



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: 26 February 2024

Language: English

Classification: Public

Public redacted version of 'Prosecution reply to F00179'

Specialist Prosecutor's Office

Kimberly P. West

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Felicity Gerry

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Toby Cadman

1. The Response¹ should be rejected, and the Specialist Prosecutor's Office should be allowed to disclose the Further Materials² and have them included in the Exhibit List.³ The Response raises irrelevant issues and relies on demonstrably incorrect conjecture, ultimately failing to establish any reason why the Request should not be granted by the Pre-Trial Judge.
2. SHALA concedes in the Response – as he must – that the Pre-Trial Judge needs only to satisfy himself that the proposed evidence is *prima facie* relevant and of sufficient importance to justify addition to the Exhibit List, without prejudice to any future determination of admissibility or weight.⁴
3. SHALA's sole argument against *prima facie* relevance is premised on the demonstrably incorrect conjecture that since the relevant phone containing the Further Materials was purchased after the seizure of his other phone on 3 May 2023, the relevant phone 'only holds information from long *after* the period within which it is alleged that the Accused committed the criminal offences with which he has been charged'.⁵ In addition to failing to explain how the Further Materials 'do not achieve the threshold of

¹ Response to Prosecution Request for authorisation for Rule 102(1)(b) disclosure, KSC-BC-2023-10/F00179, 19 February 2024, Confidential ('Response').

² As defined in paras 4-5 of the Request (Prosecution submission of Rule 109(c) chart and witness and exhibit lists and related request for Rule 102(1)(b) disclosure with confidential Annexes 1-3, KSC-BC-2023-10/F00164 ('Request')). The Further Materials consist of the forensic image of a phone seized from SHALA on 11 December 2023 during his arrest, as well as extracts of records, including text messages and call log records, taken from the forensic image.

³ As defined in para.2 of the Request.

⁴ Response, KSC-BC-BC-2023-10/F00179, para.6

⁵ Response, KSC-BC-BC-2023-10/F00179, para.6

prima facie relevance'⁶ or how he is, if at all, unfairly prejudiced,⁷ SHALA's conjecture is both incorrect as to relevance,⁸ and, ultimately, not dispositive of the issue.⁹

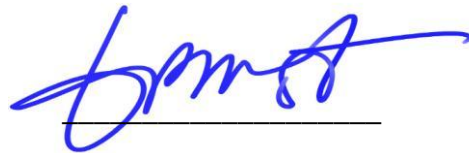
4. In any case, a plain reading of the descriptions for the extracts¹⁰ alone demonstrates the *prima facie* relevance of the Further Materials to, *inter alia*, [REDACTED]. As such, the Further Materials are *prima facie* relevant and of sufficient importance to justify their addition to the Exhibit List.

5. The remaining issue raised is not relevant to the Request, and fails to state a legal basis for the relief requested.¹¹

6. For the foregoing reasons and those given previously, the Request should be granted.

7. This filing is submitted as confidential in accordance with Rule 82(4).

Word count: 548



Kimberly P. West

Specialist Prosecutor

Monday, 26 February 2024

At The Hague, the Netherlands

⁶ Response, KSC-BC-2023-10/F00179, para.8.

⁷ Response, KSC-BC-2023-10/F00179, para.8.

⁸ [REDACTED].

⁹ Evidence of communications subsequent to 'the period within which it is alleged that the Accused committed the criminal offences with which he has been charged' could be relevant for a variety of reasons.

¹⁰ The descriptions from the Exhibit List of the extracts, [REDACTED].

¹¹ See Response, KSC-BC-2023-10/F00179, paras 9, 12(ii).