



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA 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:** 22 October 2024

**Language:** English

**Classification:** Public

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**Public redacted version of**

**Decision Requesting Observations in Relation to filings F00519 and F00524**

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**Specialist Prosecutor**

Kimberly P. West

**Counsel for Sabit Januzi**

Jonathan Elystan Rees

**Registrar**

Fidelma Donlon

**Counsel for Ismet Bahtijari**

Felicity Gerry

**Counsel for Haxhi Shala**

Toby Cadman

**TRIAL PANEL I** (Panel) hereby renders this decision requesting observations in relation to filings F00519 and F00524.

## I. PROCEDURAL BACKGROUND

1. On 8 October 2024, at the end of the trial preparation conference, the Panel ordered the Parties “to undertake *inter partes* consultations and, if they so decide, to file a written joint request seeking the Panel’s relevant authorisation” in relation to the forensic copies of the mobile phones [REDACTED] (Subject Phones).<sup>1</sup>

2. On 10 October 2024, the Specialist Prosecutor’s Office (SPO) filed the “Joint Submission requesting an RFA” (Joint Request).<sup>2</sup> The SPO submits that there remains an additional area of potential further analysis of the Subject Phones upon the parties do not agree. One or more of the Defence teams will file a request regarding this further analysis, and the SPO will respond accordingly.<sup>3</sup>

3. On the same day, the Panel ordered the Defences for Sabit Januzi, Ismet Bahtijari and Haxhi Shala to file any other requests not encompassed in the Joint Submission by Friday, 11 October 2024, at 16:00 hours.<sup>4</sup>

4. On 11 October 2024, the Defence for Sabit Januzi (Januzi Defence) and the Defence for Haxhi Shala (Shala Defence) filed the “Joint Request by Sabit Januzi

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<sup>1</sup> KSC-BC-2023-10, Transcript of Hearing, 8 October 2024, confidential, p. 369, line 18 to p. 370, line 4.

<sup>2</sup> KSC-BC-2023-10, F00519, Specialist Prosecutor, *Joint Submission requesting an RFA*, 10 October 2024, confidential. A public redacted version was filed on 14 October 2024, F00519/RED.

<sup>3</sup> Joint Request, para. 3.

<sup>4</sup> Email from the Trial Panel to the Defences for Sabit Januzi, Ismet Bahtijari and Haxhi Shala and the SPO, 10 October 2024, at 18:47 hours.

Defence and Haxhi Shala Defence for a Request for Assistance” (Defence Further Request).<sup>5</sup>

5. On 15 October 2024, the SPO filed its response to the Defence Further Request (SPO Response).<sup>6</sup>

## II. SUBMISSIONS

6. In the Joint Request, the Parties submit that they reached agreement on nearly all of the issues raised by the Defence and request the Panel to issue a request for assistance (RFA) [REDACTED] to perform limited forensic operations on the Subject Phones.<sup>7</sup>

7. The Parties seek the RFA on the following issues:

- a) [REDACTED];
- b) [REDACTED];
- c) [REDACTED];
- d) [REDACTED];
- e) [REDACTED]; and
- f) [REDACTED].<sup>8</sup>

8. In the Defence Further Request, the Januzi Defence and the Shala Defence seek a further RFA from [REDACTED] to perform the following actions:

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<sup>5</sup> KSC-BC-2023-10, F00524, Defence, *Joint Request by Sabit Januzi Defence and Haxhi Shala Defence for a Request for Assistance*, 11 October 2024, confidential, with Annex 1, confidential.

<sup>6</sup> KSC-BC-2023-10, F00530, Specialist Prosecutor, *Prosecution response to ‘Joint Request by Sabit Januzi Defence and Haxhi Shala Defence for a Request For Assistance’*, 15 October 2024, confidential.

<sup>7</sup> Joint Request, paras 2 and 4(a)-(f).

<sup>8</sup> Joint Request, para. 4(a)-(f).

- a) [REDACTED];
- b) [REDACTED]; and
- c) [REDACTED].<sup>9</sup>

9. The Januzi Defence and the Shala Defence further submit that all items identified pursuant to the Defence Further Request are to be provided to the SPO for review and to the Panel. The SPO should subsequently provide all relevant items to the Defence and file a report to the Panel on which items have been provided.<sup>10</sup>

10. The SPO responds that the Defence Further Request should be denied. The SPO submits that the majority of the search terms proposed lack a rational connection to the purported justifications for requesting the search of the Subject Phones,<sup>11</sup> and that the arguments espoused within the Defence Further Request lack a basis in fact and cannot form a proper or necessary basis for the extended further probing of the Subject Phones.<sup>12</sup> Additionally, the SPO submits that the Defence Further Request is untimely, and that allowing it would have the result of causing an extensive delay in the trial.<sup>13</sup>

### III. APPLICABLE LAW

11. The Panel notes Articles 40(2) and 55(1) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office (Law) and Rules 116(1), 198(1) and 208(1) and (2)(c) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (Rules).

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<sup>9</sup> Defence Further Request, para. 5.

<sup>10</sup> Defence Further Request, para. 5.

<sup>11</sup> SPO Response, para. 4.

<sup>12</sup> SPO Response, para. 5.

<sup>13</sup> SPO Response, para. 7.

#### IV. ANALYSIS

12. Prior to adjudicating on the merits of the requests, the Panel deems it appropriate to obtain the observations of [REDACTED] on the feasibility of the forensic actions sought.

13. The Panel considers such a course of action necessary to ascertain the feasibility of the requests as well as their potential impact on the expeditiousness of the proceedings, keeping in mind its duty to ensure the fair and expeditious conduct of proceedings pursuant to Article 40(2) of the Law and Rule 116(1) of the Rules.

14. Accordingly, the Panel decides that, prior to submitting any RFA regarding the Subject Phones, [REDACTED] is requested to provide observations, within one week of notification of the present decision, on the following:

- a) The estimated time per task, formulated in days, weeks or months, that it will take [REDACTED] to perform each of the individual forensic actions listed in paragraphs **7(a)-(f) and 8(a)-(c)** of the present decision;
- b) The date by which [REDACTED] estimates it may complete each of the tasks listed in paragraphs **7(a)-(f) and 8(a)-(c)** of the present decision and submit its report thereupon to the Registry; and
- c) Whether the time required by [REDACTED] would be substantially reduced with regard to the tasks listed in paragraph 8(a)-(c) if the time span of the request would run from: (i) 1 September 2022<sup>14</sup> or (ii) [REDACTED]<sup>15</sup> [REDACTED].<sup>16</sup>

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<sup>14</sup> Defence Further Request, para. 6.

<sup>15</sup> SPO Response, para. 4.

<sup>16</sup> KSC-BC-2023-10, F00103, Specialist Prosecutor, *Public redacted version of Prosecution request for an order and related non-disclosure*, 15 November 2023, public, para. 13.

15. Additionally, the Panel orders the Parties to make submissions, by **Thursday, 24 October 2024, by 12:00 hours**, on the following:

- a) Reasons why the requested actions were not sought earlier in the proceedings before the Pre-Trial Judge taking into consideration [REDACTED];<sup>17</sup>
- b) Which of the requested actions the Parties consider necessary to be completed in order to start the SPO case; and
- c) Which actions in their respective requests the Parties are willing to prioritise in order to maintain the expeditiousness of the proceedings and preserve the Accused's right to be tried within a reasonable time pursuant to Article 21(4)(d) of the Law.

16. Following the receipt of [REDACTED] observations, the Panel orders the Parties to make submissions, within three (3) days of notification thereof, on whether they maintain their respective Requests in respect of each and every action sought in paragraphs 7(a)-(f) and 8(a)-(c) above.

17. Pursuant to Article 55(1) of the Law and Rules 198(1) and 208 of the Rules, the Panel orders the Registry to transmit the annexed RFA and to liaise with [REDACTED] in case any additional information would be required by [REDACTED] to comply with the Request for cooperation and assistance. In this respect, the Registry is authorised to disclose the list of keywords annexed to the Defence Further Request for the purposes of providing [REDACTED] with the necessary information to submit meaningful observations.

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<sup>17</sup> See SPO Response, para. 8, [REDACTED].


## V. DISPOSITION

18. For the above-mentioned reasons, the Panel hereby:

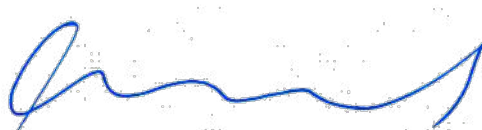
- (a) **REQUESTS** the assistance of [REDACTED] to provide observations, in accordance with paragraph 14 of the present decision, as to the feasibility of the actions requested in the Joint Request and in the Defence Further Request, as set out in the RFA, annexed to the present decision;
- (b) **REQUESTS** [REDACTED] to provide its observations within one (1) week of notification of the present decision;
- (c) **ORDERS** the Parties to file submissions on the matters listed and by the time-limits set out in paragraphs 15-16 of the present decision; and
- (d) **AUTHORISES** the Registrar to disclose information relevant for [REDACTED] to comply with the RFA, as specified in paragraph 17 of the present decision.



**Judge Mappie Veldt-Foglia**  
**Presiding Judge**



**Judge Gilbert Bitti**



**Judge Roland Dekkers**

Dated this Tuesday, 22 October 2024

At The Hague, the Netherlands.