

**In:** KSC-BC-2023-10

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

**Before:** Pre-Trial Judge

Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Haxhi Shala

**Date:** 11 February 2024

**Language:** English

**Classification:** Confidential

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**Shala Defence Response to Prosecution Request for Retention of evidence**

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## I. INTRODUCTION

1. The Defence for Mr. Haxhi Shala ("Accused") hereby files a response to the Prosecution request for retention of evidence which the Specialist Prosecutor's Office ("SPO") filed on 1 February 2024<sup>1</sup> ("Request").

## II. PROCEDURAL HISTORY

2. On 2 October 2023 the Pre-Trial Judge in KSC-BC-2023-10 ("Case 10") confirmed the Indictment against Sabit Januzi and Ismet Bahtijari<sup>2</sup> and on 4 December 2023 in KSC-BC-2023-11 ("Case 11") he confirmed the Indictment against Haxhi Shala.<sup>3</sup>
3. In the Request, the SPO requested authorisation for the SPO's further retention of the seized mobile 'phones of Haxhi Shala, Sabit Januzi and Ismet Bahtijari (collectively the "Seized 'Phones") until at least the conclusion of proceedings in Case 10 and Case 11.<sup>4</sup>

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<sup>1</sup> KSC-BC-2023-11/F00038, confidential (filed in KSC-BC-2023-11 as well).

<sup>2</sup> Decision on the Confirmation of the Indictment, KSC-BC-2023-10/F00008, 2 October 2023, Strictly Confidential and Ex Parte. (cited in Request, n. 7).

<sup>3</sup> Decision on the Confirmation of the Indictment, KSC-BC-2023-11/F00005, 4 December 2023, Strictly Confidential and Ex Parte. (cited in Request, n. 8).

<sup>4</sup> Request, paras. 1, 5.

4. On 8 February 2024 in the Decision on Request for Joinder and Amendment of the Indictment (“Joinder Decision”)<sup>5</sup>, the Pre-Trial Judge (i) granted the joinder of Special Prosecutor v. Sabit Januzi and Ismet Bahtijari (“Case 10”) and Special Prosecutor v. Haxhi Shala (“Case 11”), (ii) directed the Registry to rename the record of the case to The Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala while retaining the case record number KSC-2023-10, but (iii) determined that separate indictments should remain operative.<sup>6</sup>

### III. DISCUSSION

5. The SPO has filed the Request according to the terms of a Decision on the Prosecution Requests for Variation of Time Limits concerning Retention of Evidence<sup>7</sup> (“Decision regarding Retention of Evidence”). This is inaccessible to the Shala Defence on Legal workflow.<sup>8</sup> Therefore the Shala Defence is limited in its understanding of the circumstances in which the SPO was

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<sup>5</sup> KSC-BC-2023-10/F00041.

<sup>6</sup> Joinder Decision, paras. 55, 58a, 58f.

<sup>7</sup> KSC-BC-2023-10/F00064, 28 July 2023, Strictly Confidential and Ex Parte.

<sup>8</sup> “KSC-BC-2023-10/F00064” in footnote 1 of the Request may be a typographical error. There do not appear to be any filings in Case KSC-BC-2023-10 before 11 September 2023.

granted authorisation for the retention of the Seized 'Phones. The Request also does not refer to any decision or order authorising the seizure of the 'Phones.

6. The Accused's 'phone was seized in May 2023 and it would appear that this is the Seized 'Phone referred to in the Request.<sup>9</sup> He then obtained a second 'phone which was also seized on the day of his arrest. Both 'phones have contact details of family and friends and are linked to bank accounts.
7. The continued retention of both 'phones is causing the Accused very real difficulties. He has an interest in their return as soon as possible. For as long as he is held in the Specialist Chambers Detention Facilities, he is unable to take possession of his Seized 'Phone. In these circumstances it should be returned to a designated member of his family.
8. It is in the interests of justice for him at least to be able to make submissions on the proposed retention of the 'phone that is the subject of the Request. However, he does not have an adequate basis for doing so owing to his lack of access to the Decision regarding Retention of Evidence, and the legal grounds for seizure.

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<sup>9</sup> Evidence Bag B30976423 referred to in footnote 2 is also referenced in the printout in SPOE00339009-SPOE00339013 which was included in Disclosure 2. SPOE00339009-SPOE00339013 purports to contain details of communications in April 2023 and therefore purportedly to contain evidence obtained from the 'phone that was seized from the Accused in May 2023.

#### **IV. CONCLUSION**

9. For the foregoing reasons the Defence requests that the Request be dismissed in relation to the Accused's Seized 'Phone and that it be returned to him or, if he remains in the Specialist Chambers Detention Facilities, to a designated member of his family.

**Word Count: [665 words]**



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**Toby Cadman**

**Specialist Counsel**

**11 February 2024**

**At London, United Kingdom**