



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**In:** KSC-BC-2023-10

**Specialist Prosecutor v. Sabit Januzi and Ismet Bahtjari**

**Before:** Pre-Trial Judge

Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Date:** 11 October 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of Corrected Version of Decision on Prosecution request  
for retention of evidence or, alternatively, request for approval of a special  
investigative measure**

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Articles 39(3), 53, and 55 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 2, 31-35, 36, 42(1), and 48(2), of the Rules of Procedure and Evidence Before the Kosovo Specialist Chamber ("Rules"), hereby renders the following decision.

## I. PROCEDURAL BACKGROUND

1. On 11 September 2023, the Specialist Prosecutor's Office ("SPO") filed before the Pre-Trial Judge the indictment against Sabit Januzi ("Mr Januzi") and Ismet Bahtjari ("Mr Bahtjari"), together with a request for their arrest and transfer ("Arrest Warrants") to the Specialist Chambers' ("SC") Detention Facilities, and a request for search and seizure and related requests.<sup>2</sup>
2. On 25 September 2023, the Pre-Trial Judge issued a decision authorizing, *inter alia*, special investigative measures ("SIMs") of [REDACTED] ("Authorized SIMs"; "25 September 2023 Decision").<sup>3</sup>
3. On 2 October 2023, the Pre-Trial Judge confirmed the indictment against Mr Januzi and Mr Bahtjari ("the Accused"; "Confirmation Decision"),<sup>4</sup> issued the arrest warrants for the Accused and ordered their transfer to the Detention Facilities of the SC in the Hague, the Netherlands.<sup>5</sup>
4. On 4 October 2023, the SPO submitted the Confirmed Indictment.<sup>6</sup>

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<sup>1</sup> KSC-BC-2023-10, F00001, President, *Decision Assigning a Pre-Trial Judge*, 11 September 2023, public.

<sup>2</sup> KSC-BC-2023-10, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation and Related Requests*, 11 September 2023, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

<sup>3</sup> KSC-BC-2023-10, F00006, Pre-Trial Judge, *Decision Authorising Searches and Seizures and Special Investigative Measure*, 25 September 2023, with Annexes 1-2, strictly confidential.

<sup>4</sup> KSC-BC-2023-10, F00008, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 2 October 2023, strictly confidential and *ex parte*.

<sup>5</sup> KSC-BC-2023-10, F00009, *Decision on Request for Arrest Warrants and Transfer Orders*, 2 October 2023, strictly confidential and *ex parte*, with Annexes 1-4, strictly confidential ("Decision on Arrest and Transfer").

<sup>6</sup> KSC-BC-2023-10, F00010/A01, Specialist Prosecutor, *Indictment*, 4 October 2023, strictly confidential. A public redacted version of the Confirmed Indictment was submitted on 6 October 2023, F00016/A01.

5. On 5 October 2023, the Accused were arrested in Kosovo.<sup>7</sup> On the same day, the SPO filed the "Prosecution request for retention of evidence or, alternatively, request for approval of a special investigative measure" ("Request").<sup>8</sup>

## II. SUBMISSIONS

6. The SPO reports that, in accordance with the Pre-Trial Judge's 25 September 2023 Decision, it executed the Authorized SIMs on 4 October 2023 [REDACTED].<sup>9</sup> In this regard, the SPO submits that [REDACTED], it recorded Mr Januzi meeting with "Co-Perpetrator 1", as named in the Confirmed Indictment<sup>10</sup> and seeks authorization to retain such recording as evidence in its ongoing investigations into interference with and intimidation of SPO protected witnesses and related obstruction, as well as its prosecution of Mr Januzi.<sup>11</sup>

7. The SPO contends that, [REDACTED].<sup>12</sup> The SPO submits that, [REDACTED], Mr Januzi subsequently reported to the SPO premises in Prishtinë/Priština on 4 October 2023, where he was interviewed in the presence of his counsel.<sup>13</sup> [REDACTED].<sup>14</sup> [REDACTED].<sup>15</sup> [REDACTED].<sup>16</sup>

8. The SPO contends that while the recording [REDACTED], it also serves as evidence that, immediately after leaving an SPO interview related to the alleged

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<sup>7</sup> KSC-BC-2023-10, F00011, Registrar, *Notification of Arrest of Ismet Bahtjari Pursuant to Rule 55(4)*, 5 October 2023, strictly confidential and *ex parte*; F00012, Registrar, *Notification of Arrest of Sabit Januzi Pursuant to Rule 55(4)*, 5 October 2023, strictly confidential and *ex parte*.

<sup>8</sup> KSC-BC-2018-01, F00013, Specialist Prosecutor, *Prosecution Request for Retention of Evidence or, Alternatively, Request for Approval of a Special Investigative Measures (sic)*, 5 October 2023, strictly confidential and *ex parte*.

<sup>9</sup> Request, para. 1.

<sup>10</sup> Request, para. 1. *See also* KSC-BC-2023-10, F00010/A01, Specialist Prosecutor, *Indictment*, 4 October 2023, strictly confidential, para 6.

<sup>11</sup> Request, para. 1.

<sup>12</sup> Request, para. 2.

<sup>13</sup> Request, para. 2.

<sup>14</sup> Request, para. 2.

<sup>15</sup> Request, para. 2.

<sup>16</sup> Request, para. 3.

offences in the Confirmed Indictment, Mr Januzi directly proceeded to a meeting with Co-Perpetrator 1.<sup>17</sup> In this regard, the SPO recalls that Mr Januzi and Co-Perpetrator 1 were in close contact and coordinated before and after Mr Januzi approached Witness 1, as detailed in the Confirmed Indictment.<sup>18</sup>

9. The SPO further recalls that, pursuant to the 25 September 2023 Decision it must destroy the Video Recording [REDACTED], but seeks to retain it, claiming its evidential value.<sup>19</sup> In this regard, the SPO also contends that, independent of the 25 September Decision, it would have been proper for the SPO to obtain the Video Recording based on the circumstances and under the Rules. The SPO requests the Pre-Trial Judge, as a result, to amend the 25 September 2023 Decision.<sup>20</sup>

10. Alternatively, the SPO requests approval to retain the Video Recording pursuant to Rule 36 of the Rules ("Requested SIM").<sup>21</sup> In this regard, the SPO submits that all requirements of such a special investigative measure are satisfied. Notably: (i) had the SPO attempted to seek authorisation from the Pre-Trial Judge to make the Video Recording, the moment – that is, direct evidence of the meeting – would have been lost; (ii) the measure was necessary for the investigation, unavoidable because the evidence could not be obtained by other less intrusive but equally effective means, and the resulting interference with the rights to personal integrity, privacy or property of the persons concerned is proportionate to the legitimate aim of the investigation and does not negate the essence of the guaranteed rights; and (iii) the facts and legal reasoning underpinning the Pre-Trial Judge's finding in the 25 September 2023 Decision that there is grounded

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<sup>17</sup> Request, para. 4.

<sup>18</sup> Confirmed Indictment, paras 7-16.

<sup>19</sup> Request, para. 5.

<sup>20</sup> Request, heading preceding paragraph 4, paras 4-6.

<sup>21</sup> Request, para. 7.

suspicion that a crime has been, is being or is about to be committed by Mr Januzi apply equally to the present request.<sup>22</sup>

### III. APPLICABLE LAW

#### A. SPECIAL INVESTIGATIVE MEASURE

11. Pursuant to Rule 34(1)-(2) of the Rules, a special investigative measure (“SIM”), as identified in Rule 2 of the Rules, may only be undertaken where there is a grounded suspicion that a crime listed in Rule 34(1) of the Rules has been, is being or is about to be committed. Such a measure may be undertaken in respect of, *inter alia*, (i) a person who has committed, is committing or is about to commit any of the crimes set out in Rule 34(1) of the Rules, or (ii) a specific location where evidence of a crime under Rule 34(1) of the Rules can be found. Pursuant to Rules 31(1) and 34(2) of the Rules, the SIM must be necessary for the investigation, unavoidable, i.e. the evidence cannot be obtained by other, less intrusive but equally effective means, and proportionate, i.e. the resulting interference into the person’s right to personal integrity, privacy or property must be proportionate to the legitimate aim of the investigation and shall not negate the essence of the guaranteed right(s).

12. Pursuant to Rule 35(2) of the Rules, the Panel authorising a SIM must indicate, *inter alia*, (i) the period for which the authorisation is granted, which may not exceed sixty (60) days, and (ii) the procedure for reporting on the implementation of the authorised measure and the collected material.

13. Pursuant to Rule 36 (1)(a)-(b) of the Rules, a SIM may be ordered by the SPO without the authorization of a Panel, when (i) the requirements under Rule 31(1) and Rule 34 of the Rules are met; (ii) the immediate implementation of such measures is required to secure the collection of evidence that could not be

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<sup>22</sup> Request, paras 8-11.

collected otherwise; and (ii) the delay in seeking authorisation from a Panel would jeopardise the investigation or the safety of a witness, victim or other persons at risk. Pursuant to Rule 36(2) of the Rules, the SPO shall file a request to a Panel for approval of the SIM immediately and no later than twenty-four (24) hours after initiation. Pursuant to Rule 36(3) of the Rules, within three (3) days of the request, the Panel seized with such request, may approve the SIM only if satisfied that the conditions under Rule 36 (1)(a)-(b) of the Rules are met. Rule 35 of the Rules applies *mutatis mutandis*.

14. Pursuant to Rule 34(3) of the Rules, a person in respect of whom a SIM is authorised pursuant to Rule 34(2) of the Rules shall be notified thereof by the SPO, as long as the objective of the measure or the conduct of proceedings are not likely to be jeopardised.

15. Pursuant to Rule 32(1) of the Rules, any material collected as a result of any measure pursuant to Rules 34 to 41 of the Rules shall be appropriately retained, stored, and protected. The Panel authorising such measure shall indicate, *inter alia*, the procedure and precautions for the storage, the duration of retention and instructions, and a timeline for the return or destruction of the material.

16. Pursuant to Rule 33 (1)-(2) of the Rules, material collected or seized pursuant to Rule 34 to 41 of the Rules, shall be (a) returned by the SPO *proprio motu* or upon decision of a Panel or (b) destroyed by the SPO only upon decision of a Panel, *inter alia*, where such material is no longer relevant for the purpose for which it was obtained.

#### IV. DISCUSSION

17. The Pre-Trial Judge will address first the SPO request to amend the 25 September 2023 Decision ("First Request"), and thereafter analyse the

alternative request to retain the Video Recording as a SIM pursuant to Rule 36 of the Rules (“Second Request”).

#### A. REQUEST TO AMEND THE 25 SEPTEMBER 2023 DECISION

18. The Pre-Trial Judge recalls that in the 25 September 2023 Decision, following the request of the SPO,<sup>23</sup> he authorized the SPO to [REDACTED], under, *inter alia*, the following conditions: (i) [REDACTED];<sup>24</sup> (ii) [REDACTED]; and (iii) once such material was no longer relevant for the purpose for which it was obtained, it must be returned or destroyed pursuant to Rule 33(2)-(3) of the Rules.<sup>25</sup>

19. The Pre-Trial Judge notes that (i) [REDACTED];<sup>26</sup> (ii) [REDACTED];<sup>27</sup> (iii) [REDACTED].<sup>28</sup> In this regard, the Pre-Trial Judge considers that [REDACTED], the Video Recording was primarily intended to serve the collection of evidence for the SPO’s ongoing investigation in the charges confirmed on Mr Januzi.

20. Based on the above, the Pre-Trial Judge finds that, pursuant the 25 September 2023 Decision, and [REDACTED]:<sup>29</sup> (i) the Video Recording falls outside of the scope of the Authorized SIMs; (ii) any retention of such recording for evidentiary purposes is not encompassed in the scope for which it was obtained. Thus, considering the clear wording of the 25 September 2023 Decision, and the fact that the Authorized SIM served its purpose, that decision cannot be reconsidered and amended retroactively.

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<sup>23</sup> See KSC-BC-2023-01, F00004, Specialist Prosecutor, Further Submissions Pursuant to Order F00003, 19 September 2023, strictly confidential and *ex parte*, para. 4.

<sup>24</sup> 25 September 2023 Decision, paras 76, 80(i)(ii).

<sup>25</sup> 25 September 2023 Decision, para. 79.

<sup>26</sup> Request, para. 2.

<sup>27</sup> KSC-BC-2023-10, F00020, Registrar, *Report on the Arrest and Transfer of Sabit Januzi to the Detention Facilities*, 9 October 2023, para. 9, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

<sup>28</sup> Request, para. 2.

<sup>29</sup> [REDACTED].

21. In the light of the above, the Pre-Trial Judge rejects the First Request.

## B. REQUEST TO APPROVE THE VIDEO RECORDING AS A SIM

22. The Pre-Trial Judge recalls that Rule 36 of the Rules provides that the SPO may order or undertake a SIM in defined circumstances and which are subjected, *ex post facto*, to judicial control by way of an application for judicial review and approval.<sup>30</sup> In order to execute said judicial control, the Pre-Trial Judge must assess whether (i) the immediate implementation of such measures is required to secure the collection of evidence that could not be collected otherwise, (ii) the delay in seeking authorisation from a Panel would jeopardise the investigation or the safety of a witness, victim or other persons at risk and (ii) whether the requirements for SIMs set forth by Rule 31 and 34 of the Rules are met.<sup>31</sup>

23. Accordingly, the Pre-Trial Judge considers necessary to first assess whether the specific requirements set forth by sub-paragraphs (a)-(b) of Rule 36(1) of the Rules are met.

### 1. Requirements Pursuant to of Rule 36(1)(a)-(b) of the Rules

#### (a) Immediate implementation required

24. The Pre-Trial Judge observes that the SPO recorded a short segment of a meeting between Mr Januzi and Co-Perpetrator 1 that was already in progress.<sup>32</sup> The Pre-Trial Judge also considers that at the time of the Video Recording Mr Januzi's was already accused of the crimes charged in the Confirmed Indictment, [REDACTED] and that the duration of the meeting with Co-

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<sup>30</sup> KSC-CC-PR-2017-01, F00006, Constitutional Court Chamber, *Judgment on the Referral of Revised Rules of Procedure and Evidence Adopted by Plenary on 29 May 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office* ("Constitutional Court Chamber 28 June 2017 Judgment"), 28 June 2017, public, para. 59.

<sup>31</sup> Pursuant to Rule 36(1)(a)-(b) of the Rules.

<sup>32</sup> Request, para. 7.

Perpetrator 1 was unforeseeable and unpredictable for the SPO. Accordingly, the Pre-Trial Judge is persuaded that, had the SPO not undertaken the Video Recording immediately, also for the purpose of prosecuting Mr Januzi, it would have lost the opportunity to secure the collection of evidence necessary to corroborate the (i) charges confirmed against Mr Januzi, (ii) the joint and coordinated nature of his efforts with Co-Perpetrator 1,<sup>33</sup> and (iii) the role and actions of the latter.

25. In the light of the foregoing, the Pre-Trial Judge is satisfied that the immediate implementation of the [REDACTED] Video Recording was required to secure the collection of evidence that could not be collected otherwise, pursuant Rule 36 (1)(a) of the Rules.

(b) Delay in seeking authorisation jeopardising the investigation

26. The Pre-Trial Judge notes the imminence of the SPO's opportunity to secure evidence of the meeting between Mr Januzi and Co-Perpetrator 1, and bears in mind the advanced reasons for which the imminent implementation of the Video Recording was required. Accordingly, the Pre-Trial Judge is satisfied that a request for authorization to conduct the Requested SIM at the time of the actual Video Recording would have threatened the opportunity of the SPO to secure the sought evidence, and hence potentially jeopardised the investigation, pursuant Rule 36 (1)(b) of the Rules.

(c) Conclusion

27. For the reasons above, the Pre-Trial Judge is satisfied that the Requested SIM meets the requirements set forth by Rule 36(1)(a)-(b) of the Rules.

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<sup>33</sup> Confirmation Decision, para. 117.

## 2. Requirements for SIM

28. Turning to the Rule 34 requirements, the Pre-Trial Judge notes that the Requested SIM [REDACTED]. [REDACTED]. [REDACTED].

29. Pursuant to Rules 2, 31, and 34 of the Rules, the Panel seized with the request for approval of a SIM ordered by the SPO may approve said SIM if:

- (a) there is a grounded suspicion that a crime has been, is being or is about to be committed, pursuant to Rule 34(1) of the Rules;
- (b) the measure is necessary for the investigation;
- (c) the measure is unavoidable, i.e. the evidence cannot be obtained by other less intrusive but equally effective means, and
- (d) the resulting interference with the rights to personal integrity, privacy or property of the persons concerned is proportionate to the legitimate aim of the investigation and does not negate the essence of the guaranteed right(s).

### (a) Grounded Suspicion

30. With regard to the requirement of a grounded suspicion, the Pre-Trial Judge recalls that in the 25 September 2023 Decision he found, *inter alia*, that there is a grounded suspicion that Mr Januzi, together with Mr Bahtjari, and potentially acting in co-perpetration with, and/or under instruction or direction of other persons, including Co-Perpetrator 1, has committed, is committing, or is about to commit offences within the meaning of Article 15(2) of the Law.<sup>34</sup> The Pre-Trial Judge also recalls that he has found a well-grounded suspicion that Mr Januzi, is responsible for offences of intimidation during criminal proceedings and of obstructing official persons in performing official duties within the meaning of Articles 387 and 401 of the Kosovo Criminal Code and Article 15(2) of the Law,

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<sup>34</sup> 25 September Decision, para. 25.

together with Mr Bahtjari and Co-Perpetrator 1, under various modes of criminal liability.<sup>35</sup>

31. In this regard, the Pre-Trial pays heed to the SPO's submission that [REDACTED], Mr. Januzi directly proceeded to a meeting with Co-Perpetrator 1.<sup>36</sup> The Pre-Trial Judge finds that such conduct of Mr Januzi is consistent with the pattern of exchanges and concerted efforts with Co-Perpetrator 1 as found in the Confirmation Decision.<sup>37</sup>

32. The Pre-Trial Judge observes that the facts and the legal reasoning underpinning the Request are the same as those underlying and found in the 25 September 2023 Decision and the Confirmation Decision. For the same reasons set forth in the said decisions, the Pre-Trial Judge is satisfied that there continues to be a grounded suspicion that Mr Januzi has committed, is committing or is about to commit offences within the jurisdiction of the SC, pursuant to Rule 34(1)-(2)(a) of the Rules.

(b) Necessity

33. The Pre-Trial Judge is persuaded that the Video Recording assisted the SPO in confirming: (i) the continuous nature of the exchanges and contacts between Mr Januzi and Co-Perpetrator 1; and (ii) the role of Co-Perpetrator 1. Furthermore, given that the recorded meeting between Mr Januzi and Co-Perpetrator 1 is consistent with the pattern of exchanges between the Mr Januzi and others trying to dissuade Witness 1 from testifying in [REDACTED], as found in the Confirmation Decision,<sup>38</sup> the Pre-Trial Judge is also satisfied that [REDACTED].

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<sup>35</sup> Confirmation Decision, paras 95, 123.

<sup>36</sup> Request, para. 4.

<sup>37</sup> Confirmation Decision, paras 110, 116, 129.

<sup>38</sup> Confirmation Decision, paras 72-88.

(c) Unavoidability

34. The Pre-Trial Judge recalls that he has found that: (i) Mr Januzi engaged in numerous exchanges both in messaging applications and over the phone with Co-Perpetrator 1 prior to and after the allegedly approach of Witness 1 in an attempt to interfere with his testimony;<sup>39</sup> and (ii) Co-Perpetrator 1 may have been the conveyor of instructions to Mr Januzi in the efforts to intimidate, obstruct and interfere with the testimony of Witness 1.<sup>40</sup> The Pre-Trial Judge pays also heed to the fact that Mr Januzi directly proceeded to a meeting with Co-Perpetrator 1 [REDACTED].<sup>41</sup>

35. The Pre-Trial Judge is of the view that for the purpose of its investigation into interference with and intimidation of SPO protected witnesses and related obstruction, as well as its prosecution of Mr Januzi,<sup>42</sup> [REDACTED], the Video Recording is the only effective means of obtaining the required evidence in connection with the charges in the Confirmed Indictment.

(d) Proportionality

36. Pre-Trial Judge recalls that, in assessing the proportionality of the Requested SIM, account must be taken of, *inter alia*, the gravity of the alleged offence, the duration and scope of the requested measures, and any safeguards to be implemented.<sup>43</sup>

37. The legitimate aim of the SPO's investigation is to examine allegations of offences under Article 15(2) of the Law against Mr Januzi and others, as well as to ensure the safety and protection of witnesses and the integrity of proceedings before the SC.<sup>44</sup>

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<sup>39</sup> Confirmation Decision, para. 116.

<sup>40</sup> Confirmation Decision, para. 117.

<sup>41</sup> Request, para. 4.

<sup>42</sup> Request, para. 1.

<sup>43</sup> Constitutional Court Chamber 28 June 2017 Judgment, para. 64.

<sup>44</sup> 25 September 2023 Decision, para. 71.

38. With regard to the nature, duration, and scope of the Requested SIM, the Pre-Trial Judge recalls that, pursuant to Rule 35 of the Rules, the Panel authorising a SIM must indicate, *inter alia*, the period for which the authorisation is granted, which may not exceed sixty (60) days unless the requirements of Rule 35(3) of the Rules have been met.<sup>45</sup>

39. For the purpose of the *ex post facto* judicial control and approval of the execution of these measures envisioned by Rule,<sup>46</sup> the Pre-Trial Judge recalls that a person's right to privacy cannot be unduly infringed by authorising a measure which, even if it may fall within the confines of Rule 35 of the Rules, allows for the retrieval of information without further specifications.<sup>47</sup>

40. At first, the Pre-Trial Judge is mindful of Mr Januzi's reasonable expectation of privacy, even in public spaces,<sup>48</sup> under certain circumstances. On the other hand, the Pre-Trial Judge bears in mind the fact that the Video Recording (i) was made on an outdoor public sidewalk without capturing the substance of any conversation between Mr Januzi and Co-Perpetrator 1,<sup>49</sup> as well as (ii) its duration is of approximately two minutes and thirty seconds, while Mr Januzi and Co-Perpetrator 1 are on camera for less than approximately one minute and thirty second.<sup>50</sup>

41. Concerning the nature and the scope of the Requested SIM, the Pre-Trial Judge bears in mind that it was carried out for the purpose of collecting evidence

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<sup>45</sup> See also KSC-CC-PR-2017-01, F00004, *Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office*, 26 April 2017, para. 66; Constitutional Court Chamber 28 June 2017 Judgment, para. 58.

<sup>46</sup> Pursuant to Rule 36(3) of the Rules.

<sup>47</sup> Article 36(1) and (3) of the Constitution.

<sup>48</sup> The Pre-Trial Judge recalls that the fact that a video recording was taken in a public space cannot be considered to fall outside the scope of "private life" in absolute terms in the meaning of Article 8 of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms, see European Court of Human Rights, case no. 44787/98, *P.G. and J.H. v. The United Kingdom*, 5 September 2001, para. 57, case no. 63737/00, *Perry v. The United Kingdom*, 15 July 2003, paras 39-41.

<sup>49</sup> Request, para. 7.

<sup>50</sup> Request, para. 3.

necessary for the SPO's investigation into interference with and intimidation of SPO protected witnesses and related obstruction, as well as its prosecution of Mr Januzi.

42. In the light of the foregoing, the Pre-Trial Judge finds that, insofar as the Requested SIM was executed within the parameters set forth in the Rules, and insofar as it abides by the conditions set forth in this decision, including the requirements for retention of the obtained material, the Requested SIM meets the proportionality test.

(e) Conclusion

43. For these reasons, the Pre-Trial Judge grants the Second Request pursuant to Rule 36(3) of the Rules and approves the Requested SIM under the parameters set out in this decision.

**3. Duration and Scope of the Requested SIMs**

44. As regards the duration and scope of the Requested SIM, the Pre-Trial Judge finds that it falls within the time limit established in Rule 35(2)(a) of the Rules and recalls the scope for which it has been approved.

**4. Delayed Notification**

45. The Pre-Trial Judge considers that since the SPO's investigation is currently ongoing and the Authorised SIM and the Request are still classified strictly confidential and *ex parte*, the Pre-Trial Judge consider that any notification of the present decision may further jeopardise the investigation into attempts to interfere with and/or obstruct with SPO witnesses and/or the proceedings before the SC.

46. Accordingly, the Pre-Trial Judge defers notification of the present decision, until further order.

## 5. Reporting on the Requested SIMs

47. In accordance with Rules 31(2) and 35(2)(b) of the Rules, the SPO is required to report on the implementation of the Requested SIM and the data collected during its implementation. Noting that the Request, in this instance, contains all details of the Requested SIM, no further report is required.

## 6. Storage Protection, and Retention of Collected Material

48. The Pre-Trial Judge understands that the Video Recording was collected for evidentiary purposes in the SPO's investigation into interference with and intimidation of SPO protected witnesses and related obstruction, as well as its prosecution of Mr Januzi. The Pre-Trial Judge notes that, once such material is no longer relevant for the purpose for which it was obtained, it must be returned or destroyed pursuant to Rule 33(2)-(3) of the Rules. To this end, the Pre-Trial Judge finds that, unless it continues being relevant for the purpose of the SPO's investigation,<sup>51</sup> four (4) months are a reasonable time period in which the SPO can destroy the recordings as a result of the Requested SIMs, as required by Rule 33(2)-(3) of the Rules.

## V. DISPOSITION

49. For the above-mentioned reasons, the Pre-Trial Judge hereby:

(a) **REJECTS** the First Request;

(b) **GRANTS** the Second Request in accordance with paragraphs 28-44 of this decision and under the following conditions:

- i. notification to Mr Januzi of the present decision is deferred, until further order; and

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<sup>51</sup> Pursuant to Rule 33(1)(b) of the Rules.

- ii. the SPO is to store, protect, and retain the collected material in accordance with the Rules and paragraph 48 of this decision.

[*signed*]

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**Judge Nicolas Guillou**

**Pre-Trial Judge**

Dated this Wednesday, 11 October 2023

At The Hague, the Netherlands.

Explanatory Note

The paragraph numbers “21-42” in pages 10-16 were corrected to “28-49”.

The cross-references in paragraph 49 (b) were corrected from “21-37” to “28-44”.

The cross-references in paragraph 49(b)(ii) was corrected from “41” to “48”.