



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: Specialist Prosecutor's Office
Date: 15 November 2023
Language: English
Classification: Public

**Public redacted version of 'Prosecution request for search and seizure order
relating to Haxhi SHALA'**

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I. INTRODUCTION

1. Pursuant to Articles 35(2), 39(3), and 53 of the Law¹ and Rules 30-35, 37, 39, and 48(2) of the Rules,² the Specialist Prosecutor's Office ('SPO') requests an order from the Single Judge authorising the SPO to search the residence(s), vehicle(s) and/or person of Haxhi SHALA (together 'the Subject Locations') and to seize any evidence (including all electronic device(s), including mobile phones, laptop computers and USB or other electronic storages devices) that is believed to have been used in, connected with, or may be evidence relevant to crimes under the jurisdiction of the Kosovo Specialist Chambers ('KSC').

2. [REDACTED].

3. Additionally, the SPO requests that the search and seizure order includes provisions: (1) [REDACTED]; and (2) providing that failure to obey the order may subject SHALA to criminal sanction pursuant to Article 15(2) in conjunction with Article 393 of the 2019 Kosovo Criminal Code.

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.

4. Finally, the SPO requests that the Single Judge authorise the SPO for a maximum of thirty (30) days to [REDACTED] for the limited purpose of operational planning for and execution of the requested search and seizure order.

5. The relevant requirements are satisfied in this case. As detailed below, there is grounded suspicion that SHALA, together with others, has committed crimes within the KSC's jurisdiction, and that the requested searches and seizures will result in the discovery and seizure of evidence necessary for the investigation.³ Furthermore, the search and seizure order is necessary to collect and preserve evidence of a crime within the jurisdiction of the KSC, and there is grounded suspicion that such evidence is on the property, location, premises or object to be searched.⁴ The measures sought are necessary, insofar as the measures sought are the only effective means of obtaining such evidence. The resulting interferences with SHALA's rights are proportionate to the legitimate aims of the investigation and do not negate the essence of any guaranteed right.⁵

II. FACTUAL AND PROCEDURAL HISTORY

3. As previously detailed to the Single Judge, the SPO is actively investigating efforts undertaken by SHALA, Sabit JANUZI, Ismet BAHTJIARI, and others aimed at obstructing the testimony of protected SPO witness [REDACTED] ('Witness 1') [REDACTED].⁶ Mindful that the Single Judge is well-versed in the facts detailed in these prior filings, the SPO will not repeat them here.

³ Rule 37(2)(a).

⁴ Rule 37(2)(c).

⁵ Rule 31(1)(c).

⁶ Annex 1 to Submission of confirmed Indictment, KSC-BC-2023-10/F00010/A01, 4 October 2023, Strictly Confidential ('Indictment'); Prosecution Request for Order Authorising Search and Seizure of Mobile Telephones, KSC-BC-2018-01/F00335, 20 April 2023, Strictly Confidential and *Ex Parte*.

4. The Single Judge granted the SPO's 20 April 2023 request for an order authorising the search and seizure of SHALA's mobile telephones, finding there to be a grounded suspicion that (i) SHALA, potentially acting on the instruction or direction of others and/or in co-perpetration with others, had committed, was committing or was about to commit an offence within the meaning of Article 15(2) of the Law.⁷

5. Based on evidence uncovered during its investigation, including evidence retrieved from a mobile telephone seized from SHALA on 3 May 2023 pursuant to the search and seizure order issued by the Single Judge,⁸ the SPO submitted an Indictment for confirmation against JANUZI and BAHTJIARI, in which it identified SHALA as 'Co-Perpetrator 1.' In the Confirmation Decision for the Indictment, the Single Judge outlined the various ways in which the Indictment supporting materials demonstrated SHALA's involvement in the charged conduct and ultimately found, *inter alia*, that JANUZI and BAHTJIARI formed a group comprising at least them and SHALA and further that the group's common actions indicate a joint endeavour aimed at inducing Witness 1 to refrain from testifying [REDACTED].⁹

6. As part of its ongoing investigation, the SPO has obtained judicial authorisation to make use of [REDACTED] video taken on 4 October 2023 (the '4 October [REDACTED] Video'), as described below.¹⁰

III. SUBMISSIONS

⁷ Decision Authorising Search and Seizure and Related Measures, KSC-BC-2018-01/F00342, 28 April 2023, Strictly Confidential and *Ex Parte*, para.26.

⁸ Annex 1 to Decision Authorising Search and Seizure and Related Measures, KSC-BC-2018-01/F00342/A01, 28 April 2023, Strictly Confidential; Prosecution request for retention of evidence, KSC-BC-2023-10/F00060, 26 July 2023, Strictly Confidential and *Ex Parte*, para.2.

⁹ Decision on the Confirmation of the Indictment, KSC-BC-2023-10/F00008, 2 October 2023, Confidential ('Confirmation Decision'), paras 113, 118; Decision on Prosecution request for retention of evidence or, alternatively, request for approval of a special investigative measure, KSC-BC-2023-10/F00029, 11 October 2023, Strictly Confidential and *Ex Parte* ('SIM Decision'), p.11, para. 23.

¹⁰ SIM Decision, KSC-BC-2023-10/F00029, para.42(b).

A. THERE IS GROUNDED SUSPICION SUFFICIENT TO SUPPORT THE REQUESTED ORDER

7. The Single Judge has already found that there is grounded suspicion that SHALA has committed, is committing or is about to commit offences under Article 15(2), including his potential involvement in coordinating and/or directing the obstructive conduct aimed at intimidating Witness 1 and obstructing his testimony [REDACTED].

8. The 4 October [REDACTED] Video depicts JANUZI meeting in person with his attorney and SHALA on 4 October 2023 directly after he was interviewed by the SPO at its offices in Kosovo (the '4 October Meeting'). In the SIM Decision, the Single Judge found that this conduct by JANUZI was consistent with his pattern of exchanges and concerted efforts taken with SHALA, which the Single Judge had found in the Confirmation Decision.¹¹

9. Indeed, the 4 October [REDACTED] Video demonstrates that there was continued communication between JANUZI and SHALA regarding ongoing KSC proceedings and likely the allegations against JANUZI and SHALA contained in the Indictment. Given that SHALA's mobile telephone seized on 3 May 2023 yielded relevant evidence related to SHALA's communications with JANUZI, including phone logs and text messages, as referenced in the Confirmation Decision, there is grounded suspicion to believe that SHALA is currently in possession of additional evidence, including on the mobile device(s) he likely would have used to coordinate the 4 October Meeting with JANUZI.

¹¹ SIM Decision, KSC-BC-2023-10/F00029, para.24.

B. THE INFORMATION SOUGHT IS NECESSARY AND CANNOT BE OBTAINED BY OTHER MEANS

10. The requested search and seizure constitutes necessary measures to investigate the attempts to interfere with and obstruct witness testimony, and to determine what, if any, obstructive conduct occurred after the seizure of SHALA'S mobile telephone on 3 May 2023 and specifically before and after the 4 October Meeting between SHALA and JANUZI. The evidence sought is necessary to determining, *inter alia*: (i) the full nature and scope of SHALA's, JANUZI's, and their co-perpetrators' conduct in relation to the obstruction of criminal proceedings; and (ii) the identities, roles and conduct of other potential co-perpetrators.

11. Based on the totality of the circumstances described above, the requested searches and seizures are the only effective means for the purposes of furthering the investigation and securing evidence that may not be otherwise obtained.

C. THE REQUESTED ORDER IS PROPORTIONATE TO THE LEGITIMATE AIMS OF THE INVESTIGATION

12. The requested search and seizure order is relevant to corroborating the fact that Article 15(2) crimes were and/or are being 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 all witnesses [REDACTED].

13. [REDACTED].

14. Finally, the requested order is proportionate to the legitimate aim of the investigation and does not negate the essence of any guaranteed rights because (i) it is in accordance with the Law and Rules; (ii) as set out below, its 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.

15. Regarding SHALA's residence, the SPO previously executed a search and seizure order for SHALA [REDACTED].

16. [REDACTED].

17. [REDACTED].

IV. THE TERMS OF THE REQUESTED ORDER

18. The SPO requests that the Single Judge authorises retention of any evidence seized or produced for (1) the time necessary to complete review of the evidence; and (2) if deemed relevant, such further period of time as may be necessary for its potential use in evidence. [REDACTED].¹²

19. In its execution of the requested search and seizure order, the SPO will comply with the safeguards outlined in Rule 39, as relevant 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.¹³

20. Pursuant to Rule 49(1), the SPO also requests to be designated as the competent authority¹⁴ for service and execution of the requested search and seizure order.

21. The SPO further requests the Single Judge to include, as part of the search and seizure order for any seized mobile device, including mobile phones and laptop computers, a provision ordering (1) [REDACTED] and (2) providing that failure to

¹² [REDACTED].

¹³ See [REDACTED].

¹⁴ See [REDACTED].

obey the order may subject the individual to criminal sanction pursuant to Article 15(2) in conjunction with Article 393 of the 2019 Kosovo Criminal Code.

22. Such an order is both necessary and appropriate to ensure the proper execution of the requested search and seizure order. [REDACTED].

23. Accordingly, [REDACTED].¹⁵ [REDACTED].

24. Finally, the SPO requests that the Single Judge include, as part of the requested search and seizure order, a provision authorising the SPO to carry out certain specified, time-limited special investigative measures for the purpose of operational planning and execution. Specifically, the SPO requests the authority to [REDACTED].¹⁶

25. The requested special measures [REDACTED] are both necessary and proportional to the purposes of the investigation. [REDACTED]. Given that the SPO plans to execute the proposed search and seizure order as soon as practicable [REDACTED], the SPO submits that the requested measures, [REDACTED].

26. [REDACTED].¹⁷

V. CONFIDENTIALITY

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

VI. RELIEF REQUESTED

¹⁵ [REDACTED].


¹⁶ [REDACTED].

¹⁷ [REDACTED].

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

- a. authorise the SPO to search the residence(s), vehicle(s) and/or person of SHALA, including [REDACTED], and seize any evidence (including all electronic device(s), including mobile phones, laptop computers and USB or other electronic storages devices) that is believed to have been used in, connected with, or may be evidence relevant to crimes under the jurisdiction of the KSC;
- b. include in the search and seizure order a provision ordering (1) [REDACTED], and (2) providing that failure to obey the order may subject SHALA to criminal sanction pursuant to Article 15(2) in conjunction with Article 393 of the 2019 Kosovo Criminal Code;
- c. authorise the SPO to carry out the special investigative measures of [REDACTED], for the limited purpose of operational planning, for a maximum of thirty (30) days;
- d. designate the SPO as the competent authority for service and execution;
- e. authorise the SPO to disclose the order, as appropriate and necessary, for the purpose of execution; and
- f. authorise the SPO to store, protect, and retain seized evidence and any extracted data in accordance with the Rules.

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Wednesday, 15 November 2023

At The Hague, The Netherlands.