

20 MR. CADMAN: I'm not going to go into any detail as --

21 PRESIDING JUDGE VELDT-FOGLIA: Okay.

22 MR. CADMAN: -- to the nature of those matters, but certainly it  
23 is my submission that those are matters that the Prosecution relies  
24 upon as an aggravating factor. Certainly, it is our submission that  
25 these are not matters for which Your Honours have any jurisdiction to



1 deal with other than considering them as aggravating factors, as has  
2 been submitted by the Prosecution. Whatever consequences may follow  
3 as a result of those, that is a matter for the courts in Kosovo, not  
4 for the Specialist Chambers, to deal with.

5 PRESIDING JUDGE VELDT-FOGLIA: Noted, Defence counsel.

6 Specialist Prosecutor, do you want to reply to counsel for  
7 Mr. Shala?

8 MR. DEVANEY: Your Honour, just to note that those -- the  
9 referenced convictions are submitted for aggravating factors in terms  
10 of sentencing limited to these proceedings. As Defence counsel has  
11 noted, what might happen later is something else. Those are for  
12 these proceedings.

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Yes, no, I was just  
14 reading, took off the microphone just to understand better what you  
15 just said. Thank you. Noted.

16 So no further issues on this other than raised just now, and the  
17 Panel has noted that.

18 Then there is another point. Yes. It's not sentencing but  
19 another subject. It's reparations.

20 The Panel notes that it's the view of the Defence that  
21 reparations are inapplicable in this case because the Agreed Factual  
22 Basis does not imply that any natural person personally suffered harm  
23 as a direct result of the crimes in relation to which the accused has  
24 agreed to admit guilt. Yes, I see you nodding. This was in your  
25 sentencing submissions, paragraph 37, if I recall well.

1 Defence counsel, do you wish to make any further submissions on  
2 this matter?

3 MR. CADMAN: Your Honour, there were two points that were set  
4 out in respect of reparations, and, obviously, Your Honour has raised  
5 that question this morning, giving a deadline until 20 January.

6 First of all, no prior notification, no application has been  
7 made in respect of any reparations by the Specialist Prosecutor's  
8 Office. And, second of all, on the basis of the plea agreement, the  
9 limited basis in respect of Count 3 demonstrates that there was no  
10 harm suffered as we've set out in our sentencing note.

11 On that basis, we say there is no proper basis for the Court to  
12 proceed with any consideration of reparations in this particular  
13 case. That is also a matter that this Court had taken in its  
14 previous obstruction matter, the case of Gucati and Haradinaj, where  
15 no reparations were ordered on the basis that there was no evidence  
16 before the Court, no admissible evidence before the Court as to any  
17 harm suffered by any natural person.

18 So my submission is that there is no proper basis for the Court  
19 to proceed on the question of reparations. It is merely a matter of  
20 accepting or not the terms of the plea agreement and the sentence  
21 that has been agreed upon between the parties.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel. Your  
23 position is clear.

24 Yes. Then I turn to the Specialist Prosecutor's Office. To  
25 whom can I give the floor?

1 MR. DEVANEY: To me, Your Honour. Thank you.

2 PRESIDING JUDGE VELDT-FOGLIA: Very well. You have the floor,  
3 Mr. Prosecutor.

4 MR. DEVANEY: Your Honour, we'd note as an initial matter, that  
5 there was -- obviously, as a plea is being entered, there is no trial  
6 in this case. And as Your Honour announced, and the Panel announced  
7 earlier this morning, there will be a procedure for victims to  
8 participate in this case which will provide the relevant basis for  
9 any reparations that may be ordered.

10 We also note, and dispute, the position of the Defence regarding  
11 harm to the victims -- any victims in this case. And we note the  
12 plea agreements did not in any way limit the parties' ability to  
13 offer admissible evidence or make relevant submissions so long as the  
14 evidence and submissions are not inconsistent with the plea agreement  
15 and the Agreed Factual Basis, which harm to natural victims is not  
16 inconsistent and, in fact, a logical result of the actions in this  
17 case.

18 And should Your Honours desire to hear more of that at this  
19 moment, the SPO is prepared to offer that, perhaps in private  
20 session, in the form of the statements of victims.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Prosecutor, but  
22 would you be prepared to -- you mean now? Because that's not clear  
23 for me. You say in private session at this moment in time or at a  
24 future moment?

25 MR. DEVANEY: [Microphone not activated].

1 [Specialist Prosecutors confer]

2 MR. DEVANEY: Yes. Your Honour, the evidence I was referring to  
3 before from the victims was evidence that had been given through  
4 disclosures. We would make any relevant submissions in the future in  
5 the appropriate context, but do not feel they're necessary at this  
6 time.

7 PRESIDING JUDGE VELDT-FOGLIA: Thank you. That's clarified  
8 already my question I was having.

9 Defence counsel, I agreed with you that I would give you the  
10 floor. My question has been clarified. Maybe there's something you  
11 would share with the Panel.

12 MR. CADMAN: Well, I do wish to comment further on that.

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

14 MR. CADMAN: First of all, no evidence is before the Court, no  
15 evidence has been offered. And if you look at paragraph 15 that  
16 deals with reparations, it says that the SPO and the defendant, and  
17 then it goes on to discuss "at or prior to the timing of sentencing."

18 It is our position that the SPO has had ample opportunity to  
19 address this matter. It has failed to do so. It should not be given  
20 additional time. And it wasn't until Your Honour's raising it this  
21 morning that we now hear that there is evidence that is going to be  
22 proposed. But there is no evidence -- admissible evidence before  
23 Your Honours that would enable you to address the question of  
24 reparations as the SPO is now seeking.

25 And so it is my submission, I'm inviting the Court to dismiss

1 that in its entirety. There should be no order as to reparations  
2 because you have no evidence before you, and we are unaware of what  
3 evidence is to be put before the Court at some future stage.

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel. I  
5 will allow, if necessary, for an extra round if that is necessary,  
6 but if all views are sufficiently exchanged, then we leave it here.

7 MR. DEVANEY: No extra round is necessary, Your Honour.

8 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Thank you.

9 Yes. Then we will proceed with one point more and that is for  
10 Mr. Shala.

11 Mr. Shala, I turn to you. I note that your counsel indicated in  
12 his e-mail of yesterday, 8.50 in the morning, and for the  
13 correspondence number it's 106, that it is not anticipated that you  
14 will make any statements at today's hearing. I noted that. I have  
15 some questions for you, but you are, of course, under no obligation  
16 to answer that.

17 I would like to know, the Panel would like to know if you,  
18 Mr. Shala, would like to express any remorse, in the sense that you  
19 feel sorry for doing something wrong, regarding the Agreed Factual  
20 Basis?

21 THE ACCUSED SHALA: [Microphone not activated].

22 PRESIDING JUDGE VELDT-FOGLIA: No, you may remain seated. But I  
23 see that Defence counsel is standing.

24 MR. CADMAN: This is a matter, obviously, that was not  
25 anticipated. I would like a moment to consult with Mr. Shala on

1 that. But that's not really a matter that I can deal with in the  
2 back of the courtroom in one minute. I don't know what time  
3 Your Honours were seeking to rise for the lunchtime break, but, of  
4 course, that is a matter that I would like to consider with  
5 Mr. Shala, because he has given a clear indication that he is not  
6 making any statement today.

7 I understand that he is not obliged to answer that question, but  
8 if there are to be more questions along those lines, I would be  
9 grateful if Your Honour puts those questions to Mr. Shala now so that  
10 I can then have time to consult with him as to whether it would be  
11 appropriate for him to respond to those questions.

12 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, you will be  
13 allocated some time if you feel the need for that. That's to start  
14 with. For the Panel, one thing is between a statement. You can have  
15 a statement on -- and your point is clear, that he would not be doing  
16 that. That doesn't take away the possibility from this Panel to --  
17 because it could be a factor in sentencing to take on board, and  
18 that's the background of our question and -- if it would come so far.

19 So how much time would you need?

20 MR. CADMAN: Well, I can certainly have a very brief discussion  
21 with him now, and then I can come back to you if I'm going to need  
22 additional time. But if you permit me just to speak to Mr. Shala  
23 now.

24 PRESIDING JUDGE VELDT-FOGLIA: Yes, because for -- I will tell  
25 you I -- this is the last part of this plea hearing unless parties

1 would like to raise something else in this regard, regarding the plea  
2 agreement between Mr. Shala and the SPO.

3 So, yes, I would like to know how much time you would need,  
4 because I have a preference to finalise this part of our hearing  
5 before we go for lunch. So if you could confer with him to see what  
6 and how, and then you come back to me, and we take it from there.

7 MR. CADMAN: And, certainly, it is anticipated that I would be  
8 making submissions on his behalf. Obviously, I can't answer for the  
9 SPO as to what their position is, but certainly I would be making  
10 submissions on the question of sentencing. I don't believe I would  
11 require any more than 10, 15 minutes, but certainly there are matters  
12 that I was expecting to raise.

13 PRESIDING JUDGE VELDT-FOGLIA: Okay. But if you want to make  
14 submissions on sentencing -- very well, I will give you the floor for  
15 sentencing, but could you first confer with your client and then I  
16 will give you the floor on sentencing. Good.

17 [Specialist Counsel confer]

18 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, you're standing.  
19 I give you the floor to share with us what the results of your --

20 MR. CADMAN: Obviously only having had a brief moment --

21 PRESIDING JUDGE VELDT-FOGLIA: Yes.

22 MR. CADMAN: -- to discuss that with Mr. Shala, he is content  
23 with me making submissions on his behalf.

24 PRESIDING JUDGE VELDT-FOGLIA: So I deduct from that that he is  
25 not going to say anything on remorse?

1 MR. CADMAN: As I said, he is content for me to make the  
2 submissions on his behalf. He is not in a position to answer your  
3 question.

4 PRESIDING JUDGE VELDT-FOGLIA: Then I note for the record that  
5 on my question if there's remorse, he didn't want to give an answer.  
6 That's what I -- he doesn't want to reply to me on that.

7 MR. CADMAN: That's correct, Your Honour.

8 PRESIDING JUDGE VELDT-FOGLIA: Okay. That's noted for the  
9 record. Thank you.

10 Defence counsel, you wanted to make submissions and, of course,  
11 you must have that opportunity, on sentencing. So what we will do is  
12 I give you the floor, then I will give the floor to the Specialist  
13 Prosecutor's Office, and we will have an extra round for any replies  
14 on arguments raised by both parties, and then we will adjourn to go  
15 for lunch. Yes? Good.

16 Defence counsel, you have the floor.

17 MR. CADMAN: Thank you, Your Honour.

18 Your Honour will -- or Your Honours will have received the  
19 sentencing submissions that have been provided on behalf of  
20 Mr. Shala, which is at 616, dated 6 December. And, of course, we've  
21 gone through in some detail the plea agreement and the extent to  
22 which Mr. Shala has admitted guilt in respect of that plea agreement.

23 Your Honour, first of all, dealing with the obstructing official  
24 persons in performing official duties, as we've heard, that falls  
25 under Article 401(2). And then the matter of intimidation during



1 criminal proceedings, under Article 387, noted that that is limited  
2 to the offer of a gift and not through any other form of  
3 intimidation. It is limited specifically to the offering of a gift.

4 I would submit that the conduct for which Mr. Shala has entered  
5 his plea falls relatively low down the scale of severity in each  
6 case.

7 With regards to Count 2, firstly, the agreed basis of the plea  
8 agreement does not state that Mr. Shala actually obstructed official  
9 persons in performing their duties. Rather, it implies that there  
10 was an attempt to do so. That will be found in paragraph 10 of the  
11 sentencing submissions on Mr. Shala's behalf.

12 Secondly, the conduct is relatively small-scale in that it  
13 consisted of an approach to one individual on two separate occasions.  
14 Although it is accepted that Mr. Shala communicated with  
15 Mr. Bahtijari and Mr. Januzi, as is set out in the plea agreement,  
16 such actions would be inherent in a crime that requires participation  
17 in a group of persons which obstructs or attempts to obstruct by  
18 common action. That's dealt with at paragraph 11 of our written  
19 submissions.

20 Thirdly, there was no abuse of power or official capacity by the  
21 accused. And, finally, as we have heard this morning, there is no  
22 implication that any tangible harm resulted from the accused's  
23 actions. That's at paragraph 12 of the written submissions.

24 For those reasons, we would say that Count 2 is at the lower end  
25 of the scale of gravity, and, therefore, the sentence that has been

1 agreed with the Prosecution is entirely in line with that.

2 With regards to Count 3, again reminding ourselves that it is  
3 solely intimidation through the promise of a benefit or a gift and  
4 not by the use of any serious -- use of force or serious threat or  
5 any other means of compulsion. And that's paragraph 14 of our  
6 written submissions.

7 Looking towards the practice of this Court. The Trial Panel in  
8 the Gucati and Haradinaj case, the only other case that has been  
9 determined by this Court for obstructing official persons in  
10 performing their official duties by participating in a common action  
11 or group, both accused in that matter were sentenced to one year of  
12 imprisonment. That's at trial judgment in that matter paragraphs 981  
13 and 1006.

14 For the intimidation charge, a sentence of four years was given  
15 to both accused in that matter, and an overall sentence of four and a  
16 half years that was later reduced to four years, three months on  
17 appeal.

18 There are a number of key aspects of the Gucati and Haradinaj  
19 case where it is clear that the matters for which they were convicted  
20 were more serious and had a higher level of gravity than those that  
21 are the subject to the plea agreement in this matter. Again, looking  
22 at these matters in the round, it is clear that an agreed sentence of  
23 three years is entirely consistent with that approach.

24 In the Gucati and Haradinaj case, it was found by the  
25 Trial Panel that the acts and statements of the accused amounted to a

1 serious threat. It was also found that there were fears and concerns  
2 for those persons who were the subject of that serious threat. The  
3 gravity of the crime, under Article 387, to which Mr. Shala has  
4 agreed to plead guilty does not involve the use of serious threat but  
5 only the promise of a gift or another form of benefit.

6 Further, I would invite Your Honours to consider that the  
7 sentence in Gucati and Haradinaj was of a higher level because they  
8 were convicted of other matters, not just that single charge.

9 And, thirdly, it is quite clear, as the record shows, that  
10 neither of the accused in Gucati and Haradinaj pleaded guilty or  
11 entered a plea agreement, which must inevitably lower the sentence  
12 that Your Honours ultimately impose.

13 It's also clear that a sentence of three years for the conduct  
14 for which Mr. Shala has agreed to is entirely consistent with the  
15 practice of other international courts and tribunals. In our written  
16 submissions, we refer to the case of Haraqija and Morina --

17 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, it's not  
18 necessary to repeat all the cases -- the cases you have listed,  
19 because I can assure you that we have been going through them really  
20 carefully because they're, of course, very relevant. So rest assured  
21 that that we have seen. And I see that you want to make your point,  
22 and I want to give the floor for that.

23 MR. CADMAN: Certainly.

24 PRESIDING JUDGE VELDT-FOGLIA: At the same time, we don't have  
25 to repeat the whole submissions in that respect.

1 MR. CADMAN: And, Your Honour, rest assured, I have no intention  
2 to repeat what's in the sentencing note, and I have no intention to  
3 go in detail to the cases that had been mentioned, only for the  
4 purpose, as this is a public hearing, to ensure that these points are  
5 put on the record.

6 There are three matters that are referred to in the sentencing  
7 note. As I mentioned, Haraqija and Morina, Milan Vujin and  
8 Beqa Beqaj, which is an ICTY case. Then we mentioned a case before  
9 the International Residual Mechanism, and then, of course, we focused  
10 on the case of Bemba at the International Criminal Court.

11 All of these cases concern offences against the administration  
12 of justice. And in each case -- and I would submit that the conduct  
13 in each of those cases is on a higher level of gravity than this  
14 case, a higher level of gravity as to what the terms of the plea  
15 agreement set out. And, of course, it is accepted that in any case  
16 such as this it is determined on the facts specific to each  
17 individual case, but, of course, by looking at those cases, you can  
18 see that a sentence of three years for the conduct which has been  
19 admitted to is not inconsistent. In fact, it is higher than the  
20 sentence in all of those cases.

21 So I would submit that the overwhelming weight of the existing  
22 case law before other courts and tribunals supports the sentence that  
23 has been agreed with the Prosecution.

24 Dealing with the Prosecution's submissions on sentencing. First  
25 of all, Mr. Shala has agreed to admit guilt in relation to Counts 2

1 and 3, and he has agreed to the imposition of a sentence of three  
2 years. And in exchange for his admission of guilt, should it be  
3 accepted by Your Honours, the Prosecution has agreed that it would  
4 recommend a sentence of three years, that has been accepted by  
5 Mr. Shala, and that he should be given credit, as would be the case,  
6 for the time that he has already served whilst he was in the  
7 detention unit of this Court.

8 In spite of this agreement, the Prosecution makes submissions in  
9 its Urgent Prosecution Submissions on Plea Agreement and Sentencing  
10 that would suggest that the conduct that Mr. Shala has agreed to, and  
11 which the Prosecution has agreed to, is more serious than, in fact,  
12 it is. They don't take account for what we say is the low level of  
13 severity for the two offences for which he has admitted guilt. They  
14 make allegations to the detriment that have no basis in the plea  
15 agreement and is not supported by evidence. And they erroneously  
16 argue that no substantial weight should be given to any possible  
17 submissions of Mr. Shala's character or of any of the accused.

18 Dealing with the first point. The Prosecution alleges that in  
19 an agreement in the sentence -- the sentencing or sentencing range of  
20 each accused, the SPO took account of Rule 163(2), which required a  
21 reduced sentence in the event of a plea agreement. As such, in this  
22 case, there are no further circumstances which could mitigate the  
23 sentence to be imposed on the accused, which is what they say at  
24 paragraphs 24 and 31 of their written submissions.

25 This ignores the respects to which the offences, which Mr. Shala

1 has agreed to that he has committed, were low down the scale of  
2 severity.

3 In relation to Count 2, Mr. Shala only attempted to obstruct  
4 official persons in performing their duties. The conduct was  
5 relatively small-scale, as I've already mentioned. There's no abuse  
6 of power, no official capacity, and, as we've heard, no tangible harm  
7 resulted from his actions.

8 In Count 3, he did not use force or serious threat or any other  
9 means of compulsion, and there is no evidence of tangible harm  
10 present, and the conduct is relatively small-scale. But the  
11 Prosecution repeatedly urges this Trial Panel to impose significant  
12 terms of imprisonment on the accused without acknowledging where  
13 these offences fit within the sentencing scale.

14 In relation to the second point. It is important to stress  
15 that, as is in paragraph 1 of the plea agreement, this agreement sets  
16 out the entire understanding of the parties as to the nature and  
17 consequences of Haxhi Shala's admission of guilt. I emphasise  
18 "entire" because what is set out in the plea agreement is the  
19 entirety of what is agreed between the parties.

20 I would direct Your Honours to paragraph 14 of the plea  
21 agreement. I won't read it out now, but it is important for  
22 Your Honours to consider the implications of paragraph 14.

23 I would submit that the Urgent Prosecution Submissions on Plea  
24 Agreement and Sentencing contain a number of factual allegations that  
25 do not amount to either admissible evidence or valid submissions.

1           Looking at paragraph 17, during the explanation of Count 1, as  
2           charging attempted obstruction, there is reference to the witness  
3           confirming what was -- that what was -- exactly what had happened,  
4           that a serious threat had been made. That is not part of the plea  
5           agreement. That is not part of the terms of the plea agreement.  
6           There is reference to the presence of the family of Witness 1.  
7           Again, not within the terms of the plea agreement. The implication  
8           that Witness 1 and 4891 were protected witnesses, and a claim that  
9           both witnesses experienced significant fear for their safety and that  
10          of their family. Again, not part of the agreement, not part of the  
11          plea agreement, and I would invite Your Honours to disregard those  
12          submissions.

13           It is clear that these factual statements advanced by the  
14          Prosecution are not contained in the plea agreement and are not  
15          supported with any admissible evidence before Your Honours, and you  
16          should not consider them.

17           In terms of the submissions that the character of Mr. Shala  
18          should be given substantial weight. Despite the existence of the  
19          plea agreement, the Prosecution states that there's been a lack of  
20          cooperation on the part of Mr. Shala. Not once - not once - has the  
21          Prosecution raised that with Mr. Shala in terms of any cooperation.

22           It further stated that none of the accused have made any efforts  
23          to compensate the victims. Again, as we've heard repeatedly today,  
24          there is no evidence to suggest that any of the individuals involved  
25          in this process to which Mr. Shala has entered a plea agreement had

1 suffered any harm for which he would be required to compensate. And  
2 certainly, as I've already said, regardless of that, no request has  
3 been made until today that there should be any form of compensation.

4 The Prosecution infers from this, the lack of cooperation and  
5 failure to compensate, that no substantial weight should be given to  
6 any possible submissions as to character, as to his character. That  
7 is at paragraph 69. This entirely misses the point.

8 The Prosecution's submissions have no bearing on the character  
9 references, and I won't go into the detail of the character  
10 references that are contained in the Confidential Annexes 1 to 4.  
11 But what I would say is that these references demonstrate that a long  
12 sentence of imprisonment would have an especially damaging effect on  
13 Mr. Shala and his family, and it would reduce the contribution that  
14 he could make not only to his family but to his community and to his  
15 country, which is set out very clearly in those character references.

16 I would also ask Your Honours to consider that whilst Mr. Shala  
17 has been detained in relation to these matters, his father passed  
18 away, and he had very limited time with his family as a result of  
19 that death. It is important for Your Honours to take that into  
20 account.

21 I don't intend to deal with the additional disclosure that was  
22 made just yesterday in relation to the evidence of prior convictions.  
23 Your Honours have those. As I've stated, this is not a matter of  
24 which you would have any jurisdiction to deal with. That is a matter  
25 for another court to deal with. But I would ask you to look at those



1 and identify them in their proper context as to the severity of those  
2 offences. Again, offences at the low end of the sentencing scale,  
3 which is reflected in the sentence -- the suspended sentences that  
4 were imposed.

5 I will make note of the fact that the direction by Your Honours  
6 was for all of this material to be disclosed by 6 December, and it  
7 was disclosed 11 days later, yesterday.

8 In any event, that evidence has no relevance to the character  
9 references that have been provided on Mr. Shala's behalf. What those  
10 character references do show is the devastating effect that a long  
11 sentence would have on Mr. Shala and his family.

12 The question of reparations has been dealt with, and I won't  
13 deal with that any further. I, again, invite Your Honours, on the  
14 basis of what I have already stated, that there is no proper basis  
15 upon which any order for reparations should be considered. I  
16 recognise the oral order that Your Honour made this morning. That  
17 would further delay the finality of these matters, and it is  
18 important to recognise that finality is an important consideration in  
19 a matter such as this.

20 Mr. Shala has already been in custody for over a year now. He  
21 is very keen to understand the outcome of these proceedings, so  
22 delaying matters further is going to cause further harm to Mr. Shala  
23 in that regard.

24 Well, Your Honours, I have gone a little bit over time. For  
25 that, I do apologise, but I think it was important to put in the

1 proper context what has been agreed, that what has been agreed is  
2 entirely consistent with this Court's practice and the practice of  
3 other international courts and tribunals, the sentence that has been  
4 agreed upon with the Prosecution is entirely appropriate. And I  
5 would invite Your Honours to accept that all of the conditions are  
6 met under the legal framework of this Court for that plea agreement  
7 to be accepted and for that sentence to be accepted. There is a  
8 proper factual and legal basis for doing so, and I would invite  
9 Your Honours to rule accordingly. Unless I can assist any further.

10 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

11 I now turn to the Specialist Prosecutor's Office.

12 First, in order to do some planning. Mr. Prosecutor, how much  
13 time do you think that you would need? We are approaching the two  
14 hours we had envisioned for this hearing, which doesn't mean that you  
15 will not be allowed the same amount of time as we allocated or we  
16 have given to the Defence, but I would like to see how we are going  
17 to proceed based on what you share with me.

18 MR. DEVANEY: Yes, Your Honour. You have our written  
19 submissions. I will be responding to the Defence. I don't  
20 anticipate taking longer, or much longer, than ten minutes.

21 PRESIDING JUDGE VELDT-FOGLIA: Okay. Then in that case I will  
22 give you the floor. And, meanwhile, if that would lead to a --  
23 Mr. Cadman to respond to what is being said, I will give that  
24 opportunity, and then you may respond too, and then I think there we  
25 could wrap it up and then go for lunch. That is how I intend to

1 proceed.

2 You have the floor, Mr. Prosecutor.

3 MR. DEVANEY: Thank you, Your Honour.

4 I think the most important thing is to highlight what we agree  
5 with the Defence on, which is that three years is the just and  
6 appropriate sentence in this case. And contrary to what's been  
7 asserted by the Defence, this does fit within the scale of offences  
8 of this nature. Ten years is the maximum sentence. The sentence is  
9 three years. That has been accounted in the SPO's reckoning.

10 What we disagree with the Defence and the accused is on the  
11 severity of the conduct in this case. Looking at the Agreed Factual  
12 Basis and the relevant agreed sections of the indictment, one can  
13 only conclude that Mr. Shala was the beginning, the end, and  
14 everything in the middle that occurred during the criminal conduct in  
15 this case.

16 Mr. Shala was the beginning because he directed the other  
17 accused in this case in their actions. He was the end because he was  
18 the supply of help or money that would come in this case. And,  
19 contrary to the minimising assertions of the Defence that such  
20 communications are inherent in these offences, Mr. Shala was the  
21 engine that drove this criminal act -- these criminal acts with  
22 constant communication, with multiple accused, and multiple  
23 approaches, a second approach when the first approach did not work.  
24 So in this manner his conduct is severe.

25 The scope of the interference in this case was also substantial.

1 There were multiple approaches to Witness 1 by two of the accused at  
2 his home at the direction of Mr. Shala acting as part of or on behalf  
3 of unnamed others.

4 The harm in this case is not just to the victims. The impact of  
5 these offences as part of the continuing pervasive climate of witness  
6 interference cannot be overstated. Indeed, it is why we are here  
7 today. That protected witnesses at the Kosovo Specialist Chambers  
8 can be repeatedly approached and subject to criminal conduct has a  
9 potential chilling effect on the public confidence and the  
10 effectiveness on KSC orders and decisions, including those related to  
11 protective measures. Deterrence in the form of a significant  
12 sentence protects this confidence.

13 In that regard, Mr. Shala -- the Defence for Shala has made  
14 comparisons to the Gucati and Haradinaj case and argued elements  
15 present in that case and not in this case render it more serious. On  
16 the flip side, elements present in this case and not present in that  
17 case render the conduct here more serious.

18 The Shala Defence ignores that the victims in this case were  
19 approached in person in their homes on multiple occasions by multiple  
20 accused at the behest of Shala, a former KLA commander, and, again,  
21 working in coordination with unidentified others to stop Witness 1  
22 from testifying at all costs.

23 This flies in the face of the argument that there is not even  
24 the implication of tangible harm. The Defence has highlighted  
25 paragraph 14 of the plea agreement, which, as previously indicated,

1 allows such evidence and submissions that are not inconsistent with  
2 the agreement and the Agreed Factual Basis.

3 Indeed, the Defence has made such submissions in the form of  
4 harm to Shala and his family yet seeks to exclude the SPO from making  
5 comparable submissions on harm to the victims in this case, which has  
6 been supported in disclosures in this case and is not just consistent  
7 with the Agreed Factual Basis in this case but the logical conclusion  
8 of such actions.

9 The Defence has referenced the weight that should be placed on  
10 character evidence in this case. And Mr. Shala has provided  
11 sentencing submissions from friends and family. The Panel is free to  
12 give those submissions the weight it deems appropriate. However, the  
13 SPO asserts that the more appropriate and relevant metric of  
14 Mr. Shala's relationship with the rule of law and willingness to  
15 engage in the type of intimidation and obstructive conducts present  
16 in this case is his criminal history. This has been submitted to the  
17 Panel.

18 And, as such, Mr. Shala's prior criminal conduct serves as an  
19 aggravating factor justifying the sentence in this case. *[REDACTED]*  
*Pursuant to In-Court Redaction Order F00633RED.*

20 *[REDACTED] Pursuant to In-Court Redaction Order F00633RED.*

21 *[REDACTED] Pursuant to In-Court Redaction Order F00633RED.*

22 PRESIDING JUDGE VELDT-FOGLIA: I would prefer to go into private  
23 if you want to go into that, and that was the purpose of my question  
24 before when I discussed it with the Defence counsel.

25 MR. DEVANEY: I understand, Your Honour. And we have no

1 objection with that.

2 PRESIDING JUDGE VELDT-FOGLIA: No? Thank you.

3 Madam Court Officer, can you bring us, please, into private  
4 session.

5 [Private session]

6 [Private session text removed]

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1 [Private session text removed]

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3 [Open session]

4 THE COURT OFFICER: Your Honours, we are now in public session.

5 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.

6 Mr. Prosecutor, you have the floor.

7 MR. DEVANEY: Yes, Your Honour.

8 [REDACTED] Pursuant to In-Court Redaction Order F00633RED.

9 [REDACTED] Pursuant to In-Court Redaction Order F00633RED.

10 [REDACTED] Pursuant to In-Court Redaction Order F00633RED.

11 The last remaining thing I would like to respond to,

12 Your Honour, is the comments made by the Defence on the issue of  
13 cooperation.

14 To correct the record, Mr. Shala was given a chance to cooperate  
15 and give an interview early in the process which he declined. The  
16 further cooperation in this case has been last minute and on the eve  
17 of trial and extremely reluctant and the bare minimum. We saw in  
18 court today Mr. Shala declining to personally express remorse in this  
19 case.

20 Those are all the submissions I have, Your Honour. I think the  
21 important thing again to emphasise is that the parties are in  
22 agreement on the three-year sentence in this case, and it is just and  
23 appropriate considering the actions of Mr. Shala, the potential and  
24 actual harm to the victims, and, more broadly, the potential harm to  
25 the KSC, which the appropriate sentence in this case will mitigate

1 and properly assure the public of the confidence that they have in  
2 this institution.

3 Thank you.

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Mr. Prosecutor.

5 Defence counsel, I will give you the floor to respond to what  
6 you wish.

7 MR. CADMAN: Just very briefly.

8 First of all, Your Honours have read this morning the details of  
9 what actually transpired and what is part of the plea agreement in  
10 respect of the assertion of multiple approaches. It is quite clear  
11 that there were two approaches.

12 In terms of the -- any potential exchange of money, Your Honours  
13 will recognise that that was a matter that was advanced by the  
14 witness, not any of the accused.

15 I don't want to belabour the point as far as harm, but the  
16 Prosecution has to recognise that it is bound by what it has agreed  
17 to in the plea agreement, in which there is no harm and there is no  
18 evidence of any harm.

19 And then finally in respect of the two convictions, again,  
20 Your Honours have those. You can read the details as to those  
21 convictions and put them in their proper context for what they are.

22 The only final remark I would make is that the suggestion that a  
23 criminal matter falls at the bottom end of the sentencing scale does  
24 not minimise or trivialise an offence. It just puts that offence in  
25 its proper context. And so the submissions made puts these matters



1 on the basis of the plea agreement in the proper context, that it  
2 falls at the lower end of the sentencing scale, and therefore a  
3 sentence of three years is entirely appropriate. That is the point  
4 that was made.

5 The only other remark that was made towards the end in terms of  
6 cooperation. There was a invitation from the Prosecution after  
7 Mr. Shala had been detained for a period of time whether he wanted to  
8 submit to a voluntary interview. And upon advice, he declined. He  
9 was not interviewed prior to his arrest. He was not interviewed  
10 immediately following his arrest but several months later when he had  
11 already been detained at the detention unit.

12 There was no other invitation to cooperate during the currency  
13 of these proceedings either prior to the *inter partes* communications  
14 on a plea agreement or following those discussions. That was the  
15 point that was made. So to suggest that it is an aggravating factor  
16 that he hasn't cooperated, you cannot penalise him for something that  
17 he has not been given any opportunity to do.

18 Thank you, Your Honours.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

20 Anything the SPO wants to raise in this regard?

21 MR. DEVANEY: Nothing further, Your Honour.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

23 So, Defence counsel, the SPO has nothing more to raise. So you  
24 were the last one to talk in this respect. Oh, something you would  
25 like to add, Defence counsel?

1 MR. CADMAN: I've just been reminded of one point that I should  
2 have made.

3 PRESIDING JUDGE VELDT-FOGLIA: Yes.

4 MR. CADMAN: And it is not appropriate to penalise an accused in  
5 a matter such as this for wishing to speak through his advocate. It  
6 is entirely appropriate for submissions to be made through his  
7 advocate, and that was the only -- I think that was the final point  
8 that the SPO made, in terms of expressing remorse. He has elected to  
9 speak through his advocate, which is entirely appropriate, and he  
10 should not be penalised for that.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you, counsel. This is  
12 noted.

13 If there is -- then my final question would be, at this moment  
14 in time, is there anything that the parties would like to raise with  
15 the Panel before I conclude for this moment this hearing on the plea  
16 agreement for Mr. Shala and the SPO?

17 Yes, Defence counsel.

18 MR. CADMAN: The question was asked whether Mr. Shala would want  
19 to attend tomorrow's hearing. He has elected not to. I understand  
20 that a written waiver is required, but, obviously, it is quite  
21 difficult for us to -- other than a handwritten waiver that we will  
22 endeavour to provide the Court with. But certainly he has elected  
23 not to attend tomorrow in person or videolink.

24 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you for that. But  
25 for the formal requirements, I'm assured that CMU will be able to

1 assist you in a very proactive and helpful way. So if you liaise  
2 with them, I'm sure that that will be resolved.

3 However, the presence for the hearing after the hearing of --  
4 regarding the plea agreement between Mr. Bahtijari and the SPO, there  
5 will be an additional hearing after the half-an-hour break, when we  
6 finalise that hearing, to wrap up everything. And if something will  
7 come up, the presence -- so for that hearing, the presence of parties  
8 is required.

9 So, I mean, even if the accused don't want to participate, and  
10 their presence is not required for this wrap-up hearing, so to call,  
11 I would -- we ask or request the presence of the lawyers.

12 So very well. We are now at the end of the hearing on plea  
13 agreement entered between Mr. Shala and the SPO. We will now go for  
14 a break, and that will be a one-and-a-half-hour break. So we will  
15 start not at 2.30, but we will start at 3.00, Mr. Rees, SPO,  
16 Mr. Prosecutor, and we intend to proceed till around 5.00. I think  
17 that, less or more, that's the -- what happened now, a little bit  
18 more. But that is our plan for this afternoon.

19 So I adjourn the hearing and see you back at 3.00. Thank you.

20 --- Luncheon recess taken at 1.27 p.m.

21 --- On resuming at 3.03 p.m.

22 PRESIDING JUDGE VELDT-FOGLIA: Welcome again for this  
23 afternoon's session. We will first call the appearances.

24 Let me see. I will ask the parties to introduce themselves, and  
25 I will start with the Defence for Mr. Januzi.

1 Defence counsel, you have the floor.

2 MR. REES: Thank you, Your Honour. Representation remains as  
3 per this morning.

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.  
5 Specialist Prosecutor's Office, you have the floor.

6 MS. SHAHABUDDIN: Tazneen Shahabuddin, Prosecutor for the  
7 Specialist Prosecutor's Office. We also have the same team present  
8 as this morning, but nevertheless, I have with me, to my left,  
9 John Devaney, Associate Prosecutor; Joshua Hafetz, Prosecutor; and  
10 behind us from our -- our Case Manager, Line Pedersen. Thank you.

11 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

12 And from the other Defence teams, Defence for Mr. Shala, you  
13 have the floor.

14 MR. CADMAN: No change from this morning's representation.

15 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

16 And for Mr. Bahtijari.

17 MS. GERRY: A small change from this morning. There are just  
18 three of us here this afternoon: Myself, Felicity Gerry; co-counsel,  
19 Marion Carrin; and Yuqing Liu. Thank you.

20 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much. We will now  
21 begin with the hearing regarding the plea agreement entered into  
22 between Mr. Januzi and the SPO.

23 And for the record, I note that a plea agreement was entered  
24 between Mr. Sabit Januzi and the Specialist Prosecutor's Office on  
25 6 December 2024, and the accused's Specialist Counsel is

1 Jonathan Elystan Rees.

2 Counsel, can you confirm this?

3 MR. REES: Yes, I can, Your Honour.

4 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

5 Before we begin, we will proceed to confirm the signatures of  
6 both Defence counsel and Mr. Januzi on the different versions of the  
7 plea agreement both in English and in Albanian. And I would like to  
8 proceed to see if we can do it all via electronic way instead of  
9 sharing with Mr. Januzi the plea agreement.

10 So I ask Madam Court Officer to pull up filing 618, Annex 1. We  
11 will confirm both in ...

12 [Trial Panel and Court Officer confers]

13 PRESIDING JUDGE VELDT-FOGLIA: It's Annex 2. Yes, for sure,  
14 Annex 2 in filing 618. And then we will go to Annex 1 of filing 632.

15 Could you please go, Madam Court Officer, to page 9 and 10 of  
16 this document. And I will allow you, Madam Court Officer, to put on  
17 both the English and the Albanian version. Thank you. We now have  
18 page 10 in front of us, both of the Albanian -- okay. No. Sorry,  
19 no, I would like to have the Albanian version of -- oh, yes, sorry,  
20 Madam Court Officer. I'm making some confusion here. Yes. Thank  
21 you very much.

22 Mr. Januzi, do you see on the screen in front of you the English  
23 and Albanian version of the plea agreement you signed?

24 THE ACCUSED JANUZI: [Microphone not activated].

25 PRESIDING JUDGE VELDT-FOGLIA: Madam Court Clerk, could you

1 please assist.

2 THE ACCUSED JANUZI: [Microphone not activated].

3 PRESIDING JUDGE VELDT-FOGLIA: Yes. And the two -- the -- your  
4 signature in the Albanian version, is that your signature?

5 THE ACCUSED JANUZI: [Microphone not activated].

6 THE INTERPRETER: Microphone, please.

7 PRESIDING JUDGE VELDT-FOGLIA: Could you repeat your answer?

8 THE ACCUSED JANUZI: [Interpretation] Yes, it is my signature.

9 THE INTERPRETER: Interpreter notes that the microphone is still  
10 not on.

11 PRESIDING JUDGE VELDT-FOGLIA: Could you please -- is the  
12 microphone on? Because -- could you -- Mr. Januzi, can you please  
13 repeat your answer, because your microphone was not on, and we need  
14 that to put your answer on record.

15 THE ACCUSED JANUZI: [Interpretation] Yes, it is my signature.

16 PRESIDING JUDGE VELDT-FOGLIA: In the Albanian version, that is  
17 your signature?

18 THE ACCUSED JANUZI: [Interpretation] Yes.

19 PRESIDING JUDGE VELDT-FOGLIA: And on the right side, there we  
20 have the English version of your plea agreement. On page 10 in the  
21 English version, is that your signature?

22 THE ACCUSED JANUZI: [Interpretation] Yes, it is my signature.

23 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you for that.

24 Madam Court Officer, could you bring us to the page 11.

25 Mr. Januzi, is in the Albanian version on the left-hand side, is

1 that your signature? The second one counting from up.

2 THE ACCUSED JANUZI: [Interpretation] Yes, it is.

3 PRESIDING JUDGE VELDT-FOGLIA: And in the English version on the  
4 right-hand side, the first signature counting from above, is that  
5 your signature?

6 THE ACCUSED JANUZI: [Interpretation] Yes, it is.

7 PRESIDING JUDGE VELDT-FOGLIA: Thank you for that.

8 Then we stay here and I ask Defence counsel for Mr. Januzi, in  
9 both versions, both the Albanian and the English one, on the left and  
10 the right-hand side, is that your signature, Defence counsel?

11 MR. REES: That is my signature --

12 PRESIDING JUDGE VELDT-FOGLIA: Both?

13 MR. REES: -- in both versions.

14 PRESIDING JUDGE VELDT-FOGLIA: In both.

15 MR. REES: This is actually quite a useful exercise because  
16 having the two documents alongside each other does lead me to suggest  
17 that perhaps you should also ask for Ms. Shahabuddin to confirm that  
18 those are her two signatures, both of which are in her name, one the  
19 17th December and the second the 6th December.

20 PRESIDING JUDGE VELDT-FOGLIA: I'm most happy to ask that.

21 MS. SHAHABUDDIN: I am able to confirm that it is both my  
22 signature that appears as well as the Specialist Prosecutor's  
23 signature who signed in my presence.

24 PRESIDING JUDGE VELDT-FOGLIA: We have noted that. Thank you.

25 And thank you, Mr. Rees.

1 MR. REES: [Microphone not activated].

2 It's a natural variance.

3 PRESIDING JUDGE VELDT-FOGLIA: Then we go back to page 10 in  
4 both versions. Yes. And then the Albanian version is not of  
5 relevance in this case but the English one is.

6 Defence counsel, can you confirm that in the English version we  
7 see your signature?

8 MR. REES: [Microphone not activated].

9 Not on the -- not on --

10 PRESIDING JUDGE VELDT-FOGLIA: Are you sure?

11 MR. REES: Certainly, we do. In the English version, indeed.

12 PRESIDING JUDGE VELDT-FOGLIA: Yeah, I said --

13 MR. REES: We can't see my signature on the Albanian version.

14 PRESIDING JUDGE VELDT-FOGLIA: No, but that's what I said. Only  
15 the English version. But very well. Thank you for confirming that.

16 MR. REES: Thank you.

17 PRESIDING JUDGE VELDT-FOGLIA: Good. Thank you, counsel.

18 Then we proceed, Mr. Januzi. Yes? No, it's not necessary to  
19 put on his microphone yet. Thank you.

20 Mr. Januzi, every time you will -- I will ask you a question and  
21 I will ask you to give an answer, please switch on the button of the  
22 microphone, yeah? Do you understand how it works? Yes? Because we  
23 will not be having the Court Clerk the whole hearing standing next to  
24 you. So if I ask you to give an answer to a question, the idea is  
25 that you switch on the microphone, because if not, I cannot hear the



1 translation of what you're saying. So it's really important. Good.

2 Madam Court Clerk, I think that for now -- thank you for your  
3 assistance.

4 Mr. Januzi, as you know, and certainly your counsel is aware,  
5 the Panel may approve the plea agreement as concluded between the SPO  
6 and your counsel on your behalf if it is satisfied that certain  
7 conditions are met. This is what Rule 94(5) of the Rules requires.

8 Therefore, I will proceed to ask you some questions, and I will  
9 also ask the SPO and your counsel questions, where necessary, in  
10 order to verify whether all the conditions as set out in Rule 94(5)  
11 are met.

12 You understand that?

13 THE ACCUSED JANUZI: [Interpretation] Yes, I understand.

14 PRESIDING JUDGE VELDT-FOGLIA: Very well.

15 First, I will begin with Rule 94(5) under (a). In the plea  
16 agreement signed by you, it is indicated that you have discussed the  
17 terms of the plea agreement with your counsel and that you have  
18 entered the plea agreement after sufficient consultation with him.  
19 And I refer to paragraphs 6, 19, and 24 of the plea agreement.

20 Mr. Januzi, can you confirm that this is the case?

21 THE ACCUSED JANUZI: [Interpretation] Yes.

22 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Now I turn to  
23 Rule 94(5) under (b) and (c). In this context, I will go through the  
24 terms of the plea agreement in order to allow the Panel to assess  
25 that you understand the terms of the plea agreement and that you

1 agree to the terms of the plea agreement. So I want to know if you  
2 understood them and I want to know if you agreed to them.

3 Mr. Januzi, do you confirm that you have carefully reviewed with  
4 your counsel every part of the plea agreement in a language you  
5 understand and that you understand the terms of the said agreement,  
6 as specified in paragraph 24 of the plea agreement?

7 THE ACCUSED JANUZI: [Interpretation] Yes, I do confirm that.

8 PRESIDING JUDGE VELDT-FOGLIA: You confirm that you understand  
9 it and you confirm -- you confirm that you understand, that you took  
10 notice of it in a language you understand, and you understand the  
11 terms? So you understand what is said and you understand the terms?

12 THE ACCUSED JANUZI: Yes.

13 PRESIDING JUDGE VELDT-FOGLIA: Thank you. Now, we go now, we  
14 turn now to Rule 94(5) under (c) concerning the facts admitted by  
15 you, Mr. Januzi, underlying the charges contained in the plea  
16 agreement. And I will start with Annex 1 to your plea agreement,  
17 which is page 12 of Annex 2 of filing 618, which contains the Agreed  
18 Factual Basis.

19 Madam Court Officer, if you could pull that up both in Albanian  
20 and in English. Thank you very much.

21 Mr. Januzi, I will read out the Agreed Factual Basis:

22 "The Defendant Sabit Januzi accepts that he was part of a group  
23 which sought to induce Witness 1 to refrain from giving evidence  
24 before the Kosovo Specialist Chambers through the promise of a  
25 benefit. In particular, members of the group - acting at the

1 direction of Haxhi Shala - approached Witness 1 at his home on 5 and  
2 12 April 2023, respectively. During the 5 April ... approach, Ismet  
3 Bahtijari told Witness 1 that he should withdraw his testimony before  
4 the Kosovo Specialist Chambers. During the 12 April 2023 approach,  
5 the Defendant Sabit Januzi followed up on the first approach and  
6 relayed to Witness 1 an offer that Haxhi Shala and others would help  
7 him if he withdrew his testimony. Before and after each of the 5 and  
8 12 April 2023 approaches the Defendant Sabit Januzi communicated and  
9 coordinated with other group members regarding their interactions  
10 with Witness 1."

11 Mr. Januzi, do you confirm your agreement on the Agreed Factual  
12 Basis as I just read out to you?

13 THE ACCUSED JANUZI: [Interpretation] Yes, I do confirm.

14 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

15 I will proceed to read now, because paragraph 5 of the plea  
16 agreement refers to them, paragraphs 8 and 9, 13 till 18, and 24(i)  
17 under (i), (ii), and (iii), of the Confirmed Indictment of 10 July  
18 2024.

19 I start with paragraph 8 of the 10 July Confirmed Indictment,  
20 and I will ask Madam Court Officer to pull both the Albanian and the  
21 English version on the screen. Thank you.

22 Do you see it, Mr. Januzi? Do you see on your screen the text  
23 of the Confirmed Indictment?

24 THE ACCUSED JANUZI: [Interpretation] Yes, I do.

25 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you.

1 Paragraph 8 of the 10 July 2024 Confirmed Indictment reads as  
2 follows:

3 "On 5 April 2023, Shala called Januzi. Bahtijari then also  
4 called Januzi."

5 Then we go to paragraph 9:

6 "Then, after calling and verifying that Witness 1 was at home,  
7 Bahtijari came to Witness 1's home. Bahtijari told Witness 1 that  
8 Shala had recently approached him and sent him to tell Witness 1 that  
9 he should withdraw his testimony."

10 Then we turn to paragraph 13:

11 "Later on 5 April 2023, after Bahtijari had visited Witness 1,  
12 Shala and Januzi, and separately Januzi and Bahtijari, engaged in  
13 numerous text and phone contacts, including contacts between Shala  
14 and Januzi to coordinate an in-person meeting that same evening."

15 And then paragraph 14:

16 "In the days that followed, Shala and Januzi, amongst others,  
17 remained in contact, including connecting by phone at least four  
18 times between 6 April and 9 April 2023.

19 "On 12 April 2023," we are now on paragraph 15, "shortly after  
20 calling Shala, Januzi went to Witness 1's home. At Witness 1's home,  
21 Januzi told Witness 1 that Shala had asked Januzi to follow up on  
22 Bahtijari's visit and to find out what Witness 1 planned to do and  
23 how the matter of his testimony could be addressed.

24 "Specifically, Januzi told Witness 1 that Shala had asked Januzi  
25 to convey the message that if Witness 1 withdrew his testimony, then

1 Shala and unnamed others would provide him with 'help.' Witness 1  
2 responded that if Shala and/or the others brought him 200.000 euros,  
3 they would have a deal."

4 Then paragraph 17:

5 "Witness 1 did not confirm or deny being a witness. Januzi said  
6 he would tell 'them' what Witness 1 had said."

7 Paragraph 18:

8 "Shortly after his 12 April 2023 visit to Witness 1, Januzi  
9 again called Shala."

10 And then paragraph 24(i):

11 "On 5 April 2023, at Shala's direction, Bahtijari approached  
12 Witness 1 and (i) told Witness 1 that Witness 1 should withdraw his  
13 testimony in KSC proceedings."

14 "On 12 April 2023, at Shala's direction, Januzi approached  
15 Witness 1 to follow up after Bahtijari's earlier approach and to  
16 relay the offer that Shala and unnamed others would help Witness 1 if  
17 he agreed to withdraw his testimony."

18 And then (iii):

19 "Before and after approaching Witness 1, Januzi and Bahtijari  
20 communicated and coordinated with each other and Shala."

21 This was the content of the paragraphs in the Confirmed  
22 Indictment of 10 July 2024.

23 I will now turn to paragraph 5 of the plea agreement, which  
24 states as follows:

25 "Sabit Januzi and the Prosecution ..."

1 I will wait for a moment that we have the appropriate paragraphs  
2 in front of us. Thank you, Madam Court Officer.

3 "Sabit Januzi and the Prosecution agree that if the Prosecution  
4 were to proceed with evidence, the facts and allegations as set out  
5 in paragraphs," and I've just read them out to you, "8-9, 13-18, and  
6 24 (subparagraphs i under (i), ii and iii) of the Indictment dated  
7 10 July 2024 would be proven beyond reasonable doubt, and that those  
8 facts are true and correct and not disputed by Sabit Januzi. Sabit  
9 Januzi retains [the] right to dispute any of the other facts or  
10 allegations contained in the Indictment dated 10 July ... and any  
11 findings based thereon."

12 Mr. Januzi, do you confirm your agreement with the statement  
13 that I just read out to you?

14 THE ACCUSED JANUZI: [Interpretation] I do.

15 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

16 Mr. Januzi, the Panel also wants to ensure that you are fully  
17 aware of the charges contained in the plea agreement. For that  
18 purpose, I will read out to you paragraphs 8 and 9 of the plea  
19 agreement itself and also paragraph 3 of the plea agreement, because  
20 paragraph 8 refers to paragraph 3:

21 "Sabit Januzi," that is paragraph 3, "agrees to admit guilt  
22 before the Trial Panel pursuant to Rule 94 of the Rules in relation  
23 to Counts Two (2) and Three (3) of the Indictment, dated 10 July  
24 2024, to the extent they are alleging, in Count Two (2), obstructing  
25 official persons in performing official duties by participating in

1 the common action of a group between at least 5 and 12 April 2023,  
2 punishable under Kosovo Criminal Code ('KCC') Articles 17, 21, 28,  
3 33, 35, and 401(2) and (5), and Articles 15(2) and 16(3) of the Law  
4 on the Specialist Chambers and Specialist Prosecutor's Office  
5 ('Law'), and, in Count Three (3), intimidation during criminal  
6 proceedings by means of a promise or a gift or any other form of  
7 benefit between at least 5 and 12 April 2023 punishable under KCC  
8 Articles ..."

9 Then we go to paragraph 8 which reads as follows:

10 "Sabit Januzi fully understands that he is admitting guilt in  
11 relation to Counts Two (2) and Three (3) of the Indictment, as  
12 described above, and specifically admitting his conduct as set forth  
13 in paragraphs 8-9, 13-18, and 24 (limited to subparagraphs i(i), ii,  
14 and iii) of the Indictment and as further described in the Agreed  
15 Factual Basis."

16 And paragraph 9, which is also important for the nature of the  
17 charges you agreed on in the plea agreement, and paragraph 9 reads as  
18 follows:

19 "Sabit Januzi understands that if a trial were held, the  
20 Prosecution would be required to prove the following elements of  
21 Articles 21, 387, 401(2) and (5), beyond reasonable doubt."

22 And for Count Two (2), that would be, under (a):

23 "Participation in a group which by common action." That's  
24 401(2).

25 "Obstructs or attempts to obstruct an official person in

1 performing official duties." That's the Kosovo Criminal Code 2019  
2 Article 401(2).

3 "The offence was committed against a judge, a prosecutor, an  
4 official of a court, prosecution officer or a person authorised by  
5 the court and prosecution office, or police officer during the  
6 exercise of their official functions." This is KCC Article 401(5).

7 And the element of "awareness of, and desire to commit, the act,  
8 or awareness that a prohibited consequence can occur as a result of  
9 the act or omission and accession to its occurrence." And this is  
10 the Kosovo Criminal Code Article 21.

11 And then for Count 3, that would be, under (a), the element of  
12 "the use of force or serious threat, or any other means of  
13 compulsion, a promise of a gift or any other form of benefit," which  
14 is the KCC Article 387.

15 And, under (b), "to induce another person to refrain from making  
16 a statement or to make a false statement or to otherwise fail to  
17 state true information to the police, a prosecutor or a judge and  
18 such information relates to obstruction of criminal proceedings."  
19 And this is, again, KCC Article 387.

20 And as a last element, awareness -- under (c), "awareness of,  
21 and desire to commit, the act, or awareness that a prohibited  
22 consequence can occur as a result of the act or omission and  
23 accession to its occurrence." And this is the KCC Article 21.

24 Mr. Januzi, can you confirm that you agree to the above charges?

25 THE ACCUSED JANUZI: [Interpretation] Yes.



1 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

2 Now, as regards admission of guilt, I will read out paragraphs 3  
3 and 7 of the plea agreement, which is partly a repetition from what I  
4 just read out but now in a different setting. Paragraph 3:

5 "Sabit Januzi agrees to admit guilt before the Trial Panel  
6 pursuant to Rule 94 of the Rules in relation to Counts Two (2) and  
7 Three (3) of the Indictment, dated 10 July 2024, to the extent they  
8 are alleging [that], in Count Two (2), obstructing official persons  
9 in performing official duties by participating in the common action  
10 of a group between at least 5 and 12 April 2023, punishable under  
11 Kosovo Criminal Code ... Articles 17, 21, 28, 33, 35, and 401(2) and  
12 (5), and Articles 15(2) and 16(3) of the Law on the Specialist  
13 Chambers and Specialist Prosecutor's Office ('Law'), and, in Count  
14 Three (3), intimidation during criminal proceedings by means of a  
15 promise or a gift or any other form of benefit, between at least 5  
16 and 12 April 2023, punishable under [the] KCC Articles ..."

17 Mr. Januzi, do you confirm your agreement on this point, that  
18 you admit guilt on those two counts?

19 THE ACCUSED JANUZI: [Interpretation] Yes.

20 PRESIDING JUDGE VELDT-FOGLIA: Then we go to paragraph 7:

21 "Mr. Sabit Januzi agrees to make admission of guilt in relation  
22 to the charges identified at paragraph 3 because he is in fact guilty  
23 and acknowledges his guilt and accepts full responsibility for his  
24 conduct as described in the Agreed Factual Basis."

25 Mr. Januzi, do you confirm your agreement on this point?

1 THE ACCUSED JANUZI: [Interpretation] Yes, I do confirm.

2 PRESIDING JUDGE VELDT-FOGLIA: Mr. Januzi, the Panel takes note  
3 of your agreement on this point, and we will formally ask you to  
4 enter a plea at a later stage during this hearing.

5 Now we will go to the term of the plea agreement regarding the  
6 sentence.

7 In terms of sentence, Mr. Januzi, I read in paragraph 11 of the  
8 plea agreement that you agree on the imposition of a sentence within  
9 the range of 24 till 30 months' imprisonment. And the plea agreement  
10 also states, in paragraph 16, that in exchange for your admission of  
11 guilt, the SPO will recommend to the Panel a sentence within the  
12 range of 24 till 30 months' imprisonment and recommend that you be  
13 given credit for the time served in the custody of the Kosovo  
14 Specialist Chambers.

15 And as per paragraph 16(c) of the plea agreement, the SPO also  
16 agrees to withdraw Count 1 against you, Mr. Januzi. Do you confirm  
17 that?

18 THE ACCUSED JANUZI: [Interpretation] Yes.

19 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

20 Let me now turn to paragraph 12 of the plea agreement, which  
21 concerns legal remedies.

22 And as a preliminary remark, I note that the SPO has withdrawn  
23 its request for reconsideration and/or leave to appeal of decision  
24 612. This is filing 631 dated 16 December 2024. And as a result,  
25 paragraph 12 of the plea agreement is to be amended in order to

1 confirm to the -- conform to the decision 612. The Panel will issue  
2 the necessary order in due course. I wish, however, to ensure that  
3 you understand how this impacts your plea agreement, Mr. Januzi. And  
4 you may, of course, confer with your counsel before you give your  
5 answer.

6 Mr. Januzi, do you understand and agree that should the Panel  
7 approve the plea agreement and set a sentence which accords with the  
8 terms of the plea agreement, you will be precluded from pursuing  
9 appellate remedies against said decision; and that you will not move  
10 to withdraw your guilty plea or appeal your conviction pursuant to  
11 your guilty plea?

12 And I would like you to confirm that you understand and agree to  
13 both of the above points, Mr. Januzi. And you may, of course, confer  
14 with your counsel before you give your answer.

15 MR. REES: I would like to take brief instructions. Before I do  
16 that, can I just seek clarification on one matter.

17 Paragraph 12(a), as it's currently drafted, specifically refers  
18 to a "judgment or sentencing decision which accords with the  
19 sentencing recommendation in paragraph 16(a) below." It may be that  
20 there's no difference between the terms that Your Honour has just set  
21 out, which is "set a sentence which accords with the terms of the  
22 plea agreement."

23 PRESIDING JUDGE VELDT-FOGLIA: Yes, indeed.

24 MR. REES: If that's right, then I'm satisfied. The only reason  
25 why I raise it is because Your Honour will see that at paragraph

1 18(c) of this agreement, at page 8 of 12, you will see that  
2 specifically the right to appeal any reparations, if imposed, is  
3 retained.

4 PRESIDING JUDGE VELDT-FOGLIA: But do I read well, which is a  
5 rhetoric question, that, between brackets, you have agreed, the SPO  
6 and the Defence for Mr. Januzi, "if imposed in this case"?

7 MR. REES: Yes, so --

8 PRESIDING JUDGE VELDT-FOGLIA: The word "imposed. " And our  
9 decision 612 clearly indicates that it's not imposing.

10 MR. REES: Oh, I see. So it's not setting. Imposing is  
11 different. Is that the point you're making?

12 PRESIDING JUDGE VELDT-FOGLIA: Well, the point is made in that  
13 this is an agreement between the parties, and that the Panel can  
14 submit for amendments what they want, but it's the parties who agree.

15 MR. REES: Yes, I -- absolutely. But there's obviously a  
16 distinction between this is a sentencing agreement which deals with  
17 the sentencing recommendation that is in paragraph 16(a), the range  
18 of 24 to 30 months' imprisonment.

19 What this agreement doesn't deal with is there's no agreement as  
20 to reparations other than the fact that it's a matter for you in due  
21 course, and the agreement specifically retains the right for  
22 Mr. Januzi to appeal against any reparations, if in due course you  
23 impose them.

24 PRESIDING JUDGE VELDT-FOGLIA: If we would impose them.

25 MR. REES: Yes.

1           PRESIDING JUDGE VELDT-FOGLIA: Yes.

2           MR. REES: Yes, thank you. I just wanted to get that  
3 clarification. Now I have. Let me just take some brief  
4 instructions.

5                               [Specialist Counsel confer]

6           PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, you have  
7 conferred with your client?

8           MR. REES: Yes, I have.

9           PRESIDING JUDGE VELDT-FOGLIA: We can proceed?

10          MR. REES: We can proceed.

11          PRESIDING JUDGE VELDT-FOGLIA: Thank you.

12          Mr. Januzi, I would like you to confirm that you understand and  
13 agree to both of the above points. You have the floor.

14          THE ACCUSED JANUZI: [Interpretation] Yes, I confirm. I agree.

15          PRESIDING JUDGE VELDT-FOGLIA: Just to be sure. You understand  
16 and agree that should the Panel approve the plea agreement and set a  
17 sentence which accords to the terms of the plea agreement, you will  
18 be precluded from pursuing appellate remedies against said decision?  
19 You understand that and you agree to that?

20          THE ACCUSED JANUZI: [Interpretation] Yes, I understand that and  
21 I confirm that.

22          PRESIDING JUDGE VELDT-FOGLIA: And the same goes - that's a  
23 question - you will not move to withdraw your guilty plea or appeal  
24 your conviction pursuant to your guilty plea? Do you understand that  
25 and do you agree to that?

1 THE ACCUSED JANUZI: [Interpretation] I understand it and I agree  
2 with it.

3 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

4 So on the SPO's side, I note paragraph 16 of the plea agreement.  
5 And the same preliminary remarks apply as to paragraph 16(b) under  
6 (a) of the plea agreement with regard to the withdrawn request for  
7 reconsideration and/or leave to appeal. Very well.

8 Mr. Januzi, under Rule 94(5)(c), the Panel must be satisfied  
9 that you entered the plea agreement from your own free will. I note  
10 that in paragraph 24 of the plea agreement, you state that "no one  
11 has threatened or forced me in any way to enter this Agreement," and  
12 "I ... entered into this Plea Agreement freely and voluntarily." And  
13 your counsel also submits in paragraph 25 that your decision to enter  
14 into this agreement is "an informed and voluntary one."

15 Mr. Januzi, could you confirm before the Panel that you have  
16 agreed to this plea agreement voluntarily, without threats or  
17 coercion?

18 THE ACCUSED JANUZI: [Interpretation] Yes, Your Honour. I  
19 confirm that I entered this agreement without any pressure from  
20 anyone.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you. We note that.

22 Let us move to the next point. The Panel wants to confirm,  
23 Mr. Januzi, that you understand the consequences of the plea  
24 agreement and that you waive your right to be tried under the  
25 ordinary trial procedure, as per Rule 94(5) of the Rules.

1           On this point, Mr. Januzi, there are several steps and I will  
2 walk you through them.

3           First, I would like to read out paragraphs 17(a) till (f), and  
4 paragraph 18(a) till (c) of the plea agreement, as these paragraphs  
5 summarise the rights you waive and the rights you will still retain  
6 pursuant to the terms of the plea agreement.

7           Mr. Januzi, by virtue of this plea agreement you will be giving  
8 up, in whole or in part, the opportunity to exercise the following  
9 rights. I start now with paragraph 17, under (a):

10           The right to plead not guilty and to require the Prosecution to  
11 prove the charges in the Indictment beyond reasonable doubt at a fair  
12 and impartial public trial;

13           The right to be tried in your presence and to defend yourself  
14 through a Specialist Counsel at such trial;

15           The right to raise defences and grounds for excluding criminal  
16 responsibility and to present admissible evidence at such trial,  
17 without prejudice to the right to make submissions and present  
18 evidence with regard to sentencing;

19           The right not to be compelled to testify against yourself or to  
20 confess guilt;

21           The right to examine, or to have examined, the witnesses against  
22 you and to obtain the attendance and examination of witnesses on your  
23 behalf under the same conditions as witnesses against you, without  
24 prejudice to your right to examine any witnesses that may be called  
25 to testify and your right to call witnesses and have them examined on

1 your behalf at any proceedings with regard to sentencing; and

2 The right to pursue appellate remedies with regard to conviction  
3 or sentencing, as specified in paragraph 12 of the plea agreement,  
4 which I just read out.

5 Mr. Januzi, can I have your confirmation that you understand  
6 this and you waive these rights?

7 THE ACCUSED JANUZI: [Interpretation] Yes, I understand this, and  
8 I voluntarily waive these rights.

9 PRESIDING JUDGE VELDT-FOGLIA: Second, pursuant to the terms of  
10 the plea agreement, Mr. Januzi, and I now turn to paragraph 18, it is  
11 understood that you retain all other rights, including, in  
12 particular, the right to be represented by Specialist Counsel at all  
13 stages of the proceedings and to communicate freely with such counsel  
14 in confidence; the right to submit any information or evidence  
15 relevant for the determination of the sentence, pursuant to  
16 Rule 162(1) and (5) of the Rules; and the right to appeal any  
17 reparations, if imposed in this case.

18 Do you understand that?

19 THE ACCUSED JANUZI: [Interpretation] Yes, I understand that.

20 PRESIDING JUDGE VELDT-FOGLIA: Before I turn to ask Mr. Januzi  
21 if he understands the consequences of the plea agreement and waiving  
22 his right to be tried under the ordinary procedure, I would like to  
23 give an opportunity, like we did this morning, to the SPO and to  
24 counsel to make any other observations or submissions they deem  
25 relevant, including as regards Rule 94(5)(e) and (f), if they deem



1 relevant.

2 And I will first give the floor to the Specialist Prosecutor's  
3 Office, and then I turn to Defence counsel.

4 Madam Prosecutor, you have the floor.

5 MS. SHAHABUDDIN: Having listened carefully to Your Honour's  
6 colloquy with the accused, Mr. Januzi, it is the position of the  
7 Specialist Prosecutor's Office that the requirements of Rule 94(5)  
8 have been met, including parts (e) and (f).

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor.  
10 Defence counsel, you have the floor.

11 MR. REES: We endorse the same position. We note that the SPO,  
12 in written submissions, F00618, give further detail as to their  
13 assessment in relation to Rule 94(5)(f) in particular. And we don't  
14 say anything further, but we adopt the same position that both  
15 sub-rules (e) and (f) are satisfied in this case.

16 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

17 Mr. Januzi, having heard the submissions of the SPO and Defence  
18 counsel, may I ask you to confirm again that you understand the terms  
19 and the consequences of this plea agreement and that you do not wish  
20 to change anything in this plea agreement that you have signed.

21 You have the floor.

22 THE ACCUSED JANUZI: [Interpretation] Yes, Your Honour. I  
23 understand all the consequences, and I will -- I confirm the same.

24 PRESIDING JUDGE VELDT-FOGLIA: You don't wish to change  
25 anything.

1 THE ACCUSED JANUZI: [Interpretation] Yes, I don't wish to change  
2 anything to it.

3 PRESIDING JUDGE VELDT-FOGLIA: Mr. Januzi, during the hearings  
4 of 9 October 2023, already more than a year ago, and 12 July 2024,  
5 you pleaded not guilty to the charge of obstruction of official  
6 persons in performing official duties by participating in the common  
7 action of a group, under Count 2 of the Confirmed Indictment of 4  
8 October 2023, filing 10, and the charge of intimidation during  
9 criminal proceedings, under Count 3 of the Confirmed Indictment of  
10 10 July 2024, filing 379, Annex 1, respectively.

11 Are you ready to change your initial plea?

12 THE ACCUSED JANUZI: [Interpretation] Yes.

13 PRESIDING JUDGE VELDT-FOGLIA: I will proceed to read out Counts  
14 2 and 3 and -- as reflected in the indictment of 10 July 2024, and  
15 ask you to enter a plea for each of them. And I ask you to stand,  
16 please. Thank you.

17 Count 2: Obstructing official persons in performing official  
18 duties, by participating in the common action of a group, between at  
19 least 5 and 12 April 2023, a criminal offence against public order,  
20 punishable under Articles 17, 21, 28, 33, 35, and 401(2) and (5) of  
21 the Criminal Code of the Republic of Kosovo of 2019 and Articles  
22 15(2) and 16(3) of the Law.

23 Mr. Januzi, how do you plead, guilty or not guilty?

24 THE ACCUSED JANUZI: [Interpretation] Guilty. Guilty.

25 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

1 I proceed to Count 3: Intimidation during criminal proceedings,  
2 between at least the 5th and 12th April 2023, a criminal offence  
3 against the administration of justice and public administration,  
4 punishable under Articles 17, 21, 31, 33, 35, and 387 of the Criminal  
5 Code of the Republic of Kosovo of 2019 and Articles 15(2) and 16(3)  
6 of the Law.

7 Mr. Januzi, how do you plead, guilty or not guilty?

8 THE ACCUSED JANUZI: [Interpretation] Guilty.

9 PRESIDING JUDGE VELDT-FOGLIA: Thank you.

10 Mr. Januzi, you may be seated.

11 Very well. Before we turn to sentencing, I would like to  
12 discuss briefly reparations.

13 The Panel notes, Defence counsel, that it's the view of the  
14 Defence that reparations are not appropriate in the absence of any  
15 damage to or in respect of Witness 1. This is filing 617, paragraph  
16 37.

17 Do you want to make any further observations, Defence counsel,  
18 on this issue?

19 MR. REES: Yes, I do. And I was intending to address that as I  
20 make some more general remarks in relation to the Prosecution's  
21 position for these hearings. I can do it if Your Honour wishes me to  
22 take that out of turn and deal with it now, or Your Honour can leave  
23 it to me and I will address Your Honours in due course on it.

24 PRESIDING JUDGE VELDT-FOGLIA: I propose, if that would be  
25 possible, that you deal with reparations now, because in that way I

1 will allow for the SPO also to give its views on the matter, and we  
2 can further exchange, if necessary, any submissions on the matter.

3 MR. REES: Indeed.

4 So the issue of reparations is linked directly to the issue of  
5 harm. Article 22(3) of the Law provides that reparations are only  
6 applicable where a person has suffered harm which has directly  
7 resulted from the crime to which the accused has pleaded or been  
8 adjudged guilty. In this case, it is the offence -- the two offences  
9 to which he has pleaded which can only be relevant.

10 The first offence is an offence directed towards the SPO in the  
11 sense it's a case -- it's an offence of obstruction, and there has  
12 been no suggestion made of any harm having directly resulted to the  
13 SPO from that offence.

14 The second offence, the offence contrary to Article 387 of the  
15 Kosovo Criminal Code, the offence as pleaded to is encapsulated in  
16 the Agreed Factual Basis. The first thing to say about the Agreed  
17 Factual Basis is that it is agreed only that one person might  
18 properly be described as a victim of the offence because it only  
19 refers to Witness 1 being present at any point. Nothing else is  
20 agreed.

21 In relation to Witness 1, therefore, and Witness 1 alone,  
22 reparations would only be appropriate if it was established that  
23 Witness 1 had directly -- suffered harm directly as a result of being  
24 offered help if he withdrew his testimony. There is no evidence to  
25 support any such conclusion. In fact, it is, of course, not even

1 claimed.

2 I'm going to deal at the same time, therefore, with the issue  
3 about harm, because it is the one and the two. Harm and reparations  
4 is an issue which is directly linked.

5 At an earlier stage today, Mr. Devaney referred to evidence  
6 having been disclosed. Well, I think I know what he was referring  
7 to. He was referring to the witness interview transcripts of  
8 Witness 1 and also Witness W04891.

9 At an earlier stage, Mr. Devaney might recall, I'm sure  
10 Your Honours will, that the Prosecution had applied to admit the  
11 transcripts of Witness 1 and W04891 as evidence in lieu of direct  
12 testimony. That application was refused.

13 There has been no evidence from either Witness 1 or W04891.

14 In relation to the submissions that the Prosecution makes about  
15 harm, you will see, if you look at paragraph 23 of the submissions  
16 F00618, in particular at the top of page 8 of that document -- I say  
17 page 8, it's page 9 of 23, page 8 of the substantive filing. But  
18 you'll see there that the Prosecution made it perfectly clear that  
19 their view, as per the plea agreement, was the testimony was not  
20 needed in this case because, they said, "the factual basis provided  
21 by each accused is clear and sufficient." And we absolutely agree  
22 with that, have agreed with it. It is there in the Agreed Factual  
23 Basis, as the Prosecution have said today, provides everything that  
24 you need, require, and indeed have for the purposes of a sentence  
25 under this agreement.

1 I'm going to refer briefly to the 17 December further revised  
2 indictment this morning -- that we discussed this morning because,  
3 although Your Honours have decided to proceed by dealing this morning  
4 and this afternoon with Mr. Shala and Mr. Januzi, respectively, by  
5 going back to the 10 July indictment directly, the further revised  
6 indictment that was filed yesterday nevertheless is of assistance  
7 because it does, as both Prosecution and Defence agreed this morning,  
8 reflect the content of the plea agreements. It was revised further  
9 in order to do that.

10 And without taking you directly to the document, Your Honour  
11 noted this morning when Your Honour asked me directly why in  
12 particular at paragraphs 11 and 19, as they appeared on 6 December  
13 revised indictment, there are equivalent paragraphs in the July 24  
14 indictment, why they were deleted.

15 The answer to that, together with the other amendments, is that  
16 they were deleted because it is no part of this case under the plea  
17 agreements that anybody suffered any fear or concern.

18 So, for example, just bear with me for a moment, please. Any  
19 reference in the indictment to a witness being caused fear or concern  
20 was deleted by agreement because any such fact does not appear in any  
21 of the paragraphs of either the 10 July 2024 indictment to which  
22 Mr. Januzi has accepted or, indeed, in the Agreed Factual Basis  
23 annexed to the plea agreement.

24 It was also agreed to delete any reference to any intention to  
25 intimidate a witness from the revised indictment, again, because that

1 reflected that the only intention, as per the plea agreement, is an  
2 intention to induce Witness 1 to withdraw evidence or refrain from  
3 providing evidence in KSC official proceedings.

4 And it was agreed also to delete any reference to pressuring a  
5 witness, Witness 1, to recant his statement. That was agreed to be  
6 deleted because, in accordance with the plea agreements, the witness  
7 was not pressured but was instead induced.

8 And it was also agreed to delete a reference to "unwanted  
9 contact" being had with Witness 1. That's because the contact, in  
10 fact, was at the invitation of Witness 1, Witness 1 having invited  
11 Mr. Januzi to his address on 12 April 2023, when he was present at --  
12 he was present at the home address because Witness 1 had asked him to  
13 attend at that location.

14 So we say there is no evidence of harm, certainly no evidence of  
15 direct harm, resulting from the offer of help being made to  
16 Witness 1. And, therefore, under -- in accordance with Article 22,  
17 reparations cannot be applicable in the absence of harm.

18 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel, for  
19 your submissions.

20 I will now give the floor to the Specialist Prosecutor's Office.

21 Madam Prosecutor, you have the floor.

22 MS. SHAHABUDDIN: On the subject of reparations, the SPO would  
23 propose to reserve making any submissions at this time given the  
24 second oral order issued this morning referring the matter to the  
25 VPO. And given that we will have a chance to respond once the VPO

1 has identified any participating victims and issued a report, we  
2 would defer making any factual submissions along those lines until  
3 that point. At the moment, we're talking in the abstract given that  
4 the VPO has yet to identify potential victims, accept applications,  
5 and then report back as to whether there are any participating  
6 victims and how many, as well as who they are.

7 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor. We  
8 note that.

9 Then we go to Defence counsel. You have the floor. I see that  
10 you are standing.

11 MR. REES: Yes, thank you.

12 So shall I move on to the issue of the material provided  
13 yesterday from the central criminal records system of Kosovo, or  
14 would you --

15 PRESIDING JUDGE VELDT-FOGLIA: I had another sequence in mind,  
16 but I will give you the floor. You will be able to put any  
17 submissions you want to put. We are going to discuss sentencing now,  
18 but please allow me to make some introductory words.

19 MR. REES: Indeed.

20 PRESIDING JUDGE VELDT-FOGLIA: We will now turn to the Defence  
21 submissions on sentencing.

22 Mr. Januzi, I will have a question for your counsel. And if  
23 anything is unclear, you may always confer with him.

24 Mr. Januzi, I will first now discuss with your counsel an issue  
25 with regard to your criminal record.





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19 [Open session]

20 THE COURT OFFICER: Your Honours, we're in public session.

21 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

22 We note the parties' written submissions on sentencing. And in  
23 addition to the written submissions, I invite the parties to make any  
24 additional oral submissions or observations in court, and I note that  
25 Defence counsel for Mr. Januzi will do so, and I will after that give



1 the floor to the Specialist Prosecutor's Office.

2 MR. REES: [Microphone not activated].

3 PRESIDING JUDGE VELDT-FOGLIA: Please, Defence counsel, you have  
4 the floor.

5 MR. REES: Thank you. I did want to deal directly with some of  
6 the matters that refer to harm, just dealing very briefly with that  
7 point, that appear in the written submissions of the Prosecution.  
8 I'll give Your Honours the paragraph numbers. Paragraph 48 and 49 in  
9 particular.

10 But it does seem to me that in light of the Prosecution's  
11 position this afternoon, that they make no submissions as to harm for  
12 these purposes, but they will wait to see what, if anything, arises  
13 out of the victims procedure that Your Honours initiated this  
14 morning. I take it that I do not need to deal with that today.

15 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, I leave it to  
16 you. It's if you want to make submissions on this matter, I will  
17 note them. And if you don't, if you choose not to proceed in that  
18 way, that is also possible.

19 MR. REES: Well, I've referred the Panel to those two paragraph  
20 numbers. You will see immediately the matters that I take issue with  
21 in there. And it's only -- really, I would only be repeating what  
22 I've already advanced, which is that for the purposes of these plea  
23 agreements, there is no evidence. There is no admission. There has  
24 been no finding to the criminal standard based on admissible evidence  
25 of harm being established. And in those circumstances, Your Honours

1 should not be taken down the wrong path, as it were, by those two  
2 paragraphs and other references to harm in the Prosecution's  
3 submissions.

4 We, of course - Prosecution, Defence - have agreed an  
5 appropriate sentencing range. The bottom end of that range, the  
6 lowest end of that range is 24 months, and it is my submission that  
7 that is the appropriate sentence. It is the minimum sentence, albeit  
8 under Kosovan law there is provision for a sentencing judge to go  
9 below the minimum. It's not actually a minimum sentence in that  
10 sense. You can go below it when there are particular features of  
11 mitigation that might justify doing that. But I accept for these  
12 purposes, I have done, it's there in the plea agreement, that the  
13 appropriate range begins with two years, 24 months; the highest end  
14 of that range, 30 months. My submission is the appropriate sentence  
15 is that of 24 months.

16 The reason why I submit that is because, there is no issue about  
17 this, the accused Mr. Januzi was acting under direction. Whereas the  
18 Prosecution have referred to there being multiple interferences with  
19 Witness 1 - when they say "multiple," they mean two - but, in fact,  
20 for Mr. Januzi, he only had contact with Witness 1 on a single  
21 occasion only.

22 And the culpable conduct at the heart of Count 3 is, and only  
23 is, the unspecified offer of help. That is the extent of the  
24 culpable conduct. It was not an offer of money. It was not an offer  
25 of an amount of money. It was an unspecified offer of help. There

1 can be, in our respectful submission, no lower level of inducement  
2 for the purposes of the offence under Article 387 of the Kosovo  
3 Criminal Code. There cannot be a more vague, unspecified, and lower  
4 level of inducement.

5 Now, it's right that, of course, following that inducement being  
6 offered, Witness 1 himself then requested a monetary sum. It was  
7 Witness 1 who requested money. It was not offered to him  
8 specifically. And he requested a sum of quite considerable amount.  
9 That was subsequently rejected. There was no further attempt to  
10 induce the witness.

11 It was suggested this morning by Mr. Devaney that this was a  
12 case in which the agreement was to stop Witness 1 from giving  
13 evidence at all costs. That palpably is not correct because it was  
14 -- the offer that he made to withdraw if he received 200.000 euros  
15 was rejected and there was no further attempt.

16 *[REDACTED] Pursuant to In-Court Redaction Order F00633RED.*

17 *[REDACTED] Pursuant to In-Court Redaction Order F00633RED.* He did not  
18 receive the 200.000 euros

19 either, which perhaps has left him aggrieved, but that does not  
20 amount to harm for the purposes of reparations or, indeed, for  
21 sentencing.

22 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, allow me to  
23 interrupt you.

24 Madam Court Officer, can we go into private session.

25 [Private session]

[Private session text removed]

1 [Private session text removed]

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1 [Open session]

2 THE COURT OFFICER: Your Honours, we're in public session.

3 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Court Officer.

4 Defence counsel, you have the floor again.

5 MR. REES: Thank you, Your Honour.

6 Obviously, this far I've been concentrating on Count 3, albeit  
7 that the conduct, which is the conduct that has been admitted to and  
8 belies the guilty plea to Count 3, is also the same conduct that  
9 relates to Count 2, but the consequences or potential consequences  
10 are different.

11 With Count 2, you are looking at the consequences in relation to  
12 the SC/SPO or -- indeed, I say the SC/SPO, an official that is either  
13 of these Specialist Chambers or of the Prosecution itself. And we  
14 make the point that there has been no suggestion, certainly nothing  
15 in the agreed basis of fact, but, more than that, no suggestion that  
16 an act of either this Court or, indeed, the Specialist Prosecutor's  
17 Office was, in fact, prevented or impeded or hindered or delayed in  
18 performing as part of his or her work with the Specialist Chambers or  
19 the Specialist Prosecutor's Office as a result of the accused's  
20 actions.

21 Those words are words that have been taken from the trial  
22 judgment in the case of Gucati and Haradinaj when they identified  
23 what would be required to consider that obstruction had actually  
24 occurred as opposed to merely being attempted. This is, as  
25 Mr. Cadman submitted this morning, effectively a case of attempted

1 obstruction. It was not successful in any way.

2 Similarly, there has not been any suggestion that as a result of  
3 the diversion of time and resources, the SPO has been prevented from  
4 or delayed in carrying out its regular investigative functions.  
5 Again, those words taken from the trial panel judgment dealing with  
6 sentencing in the case of Gucati and Haradinaj, Case 07.

7 In that case, the Trial Panel made the point that regular  
8 witness care, contact with witnesses is part and parcel of what the  
9 SPO does on a day-to-day basis. And in this case, as in that case,  
10 there is no evidence, it certainly has not been proven nor admitted  
11 that, as a result of any diversion of time and resources, the SPO has  
12 been prevented from or delayed in carrying out its regular  
13 investigative functions in this matter.

14 I won't take at length -- at any length, in fact, the list of  
15 aggravating features in Rule 163(1)(b) or Article 72 of the Kosovo  
16 Criminal Code, save to say that, in our submission, none of those  
17 are, indeed, present in Mr. Januzi's case.

18 In relation to mitigating features that, again, are listed, this  
19 time in Rule 163(1)(a)(ii) and Article 70(3) of the KCC, there are,  
20 however, a number of features that require a downward adjustment of  
21 the sentence. Firstly, there is entry into the plea agreement  
22 itself, and that is a specific -- it's required specifically by the  
23 legislative scheme that that fact requires to be taken into account  
24 as a mitigating feature of the case.

25 I also say this. Mr. Januzi has not made a statement, but he

1 has expressly given me instructions, as he did prior to the  
2 submission of this document, to express remorse on his behalf. He  
3 has reflected upon the time that he has spent in detention on remand,  
4 and he wishes to state publicly, through me, that he is remorseful  
5 for his conduct in April 2023.

6 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, do I understand  
7 well that Mr. Januzi is not willing, if we would ask him if he would  
8 like to express remorse, to say what you are saying in person?

9 MR. REES: Certainly -- well, I can take instructions. Speaking  
10 in court is not something that comes easy to Mr. Januzi as it doesn't  
11 come easy to many defendants, and that shouldn't be held against him.  
12 As I say, I specifically had instructions from him to express sincere  
13 remorse on his behalf. I would not do that lightly. I do it because  
14 I am satisfied that that is a proper thing to express on his behalf,  
15 having discussed it and taken further instructions about it.

16 I can ask him if he wishes to confirm that he is remorseful. I  
17 suspect that he would be reluctant to say more than that because  
18 speaking in court is not something that comes easy to Mr. Januzi.  
19 That is why, after all, we have Specialist Prosecutors that side of  
20 the Court and we have Specialist Counsel this side of the Court,  
21 because speaking in court is not something that comes easy to people  
22 like Mr. Januzi. But I can certainly ask if Your Honour wishes me  
23 to.

24 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, let me put this  
25 straight. At this moment in time, the fact that you are expressing

1 that Mr. Januzi is expressing remorse through you is not being held  
2 against him in any way at this moment in time. That is not the  
3 point.

4 MR. REES: But will it be taken into account in his favour?

5 PRESIDING JUDGE VELDT-FOGLIA: But the Panel, apart from having  
6 a Specialist Prosecutor's Office and having a Defence counsel, can  
7 ask, and there's no obligation, if the accused himself wants to say  
8 something about that. And if an answer would come, we could discuss  
9 that some more. That is a possibility.

10 MR. REES: But --

11 PRESIDING JUDGE VELDT-FOGLIA: But this Panel will not impose  
12 this on anyone, but I can ask him.

13 MR. REES: You --

14 PRESIDING JUDGE VELDT-FOGLIA: And you can also say, "We prefer  
15 not," you have given reasons. But I leave it with you. If --

16 MR. REES: You, of course, can, Your Honour. This is your court  
17 after all, and you can address Mr. Januzi directly if you not only  
18 wish but also think it's fair to do so.

19 Can I take instructions?

20 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, you may.  
21 Please.

22 [Specialist Counsel confer]

23 MR. REES: Your Honour, I think Mr. Januzi has indicated that he  
24 is willing to assist you directly if you wish.

25 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated].



1 MR. REES: [Microphone not activated].

2 PRESIDING JUDGE VELDT-FOGLIA: He is willing?

3 MR. REES: He is willing to assist you directly if you wish.

4 PRESIDING JUDGE VELDT-FOGLIA: Okay. We will first proceed with  
5 your sentencing submissions in order, and then we will go to that.  
6 Thank you very much.

7 MR. REES: So just running again through the headlines, as it  
8 were, in relation to mitigating features which require a downward  
9 adjustment of the sentence, we do refer -- we've already referred to  
10 the fact he has no relevant previous convictions. And we will also  
11 draw Your Honours' attention to elements of cooperation with his  
12 conduct with the Specialist Prosecutor and, indeed, the Specialist  
13 Chambers. Again, another specific feature to be taken into account.  
14 And then there are, finally, mitigating circumstances which relate to  
15 his personal circumstances that I would invite Your Honours to take  
16 into account, again, requiring a downward adjustment to be made.

17 Let me return then in brief form to those headline matters in  
18 mitigation. The fact of entry into a plea agreement. Not only is  
19 that a matter which is required to be taken into account, meriting a  
20 reduction in the sentence to be imposed. In this case, this was not  
21 a plea agreement that was made at the very last opportunity. In  
22 accordance with Rule 94(1), a plea agreement can be made as late as  
23 even the closing of the case.

24 This plea agreement was entered into prior to the trial being  
25 opened. That is stated in Rule 94(1) to be the preferable time. And

1 this agreement was made in a timely fashion accordingly. And it was  
2 done so further at a time when the Prosecution -- the only  
3 application to admit evidence by the Prosecution had been refused.  
4 That is the application to admit the interview transcripts of  
5 Witness 1 and W04891 in lieu of direct oral testimony. That was  
6 rejected by you, Your Honour.

7 And there was also applications concerning disclosure failings  
8 alleged by the Defence on the part of the SPO, so allegations the  
9 Defence brought pointing to disclosure failings on the part of the  
10 SPO. Those applications remained outstanding at the time which the  
11 plea agreement was entered into. And in fact, they, as it happens,  
12 remain outstanding, of course, to this day.

13 The fact of the plea agreements, and, obviously, in relation to  
14 Mr. Januzi specifically, has saved significant court time and  
15 expense. And in my respectful submission, significant credit should  
16 be given for the entry into the plea agreement accordingly.

17 In relation to the issue of cooperation, it is submitted on  
18 behalf of Mr. Januzi that he did show an element of cooperation with  
19 the Specialist Prosecutor's Office at an earlier stage. That is,  
20 again, something to his credit. It began from the very outset. When  
21 he was first approached, an order had been issued *ex parte* for the  
22 Specialist Prosecutor's Office to attend at his address and carry out  
23 a search of both his home address and any vehicle that he had access  
24 to, to look for his mobile phone.

25 In fact, what happened is that investigators from the SPO

1 attended at the home address. Mr. Januzi willingly met them. They  
2 were not required to execute the search order against his will. On  
3 the contrary, they spoke with him. He, indeed, voluntarily  
4 recovered, retrieved his mobile phone and handed it over to them  
5 without this search order being executed.

6 He was from that date in May, 3 May 2023, obviously made aware  
7 that he was under investigation, it was part of the discussion  
8 investigators had with them when they attended his home address, and  
9 had been aware that he was under investigation since 3 May 2023 right  
10 through to October 2023 when he -- from his own steam, as it were,  
11 attended for an interview at the EULEX headquarters.

12 Between May, when he handed over his phone voluntarily, and  
13 October, when he voluntarily attended for an interview, he was aware  
14 that he was under investigation and had remained in his home address  
15 where the SPO knew where he was throughout. And when he attended at  
16 the EULEX headquarters for an interview, he attended and did give an  
17 interview. He gave a full interview setting out a lengthy account.  
18 He, in fact, did so even though he had been charged by that point by  
19 way of a Confirmed Indictment, albeit the fact that he'd been charged  
20 was not -- was kept from him.

21 He is, then turning to his personal circumstances, a 58-year-old  
22 man. He has no relevant previous convictions. He is a former  
23 soldier. He fought during the war. Since the war, he's been a  
24 hard-working father and grandfather. He is a family man. He is a  
25 community man. He has very strong ties to his local community, the

1 village of upper Fushtice. He has lived and worked in that village  
2 throughout his life. He grew up there, he worked there, he continues  
3 to live there to this day.

4 His home address was built by the family on the plot of land  
5 that they held in that village before his birth. It has been  
6 renovated but only by the family themselves. He lives there with his  
7 three sons - their details are set out in the written submissions  
8 that we have filed - his daughter, his two daughters-in-law, and his  
9 six grandchildren, who age from being just shy of teenagers to being  
10 very young. Sadly, Mr. Januzi lost his wife some years ago when she  
11 passed away.

12 He is a man of modest means, a bricklayer by trade, who works  
13 typically on small housing developments and renovations. He is not a  
14 well-learned man. He left education once secondary school came to an  
15 end. He works, again, as a family man, with his three sons in  
16 construction. They are, he and his three sons, the tradesmen that he  
17 works with.

18 In fact, at the time of his arrest Mr. Januzi had not been  
19 working regularly because of poor health. In particular, he has  
20 advanced rheumatism in both his knees, which you will understand  
21 poses a real difficulty for a bricklayer by trade. He has some other  
22 health issues also.

23 The financial means, we've set out some details in paragraph 33  
24 of our written submissions. They are, as I've already submitted,  
25 modest. The income from the family, the household that he lives in,

1 is all pooled and effectively is then used to support that large  
2 household of 13 people. The household income will vary from month to  
3 month, as you can imagine, with a family team of tradesmen working in  
4 building, with work fluctuating, and the income fluctuating with the  
5 work. But whatever is earned on a monthly basis across the household  
6 is effectively used and consumed in the living expenses for 13  
7 people, six of whom are young children, the other seven are adults,  
8 living in the house.

9 Mr. Januzi, one of the things that he has reflected on and  
10 greatly missed during his time in detention on remand has been the  
11 time that he spends with his grandchildren. He is a hard-working  
12 man, albeit with some health difficulties which make that difficult  
13 for him. When he's not engaged in working, he is mainly, if not  
14 totally, spending time with his grandchildren.

15 It is his utmost wish to simply return home to be with his  
16 grandchildren again as soon as possible.

17 We submit that taking all of those above matters into account  
18 requires the imposition of a sentence of imprisonment at the lowest  
19 end of the appropriate range, namely 24 months' imprisonment less  
20 time served.

21 Finally, we do additionally raise this matter. We do invite the  
22 Court to consider a further order. We accept, and we have done in  
23 the -- it's there in the plea agreement, we accept that you will  
24 impose a sentence of imprisonment. But we invite you then to  
25 consider a further order that that term of imprisonment imposed, we

1 say 24 months' imprisonment, the bottom end of the range, less time  
2 served, shall not be executed unless the accused commits another  
3 offence during a verification period of not less than one year. And  
4 that's the statutory verification period for the purposes of an order  
5 that the sentence shall not be executed under the Kosovo Criminal  
6 Code.

7 It is within the Court's discretion to make such an order. It's  
8 been considered previously by the Trial Panel I in the case of Gucati  
9 and Haradinaj, and you have the reference there in the written  
10 submissions which refer to it. I can take -- I can go through that  
11 in further detail if it assists, but it's there in the trial judgment  
12 itself.

13 And moreover, it's within the Court's discretion to do so and,  
14 in our submission, would actually be a powerful tool to use in this  
15 case. That an order that the sentence of imprisonment imposed not be  
16 executed unless the accused commits another offence during the  
17 verification period would further the principles of rehabilitation.  
18 It would allow Mr. Januzi to return home to be with his  
19 grandchildren. He has already spent over 12 months in custody. He  
20 has never experienced anything like that before. And as is  
21 demonstrated from his expression of sincere remorse through me, it  
22 has had a salutary effect upon him.

23 But it would also, such an order, further the principle of  
24 prevention in that it would create a powerful incentive to him, if he  
25 was ever so minded - we submit that he is not, and we submit that you

1 can be satisfied that he is not - but if he was ever minded to  
2 transgress again, he would have the powerful incentive of a term of  
3 imprisonment hanging over him like the Sword of Damocles.

4 I've already made submissions in relation to reparations, so I  
5 won't take any further time in that regard. Those are my  
6 submissions.

7 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, thank you very  
8 much.

9 We go to the Specialist Prosecutor's Office. I can give the  
10 floor to Madam Prosecutor. Your turn. Can you anticipate how much  
11 time you think you will be needing?

12 MS. SHAHABUDDIN: I'm going to try to keep it to ten minutes,  
13 but I also ask that I be able to respond fully to my colleague.

14 In the plea agreement, the parties have agreed to a sentencing  
15 range of 24 to 30 months' imprisonment for Mr. Januzi.  
16 Specialist Counsel has argued in his written submissions, and just  
17 now before the Panel, for a sentence at the bottom of that range of  
18 24 months' imprisonment or has invited the Panel to impose a  
19 suspended sentence.

20 It is the SPO's position that a sentence of 30 months'  
21 imprisonment, at the top of the agreed-upon range, to be served in  
22 prison would be just, appropriate, and necessary in this case given  
23 the gravity of Mr. Januzi's crimes, including his specific roles and  
24 actions as well as the importance of deterrence, even considering any  
25 mitigating factors that the Panel might weigh in its ultimate

1 analysis as well as Mr. Januzi's admission of guilt, which I propose  
2 to address.

3 Let me start the offences. The offences to which Mr. Januzi  
4 pleads guilty, or may be plead guilty, are serious. He committed the  
5 crime of intimidation during criminal proceedings. He and the other  
6 accused, as per the factual basis, targeted a specific witness. They  
7 coordinated to make two approaches to the witness in order to induce  
8 him to refrain from giving evidence before this Tribunal. Mr. Januzi  
9 specifically was in close communication with the other two accused  
10 during the entire indictment period, and he personally approached the  
11 witness for the second approach that was made.

12 Now, he acted at the direction of Mr. Shala, but he took it upon  
13 himself to address the witness in person, physically. And in making  
14 that address, referenced the first approach that had been to the  
15 witness and that he, Mr. Januzi, was following up, therefore  
16 underscoring that his own efforts were part of a continued and  
17 consistent campaign to prevent the witness's testimony before this  
18 Tribunal. And then he went further and communicated an offer of  
19 "help" from Mr. Shala and unnamed others in order for the witness to  
20 ultimately withdraw from the proceedings, or withdraw their proposed  
21 testimony as they understood it.

22 Now, I do have submissions that I would like to make as to harm  
23 completely separate and apart from the VPO process that will be  
24 undertaken pursuant to the Panel's order from this morning, but I  
25 have a larger point to make about what facts the Panel may consider



1 in its sentencing analysis here.

2 Now, we've heard from Specialist Counsel this morning and just  
3 now that what facts are before you are limited to what is contained  
4 in the Annex 1s to the plea agreements that the Panel is considering.  
5 That is, the factual bases.

6 Now, the factual basis are the facts to which the accused are  
7 admitting in order for the Panel to be able to find them guilty of  
8 the crimes of obstruction and intimidation during criminal  
9 proceedings. However, that does not limit the Panel in its  
10 truth-seeking function and in imposing sentence.

11 I will point the Panel to our own Rules, specifically  
12 Rule 162(1), which provides that "the Specialist Prosecutor and the  
13 Defence may submit any relevant information that may assist the Panel  
14 in determining an appropriate sentence ..."

15 This rule of our own has precedent in other tribunals, and  
16 specifically I would refer the Panel to the Babic case at the ICTY  
17 and the judgment on sentencing appeal No. 18/07 -- or the date being  
18 18/07/2005. In paragraph 18 of that decision, the Panel announced  
19 that it would exercise its discretion in determining the sentence on  
20 the basis of facts agreed by the parties as well additional  
21 information provided by the parties.

22 Now, I make those submissions because there is evidence that was  
23 disclosed during the course of the proceedings, including  
24 witness statements as referred to by my colleague across the aisle,  
25 that address some of harm that the SPO would have sought to prove at

1 trial. And I will mention that one of the facts referred to by my  
2 colleague was the monetary bribe that was raised in the context of  
3 Mr. Januzi's approach to the witness.

4 I would ask that should your Panel consider that fact, which  
5 comes from these disclosed materials, that the Panel not limit itself  
6 to just those materials but also consider the various sources that  
7 are cited in the SPO's own sentencing submissions.

8 That said, I will also point out that the Panel has everything  
9 it needs on the basis of what is contained within the four corners of  
10 the plea and the factual basis contained therein, or annexed thereto,  
11 to find that the only just sentence here is, indeed, 30 months'  
12 imprisonment for Mr. Januzi.

13 I will make -- one moment. I apologise.

14 I also want to make reference, before moving on from this point,  
15 that Specialist Counsel also referred to another fact contained  
16 within the disclosed materials but not in the indictment or in the  
17 plea agreement and its annex, which was that the contact between  
18 Mr. Januzi and the witness, that is the second approach as we've been  
19 calling it, was initiated by the witness.

20 Well, again, in order to fully respond to that, I would have to  
21 refer Your Honours to the materials that have been disclosed and  
22 submitted by the SPO because that, of course, is not the full story,  
23 just as the facts as laid out by Specialist Counsel with regard to  
24 the monetary bribe is not the full story. A witness statement sets  
25 forth in great detail how the second approach came about, in terms of

1 how it is that Mr. Januzi showed up at the witness's home, and also  
2 what drove the witness to address the monetary bribe referenced by  
3 Specialist Counsel.

4 And so I would say that the Panel should not limit itself but  
5 rather take -- but rather abide by Rule 162(1) in order to consider  
6 whatever facts it should find necessary in order to impose a just  
7 sentence in this case.

8 With regard to the harm, which is part and parcel of this  
9 analysis, and the reference to additional materials. The reason I  
10 say that, even without reference to any disclosed materials, but  
11 based simply on the admissions contained in the plea agreement and  
12 made at these proceedings today are sufficient for the Panel, is that  
13 based on the facts that have already been admitted, it is, of course,  
14 entirely foreseeable, if not inevitable, that the result of the two  
15 approaches made to the witness, in quick succession, by two separate  
16 people, would have the effect of causing harm, that is, placing the  
17 witness in fear.

18 Now, that's not the only offence which we are here about today.  
19 There is also the offence of obstruction. And we submit that  
20 offences against the administration of justice constitute a grave  
21 challenge to the security and integrity of judicial proceedings,  
22 including at this Tribunal. These offences undermine the discovery  
23 of the truth and impede justice for victims and for society as a  
24 whole. And the impact of these offences, including specifically as  
25 part of a pervasive climate of witness intimidation that exists in

1 the context of these proceedings, this Tribunal, but also in the  
2 history of these types of proceedings in Kosovo, the impact cannot be  
3 overstated.

4 That a protected witness at the KSC can be approached multiple  
5 times, and subject to criminal inducement on top of that, has a  
6 chilling effect on the public confidence in the effectiveness of KSC  
7 orders and decisions, including those related to protective measures.

8 Turning to other factors that the Panel may consider. I will  
9 note that Rule 163(2), indeed, provides that an admission of guilt  
10 shall result in a reduced sentence, but that rule also provides that  
11 the timing of that admission shall be taken into account.

12 The SPO's sentencing recommendation of 30 months in prison  
13 reflects the considerations in this rule. In the factual basis,  
14 Mr. Januzi has made only limited admissions. Those admissions came  
15 on the very eve of trial. That is, approximately one week before  
16 opening statements were set to commence. While those factual  
17 submissions entirely support and are sufficient to support the two  
18 counts being pleaded to today, they can also be fairly described as  
19 the bare minimum in that context.

20 Moreover, Specialist Counsel made reference to two incidents  
21 that he proposes demonstrate the cooperative mindset, let's say, of  
22 Mr. Januzi. First, that when confronted with a search warrant for  
23 his phone, he offered it to him -- sorry, offered it to SPO  
24 investigators. But, of course, it's hard to describe such an offer  
25 as voluntary when investigators show up at your door with a warrant,

1 letting you know that they have a warrant for the seizure of your  
2 phone. So I would submit that the Panel not attribute much weight,  
3 if any, to that particular action on the part of Mr. Januzi.

4 Moreover, the interview that he gave to the SPO cannot be  
5 considered meaningful cooperation in any sense. He admitted to  
6 visiting the witness, but he did not even approach making admissions  
7 of the kind laid out in his factual basis that provide the basis for  
8 his guilty plea today. Indeed, he attempted to obscure the core  
9 facts of his offences and, thus, that interview should have no  
10 mitigating effect on the Panel's sentencing analysis.

11 And so with that, given all of those factors, the SPO would  
12 argue that on balance, taken together, this Panel should impose a  
13 sentence at the top end of the agreed-upon range for Mr. Januzi,  
14 which would be 30 months in prison.

15 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Madam Prosecutor.

16 Defence counsel, you --

17 MR. REES: I'd just like --

18 PRESIDING JUDGE VELDT-FOGLIA: -- receive the floor again for  
19 any submissions.

20 MR. REES: Thank you. Just briefly, I would like to deal with  
21 the issue about what facts can be taken into account.

22 The key phrase is "facts." They have to be facts, not mere  
23 allegations. Facts can be either agreed, not in issue, or they can  
24 be proven to the criminal standard of proof on admissible evidence.  
25 They cannot in any other way enter the consideration of the

1 Trial Panel.

2 That does not mean, as perhaps I had not made myself entirely  
3 clear, it does not mean that all you can look at is the Agreed  
4 Factual Basis. You can look at other information which, for example,  
5 is non-controversial and has -- and is accepted by all parties, such  
6 as the certificate from the Kosovo criminal records bureau confirming  
7 that he has no recorded convictions on his record as of today's date.

8 Other information, other allegations may be made by the SPO in  
9 the past. They may have been made by witnesses in the past. But  
10 where they are disputed, they cannot form part of your decision at  
11 this stage unless they have been proved to the criminal standard of  
12 proof on evidence that is put before this Court.

13 I remind the Panel, and indeed the SPO, of the agreement that  
14 the SPO signed. Paragraph 5 of the agreement sets out, as  
15 Your Honour has very carefully gone through with Mr. Januzi, those  
16 paragraphs of the indictment dated 10 July 2024 that he accepts, and  
17 that he accepts would be proven beyond reasonable doubt, and that he  
18 accepts are true and not disputed by him.

19 Paragraph 5 also goes on to make it clear that he disputes any  
20 of the other facts or allegations contained in the indictment dated  
21 10 July 2024. It's there in the agreement that the Prosecution  
22 signed and agree and proceed upon today.

23 So you can refer to other information such as, for example,  
24 character references in support of a defendant, or a conviction from  
25 the Kosovo criminal bureau to the effect that the defendant has no

1 relevant previous convictions, because those are matters that are not  
2 controversial and are not in dispute.

3 But any suggestion that there were -- that there was fear or  
4 even concern on the part of Witness 1 is very much in dispute. And  
5 you haven't heard evidence from him, and you cannot therefore go  
6 behind the plea agreement to read into it. That's something which  
7 has not been agreed by Mr. Januzi. It's not admitted by him.

8 My learned friend describes what Mr. Januzi has accepted as the  
9 minimum, and that's right, and he's to be sentenced on that basis.  
10 That is what he accepts doing, he is remorseful for it, and he falls  
11 to be sentenced on the basis of it, not on other disputed, contested  
12 allegations that arise out of what can only be described as  
13 information and nothing more.

14 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated].

15 Thank you, Defence counsel.

16 I will give the floor to the Specialist Prosecutor's Office, if  
17 necessary.

18 MS. SHAHABUDDIN: I don't have any additional submissions to  
19 make, Your Honour.

20 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you very much,  
21 Madam Prosecutor.

22 Yes. Then I have a question, or maybe more, for Mr. Januzi.

23 Mr. Januzi, your counsel indicated on behalf of you that you  
24 have reflected upon your time in detention on remand, and that you  
25 wish to state that you are remorseful for your conduct in April 2023.

1 And my first question to you would be: Do you confirm this  
2 statement?

3 THE ACCUSED JANUZI: [Interpretation] Yes, I confirm this.

4 PRESIDING JUDGE VELDT-FOGLIA: And could you indicate to the  
5 Panel why you regret what you did?

6 THE ACCUSED JANUZI: [Interpretation] Do I have to stand up for  
7 this?

8 PRESIDING JUDGE VELDT-FOGLIA: No, you don't have to stand up.

9 THE ACCUSED JANUZI: [Interpretation] Well, taking into account  
10 that my contact with a witness of the Prosecution constitutes  
11 obstruction of justice, of course, I -- I am not happy with what I  
12 did. And, of course, I'm not a legal person. But I regret what I  
13 did.

14 PRESIDING JUDGE VELDT-FOGLIA: Would you do something similar  
15 again?

16 THE ACCUSED JANUZI: [Interpretation] Now that I understand the  
17 importance of this matter, of course I would never do it again.

18 PRESIDING JUDGE VELDT-FOGLIA: So if I understand you well,  
19 you're saying to the Panel, but please correct me if I'm wrong, that  
20 you consider that your behaviour was wrong?

21 THE ACCUSED JANUZI: [Interpretation] Yes.

22 PRESIDING JUDGE VELDT-FOGLIA: Mr. Januzi, this suffices for the  
23 Panel.

24 This was the last part of the plea hearing with regard to the  
25 plea agreement of Mr. Januzi with the Specialist Prosecutor's Office,



1 unless there is anything that the Specialist Prosecutor's Office or  
2 Defence counsel want to raise.

3 And I see a nodding from the side -- nodding in the sense, no,  
4 there is nothing to raise from the side of the Defence.

5 MS. SHAHABUDDIN: [Microphone not activated].

6 I have something more akin to a process proposal with regard to  
7 the further amendment that needs to be made to the plea agreement.

8 I understood from the plea colloquy between Your Honour and  
9 Mr. Januzi earlier that the Panel foresees requesting further  
10 amendment to paragraph 12 of the plea agreement. And I wondered if  
11 it might not be possible to make those changes to the plea agreement  
12 now in handwriting and initial while we're all here, just to avoid  
13 the kind of drawn-out timeline that may result in trying to just  
14 coordinate between the parties and then also with the DU in order to  
15 execute a new agreement.

16 So I just wanted to put that out there in case the Panel would  
17 be amenable and in case Specialist Counsel and the accused would be  
18 amenable.

19 PRESIDING JUDGE VELDT-FOGLIA: Defence counsel, is there -- and  
20 I will give in this -- but this is -- your remark is not only -- it  
21 has not only to do with the plea hearing we are concluding now with  
22 regard to Mr. Januzi, but I hear you that it's for the three plea  
23 agreements?

24 MS. SHAHABUDDIN: Yes, indeed. If possible, Your Honour.

25 PRESIDING JUDGE VELDT-FOGLIA: Okay. But then let's get things

1 straight for the record. We have concluded the plea hearing with  
2 regard to Mr. Januzi, yes. And we are now considering a proposal  
3 made by Madam Prosecutor with regard to any further amendments to be  
4 made -- to be possibly made to the plea agreement.

5 I will invite Defence counsels of the three accused to give  
6 their views on that, and then we will proceed.

7 Defence counsel, you have the floor.

8 MR. REES: I'm conscious that we will have some time tomorrow.  
9 So whereas I certainly join the exhortation for us to be able to deal  
10 with this promptly, rather than deal with it now, perhaps we can  
11 agree what the terms are to be amended, and then I can deal with  
12 getting Mr. Januzi to sign and explain to him anything that he's been  
13 asked to sign tomorrow morning.

14 PRESIDING JUDGE VELDT-FOGLIA: Very well. Thank you.

15 Defence counsel for Mr. Shala.

16 MR. CADMAN: Your Honour, I'm conscious that Mr. Shala is not  
17 going to be here tomorrow, but I feel as though it's probably not  
18 quite as quick and simple. It's going to take a little bit of time,  
19 and I obviously don't want to see Mr. Shala waiting in the cells  
20 downstairs for the next hour whilst we're trying to organise this.

21 I think it probably is better that we agree what changes need to  
22 be made, and then we make arrangements in order for them to be signed  
23 tomorrow.

24 PRESIDING JUDGE VELDT-FOGLIA: Good.

25 The Defence counsel for Mr. Bahtijari, you have the floor.

1 MS. GERRY: [Microphone not activated].

2 I'm sorry. Would you ask me the question again? I do  
3 apologise.

4 PRESIDING JUDGE VELDT-FOGLIA: Yes. If you agree or not or what  
5 your submissions are regarding the proposal of Madam Prosecutor. But  
6 maybe you missed that.

7 MS. GERRY: I didn't think it applied to Mr. Bahtijari because  
8 he will be here tomorrow. I can't see him overnight. So anything  
9 that needs to be signed, we can deal with tomorrow.

10 My request for tomorrow was to come in the --

11 PRESIDING JUDGE VELDT-FOGLIA: No, that we are not going to  
12 discuss now. We are first going to discuss the proposal made by  
13 Madam Prosecutor with regard to the plea agreement.

14 MS. GERRY: Yes, I thought we were discussing the signing of a  
15 plea agreement. I can't do that today.

16 PRESIDING JUDGE VELDT-FOGLIA: No, amendments to the plea  
17 agreement.

18 MS. GERRY: Yes.

19 PRESIDING JUDGE VELDT-FOGLIA: Okay.

20 MS. GERRY: I can't do that today because he is not here.  
21 You've ordered for him to be here tomorrow. So I'm sure we can deal  
22 with it tomorrow when he is here.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you for your submissions.

24 MS. GERRY: And that's why I thought you weren't asking me was  
25 because he's not physically here today and the other two are. Thank

1 you.

2 PRESIDING JUDGE VELDT-FOGLIA: Very well.

3 What we will do is -- this could be an idea. I see the  
4 usefulness of the idea. But it's very possible that further  
5 amendments would be needed.

6 So whatever -- if there would be an agreement to take out any  
7 paragraphs that now, in the light of what we have discussed, and in  
8 light of the withdrawal of the request for reconsideration, or the  
9 leave to grant an appeal against the decision 612, it could be that  
10 there are still further issues that need to be discussed.

11 So parties are free to agree that parts of their plea agreement  
12 don't apply anymore, but that will not refrain the Panel to propose  
13 any further amendments to this agreement. So that would be for now  
14 our position.

15 Madam Prosecutor.

16 MS. SHAHABUDDIN: Thank you, Your Honour. I made the proposal  
17 based on an understanding that the changes would be limited to  
18 paragraph 12. So rather than executing amended agreements in further  
19 rounds, perhaps it makes sense to hold off until the Panel reaches a  
20 decision as to all the changes. [Overlapping speakers] ...

21 PRESIDING JUDGE VELDT-FOGLIA: Okay. Madam Prosecutor, at the  
22 beginning of our -- of the trial this morning, our instructions or  
23 our planning as how to proceed also included that the Panel may give  
24 further instructions on this matter. So, yes, it could very well be  
25 enlarged, but I'm not in a position now to say anything on that. We

1 first have to further deliberate.

2 Very well. So then we go to a pending request. Before we  
3 conclude today's hearing, the Panel notes a request of the Defence  
4 for Mr. Bahtijari -- no, I already have your request. So to start  
5 tomorrow's hearing as regards the plea agreement entered between the  
6 SPO and Mr. Bahtijari in the morning in order to maximise available  
7 time, and said request was communicated to the Panel today via e-mail  
8 at 1454.

9 The Panel is confident that there will be sufficient time to go  
10 through the terms of Mr. Bahtijari's agreement and related matters  
11 during the afternoon session, and therefore we reject your request,  
12 and we will start at 1.00 as indicated in our scheduling of this  
13 morning and in our oral order.

14 So this concludes the oral order of the Panel.

15 Is there anything else parties would like to raise with -- I see  
16 you nodding.

17 And SPO, would there be anything you would like to raise just to  
18 know what -- no, no, I will give the floor first to Mr. Rees, but is  
19 there something you would like to raise later on?

20 MS. SHAHABUDDIN: Nothing further today, Your Honour.

21 PRESIDING JUDGE VELDT-FOGLIA: Okay. Very well.

22 Mr. Rees, you have the floor.

23 MR. REES: Thank you, Your Honour. Just one -- a brief matter.  
24 It is a request in relation to reclassification.

25 Your Honours previously gave a decision on matters related to

1 plea proceedings, filing F00612, which was intended to regulate, as  
2 it were, the process that has led to today's hearing. As part of  
3 that, the filing did come with a confidential and *ex parte* annex with  
4 a direction to the Specialist Prosecutor to provide, by 6 December,  
5 submissions on the matters specified in the annex attached to the  
6 present decision, and that was again repeated in the disposition.

7 As we are now, as it were, past the plea proceedings hearing in  
8 relation to Mr. Januzi, although we are continuing tomorrow with a  
9 third defendant, my request would be for the Court to consider  
10 reclassifying that annex and, indeed, any submissions responding to  
11 it that were submitted by the SPO pursuant to F00612 in the event  
12 that the Defence may wish to make -- they may not wish to, but they  
13 may wish to make some submissions in relation to the content of it.

14 Obviously, I don't know what the content is because at the  
15 moment it's *ex parte*, and the only party that's seen it is the  
16 Prosecution I infer from the direction that they make submissions on  
17 it. But I would request that the Court considers reclassifying that  
18 because it was part and parcel of the decision that regulated these  
19 plea agreement hearings, and it does seem to us that the defendants  
20 ought to be entitled to see both the request and the submissions  
21 pursuant to it from the SPO.

22 That's my request.

23 PRESIDING JUDGE VELDT-FOGLIA: Thank you, Defence counsel.

24 Specialist Prosecutor's Office. Madam Prosecutor.

25 MS. SHAHABUDDIN: With regard to that specific --

1 PRESIDING JUDGE VELDT-FOGLIA: Sorry, we can remain in public?

2 MS. SHAHABUDDIN: I won't address the substance, but I will  
3 address the role of WPSO.

4 PRESIDING JUDGE VELDT-FOGLIA: I cannot foresee what you are  
5 going to say --

6 MS. SHAHABUDDIN: Yes.

7 PRESIDING JUDGE VELDT-FOGLIA: -- so it's for you to ask the  
8 Panel if we have to go into private or not.

9 MS. SHAHABUDDIN: I think we're fine in public session.

10 PRESIDING JUDGE VELDT-FOGLIA: Okay. Good. Then we proceed.

11 MS. SHAHABUDDIN: Okay. What I will say in public session is  
12 with regards to the annex, we do not support its reclassification.  
13 It is concerned with witness protection measures. And certainly it  
14 is not only our submissions that should be sought before seeking  
15 reclassification, but I would submit also possibly WPSO in connection  
16 with the contents of that annex.

17 PRESIDING JUDGE VELDT-FOGLIA: Okay. Thank you.

18 Defence counsel, is there anything you would like to add in this  
19 respect?

20 MR. REES: Yes, only this. I'm grateful to my learned friend  
21 for the indication as to at least the nature of this material, and  
22 that's something that we didn't -- we didn't have any information at  
23 all about it.

24 And whereas we do accept it is part and parcel of the  
25 legislative framework of these Chambers that *ex parte* communications

1 between the Trial Panel and the SPO, and also other parties if  
2 necessary, is part and parcel of that framework, I would always  
3 encourage, where possible, even if the document is not reclassified,  
4 there is a description given of the document so we can at least  
5 understand potentially why it might have been classified in the way  
6 that it was.

7 So I would urge, if reclassification cannot be made in full,  
8 whether there can at least be either a redacted version or, indeed,  
9 if not a redacted version, a document that summarises what the  
10 document contains so that we can at least understand why it was  
11 *ex parte*, and there is no suggestion from our side that you've been  
12 shown something that materially affects this procedure as far as the  
13 rights and entitlements of the defendants are concerned.

14 That's simply it.

15 PRESIDING JUDGE VELDT-FOGLIA: Thank you very much.

16 Do the other Defence counsels want to submit anything in this  
17 regard?

18 MR. CADMAN: Having discussed the matter that Mr. Rees has just  
19 set out with him earlier, we support the application that he now  
20 makes and -- certainly support that, but no further matters that need  
21 to be raised at this stage.

22 PRESIDING JUDGE VELDT-FOGLIA: [Microphone not activated].

23 I will give you the floor, Madam Prosecutor, but I first want to  
24 be sure that we have taken all the submissions on board from the part  
25 of the accused, the Defence.



1 MS. GERRY: Thank you. Having heard what we've heard from the  
2 SPO today, I think what we would ask for is a filing that just sets  
3 out the categories of what's been left as *ex parte*, because we've  
4 just been told that category. So we would invite a further filing  
5 that just clarifies that particular document, and maybe further  
6 reflection to change the classification. Without us knowing the  
7 content, it makes any further submissions difficult.

8 So I think I sit somewhere between both sides.

9 PRESIDING JUDGE VELDT-FOGLIA: Your submissions are noted.  
10 Thank you.

11 MS. GERRY: Thank you.

12 PRESIDING JUDGE VELDT-FOGLIA: Madam Prosecutor, is there  
13 anything you want to add before I indicate what will be the course of  
14 action -- what will be the course of action of the Panel?

15 MS. SHAHABUDDIN: I wanted to request that we actually deal with  
16 this matter in written submissions, because I'm not entirely  
17 comfortable, when it comes to this type of material, kind of  
18 responding off-the-cuff in the way I just did. And I'd like a chance  
19 to be more deliberate and maybe come up with a better proposal in  
20 terms of something responsive to the concerns that have been  
21 expressed by Defence counsel today.

22 So I would make the proposal that we perhaps shift this to  
23 written submissions.

24 PRESIDING JUDGE VELDT-FOGLIA: The Panel will come back to this  
25 tomorrow, and if necessary, we will give an oral ruling. And we'll

1 try to sort this out in a way that takes on board the concerns and  
2 also the issue of confidentiality.

3 I see Defence Counsel Gerry raising her hand. You have the  
4 floor.

5 MS. GERRY: Just very quickly. I've made a suggestion, not a  
6 request, via your Court Officers in an attempt to assist in the  
7 carriage of your questions to Mr. Bahtijari when he's here tomorrow  
8 that they are kept as simple as possible, perhaps without the lead up  
9 of the section numbers and so forth.

10 I've written that down in a document just for your assistance.  
11 I'm not making a request, I'm not asking for a filing, but I've made  
12 a suggestion that you might want to do that and perhaps have a copy  
13 translated for him.

14 I don't think it's for me to start giving him your questions in  
15 advance or anything like that, but I just hope it's helpful, and I  
16 didn't want it to come as a surprise before you rise. You can  
17 completely ignore me, and, of course, conduct your court in its own  
18 way. But it's a suggestion so that we can get through matters  
19 swiftly tomorrow.

20 Thank you.

21 PRESIDING JUDGE VELDT-FOGLIA: We have taken note on this  
22 request, suggestion, how you would like to formulate it, and we will  
23 relay instructions to you as soon as we have had the time to fully  
24 consider it outside this courtroom.

25 MS. GERRY: Very grateful. I just didn't want it to not be

1 heard when you asked if there was anything else. Thank you.

2 PRESIDING JUDGE VELDT-FOGLIA: Then this concludes today's  
3 hearing.

4 As announced earlier, we will reconvene tomorrow at 1530 in the  
5 composition with the three accused and the Defence lawyers, and not  
6 all accused will be present, but we request the presence, of course,  
7 of all Defence lawyers. We will have at 1.00, as indicated earlier,  
8 the plea agreement hearing with regard to Mr. Bahtijari and the SPO.  
9 And this wrap-up session for all parties will be around half past  
10 3.00. However, it could also become later. We start at 1.00 and let  
11 us see how we proceed. It could also become 4.00 or 4.30. We've  
12 seen that there has been a little bit of difference between  
13 Mr. Shala's duration of the discussion of the plea agreement and of  
14 Mr. Januzi.

15 Very well. Then I would like to say that I thank the parties  
16 for their participation in today's hearing. And I also want to thank  
17 the interpreters - I didn't ask for the possibility to work longer,  
18 but it was all arranged for - our audio-visual technicians, and the  
19 security personnel for their assistance.

20 The hearing is adjourned.

21 --- Whereupon the hearing adjourned at 5.36 p.m.

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