



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

In: **KSC-BC-2023-10**
Specialist Prosecutor v. Sabit Januzi and Ismet Bahtijari

Before: **Pre-Trial Judge**
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 21 November 2023

Language: English

Classification: Public

**Public redacted version of 'Prosecution reply to Corrected Version of 'Submissions re
F00032 Prosecution Request for an Order on behalf of Sabit JANUZI''**

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I. INTRODUCTION

1. The Specialist Prosecutor's Office ('SPO') hereby replies to the Defence Response,¹ which opposes the SPO Request² for search and seizure of Mr JANUZI's mobile phone. The Defence: (1) conflates securing JANUZI's phone during a security search incident to arrest with a search and seizure operation conducted pursuant to Rule 37 of the Rules;³ (2) in doing so, incorrectly incorporates the requirements of Rule 37 into the arrest procedure; and (3) [REDACTED].

II. SUBMISSIONS

A. THE RESPONSE CONFLATES A SEARCH INCIDENT TO ARREST WITH A RULE 37 SEARCH

2. The Defence asserts that the SPO is inconsistent in representing both that (1) the SPO assessed [REDACTED], and (2) a search incident to arrest is a necessary and proper part of the procedure of an arrest.⁴ This is not so.

3. Search and seizure pursuant to Rule 37 is subject to the execution requirements enumerated in Rule 39, which include ensuring the presence of an independent observer and counsel for the person concerned. Meeting those requirements necessitates a significant investment of time, during which the team executing the search must simultaneously ensure the safety and security of all persons present at the search site.⁵ In contrast, a search incident to arrest is a necessary and proper part of standard law

¹ Corrected Version of Submissions re F00032 Prosecution Request for an Order on behalf of Sabit Januzi, KSC-BC-2023-10/F00104/COR, 15 November 2023, Confidential ('Response').

² Confidential redacted version of 'Prosecution request for an order,' KSC-BC-2023-10/F00032/CONF/RED, 12 October 2023, Confidential ('Request').

³ 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.

⁴ Response, KSC-BC-2023-10/F00104/COR, para.31.

⁵ See [REDACTED].

enforcement arrest protocol—indispensable to the safe execution of an arrest warrant—and takes a matter of minutes.⁶

4. JANUZI's phone was secured when he was searched incident to arrest [REDACTED]. The phone was not seized and searched pursuant to Rule 37.

B. THE DEFENCE'S CHALLENGE TO THE TIMING OF JANUZI'S ARREST AND THE SPO'S DECISION NOT TO EXECUTE THE AUTHORIZED SEARCH AND SEIZURE LACKS MERIT

5. The Response suggests that the SPO should have arrested JANUZI when he appeared at the EULEX Compound on 4 October 2023 in response to an interview summons and then executed the Authorised Search and Seizure there.⁷ Specifically, the Defence submits that 'no reasons which could amount to concrete or compelling circumstances' have been provided by the SPO for the timing of JANUZI's arrest.⁸

6. As an initial matter, the SPO notes that the Order for Further Submissions did not direct the SPO to justify its operational reasons for executing the arrests of JANUZI and his co-Accused on a specific date, including its reasons for not arresting JANUZI on the date he was summonsed to appear for an interview.

7. The SPO further notes that arrest warrants do not mandate a specific date or manner of execution; such limitations on operational discretion would prevent effective execution of arrest warrants. Moreover, the SPO must maintain the operational flexibility to conduct arrests as it deems appropriate both for safety and investigative reasons.

⁶ See [REDACTED].

⁷ Response, KSC-BC-2023-10/F00104/COR, paras 29-30.

⁸ Response, KSC-BC-2023-10/F00104/COR, para.30.

8. [REDACTED].⁹ In contrast, the Defence makes a blanket assertion that the SPO's concerns related to safety, operational security or confidentiality are neither concrete nor compelling.¹⁰ Notably, the Defence does not directly address either the SPO's [REDACTED].

9. The Defence's challenge to the SPO's exercise of discretion in choosing the time and place of JANUZI's arrest and not executing the Authorised Search and Seizure is overbroad and without substance. As such, it must fail.

C. THE DEFENCE'S MISCHARACTERIZES THE SPO'S CONTROL OVER JANUZI'S PHONE

10. The Response mischaracterizes the SPO's level of control over JANUZI's phone by incorrectly asserting that [REDACTED].¹¹ [REDACTED].¹²

11. [REDACTED].¹³ [REDACTED].

12. Accordingly, the transfer of JANUZI's phone [REDACTED] did not require the presence of counsel or an independent observer, as the Response incorrectly suggests.¹⁴ The transfer process [REDACTED] was both proper and lawful.

III. CLASSIFICATION

13. This filing is submitted confidentially pursuant to Rule 82(4). A public redacted version will be filed.

⁹ See [REDACTED].

¹⁰ Response, KSC-BC-2023-10/F00104/COR, para.30.

¹¹ [REDACTED].

¹² [REDACTED].

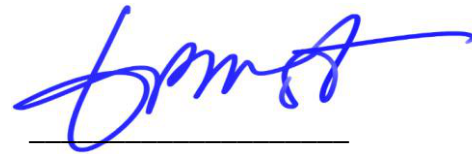
¹³ [REDACTED].

¹⁴ See Response, KSC-BC-2023-10/F00104/COR, paras 18-19.

IV. CONCLUSION

14. For the foregoing reasons and the reasons set forth in the SPO's Request and Further Submissions, the Pre-Trial Judge should grant the Request.

Word count: 1,106



Kimberly P. West

Specialist Prosecutor

Tuesday, 21 November 2023

At The Hague, the Netherlands