



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

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

Before: **Trial Panel I**
Judge Mappie Veldt-Foglia, Presiding Judge
Judge Roland Dekkers
Judge Gilbert Bitti
Judge Vladimir Mikula, Reserve Judge

Registrar: Fidelma Donlon

Date: 11 November 2024

Language: English

Classification: **Public**

Decision on Specialist Prosecutor's Office request to amend its exhibit list

To be notified to:

Specialist Prosecutor
Kimberly P. West

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Felicity Gerry

Counsel for Haxhi Shala
Toby Cadman

TRIAL PANEL I (Panel) hereby renders this decision on the Specialist Prosecutor's Office (SPO) request to amend its exhibit list.

I. PROCEDURAL BACKGROUND

1. On 7 October 2024, during the trial preparation conference, the Defence for Sabit Januzi (Januzi Defence and Accused, respectively) requested the Panel to issue an oral order instructing the SPO to "serve any outstanding material relating to the six mobile telephones seized from the accused by 14 October".¹ Thereafter, the SPO committed to file on the following day a request to amend its exhibit list for the items already in its possession.²

2. On 8 October 2024, the SPO filed the (anticipated) request to amend its exhibit list (Request).³

3. On the same day, the Panel set the deadlines for responses and replies to the Request.⁴

4. On 11 October 2024, the Defence for Ismet Bahtijari (Bahtijari Defence and Accused, respectively) and the Defence for Haxhi Shala (Shala Defence and Accused,

¹ KSC-BC-2023-10, Transcript of Hearing, 7 October 2024, confidential, p. 309, lines 12-14.

² KSC-BC-2023-10, Transcript of Hearing, 7 October 2024, confidential, p. 341, lines 18-25.

³ KSC-BC-2023-10, F00512, Specialist Prosecutor, *Prosecution request to amend exhibit list*, 8 October 2024, confidential, with Annexes 1-2, confidential. A public redacted version was filed on 11 October 2024, F00512/RED. The SPO exhibit list was first submitted confidentially on 9 February 2024 (F00164/A03) and, after the joinder of the present case involving Sabit Januzi and Ismet Bahtijari with case KSC-BC-2023-11 involving Haxhi Shala, was further submitted on a confidential basis on 16 February 2024 (F00177/A03). Upon judicial authorisation, on 5 July 2024, the SPO submitted a confidential amended exhibit list (F00374/A01) (Amended Exhibit List).

⁴ KSC-BC-2023-10, Transcript of Hearing, 8 October 2024, public, p. 373, line 9 to p. 375, line 14.

respectively) responded to the Request (Bahtijari Response and Shala Response, respectively).⁵

5. The Januzi Defence did not respond to the Request and the SPO did not file a reply.

II. SUBMISSIONS

6. In the Request, the SPO seeks leave to amend its exhibit list with (i) six supplemental reports from an external forensic institute (EFI) regarding the phones of each Accused seized in connection to this case (EFI Reports and Subject Phones, respectively); and (ii) a note relating to a video recording (Note and Video Recording, respectively).⁶ The SPO submits that the Request is timely. It avers that three of the EFI Reports were only received by the SPO on 24 September 2024 and needed to be processed internally, while the Note, which relates to the Video Recording that is already on its exhibit list, had already been disclosed to all Defence teams under Rule 102(3) on 16 February 2024.⁷ The SPO further contends that there is good cause for the addition of the EFI Reports and the Note (collectively, Additional Material) to its exhibit list, since the Additional Material (i) is relevant to the case and will assist the parties' and the Panel's understanding of the evidence in this case;⁸ and (ii) will not cause any prejudice to the Defence, as it is limited in scope and only enhances the understanding of evidence already on its exhibit list.⁹

⁵ KSC-BC-2023-10, F00521, Bahtijari Defence, *BAHTIJARI response to F00512*, 11 October 2024, public; F00525, Shala Defence, *Haxhi Shala Response to Prosecution Request to amend the exhibit list*, 11 October 2024, confidential.

⁶ Request, para. 2.

⁷ Request, paras 1, 4-5.

⁸ Request, paras 1, 3, 5-6.

⁹ Request, paras 2-3, 5-6.

7. The Bahtijari Defence does not object to the Request.¹⁰

8. The Shala Defence partially objects to the Request as far as the EFI Reports are concerned, maintaining that their technical character will not allow the Shala Defence adequate time to evaluate them prior to the start of the trial on 7 November 2024. Therefore, according to the Shala Defence, adding the EFI Reports to the SPO exhibit list could further postpone the trial and would thus not be in the interests of justice.¹¹

III. APPLICABLE LAW

9. The Panel notes Articles 21(6), 40(2) and (6)(b) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 102(1)(b) and 118(2) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules).

IV. ANALYSIS

10. The Panel recalls that Rule 118(2) of the Rules provides that a request for amendment of the SPO exhibit list may be permitted upon timely notice and a showing of good cause.

A. TIMELY NOTICE

11. The Panel observes that the SPO filed its Request on 8 October 2024, promptly after receiving, on 24 September 2024, the last three EFI Reports,¹² considering also the time necessary to process them internally.¹³ Additionally, the Panel notes that the SPO filed the Request earlier than originally requested,¹⁴ in order to

¹⁰ Bahtijari Response, para. 2

¹¹ Shala Response, paras 2-3.

¹² Request, para. 4; Annex 1 to the Request, pp. 23, 31, 40.

¹³ Request, para. 4.

¹⁴ See para. 1 above.

accommodate the Januzi Defence concerns regarding the comprehensive assessment of the exhibits associated with the EFI Reports.¹⁵ The Panel also recalls that, at the time of the Request, the start of the trial was yet to be determined, which for now has been set to 14 November 2024.¹⁶ As a result, the Panel finds that the Request was made in a timely manner.

B. SHOWING OF GOOD CAUSE

12. With regard to the EFI Reports, the Panel considers that they are of importance, as they provide significant supplementary information for and enhance the assessment of the content of the Subject Phones which are already on the SPO exhibit list.¹⁷ More specifically, the EFI Reports offer additional information as to the forensic examination and copying of the content of each of the Subject Phones, including details on, *inter alia*, (i) the material or item(s) under examination; (ii) the SPO examination request; (iii) the examination methods used and related results; and/or (iv) extractions and/or any other related actions carried out by EFI.¹⁸ In fact, their significance can be deduced from the Defence submissions in this regard.¹⁹ Consequently, adding the EFI Reports to the SPO exhibit list will allow the parties and the Panel to comprehensively assess the Subject Phones and other evidence in the case. As a result, the Panel finds that the EFI Reports are relevant and of significance.

¹⁵ KSC-BC-2023-10, Transcript of Hearing, 7 October 2024, confidential, p. 307, line 18 to p. 309, line 21; public, p. 341, line 15 to p. 342, line 10.

¹⁶ KSC-BC-2023-10, F00559, Trial Panel I, *Decision on the date for the commencement of the trial* (Trial Commencement Date Decision), 24 October 2024, public, paras 6, 17.

¹⁷ Amended Exhibit List, pp. 5, 11-12; Items 73, 76-77, 168, 187-188.

¹⁸ Request, para. 3; Annex 1 to the Request.

¹⁹ *See e.g.*, the relevant discussion between the Januzi Defence and the SPO during the trial preparation conference, KSC-BC-2023-10, Transcript of Hearing, 7 October 2024, confidential, p. 305, lines 11-24. *See also* KSC-BC-2023-10, F00457/A01, Shala Defence, *Annex 1 to Submission of Haxhi Shala Pre-Trial Brief*, 2 September 2024, confidential, para. 13.

13. With regard to the Note, the Panel notes that its addition to the SPO exhibit list will assist the parties and the Panel in their evaluation of the Video Recording which is already on said exhibit list.²⁰ It provides further information regarding the Video Recording's authenticity and reliability.²¹ As a result, the Panel is convinced that the Note is relevant and of significance.

14. Turning to the impact of the late addition on the Accused's preparation for trial, the Panel notes that: (i) the Additional Material is of limited volume (collectively just under 50 pages); (ii) the Additional Material is limited in scope, as it does not present new aspects of the SPO case, but simply complements the assessment of items already on its exhibit list and known to all Defence teams; (iii) the Note has been disclosed to all Defence teams in February 2024,²² hence it does not, in any way, constitute new information in need of further evaluation; and (iv) the presentation of evidence by the SPO is foreseen to start only on 9 December 2024,²³ allowing ample and meaningful time for all Defence teams to integrate in their preparations the additional, yet limited, material. In light of all the above, the Panel is not persuaded by the Shala Defence argument that adding, *inter alia*, the EFI Reports on the SPO exhibit list would postpone the start of the trial or would not be in the interests of justice. Conversely, the Panel is satisfied that the late addition of the Additional Material, as a whole, is not prejudicial to the rights of the Defence at this stage of the proceedings.

15. In light of the foregoing, the Panel finds that the SPO has demonstrated good cause and authorises the SPO to add the Additional Material to its exhibit list.

²⁰ Amended Exhibit List, p. 7; Item 99.

²¹ Request, para. 5; Annex 2 to Request.

²² Request, para. 5. *See* Disclosure Packages 16-18.

²³ Trial Commencement Date Decision, paras 15, 17.

V. FUTURE REQUEST FOR AMENDMENT

16. The Panel takes note of the SPO submission that it intends to file an additional request to amend its exhibit list with certain additional material.²⁴ Should the material concerned be available, the Panel orders the SPO to submit said request by no later than **Thursday, 21 November 2024**, so that a decision can be taken in time before the start of the SPO's evidence presentation. Any response by the Defence teams to the new request, if they so wish, shall be submitted by no later than Thursday, 28 November 2024. No replies will be entertained.

VI. CLASSIFICATION

17. The Panel orders the Shala Defence to file a public redacted version of the Shala Response, following the redactions contained in the public redacted version of the Request, by **Monday, 18 November 2024**.²⁵

VII. DISPOSITION

18. For the above-mentioned reasons, the Panel hereby:
- a. **GRANTS** the SPO Request;
 - b. **ORDERS** the SPO to file an updated exhibit list by **Thursday, 14 November 2024**;

²⁴ Request, para. 7; *see also* KSC-BC-2023-10, F00491, Specialist Prosecutor, *Prosecution submissions in advance of trial preparation conferences*, 1 October 2024, confidential, para. 3, with Annex 1, confidential. A public redacted version was submitted on 4 October 2024, F00491/RED; Transcript of Hearing, 7 October 2024, confidential, p. 307, line 18 to p. 308, line 1.

²⁵ The Panel urges the Shala Defence to take note of the directions provided in KSC-BC-2023-10, Trial Panel I, F00586, *Decision on the conduct of proceedings*, 11 November 2024, public, para. 83.

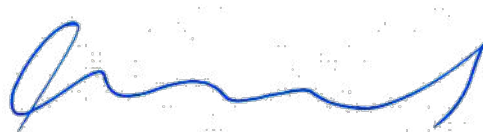
- c. **ORDERS** the SPO to file any new request to amend its exhibit list by no later than **Thursday, 21 November 2024**, and orders the Defence teams, if they so wish, to respond to said request by no later than **Thursday, 28 November 2024**; and
- d. **ORDERS** the Shala Defence to file a public redacted version of the Shala Response, as specified above in paragraph 17, by **Monday, 18 November 2024**.



Judge Mappie Veldt-Foglia
Presiding Judge



Judge Gilbert Bitti



Judge Roland Dekkers

Dated this Monday, 11 November 2024

At The Hague, the Netherlands.