

In: KSC-BC-2023-10

**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: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Haxhi Shala

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**Public Redacted Version of Haxhi Shala Submissions in relation to Filings F00519
and F00524**

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I. INTRODUCTION

1. The Defence for Mr Haxhi Shala ("Defence") hereby submits observations on the Joint Submission requesting an RFA¹ and KSC-BC-2023-10/F00524 and Joint Request by Sabit Januzi Defence and Haxhi Shala Defence for a Request for Assistance.²

II. PROCEDURAL BACKGROUND

2. On 22 January 2024 and on 21 December 2023 the Pre-Trial Judge issued on the request of the Specialist Prosecutor's Office ("SPO") *ex parte* confidential Decisions in relation to the forensic copies of the mobile phones [REDACTED] ("Subject 'Phones").³
3. On 8 October 2024, the Trial Panel ordered the Parties to undertake *inter partes* consultations and, if they so decided, to file a written joint request seeking the Panel's relevant authorisation in relation to the Subject 'Phones⁴ and ordered

¹ KSC-BC-2023-10/F00519, 10 October 2024, confidential.

² KSC-BC-2023-10/F00524, 11 October 2024, confidential, with Annex 1, confidential.

³ KSC-BC-2023-10/F00141, Decision on Prosecution Request for an Order and Related Non-Disclosure, 21 December 2023, confidential ("F00141"); KSC-BC-2023-10/F00151, Decision on Prosecution Supplemental Request for an Order, 22 January 2024, confidential ("F00151").

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

the Defences for Sabit Januzi, Ismet Bahtijari and Haxhi Shala to file any other requests not encompassed in the Joint Submission.⁵

4. On 10 October 2024, the Specialist Prosecutor's Office (SPO) filed the Joint Submission requesting an RFA ("Joint Request").⁶
5. On 11 October 2024, the Defences for Sabit Januzi and Haxhi Shala filed the Joint Request by Sabit Januzi Defence and Haxhi Shala Defence for a Request for Assistance ("Defence Further Request").⁷
6. On 22 October 2024 the Trial Panel ordered the Parties to make submissions on specific questions related to the Joint Request and the Defence Further Request.⁸

III. APPLICABLE LAW

7. Article 21(6) of the Law on Specialist Chambers and Specialist Prosecutor's Office⁹ ("Law") provides:

⁵ 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.

⁶ KSC-BC-2023-10/F00519, Joint Submission requesting an RFA, 10 October 2024, confidential.

⁷ KSC-BC-2023-10/F00524, confidential.

⁸ KSC-BC-2023-10/F00548, Decision Requesting Observations in Relation to filings F00519 and F00524.

⁹ Law no.05/L-053, 3 August 2015.

“All material and relevant evidence or facts in possession of the Specialist Prosecutor’s Office which are for or against the accused shall be made available to the accused before the beginning of and during the proceedings, subject only to restrictions which are strictly necessary and when any necessary counter-balance protections are applied.”

8. Rule 102(3) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers,¹⁰ (“Rules”) provides:

“The Specialist Prosecutor shall, pursuant to Article 21(6) of the Law, provide detailed notice to the Defence of any material and evidence in his or her possession. The Specialist Prosecutor shall disclose to the Defence, upon request, any statements, documents, photographs and allow inspection of other tangible objects in the custody or control of the Specialist Prosecutor, which are deemed by the Defence to be material to its preparation, or were obtained from or belonged to the Accused. Such material and evidence shall be disclosed without delay. The Specialist Prosecutor shall immediately seize the Panel where grounds to dispute the materiality of the information exist.”

¹⁰ KSC-BD-03/Rev3/2020, 2 June 2020.

IV. SUBMISSIONS

9. On 1 October 2024, the Defence for Mr. Sabit Januzi sought access to the Subject 'Phones.¹¹ Evidence extracted from them is central to the SPO case;¹² but it has not yet been possible for the Defence to examine their integrity or to conduct other investigations that would have a bearing on their value as evidence.
10. At the Trial Preparation Conference, the SPO recognised that it was understandable that the defence sought access to the Subject 'Phones¹³ but stated that it did not possess or have authority to give access to them.¹⁴ However, the SPO had possessed and controlled the Subject 'Phones and had chosen to seek an order whereby they would be provided to an External Forensic Institute ("EFI"). The fact that the Subject 'Phones are no longer in the physical possession of the SPO does not absolve it of the responsibility to facilitate their disclosure without delay as provided for in Article 21(6) of the Law and Rule 102(3) of the Rules.

¹¹ KSC-BC-2023-10/F00495, Submissions for the Trial Preparation Conferences on behalf of Januzi.

¹² Prosecution Pre-Trial Brief, paras. 24-30 (Annex 1 to Submission of Prosecution Pre-Trial Brief, witness lists and exhibit lists, and Rule 109(c) chart, F00177/A01).

¹³ KSC-BC-2023-10, Transcript 7 October 2024, pp. 288.

¹⁴ KSC-BC-2023-10, Transcript 7 October 2024, pp. 287.

11. With this in mind, the Defence responds as follows to the Trial Panel's questions:

a) Reasons why the requested actions were not sought earlier in the proceedings before the Pre-Trial Judge taking into consideration the decisions issued by that Judge in December 2023 and January 2024.¹⁵

In F00141 and F00151 the Pre-Trial Judge ordered, *inter alia*, the SPO and the EFI to store, protect and retain seized evidence (full forensic copy of the Subject 'Phones) in accordance with the Rules and the Decisions.¹⁶ Since the Subject 'Phones are now in the physical possession of the EFI, analysing their contents is much less straightforward than it would be if they were documents that could be disclosed on Legal Workflow. Had they been documents, they could have been disclosed immediately so that the Defence could review them much more easily and over a period of many months with the possibility of carrying out research on them at any time. However, in view of their nature and their situation at the EFI it is necessary for specific questions to be formulated in advance some of which depend on a technical understanding that cannot be acquired immediately and to some extent depend on the developing knowledge of the SPO case

¹⁵ F00141; F00151.

¹⁶ F00141, para. 45(d); F00151, para. 48(d).

and a more general feel for the evidence to be obtained from mobile 'phones which the Defence has gained gradually throughout the proceedings as the SPO has disclosed more and more such evidence. For example, the Reports of the EFI in Annex 1 of the Prosecution Request to Amend Exhibit List with two Confidential Annexes¹⁷ which were only provided to the Defence on 8 October 2024 allowed insights into the workings of the EFI which had not been possible previously. The need to depend on Legal Aid has of course reduced the human and other resources at the disposal of the Defence and thereby the speed with which it can prepare for the trial. From the perspective of the Defence these factors provide an explanation for the timing of the Joint Request and the Defence Further Request.

b) Which of the requested actions the Parties consider necessary to be completed in order to start the SPO case;

If the Subject 'Phones could have been disclosed in the ordinary way so that each Party could undertake any analysis of them that they wished to, the only issue would be how much time would be required. Individual investigations may lead in directions that have not been foreseen. With regard to the Subject 'Phones a single set of questions has to be posed at

¹⁷ KSC-BC-2023-10/F00512, confidential.

the same time. Answers cannot be predicted. It is therefore not possible to specify which actions should be completed in order to start the SPO case. It should also be noted that the actions requested of the EFI and subsequent checks to be made by the SPO will be very largely automated and therefore will not be overly time-consuming.

- 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.*

The Defence can also not put the requests in a hierarchy of priority given the uncertainties described in answer to b) above. The Defence seeks to the fullest extent possible to maintain the expeditiousness of the proceedings and to preserve the Accused's right to be tried within a reasonable time pursuant to Article 21(4)(d) of the Law. Equally, a trial should not take place if there remains a very real possibility of obtaining exculpatory evidence which is not currently available for reasons for which the Defence is not responsible. If as a result the Accused's trial does not take place within a reasonable time in violation of not only the Law but also Article 6(1) of the European Convention for the Protection of Fundamental Rights

and Freedoms,¹⁸ the proceedings should be discontinued and the Accused should be released from detention immediately. Above all, the Accused has a right to a fair trial and no actions should be taken that would compromise that fundamental right.

V. QUALIFICATION

12. This filing is confidential pursuant to Rule 82(4) of the Rules.

Word Count: [1,478 words]



Toby Cadman

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24 October 2024

At London, United Kingdom

¹⁸ Ratified 04 November 1950, in force 03 September 1953, 213 UNTS 221.