

In: **KSC-BC-2023-10**
Specialist Prosecutor v. Sabit Januzi, Ismet Bahtijari and Haxhi Shala

Before: **Pre-Trial Judge**
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Haxhi Shala

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Classification: **Confidential**

Reply to Prosecution Response to F00261

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I. INTRODUCTION

1. The Defence for Mr. Haxhi Shala (“Defence”) hereby replies to Prosecution response to F00261¹ (“Prosecution Response”), in which the Special Prosecutor’s Office (“SPO”) stated that it “[sought] to clarify the record regarding certain assertions raised in the Request”. In the Reply the Defence will make additional submissions in relation to those clarifications which demonstrate the need for a substantial extension of time in which to challenge the admissibility of the evidence that is at issue. Also, as a consequence of being able to review recent disclosures the Defence will be in a position to request a specific period of time for the extension.

II. SUBMISSIONS

2. On 21 December 2023 in Disclosure Package 2 the SPO disclosed a recording² and accompanying transcripts³ of what purports to be a conversation on 12

¹ KSC-BC-2023-10/F00271, 29 April 2024.

² 116623-01.

³ 116623-01-TR-AT; 116623-01-TR-AT-ET.

April 2023 between Witness 1 and Sabit Januzi⁴ which Witness 1's wife (W04891) allegedly made on her mobile telephone⁵ ("Impugned Evidence").

3. On 19 April 2024 the Defence filed Haxhi Shala Request for an Extension of Time to File its Submission of Requests Related to the Disclosure Process⁶, in which it requested an extension of the time-period for objecting to the admissibility of the Impugned Evidence so as to enable it to give proper consideration to all relevant materials after they had been disclosed.⁷
4. In the Defence Request the Defence submitted that there were two developments which made additional time necessary.⁸
5. First, at 13:19 on 19 April 2024, just over six hours prior to the filing of the Defence Request, the SPO disclosed revised transcripts of the recording of what purports to be the conversation on 12 April 2023 between Witness 1 and Sabit Januzi.⁹

⁴ KSC-BC-2023-10-116623-01-TR-AT Revised; KSC-BC-2023-10-116623-01-TR-AT-ET Revised.

⁵ Disclosure 2 in Case 11.

⁶ KSC-BC-2023-10/F00261.

⁷ Defence Request, para. 7.

⁸ Defence Request, paras. 3-5.

⁹ Defence Request, para. 3 (referring to Disclosure Package 26 containing KSC-BC-2023-10-116623-01-TR-AT Revised and KSC-BC-2023-10-116623-01-TR-AT-ET Revised).

6. Secondly, on 5 April 2024 the SPO had stated that it would disclose additional relevant materials after they had been received and processed.¹⁰
7. In fact, the SPO had disclosed those materials in Disclosure Package 29 at 17.41 on 19 April 2024, less than two hours before the Defence filed the Defence Request, and for this reason the Defence was unaware of them at the time of filing. The Package included an audio-recording dated 12 April 2023 which the Netherlands Forensic Institute (“NFI”) extracted from Witness 1’s wife’s ‘phone,¹¹ English and Albanian transcripts of the recording¹² and an NFI Forensic Report titled “Examination into an Audio File in Witness’ Smartphone”.¹³
8. The SPO responded that (i) the recording disclosed on 19 April was “a version of the April 2023 recording that has already been disclosed to [the] Defence for all of the accused” and that “the originally-obtained audio recording and original corresponding transcript were disclosed to Shala on 15 December 2023”¹⁴ and (ii) that on 19 April 2024 the SPO disclosed to Shala the audio-

¹⁰ Defence Request, para. 5 (referring to KSC-BC-2023-10/F00242, Prosecution request for Rule 102(1)(b) disclosure and to amend exhibit list, 5 April 2024, confidential, para. 2).

¹¹ 120547-01.

¹² 120547-01-TR-AT; 120547-01-TR-AT-ET.

¹³ 120520-120530.

¹⁴ According to Legal Workflow, the audio recording and transcripts in Disclosure 2 were disclosed to the Defence on 21 December 2023.

recording of 12 April 2023, a transcript and additional material related to the recording.¹⁵

9. There are now three separate versions of the transcripts which are not all identical¹⁶ and two versions of the recording of the purported meeting on 12 April from apparently different sources. In order to determine the integrity of these items of evidence they need to be closely examined. These issues go to the core of the case, and the Defence must be sure as to what was actually stated orally by the participants. Moreover, the NFI Forensic Report is highly technical. Its implications for the other related items of evidence need to be considered, if necessary, in light of other expertise. These activities will be time-consuming.
10. The Defence Request stated that the Defence was not in a position to specify a date by which it would be able to make its intended filing.¹⁷ Since the Defence is now aware of Disclosure Package 29 as well as Disclosure Package 26, it is in a position to do so.

¹⁵ Prosecution Response, paras. 3-4, referring to Disclosures 26 and 29.

¹⁶ For example, the Albanian transcript in Disclosure 2 (116623-01-TR-AT) is 44 pages long, whereas the one in Disclosure 26 (116623-01-TR-AT Revised) is 46 pages long.

¹⁷ Defence Request, para. 5.

III. CLASSIFICATION

11. This filing has been classified as confidential pursuant to Rule 82(4). The Defence does not oppose its reclassification as public.

IV. CONCLUSION

12. The Defence requests that the Pre-Trial Judge grant the Defence 14 days from the date of his Decision on the Request within which to file a request seeking a finding of the inadmissibility of the Impugned Evidence.

Word Count: [825 words]



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Wednesday, 01 May 2024

At Utrecht, The Netherlands