



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**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 Prosecutor's Office

**Date:** 2 May 2024

**Language:** English

**Classification:** Confidential

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**Prosecution consolidated reply to F00264 and F00265**

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**Specialist Prosecutor's Office**

Kimberly P. West

**Counsel for Sabit Januzi**

Jonathan Elystan Rees

**Counsel for Ismet Bahtijari**

Felicity Gerry

**Counsel for Haxhi Shala**

Toby Cadman

1. The Responses<sup>1</sup> should be rejected, and the Requests<sup>2</sup> of the Specialist Prosecutor's Office ('SPO') to retain the two mobile telephones seized from Haxhi Shala ('Seized Phones') should be granted. The Responses combine unsubstantiated assertions with wilful misstatements of fact, ultimately failing to establish any reason why the Requests should not be granted by the Pre-Trial Judge.
2. The SPO has requested retention of the Seized Phones through the conclusion of the proceedings, as such retention is necessary to, *inter alia*, (i) preserve the ability to conduct further forensic investigation of the Seized Phones as necessary, (ii) ensure the proper preservation of the original evidence for potential use in the proceedings, and (iii) ensure the rights of the Accused, to inspect and examine the physical items in support of the Accused's rights to a fair trial.<sup>3</sup> Further, as noted by Shala,<sup>4</sup> the Single Judge has already recognized the proportionality of retention based on the legitimate aims of examining serious allegations of acts of intimidation against SPO protected witnesses and acts of obstruction of justice, and, to that end, ensuring the safety of protected witnesses and the integrity of the proceedings before the KSC.<sup>5</sup>

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<sup>1</sup> Shala Defence Supplement to Response to Prosecution Request for Retention of evidence, KSC-BC-2023-10/F00264, 24 April 2024, Confidential ('Supplemental Response'); Shala Defence Response to Confidential redacted version of 'Prosecution request for retention of evidence (F00521)', KSC-BC-2023-10/F00265, 24 April 2024, Confidential ('Response') (collectively 'Responses').

<sup>2</sup> Prosecution request for retention of evidence, KSC-BC-2023-10/F00158, 1 February 2024, Confidential ('Request F00158'); Prosecution request for retention of evidence (F00521), KSC-BC-2023-10/F00208, 6 February 2024, Confidential ('Request F00208') (collectively 'Requests').

<sup>3</sup> Request F00158, KSC-BC-2023-10/F00158, para.4; Request F00208, KSC-BC-2023-10/F00208, para.4.

<sup>4</sup> Supplemental Response, KSC-BC-2023-10/F00264, para.7.

<sup>5</sup> Decision on the Prosecution Requests for Variation of Time Limits concerning Retention of Evidence, KSC-BC-2023-10/F00064, 28 July 2023, Confidential, para.18.

3. In the face of these compelling necessities, including the necessity of ensuring his own rights, Shala can only respond with unsubstantiated complaints of inconvenience<sup>6</sup> and wilfully incorrect assertions of irrelevance.<sup>7</sup>
4. Regarding inconvenience, Shala asserts that the Seized Phones hold contact details of family and friends and are linked to bank accounts.<sup>8</sup> However, Shala provides no reason why he cannot obtain any of the above information from other sources, including the full forensic copies of both Seized Phones that have now been disclosed to him.
5. Regarding relevance, Shala asserts that the second phone was only obtained after the seizure of the first phone on 3 May 2023, and therefore 'contains evidence of the Accused's activities from this time', not the relevant time period of the indictments 'prior to May 2023', and there 'is therefore no reason for the period within which the SPO should retain the [phone to be linked to the conduct of proceedings'.<sup>9</sup> Shala persists in this assertion,<sup>10</sup> despite the SPO having previously pointed out that the phone at issue contains, *inter alia*, communications between Shala and Co-Accused Sabit Januzi dating back to even before the time period covered in the indictment.<sup>11</sup>
6. For the foregoing reasons and those given previously, the Requests should be granted.
7. This filing is submitted as confidential in accordance with Rule 82(4).

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<sup>6</sup> Supplemental Response, KSC-BC-2023-10/F00264, para.10; Response, KSC-BC-2023-10/F00265, paras 12, 13.

<sup>7</sup> Response, KSC-BC-2023-10/F00265, paras 11, 13.

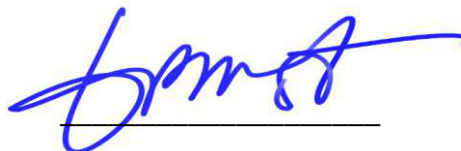
<sup>8</sup> Shala Defence Response to Prosecution Request for Retention of evidence, KSC-BC-2023-10/F00167, 11 February 2024, Confidential, para.6; Response, KSC-BC-2023-10/F00265, para.12.

<sup>9</sup> Response, KSC-BC-2023-10/F00265, para.11.

<sup>10</sup> See Response to Prosecution Request for authorisation for Rule 102(1)(b) disclosure, KSC-BC-2023-10/F00179, 19 February 2024, Confidential, para.8.

<sup>11</sup> See Prosecution reply to F00179, KSC-BC-2023-10/F00187, 26 February 2024, Confidential, paras 3-4.

**Word count: 583**



**Kimberly P. West**

**Specialist Prosecutor**

Thursday, 2 May 2024

At The Hague, the Netherlands