



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

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

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

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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Public redacted version of 'Prosecution request for an order'

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Articles 35(2), 39(3), and 53 of the Law¹ and Rules 30-33, 37, 39, and 48(2) of the Rules,² the Specialist Prosecutor's Office ('SPO') requests:

- a. an order from the Pre-Trial Judge authorising the SPO to search and seize the mobile telephones (collectively, 'the Subject Phones') of Ismet BAHTJARI and Sabit JANUZI (together 'the Suspects'); and
- b. an order to the Registrar to provide the SPO with access to the personal property of the Suspects secured at the time of their arrest and currently stored at the KSC Detention Centre for the purpose of executing the search and seizure order.

2. The relevant requirements are satisfied in this case. There is grounded suspicion that the Suspects have committed crimes within the jurisdiction of the Specialist Chambers ('KSC') and that the requested search and seizure will result in the discovery and seizure of evidence necessary for the SPO investigation.³ Furthermore, the search and seizure order is necessary to collect and preserve evidence of crimes within the jurisdiction of the KSC.⁴ 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 the Suspects' rights is proportionate to the legitimate aim of the investigation, and does not negate the essence of the guaranteed rights.

¹ 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.

² 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.

³ Rule 37(2)(a).

⁴ Rule 37(2)(c).

II. FACTUAL AND PROCEDURAL HISTORY

3. On 11 September 2023, the SPO filed requests for the arrest of the Suspects and for the search and seizure of their mobile telephones.⁵

4. On 25 September 2023, the Pre-Trial Judge issued arrest warrants for the Suspects and authorised, *inter alia*, the searches of each Suspect's person, their mobile telephones, and their possessions, and 'the seizure of any and all mobile telephones (to include any and all SIM cards), and any further evidence that is believed to have been used in, connected with or may be relevant to the charged crimes and any recent efforts to interfere with the administration of justice which he carries on their persons or in their Possessions.'⁶ The Single Judge further ordered that the authorised searches and seizures 'are to be executed in Kosovo at the time of the arrest of the Suspects at the latest.'⁷

5. On 2 October 2023, the Pre-Trial Judge issued a decision confirming the indictment of the Suspects and finding that there is a well-grounded suspicion that the Subjects have committed multiple obstruction of the administration justice offences.⁸

6. On 5 October 2023, the SPO executed the arrest warrants for the Suspects. For safety and operational reasons, each suspect was arrested outside of his home.⁹ To

⁵ Submission of Indictment for confirmation and related requests, KSC-BC-2023-10/F00002, 11 September 2023, Strictly Confidential and *Ex Parte*.

⁶ Decision Authorising Searches and Seizures and Special Investigative Measures, KSC-BC-2023-10/F00006, 25 September 2023, Strictly Confidential and *Ex Parte* ('Decision F00006') para.80(b).

⁷ Decision F00006, KSC-BC-2023-10/F00006, para.80(b)(i).

⁸ Decision on the Confirmation of the Indictment, KSC-BC-2023-10/F00008, 2 October 2023, Strictly Confidential and *Ex Parte*, paras 123, 126, 131, 135, 139, 141-44.

⁹ See Report on the Arrest and Transfer of Sabit Januzi to the Detention Facilities, KSC-BC-2023-10/F00020, 9 October 2023, Strictly Confidential and *Ex Parte*, para.9 ('Report on Sabit Januzi') and Report on the Arrest and Transfer of Ismet Bahtjari to the Detention Facilities, KSC-BC-2023-10/F00021, 9 October 2023, Strictly Confidential and *Ex Parte*, para.9 ('Report on Ismet Bahtjari').

ensure the safe and efficient execution of the arrest warrants, the SPO did not execute the 25 September search and seizure orders at the time of arrest.

7. At the time of arrest, SPO security personnel conducted a routine security search of the person each Suspect.¹⁰ During the security search of BAHTJARI's person, the SPO personnel recovered [REDACTED].¹¹ During the security search of JANUZI's person, SPO personnel recovered [REDACTED].¹²

8. In accordance with arrest procedure and to safeguard the personal property of each Suspect, the SPO transferred custody of each Suspect's personal property to the KSC Registry personnel in Kosovo.¹³

9. On 6 October, after Suspects' arrival in the Netherlands, their personal property was delivered by KSC Registry personnel directly to the Chief Detention Officer of the Detention Management Unit ('DMU') of the Registry.¹⁴ As far as the SPO is aware, each Suspect's personal property – including each Suspect's mobile phone – remains in DMU custody.

III. APPLICABLE LAW

10. The SPO now requests authorisation to search and seize the Subject Phones from the DMU. The Single Judge has identified the relevant requirements for such measures as follows:¹⁵

¹⁰ See Report on Sabit Januzi, KSC-BC-2023-10/F000020, para.10 and Report on Ismet Bahtjari, KSC-BC-2023-10/F000021, para.10.

¹¹ See Annex 3 to Report on Ismet Bahtjari, KSC-BC-2023-10/F000021, pp.6 and 31.

¹² See Annex 3 to Report on Sabit Januzi, KSC-BC-2023-10/F000020, pp.6 and 27.

¹³ See Report on Sabit Januzi, KSC-BC-2023-10/F000020, para.18 and Report on Ismet Bahtjari, KSC-BC-2023-10/F000021, para.19.

¹⁴ See Report on Sabit Januzi, KSC-BC-2023-10/F000020, para.31 and Report on Ismet Bahtjari, KSC-BC-2023-10/F000021, para.34.

¹⁵ See e.g. Decision Authorising Search and Seizure and Related Measures, KSC-BC-2018-01/F00348, 3 May 2023, Strictly Confidential and *Ex Parte*; Decision Authorising Search and Seizure and Related Measures, KSC-BC-2018-01/F00342, 28 April 2023, Strictly Confidential and *Ex Parte*; [REDACTED].

- a. the mobile telephone is the property of the person concerned;
- b. there is grounded suspicion that, *inter alia*, evidence of a crime within the jurisdiction of the KSC 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 seizures appear 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. THE RELEVANT REQUIREMENTS HAVE BEEN MET

11. As detailed above, the Pre-Trial Judge has already found that the legal requirements for the search and seizure of the Suspects' mobile phones have been met. In that regard, the SPO hereby incorporates by reference Decision F00006 and the facts and legal conclusions underpinning the Single Judge's 25 September 2023 search and seizure authorisation.¹⁶

12. Additionally, the SPO recalls that on 4 October 2023, JANUZI and his attorney responded to the SPO office at the EULEX facility in Pristina, Kosovo pursuant to a summons issued to JANUZI by the SPO. There, after receiving his rights as a suspect, JANUZI agreed with his attorney to participate in a video-recorded interview with the SPO.

¹⁶ See Decision F00006, KSC-BC-2023-10/F00006, paras 21-38.

13. Immediately after the interview, SPO personnel [REDACTED] to ascertain JANUZI's location in preparation for the execution of the warrant for his arrest the next morning. [REDACTED], SPO personnel observed an individual believed to be JANUZI at an outdoor café in Pristina. [REDACTED]. The video shows that JANUZI, his attorney, and Haxhi SHALA met together and talked at the café.

14. The SPO further recalls that (a) SHALA is 'Co-Perpetrator 1' in the confirmed indictment against BAHTJARI and JANUZI, (b) [REDACTED] has reported to the SPO that both BAHTJARI and JANUZI identified as directing the obstructive approaches made to [REDACTED], and (c) JANUZI and SHALA were in contact both before and after JANUZI visited [REDACTED] at his home on 12 April 2023.

15. In sum, the SPO submits that the meeting between JANUZI, his attorney and SHALA immediately after the 4 October SPO interview has only increased the existing grounded suspicion of JANUZI's and SHALA's involvement in the offences targeting [REDACTED], as well as the necessity of the requested searches.

16. The SPO submits that the Subject Phones are likely to contain relevant evidence, including but not limited to messages, call logs and location data, critical to determining, *inter alia*, the full nature and scope of Co-Perpetrator 1's involvement in the obstructive conduct at issue. The potential evidence on the Subject Phones is necessary in particular to determine the existence, nature and scope of relevant communications between and among the Suspects, Co-Perpetrator 1, and possibly others, including evidence of meetings after the SPO's summoning of JANUZI and before and after his 4 October SPO interview.

17. The requested search and seizure of the Subject Phones is unavoidable because it is the only effective means of furthering the investigation and securing the evidence believed to be on the phones. There is no other less intrusive but equally effective means to collect the sought evidence.

18. Finally, the requested search and seizure is proportionate to the legitimate aim of the investigation and does not negate the essence of the Suspects' rights to privacy and property for the same reasons articulated in Decision F00006.¹⁷

B. TIME, DURATION, AND SCOPE OF THE SEARCHES AND SEIZURES

19. As noted above, the Subject Phones are currently in the custody of the Chief Detention Officer of the DMU as part of the Suspects' personal property removed from their person and safeguarded at the time of their arrest.

20. The SPO therefore submits that in order to execute the search and seizure orders in the presence of the Suspects as required by the Rules, the search and seizure order will have to be executed in the KSC Detention Centre.

V. TERMS OF THE REQUESTED ORDER

21. The SPO requests that the Pre-Trial Judge authorise the retention of the Subject Phones for: (1) the time necessary to complete the extraction, as applicable, and examination of the relevant content of each seized phone(s); and (2) such further period of time as may be necessary for the seized phone(s) potential use in evidence.

22. The SPO further requests the Single Judge to order the Registry to provide the SPO access to the personal property of the Suspects in the Detention Centre and the authorisation to search that personal property for the limited purpose of searching and seizing the Subject Phones.

23. In its execution of the requested search and seizure order, the SPO will comply with the safeguards outlined in Rule 39, in a manner consistent with the Pre-Trial

¹⁷ See Decision F00006, KSC-BC-2023-10/F00006, paras 34-37.

Judge's findings regarding its purpose and the scope of feasible application, including, in particular, in the context of expert examinations.¹⁸

24. Pursuant to Rule 49(1), the SPO also requests to be designated as the competent authority¹⁹ for service and execution of the requested search and seizure order.

VI. TIMING OF REQUEST

25. Given the proceedings in Case 10 and the ongoing investigation into, *inter alia*, Co-Perpetrator 1's involvement in the charged offences, the SPO anticipates executing the requested searches and seizures as soon as possible. This will necessarily involve arrangements in coordination with the Registry/DMU for the presence of an independent observer, the Subjects and their respective counsel at the time of execution.

VII. CONFIDENTIALITY

26. This filing is classified as strictly confidential and *ex parte* to ensure the SPO's ability to search and seize the Subject Phones without alerting the Suspects and/or any confederate [REDACTED]. Therefore, the SPO requests this filing to remain strictly confidential and *ex parte* at least until the search and seizure is executed.

27. The SPO requests an opportunity to make submissions before any reclassification or redacted version is ordered.

VIII. RELIEF REQUESTED

28. The SPO hereby requests the Pre-Trial Judge to grant this request, in the terms set out above, and:

¹⁸ See [REDACTED].

¹⁹ See [REDACTED].

- a. authorise the search and seizure of the Subject Phones, and for expert technical examination of each seized mobile phone and potential use in evidence;
- b. order the Registry to provide the SPO access to the personal property of the Suspects in the Detention Centre;
- c. 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; and
- d. authorise the SPO to store, protect, and retain seized evidence and any extracted data in accordance with the Rules.

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/signature/

Ward Ferdinandusse

Acting Deputy Specialist Prosecutor

Thursday, 12 October 2023

At The Hague, The Netherlands.