



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

**In:** KSC-BC-2018-01

**Before:** Single Judge Panel  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Acting Specialist Prosecutor

**Date:** 20 April 2023

**Language:** English

**Classification:** Public

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**Lesser redacted public version of 'Prosecution request for orders authorising  
search and seizure of mobile telephones'**

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## I. INTRODUCTION

1. Pursuant to Articles 35(2), 39(3) and 53 of the Law<sup>1</sup> and Rules 30-33, 37, 39 and 48(2) of the Rules,<sup>2</sup> the Specialist Prosecutor's Office ('SPO') requests two separate orders from the Single Judge authorising the search and seizure by the SPO of all mobile telephones (collectively, 'the Subject Phones') of Ismet BAHTJARI and Haxhi SHALA, respectively, including the search and seizure [REDACTED]. The SPO further requests that each order include the authority to search the respective residences and persons of BAHTJARI and SHALA for the limited purpose of searching and seizing mobile phones at each individual's residence.

2. Additionally, for the reasons detailed below, the SPO requests that each of these search and seizure orders contain a provision ordering (1) [REDACTED] and (2) providing that failure to obey the order may subject the individual to criminal sanction pursuant to Article 15(2) of the Law in conjunction with Article 393 of the 2019 Kosovo Criminal Code.

3. [REDACTED]. [REDACTED].

4. The relevant requirements are satisfied in this case. There is grounded suspicion that evidence of a crime within the jurisdiction of the Kosovo Specialist Chambers ('KSC') is to be found on the Subject Phones. The measures sought are necessary, insofar as the examination of the content of the Subject Phones is the only effective means of obtaining such evidence. The resulting interference with

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<sup>1</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' herein refer to articles of the Law, unless otherwise specified.

<sup>2</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

BAHTJARI's and SHALA's rights is proportionate to the legitimate aim of the investigation, and does not negate the essence of the guaranteed rights.

## II. FACTUAL AND PROCEDURAL HISTORY

5. [REDACTED].<sup>3</sup>

6. [REDACTED].<sup>4</sup> [REDACTED]. [REDACTED].

7. [REDACTED].<sup>5</sup> [REDACTED]. [REDACTED].

8. On 5 April 2023 [REDACTED] reported to the SPO that he was threatened with death if he did not withdraw his testimony.

9. Specifically, [REDACTED] reported to the SPO that earlier that day, [REDACTED] Ismet BAHTJARI visited his home and delivered a message on behalf of others to withdraw his testimony [REDACTED].<sup>6</sup> [REDACTED] informed the SPO that BAHTJARI, also known as 'Shema', used the Facebook Messenger application to call [REDACTED]'s mobile phone on the afternoon of 5 April 2023. [REDACTED]'s wife answered the incoming call because [REDACTED] was napping at the time. BAHTJARI asked if [REDACTED] was home. [REDACTED]'s wife confirmed that he was home and asked BAHTJARI if she should wake him up to talk. BAHTJARI said not to wake [REDACTED].

10. Thirty minutes later, BAHTJARI arrived at [REDACTED]'s home. BAHTJARI is not a frequent visitor to [REDACTED]'s home, nor are the two in frequent communication.

11. When [REDACTED] asked BAHTJARI why he had come to his home, BAHTJARI stated, 'I haven't come for good' and added an Albanian phrase meaning

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<sup>3</sup> See e.g., [REDACTED].

<sup>4</sup> [REDACTED].

<sup>5</sup> [REDACTED].

<sup>6</sup> [REDACTED].

'I have something to do for the evil.' BAHTJARI then stated, in sum and substance, 'I have been sent here to tell you that you are [REDACTED] and that [REDACTED] should withdraw his testimony. BAHTJARI told [REDACTED] that Haxhi SHALA, also known as 'Topi,' sent BAHTJARI to deliver this message to [REDACTED]. BAHTJARI also told [REDACTED] that SHALA had recently approached BAHTJARI at a café that BAHTJARI frequents in the area between Fushtice and Komoran. SHALA told BAHTJARI 'Go and tell [[REDACTED]] that he's [REDACTED] and tell him to withdraw.' [REDACTED] was not certain, but believed BAHTJARI's encounter with SHALA occurred a day or two before BAHTJARI's 5 April 2023 visit to [REDACTED].

12. During their discussion at [REDACTED]'s home, BAHTJARI appeared nervous and uncomfortable and kept his head down and avoided eye contact with [REDACTED]. [REDACTED] asked BAHTJARI if he was recording their conversation, which BAHTJARI denied.

13. [REDACTED] asked BAHTJARI, 'Have they told you if I don't withdraw they will kill me or my son?' and 'Will they kill me if I testify?' BAHTJARI kept his head down and replied, 'Yes, yes.' When the SPO asked who [REDACTED] was referring to when he asked if 'they will kill' him, [REDACTED] stated that by 'they' he meant [REDACTED].

14. [REDACTED] then told BAHTJARI, 'Tell [REDACTED], that if The Hague calls me, I will fuck all their mothers' and 'Tell them if I see them in front of me I will kill them if they don't kill me first.' [REDACTED] explained to the SPO that [REDACTED] and others tried to kill [REDACTED] years ago, and that [REDACTED] believes that [REDACTED] and SHALA are responsible for the current message that he should withdraw his testimony now.

15. After the discussion finished, BAHTJARI appeared nervous. [REDACTED] asked BAHTJARI if he needed a taxi, because he knows BAHTJARI does not drive. BAHTJARI told [REDACTED] that he did not need a taxi because 'I have this guy who

works with me from Fushtice,' which [REDACTED] understood to mean BAHTJARI had someone to drive him home.

16. BAHTJARI then left [REDACTED]'s home and walked down the street toward a [REDACTED], which appeared to be waiting approximately 200 meters away. [REDACTED]'s wife, who was watching BAHTJARI from the window, alerted [REDACTED] that two men were standing near [REDACTED] and appeared to be getting into it. [REDACTED] went to the window and, based on what he observed, he believes that [REDACTED] and two other men entered [REDACTED] which was driven by a fourth person. [REDACTED] is certain BAHTJARI was not driving. [REDACTED] believes the two other men had likely been watching his home while BAHTJARI visited.

17. [REDACTED] told the SPO several times that while he is not concerned for his own safety, he is very concerned for the safety of his wife and children as a result of BAHTJARI's visit.

18. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

19. [REDACTED]. [REDACTED]. [REDACTED].

### III. APPLICABLE LAW

20. The SPO requests authorisation from the Single Judge for search and seizure of the Subject Phones, including the authority to search the residences and persons of BAHTJARI and SHALA for the purpose of executing the seizure of the Subject Phones. The Single Judge has identified the relevant requirements for such measures as follows:<sup>7</sup>

- a. the mobile telephone is the property of the person concerned;

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

- b. there is grounded suspicion that, *inter alia*, evidence of a crime within the jurisdiction of the Specialist Chambers is on the mobile telephone;
- c. the seizure is necessary for the investigation;
- d. the measure sought is unavoidable (in that, in the specific circumstances, evidence may not be otherwise obtained and the requested seizure appears to be the only effective means for the purposes of the investigation); and
- e. the resulting interference into the person's right to personal integrity, privacy or property is proportionate to the legitimate aim of the investigation and does not negate the essence of the guaranteed right.

#### IV. SUBMISSIONS

##### A. THERE IS GROUNDED SUSPICION THAT THE SUBJECT PHONES CONTAIN EVIDENCE OF A CRIME WITHIN THE JURISDICTION OF THE KSC

21. Based on the facts set forth above, there is grounded suspicion that both BAHTJARI and SHALA, acting on the instruction or direction of others and/or in co-perpetration with others, have committed, are committing or are about to commit an offence within the meaning of Article 15(2). Indeed, as detailed above, BAHTJARI told [REDACTED] that SHALA approached and instructed BAHJTARI to tell [REDACTED] that he ([REDACTED]) is '[REDACTED]' and to withdraw his testimony and that if he did not, he could be killed. [REDACTED] understood this message to be coming from [REDACTED] SHALA.

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

23. As to BAHTJARI's communications, the SPO notes that [REDACTED] reported he was contacted by BAHTJARI on his mobile phone via the Facebook Messenger application. Accordingly, there is grounded suspicion that BAHTJARI used a

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<sup>8</sup> +377 is the international dialling prefix for Monaco but is often assigned to phone numbers in Kosovo.

smartphone to communicate with [REDACTED] immediately before visiting [REDACTED] on 5 April 2023.

24. There is thus grounded suspicion that the Subject Phones contain evidence of the criminal conduct described above, [REDACTED]. More specifically, the Subject Phones used by BAHTJARI and SHALA likely contain evidence of each man's contacts with each other both before and after the 5 April 2023 threat to [REDACTED], as well as contacts with other individuals involved in directing or executing the threat. The Subject Phones are also likely to contain evidence confirming the location of the meeting between BAHTJARI and SHALA during which SHALA directed BAHTJARI to deliver the intimidating message to [REDACTED], as well as the location of any potential meeting following SHALA's 5 April 2023 visit to [REDACTED]. SHALA's mobile phone(s) is/are likely also to contain evidence of communications with [REDACTED] and other potential perpetrators both before and after the 5 April 2023 visit to [REDACTED].

25. The SPO intends to execute any authorised seizure of the Subject Phones at the residences of BAHTJARI and SHALA; however, this will depend on operational and security requirements and the seizures may be executed in another location as deemed necessary.

26. [REDACTED].

27. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

B. THE INFORMATION SOUGHT IS NECESSARY

28. Search and seizure of the content of the Subject Phones is a necessary measure to investigate the ongoing witness intimidation and interference with obstruction of criminal proceedings.

29. Specifically, the Subject Phones are likely to contain relevant evidence, [REDACTED]. Such evidence is necessary and indeed critical to determining, *inter alia*, (1) the full nature and scope of BAHTJARI's and SHALA's obstructive conduct in relation to [REDACTED] and potentially to other witnesses, and (2) the identities, roles and conduct of other potential co-perpetrators, [REDACTED].

30. Based on the totality of the circumstances described above, the requested seizure is the only effective means for the purposes of furthering the investigation and securing evidence that may not be otherwise obtained.

C. THE REQUESTED ORDERS ARE PROPORTIONATE TO THE LEGITIMATE AIM OF THE INVESTIGATION

31. The requested orders are relevant to corroborating the fact that an Article 15(2) crime was, is being or is about to be committed, enabling the SPO to advance the investigation by collecting relevant evidence and identifying all of the individuals involved in such offences and their respective roles in those offences, and ensuring the safety and protection of witnesses at risk because of information they have provided to the SPO.

32. The SPO further notes [REDACTED]. [REDACTED]. This context thus further necessitates the requested search and seizure, which is the only effective means of obtaining the evidence in question.

33. Finally, the requested orders are proportionate to the legitimate aim of the investigation and do not negate the essence of any guaranteed rights because (i) they are in accordance with the Law and Rules; (ii) as set out below, their terms are tailored to the needs of the investigation and are designed to exclude information of no foreseeable relevance; and (iii) the SPO will take appropriate measures for the protection and due respect of victims and witnesses, and the fundamental rights of (potential) suspects and/or accused.



## V. THE TERMS OF THE REQUESTED ORDERS

34. The SPO requests that the Single Judge authorise retention of the Subject Phones for: (i) the time necessary to complete extraction, as applicable, and examination of its relevant content; and (ii) such further period of time as may be necessary for its potential use in evidence. The SPO further requests that each order include the authorisation to search the respective locations, anticipated to be the residences, and persons of BAHTJARI and SHALA for the limited purpose of searching and seizing their mobile phones.

35. In execution of the search and seizure, the SPO will comply with the safeguards outlined in Rule 39, in a manner consistent with the Single Judge's findings regarding its purpose and the scope of feasible application, including, in particular, in the context of expert examinations.<sup>9</sup>

36. Pursuant to Rule 49(1), the SPO also requests to be designated as the competent authority<sup>10</sup> for service and execution of the requested search and seizure order.

37. The SPO further requests the Single Judge to include, as part of the search and seizure order for BAHTJARI's and SHALA's mobile phones, a provision ordering (1) [REDACTED] and (2) providing that failure to obey the order may subject the individual to criminal sanction pursuant to Article 15(2) of the Law in conjunction with Article 393 of the 2019 Kosovo Criminal Code.

38. Such an order is both necessary and appropriate to ensure the proper execution of the requested search and seizure orders. In particular, [REDACTED]. [REDACTED]. [REDACTED].<sup>11</sup> [REDACTED].

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

<sup>10</sup> See [REDACTED].

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

39. Accordingly, [REDACTED]. [REDACTED]. [REDACTED].<sup>12</sup> The same rationale applies here.

40. Finally, the SPO requests that the Single Judge include, as part of each search and seizure order for the mobile phones, [REDACTED]. [REDACTED]. [REDACTED].<sup>13</sup>

41. [REDACTED].

#### VI. TIMING OF REQUEST

42. Given the attempted intimidation and potential for retaliation against [REDACTED], and in order to collect the relevant evidence before it is destroyed, the SPO anticipates executing the requested searches and seizures as soon as practicable. Accordingly, the SPO is planning to execute the requested orders during the week of 1 May 2023, and thus respectfully requests a decision on the orders sufficiently in advance of 1 May 2023 to permit execution that week.<sup>14</sup>

#### VII. CONFIDENTIALITY

43. This filing is classified as strictly confidential and *ex parte* to protect [REDACTED]. The SPO requests an opportunity to make submissions before any reclassification or redacted version is ordered.

#### VIII. RELIEF REQUESTED

44. The SPO hereby requests the Single Judge to grant this request, in the terms set out above, and:

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

<sup>13</sup> [REDACTED].

<sup>14</sup> Execution may have to be postponed if operational concerns, including the safety of [REDACTED] and his family, so requires.

- a. authorise the search and seizure of the mobile telephones of BAHTJARI and SHALA, [REDACTED];
- b. include in each search and seizure order the authority to search the respective locations of execution, anticipated to be the residences, and persons of BAHTJARI and SHALA for the limited purpose of searching and seizing their mobile phones;
- c. include in each search and seizure order a provision ordering (1) [REDACTED] and (2) providing that failure to obey the order may subject the individual to criminal sanction pursuant to Article 15(2) of the Law in conjunction with Article 393 of the 2019 Kosovo Criminal Code;
- d. [REDACTED]; and
- e. designate the SPO as the competent authority for service and execution; and authorise the SPO to disclose the order, as appropriate and necessary, for the purpose of execution.

**Word count: 4,315**

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**Alex Whiting**

**Acting Specialist Prosecutor**

Thursday, 20 April 2023

At The Hague, The Netherlands.