



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

**In:** KSC-BC-2018-01  
**Before:** Single Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon  
**Filing Participant:** Specialist Prosecutor's Office  
**Date:** 2 May 2024  
**Language:** English  
**Classification:** Public

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**Public redacted version of 'Prosecution reply to F00648 and F00652 regarding retention of evidence'**

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1. The SPO provides the following facts in reply to filings F00648<sup>1</sup> and F00652<sup>2</sup> challenging the SPO's request to retain the four Pending Items<sup>3</sup> seized from KILAJ in November 2023, pursuant to judicial order.<sup>4</sup>

2. As a threshold matter, KILAJ's repeated claims that the SPO and the external forensic institute ('EFI') have shown a lack of diligence and expeditiousness in creating forensic copies of and examining the contents of the Pending Items are groundless. The SPO has and continues to act with diligence and expeditiousness to obtain forensic copies of the Pending Items and complete their review. Indeed, as the Single Judge has already observed, the SPO completed its review of most of the seized items within the time originally afforded,<sup>5</sup> demonstrating its diligent efforts to review the seized material. As to the EFI, as discussed further below, there is no basis to believe that providing the final two remaining Pending Items to any other institute would yield different results.

A. [REDACTED]

3. Regarding the [REDACTED] and the [REDACTED], the SPO has demonstrated the required good cause for their further retention. The retention is required to complete the review of the devices authorised by the Search and Seizure Decision. [REDACTED]. This process takes time.

4. Further, the SPO is scheduled to collect the forensic copies of the two devices from the EFI on Friday, 3 May 2024. The SPO anticipates that it will be able to commence its review of these two devices consistent with the Search and Seizure

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<sup>1</sup> Kilaj response to Prosecution second request for retention of evidence, KSC-BC-2018-01/F00648, 30 April 2024, Confidential ('F00648').

<sup>2</sup> Addendum to Kilaj response to Prosecution second request for retention of evidence, KSC-BC-2018-01/F00652, 1 May 2024, Confidential ('F00652').

<sup>3</sup> As defined in Confidential Lesser Redacted Version of Decision on Request on Variation of Time Limits concerning Retention of Evidence, KSC-BC-2018-01/F00611/CONF/RED2, 12 March 2024, Confidential ('Decision F00611'), namely [REDACTED].

<sup>4</sup> Decision F00611, KSC-BC-2018-01/F00611/CONF/RED2.

<sup>5</sup> See Decision F00611, KSC-BC-2018-01/F00611/CONF/RED2, para.25.

Decision beginning the week of 6 May. As previously submitted, the SPO will complete its review of the items as expeditiously as possible and will execute its obligations consistent with the Seizure Decision<sup>6</sup> and the Rules.<sup>7</sup> The SPO cannot *ex ante* forecast with precision how long the review will take to complete because the SPO does not know the volume of material contained on each device or how much material will require translation. However, based on past experience reviewing electronic devices, the SPO is confident that it will be able to complete its review for purposes of assessing its position on whether to retain or return the devices consistent with Rule 33 within three months from 3 May 2024.

B. [REDACTED]

5. Regarding the remaining two Pending Items – the [REDACTED] and [REDACTED] – the SPO notes the following. In F00648, KILAJ accused the SPO of a ‘serious’ act of ‘incompetence’ and fatal a lack of diligence and expedience for failing for ‘six months’ to provide [REDACTED].<sup>8</sup> Then, in an addendum filed yesterday, KILAJ withdrew his accusation and acknowledged that [REDACTED].<sup>9</sup> Instead, KILAJ now attempts to cover his now withdrawn allegation by making several new unfounded claims in a failed attempt to undermine the SPO’s good cause to retain the Pending Items.<sup>10</sup>

6. None of KILAJ’s claims bears scrutiny. To the contrary, the SPO has demonstrated good cause for the further retention of the [REDACTED] and [REDACTED].

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<sup>6</sup> Confidential Redacted Version of Decision Authorising Search and Seizure [REDACTED], KSC-BC-2018-01/F00484/CONF/RED, 20 October 2023, Strictly Confidential and *Ex Parte* (‘Search and Seizure Decision’), para.50.

<sup>7</sup> See also Rules 32 and 33 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 (‘Rules’).

<sup>8</sup> [REDACTED].

<sup>9</sup> [REDACTED].

<sup>10</sup> [REDACTED]

7. [REDACTED].<sup>11</sup>

8. [REDACTED].

9. The SPO transferred the [REDACTED] to the EFI in the Netherlands as soon as possible, on 3 November 2023, just one day after its seizure in Kosovo. [REDACTED].

10. [REDACTED].

11. [REDACTED],<sup>12</sup> [REDACTED].

12. [REDACTED].

13. In sum, the SPO has made all reasonable and diligent efforts to access the information stored on the [REDACTED] and [REDACTED] in accordance with the Rules and the Search and Seizure Decision. As the Single Judge is no doubt aware, [REDACTED]. The delay here does not result from any lack of diligence or expeditiousness. KILAJ's bare assertion otherwise is unfounded. [REDACTED].

14. In the meantime, the SPO's request regarding the [REDACTED] and [REDACTED] is simple, reasonable and consistent with the Rules and the Search and Seizure Decision: further retention of the devices to allow time for forensic copying to occur and for the SPO to then conduct the review of the devices' content as authorised in the Search and Seizure Decision. The good cause justifying the original retention of the Pending Items remains.<sup>13</sup> This is particularly true because of the critical and legitimate investigative aims of examining serious allegations of acts of intimidation against SPO witnesses and acts of obstruction of justice, and ensuring the safety and integrity of the KSC proceedings.

15. This filing is submitted as confidential pursuant to Rule 82.

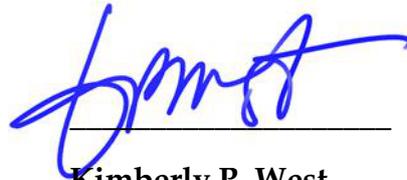
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<sup>11</sup> [REDACTED].

<sup>12</sup> [REDACTED]

<sup>13</sup> See Decision F00611, KSC-BC-2018-01/F00611/CONF/RED2, paras 25-29.

**Word count: 1,522**



**Kimberly P. West**

**Specialist Prosecutor**

Thursday, 2 May 2024

At The Hague, the Netherlands.