



In: KSC-BC-2023-10

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

Before: Pre-Trial Judge

Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 1 March 2024

Language: English

Classification: Confidential

**Confidential Redacted Version of Decision on Access Rights and
Transfer of Filings**

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THE PRE-TRIAL JUDGE,¹ pursuant to Articles 21(2) and (6) and 39(6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, and Rule 82(5) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 15 December 2023, pursuant to the Pre-Trial Judge's order,² the SPO filed submissions regarding the transfer of filings from the record of file KSC-BC-2018-01 to the record of the case of *The Specialist Prosecutor v. Haxhi Shala* (KSC-BC-2023-11) ("Mr Shala", "Case 11" and "SPO First Submissions").³
2. On 8 February 2024, the Pre-Trial Judge joined the case of *The Specialist Prosecutor v. Sabit Januzi and Ismet Bahtijari* (KSC-BC-2023-10) ("Mr Januzi" and "Mr Bahtijari") ("Case 10") with Case 11.⁴ The Pre-Trial Judge further directed the Registry to rename the record of Case 10 to *The Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala* while retaining the case record number KSC-BC-2023-10 and to discontinue the Case 11 record.⁵
3. On 13 February 2024, the Pre-Trial Judge issued an order instructing the SPO to file submissions concerning the access rights to be granted to each accused in

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

² KSC-BC-2023-11, F00014, Pre-Trial Judge, *Decision Setting the Date for the Initial Appearance of Haxhi Shala and Related Matters*, 12 December 2023, strictly confidential and *ex parte*, paras 21, 22(f).

³ KSC-BC-2023-11, F00020, Specialist Prosecutor, *Prosecution Submissions Regarding Transfer of Filings*, 15 December 2023, strictly confidential and *ex parte*. See also KSC-BC-2023-10, F00136, Specialist Prosecutor, *Prosecution Submissions Regarding Transfer of Filings*, 15 December 2023, strictly confidential and *ex parte*; KSC-BC-2018-01, F00539, Specialist Prosecutor, *Prosecution Submissions Regarding Transfer of Filings*, 15 December 2023, strictly confidential and *ex parte*.

⁴ KSC-BC-2023-10, F00161, Pre-Trial Judge, *Decision on Request for Joinder and Amendment of the Indictment* ("Decision on Joinder"), 8 February 2024, confidential. A public redacted version was filed on the same day, F00161/RED; KSC-BC-2023-11, F00041, Pre-Trial Judge, *Decision on Request for Joinder and Amendment of the Indictment*, 8 February 2024, confidential. A public redacted version was filed on the same day, F00041/RED.

⁵ Decision on Joinder, para. 58 (f)-(g).

Case 10, and, in particular, to identify: (i) the filings and decisions from the record of file KSC-BC-2018-01 that can be made available to all three accused; (ii) the filings presently classified as confidential in the case records of Case 10 and Case 11 that can be made available to all three accused; (iii) the filings presently classified as strictly confidential and *ex parte* in the records of Case 10 and Case 11 that can be reclassified and made available to all three accused; and (iv) the filings identified in KSC-BC-2023-10/F00117 and KSC-BC-2023-10/F00090 that can now be reclassified (“Order”).⁶

4. On 20 February 2024, the SPO filed its submissions (“SPO Second Submissions”).⁷ The Defence for Mr Januzi, Mr Bahtijari and Mr Shala (together “Defence”) did not make submissions.

II. SUBMISSIONS

A. SPO FIRST SUBMISSIONS

5. The SPO proposes, *inter alia*, the copying and transfer of: (i) all filings and decisions from the record of file KSC-BC-2018-01 that were previously transferred to the case record of Case 10, into the case record of Case 11; and (ii) three additional filings from the record of file KSC-BC-2018-01 into the case records of Case 10 and Case 11, namely KSC-BC-2018-01/F00474, KSC-BC-2018-01/F00513, and KSC-BC-2018-01/F00521 with KSC-BC-2018-01/F00521/A01.⁸ The SPO also requests that KSC-BC-2018-01/F00474 retain its classification and indicates that it

⁶ Transcript of Hearing, 13 February 2024, p. 196, line 17 to p. 197, line 14.

⁷ KSC-BC-2023-10, F00180, Specialist Prosecutor, *Prosecution Submissions Pursuant to the Third Oral Order of 13 February 2024*, 20 February 2024, strictly confidential and *ex parte*. A confidential redacted version was filed on the same day, F00180/CONF/RED.

⁸ SPO First Submissions, paras 2-3.

will file a confidential redacted version of KSC-BC-2018-01/F00513 in both the file and the case records.⁹

B. SPO SECOND SUBMISSIONS

6. The SPO submits that, in addition to the filings identified in the SPO First Submissions,¹⁰ three additional filings, including accompanying annexes, should be transferred from the record of file KSC-BC-2018-01 to the case record of Case 10, namely: KSC-BC-2018-01/F00531, KSC-BC-2018-01/F00561 and KSC-BC-2018-01/F00568. The SPO proposes that KSC-BC-2018-01/F00531 and KSC-BC-2018-01/F00561 retain their current classification of strictly confidential and *ex parte* and to file a confidential redacted version of KSC-BC-2018-01/F00568 after its transfer to the case record of Case 10.¹¹

7. The SPO further submits that all confidential filings in the case record of Case 10 that are available to both Mr Januzi and Mr Bahtijari should also be made available to Mr Shala.¹² Likewise, it submits that all confidential filings in the case record of Case 11 should be made available to Mr Januzi and Mr Bahtijari, with the exception of KSC-BC-2023-11/F000022/A01, KSC-BC-2023-11/F00022/A02 and KSC-BC-2023-11/F00022/A03, which it asserts should remain confidential and be marked *ex parte* to Mr Shala insofar as they contain private information relating to Mr Shala and are largely administrative in nature.¹³

8. With regard to the reclassification of filings presently classified as strictly confidential and *ex parte* in the case records of Case 10 and Case 11, the SPO submits that it will file confidential redacted versions of the following filings:

⁹ SPO First Submissions, para. 4

¹⁰ *See supra* para. 5.

¹¹ SPO Second Submissions, paras 3-4.

¹² SPO Submissions, para. 5.

¹³ SPO Second Submissions, para. 5.

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Reclassified as Public pursuant to
instructions contained in F00467
of 4 September 2024

- KSC-BC-2023-10/F00010;
- KSC-BC-2023-10/F00136;
- KSC-BC-2023-10/F00139;
- KSC-BC-2023-11/F00007;
- KSC-BC-2023-11/F00010;
- KSC-BC-2023-11/F00020; and
- KSC-BC-2023-11/F00026.¹⁴

9. The SPO also submits that, following the filing of confidential redacted versions of the above filings in the case record of Case 11, no other prosecution filings will remain in said record for which a confidential redacted version has not already been produced.¹⁵ With respect to all remaining prosecution filings in the case record of Case 10 record, the SPO asserts that the strictly confidential and *ex parte* classification remains necessary in order to protect the integrity, security and confidentiality of SPO investigations, and that their reclassification, even in redacted form, would be conflict with the purpose for their classification in the first instance.¹⁶

10. In particular, the SPO reiterates that the current classification remains necessary for the following filings in the case record of Case 10, in order to protect the integrity, security and confidentiality of SPO investigations, as well as [REDACTED].¹⁷ The SPO maintains that [REDACTED].¹⁸

¹⁴ SPO Second Submissions, para. 6.

¹⁵ SPO Second Submissions, footnote 13.

¹⁶ SPO Second Submissions, para. 7.

¹⁷ SPO Second Submissions, para. 9. *See also* KSC-BC-2023-10, F00090, Specialist Prosecutor, *Prosecution Submissions on Reclassification of Filing*, 6 November 2023, para. 7. A confidential redacted version was filed on 7 November 2023, *see* F00090/CONF/RED; F00117, Specialist Prosecutor, *Prosecution Notification Related to Decision*, 29 November 2023, strictly confidential and *ex parte*, para. 1.

¹⁸ SPO Second Submissions, paras 8-9.

III. DISCUSSION

11. Having considered the SPO's submissions and considering that the Defence does not raise any objections, the Pre-Trial Judge finds that all confidential (and not marked as *ex parte*) filings and their respective annexes in the records of Case 10 and Case 11 shall be made available to all three accused, with the exception of the following annexes in Case 11, which shall retain their confidential classification and be marked as *ex parte*, only available to the Defence for Mr Shala and the SPO:

- KSC-BC-2023-11, F00022/A01 (currently classified as confidential);
- KSC-BC-2023-11, F00022/A02 (currently classified as confidential); and
- KSC-BC-2023-11, F00022/A03 (currently classified as confidential).

12. The Pre-Trial Judge further orders the SPO to file confidential and public redacted versions of the following filings, including their corresponding annexes, in their respective case records, i.e. Case 10 and Case 11, to be made available to all three accused, or to provide reasons why a confidential and/or public redacted version cannot be provided at this time:

- KSC-BC-2023-10/F00010 (currently classified as strictly confidential and *ex parte*), with KSC-BC-2023-10/F00010/A01 (currently classified as strictly confidential);
- KSC-BC-2023-10/F00136 (currently classified as strictly confidential and *ex parte*);
- KSC-BC-2023-10/F00139 (currently classified as strictly confidential and *ex parte*), with KSC-BC-2023-10/F00139/A01 and KSC-BC-2023-10/F00139/A02 (currently classified as strictly confidential and *ex parte*);

- KSC-BC-2023-11/F00007 (currently classified as strictly confidential and *ex parte*);
- KSC-BC-2023-11/F00010 (currently classified as strictly confidential and *ex parte*), with KSC-BC-2023-11/F00010/A01 (currently classified as strictly confidential and *ex parte*);
- KSC-BC-2023-11/F00020 (currently classified as strictly confidential and *ex parte*); and
- KSC-BC-2023-11/F00026 (currently classified as strictly confidential and *ex parte*), with KSC-BC-2023-11/F00026/A01 and KSC-BC-2023-11/F00026/A02 (currently classified as strictly confidential and *ex parte*).

13. Furthermore, the Pre-Trial Judge does not find it necessary for filings previously transferred from the KSC-BC-2018-01 file record into the Case 10 record to also be transferred into the Case 11 record,¹⁹ as Mr Shala will have access to those filings in the record of Case 10. The Pre-Trial Judge further clarifies that: (i) any forthcoming confidential and/or public redacted versions of either: (a) Case 10 filings²⁰ or (b) filings that will be transferred from the KSC-BC-2018-01 file into the Case 10 record,²¹ shall be filed in the record of Case 10; and (ii) any forthcoming confidential and/or public redacted versions of Case 11 filings shall be filed in the Case 11 record.²²

14. With respect to the remainder of filings classified as strictly confidential and *ex parte* in Case 10, i.e. SPO filings and related decisions/orders or any other related filing, the Pre-Trial Judge finds it appropriate that they retain their current classification.²³

¹⁹ See *supra* para. 5.

²⁰ See *supra* para. 12.

²¹ See *supra* paras 5-6.

²² See *supra* para. 12.

²³ See *supra* paras 9-10.

15. Lastly, the Pre-Trial Judge informs the Parties that confidential and/or public redacted versions of the decisions in the records of Case 10 and Case 11, as the case may be, will be prepared in due course.

IV. DISPOSITION

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

- a. **ORDERS** the SPO to file a confidential and/or public redacted version of the filings and corresponding annexes listed in paragraph 12 of the present decision, or to provide reasons why a confidential and/or public redacted version cannot be provided at this time, by **15 March 2024**;
- b. **ORDERS** the Registrar to mark as *ex parte*, only available to the Defence for Mr Shala and the SPO, the annexes listed in paragraph 11 of the present decision;
- c. **ORDERS** the Registrar to make available to all three accused all confidential filings and related annexes (not marked as *ex parte*) in the Case 10 and Case 11 records, in accordance with paragraph 11 of the present decision; and
- d. **ORDERS** the Registrar to cross-file the present decision in the KSC-BC-2018-01 and KSC-BC-2023-11 case records.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Friday, 1 March 2024
At The Hague, the Netherlands.