



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2018-01
Before: Single Judge Panel
Judge Nicolas Guillou
Registrar: Dr Fidelma Donlon
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**Public Redacted Version of Decision Authorising Search and Seizure and Special
Investigative Measures**

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THE SINGLE JUDGE,¹ pursuant to Articles 33(2), 35(2)-(3) and 53 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 2, 31-35, 37, 39, 42(1), 48(2), 49(1), 200 and 202 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 15 November 2023, the Specialist Prosecutor's Office ("SPO") submitted a request to the Single Judge for orders authorising: (i) a search of the residence(s), vehicle(s) and/or person of Haxhi Shala ("Mr Shala"; "Subject Locations") and the seizure of any evidence that is believed to have been used in, connected with, or may be evidence relevant to crimes under the jurisdiction of the Specialist Chambers ("SC"); and (ii) other search related requests ("Request").²

II. SUBMISSIONS

2. The SPO recalls that it is investigating into acts of obstruction of the testimony of SPO protected witness [REDACTED] ("Witness 1") [REDACTED] allegedly committed by Mr Shala, together with the Accused Sabit Januzi and Ismet Bahtijari ("Mr Januzi" and "Mr Bahtijari", respectively) in the *Specialist Prosecutor v. Sabit Januzi and Ismet Bahtijari* trial (KSC-BC-2023-10) ("Case 10" or "*Januzi and Bahtijari* trial").³

3. The SPO further recalls that, on 28 April 2023,⁴ the Single Judge granted an SPO request⁵ to, *inter alia*, search and seize Mr Shala's mobile telephones, finding

¹ KSCPR-2018, F00004, President, *Decision Assigning a Single Judge Pursuant to Article 33(2) of the Law*, 29 May 2018, strictly confidential and *ex parte*.

² KSC-BC-2018-01, F00513, Specialist Prosecutor, *Prosecution Request for Search and Seizure Order Relating to Haxhi Shala*, 15 November 2023, strictly confidential and *ex parte*.

³ Request, para. 3 (p. 3).

⁴ KSC-BC-2018-01, F00342, Single Judge, *Decision Authorising Search and Seizure and Related Measures*, 28 April 2023, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential.

⁵ KSC-BC-2018-01, F00335, Specialist Prosecutor, *Prosecution Request for Order Authorising Search and Seizure of Mobile Telephones*, 20 April 2023, strictly confidential and *ex parte*.

a grounded suspicion that Mr Shala, potentially acting on the instruction or direction of others and/or in co-perpetration with others,⁶ had committed, was committing or was about to commit an offence within the meaning of Article 15(2) of the Law ("28 April 2023 Decision").⁷

4. The SPO also recalls that, based on evidence uncovered during its investigation, including evidence retrieved from a mobile telephone seized from Mr Shala on 3 May 2023 pursuant to the 28 April 2023 Decision, it submitted for confirmation by the Pre-Trial Judge an indictment against Mr Januzi and Mr Bahtijari ("Case 10 Indictment"; "Case 10 Accused"), in which it identifies Mr Shala as "Co-Perpetrator 1".⁸ It further recalls that in the decision confirming the Case 10 Indictment ("Case 10 Confirmation Decision"),⁹ the Pre-Trial Judge found, *inter alia*, that the Case 10 Accused formed a group comprising at least them and Mr Shala, with the intention of inducing Witness 1 to refrain from testifying in SC proceedings.¹⁰

5. Moreover, the SPO recalls that, as part of its investigation, it has obtained judicial authorisation to make use of a [REDACTED] video taken on 4 October 2023 ("4 October [REDACTED] Video")¹¹ depicting Mr Januzi meeting in person with his attorney and Mr Shala on 4 October 2023, directly after Mr Januzi was

⁶ See also, KSC-BC-2018-01, F00348, Single Judge, *Decision Authorising Search and Seizure and Related Measures*, 3 May 2023, strictly confidential and *ex parte*, with Annex 1, strictly confidential.

⁷ Request, para. 4 (pp. 3-4).

⁸ Request, paras 4-5 (p. 4).

⁹ KSC-BC-2023-10, F00008, Pre-Trial Judge, *Decision on the Confirmation of the Indictment*, 2 October 2023, strictly confidential and *ex parte*. A confidential redacted version and a corrected version of the public redacted version of the decision were filed on 12 October 2023, F00008/CONF/RED and F00008/RED/COR; see also F00010, Specialist Prosecutor, *Submission of Confirmed Indictment*, 4 October 2023, strictly confidential and *ex parte*, with Annex 1, strictly confidential; F00016, Specialist Prosecutor, *Submission of Public Redacted Version of Confirmed Indictment*, 6 October 2023, public, with Annex 1, public.

¹⁰ Request, para. 5 (p. 4).

¹¹ Request, para. 6. See also, KSC-BC-2023-10, F00029, Pre-Trial Judge, *Decision on Prosecution Request for Retention of Evidence or, alternatively, Request for Approval of a Special Investigative Measure* ("Decision on Retention of Evidence"), 11 October 2023, strictly confidential and *ex parte*, para. 24. A corrected version was issued on 12 October 2023, F00029/COR.

interviewed by the SPO at its offices in Kosovo.¹² According to the SPO, the 4 October [REDACTED] Video demonstrates that there was continued communication between Mr Januzi and Mr Shala regarding ongoing SC proceedings and likely the allegations against Mr Januzi and Mr Shala contained in the Case 10 Indictment.¹³ On the basis of this, and given that Mr Shala's mobile telephones seized on 3 May 2023 yielded relevant evidence related to Mr Shala's communications with Mr Januzi, including phone logs and text messages, as referenced in the Case 10 Confirmation Decision, the SPO avers that Mr Shala may be currently in possession of additional evidence, including on the mobile device(s) he likely would have used to coordinate the meeting with Mr Januzi on 4 October 2023.¹⁴

6. Accordingly, the SPO claims that: (i) there is grounded suspicion that Mr Shala, together with others, has committed crimes within the jurisdiction of the SC and that the searches and seizures sought in the Request will result in the discovery and seizure of evidence necessary for the investigation; or there is grounded suspicion that such evidence is on the property, location, premises or object to be searched; (ii) the measures sought are necessary; and (iii) the resulting interference with Mr Shala's rights are proportionate to the legitimate aims of the investigation.¹⁵

7. On the basis of the above, the SPO requests to: (i) search the Subject Locations, including [REDACTED]; as well as (ii) seize any evidence (including all electronic device(s), such as mobile phones, laptop computers, USB or other electronic storage devices) that is believed to have been used in, connected with, or may be

¹² Request, para. 8.

¹³ Request, para. 9.

¹⁴ Request, para. 9.

¹⁵ Request, paras 5 (p. 3), 7-17.

evidence relevant to crimes falling under the jurisdiction of the SC (“Searches and Seizures”).¹⁶

8. Additionally, the SPO requests that the order for the Searches and Seizures includes: (i) [REDACTED]; and (ii) the provision that failure to obey the Single Judge’s order may result in criminal sanctions pursuant to Article 15(2) of the Law, in conjunction with Article 393 of the 2019 Criminal Code of Kosovo, Code No. 06/L-074 (“KCC”).¹⁷

9. Likewise, the SPO requests the Single Judge’s authorisation to carry out, [REDACTED] from the date of the requested order, special investigative measures (“SIMs”) [REDACTED] (“First SIM” and “Second SIM”).¹⁸ The SPO submits that the relevant requirements for authorising the SIMs are satisfied.¹⁹

10. Lastly, the SPO seeks an expedited consideration of the Request in light of the urgency of the matter, to enable the Searches and Seizures to be conducted [REDACTED].²⁰

III. APPLICABLE LAW

A. SEARCH AND SEIZURE

11. Pursuant to Article 53(1) of the Law and Rule 202(3) of the Rules, all entities and persons in Kosovo shall co-operate with the SC and SPO and shall comply without undue delay with any request for assistance, order or decision issued by the SC. Pursuant to Rule 202(2) of the Rules, the Single Judge may impose any conditions deemed necessary, including relating to confidentiality and protective measures.

¹⁶ Request, paras 1-2, 28(a).

¹⁷ Request, paras 3 (p. 2), 21-23, 28(b).

¹⁸ Request, paras 4 (p. 2), 24-25, 28(c).

¹⁹ Request, paras 5 (p. 3), 25.

²⁰ Request, para. 26.

12. Pursuant to Article 35(2) of the Law, the SPO has the authority to conduct criminal investigations within the subject matter jurisdiction of the SC. Pursuant to Article 35(2)(b) of the Law, the SPO's authority includes the collection and examination of information and evidence.

13. Pursuant to Article 35(3) of the Law, the police within the SPO has the authority and responsibility to exercise powers given to Kosovo Police under Kosovo law.

14. Pursuant to Rules 31(1) and 37(1)-(3) of the Rules, a Panel may authorise the search of the property of a person, such other locations, premises or objects in respect of which that person has a reasonable expectation of privacy, or a person, and the seizure of items found during the search, if there is, *inter alia*, a grounded suspicion that (i) the person concerned has committed, is committing or is about to commit a crime within the jurisdiction of the SC, and the search will result in his or her arrest or in the discovery and seizure of evidence necessary for the investigation; and/or (ii) the evidence of a crime within the SC's jurisdiction is on the property, location, premises or object to be searched; and/or (iii) the search will result in the discovery of evidence of a crime within the jurisdiction of the SC and seizure thereof accordingly, provided that the measure is necessary for the investigation, unavoidable, and proportionate to the legitimate aim of the investigation.

15. Pursuant to Rule 37(4) of the Rules, any decision authorising the search and seizure shall include: (a) the time, duration and scope of its execution, including an indication of the person or property, location, premises or object in relation to which the measure is authorised; and (b) the procedure for reporting on its implementation in accordance with Rule 31(2) of the Rules.

16. Pursuant to Rule 39(1)-(2) of the Rules, the search and seizure must be executed in the presence of the person concerned by the SPO, unless he or she cannot be found or refuses to attend the search, and if the delay in execution would

jeopardise the investigation or the safety or property of a witness, victim or other person at risk. The SPO must likewise provide the person concerned with a certified copy of the decision of the Panel, inform the person of his or her rights under Rule 42 or Rule 43 of the Rules, ensure the presence of counsel, unless the person waives this right or counsel's presence cannot reasonably be awaited, as well as the presence of an independent observer.

17. Pursuant to Rules 32(1) and 39(5) of the Rules, material seized as a result of any measure pursuant to Rule 34 to Rule 41 of the Rules, shall be appropriately retained, stored and protected. The Panel authorising such measure shall indicate the procedure and precautions for the storage, protection and transfer, the duration of retention of the seized material, and instructions and a timeline for the return or destruction of the material.

B. SPECIAL INVESTIGATIVE MEASURE

18. Pursuant to Rule 34(1)-(2) of the Rules, a 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).

19. 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.

20. 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.

21. 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.

IV. DISCUSSION

A. SEARCHES AND SEIZURES

1. Requirements for Search and Seizure

22. Pursuant to Rules 31 and 37 of the Rules, the search of the Subject Locations, and the seizure of any evidence relevant to crimes under the jurisdiction of the SC may be authorised if:

- (a) the residence(s), vehicle(s) and electronic devices, including mobile telephone(s), to be searched are either the property of Mr Shala, or there is a reasonable expectation of privacy in relation thereto;²¹
- (b) as regard to the search of property, locations or objects, there is a grounded suspicion that: (i) Mr Shala has committed, is committing or is about to commit a crime within the jurisdiction of the SC and the search will result in his arrest or in the discovery and seizure of evidence

²¹ Rule 37(2) of the Rules.

necessary for the investigation;²² and/or (ii) the Searches and Seizures are necessary to collect and preserve evidence of a crime within the jurisdiction of the SC and there is a grounded suspicion that such evidence is on the property, location, premises or object to be searched.²³ With regard to the search of the person of Mr Shala, there must be a grounded suspicion that the search will result in the discovery of evidence of a crime within the jurisdiction of the SC, and may authorise the seizure thereof accordingly;²⁴

- (c) the Searches and Seizures are necessary for the investigation;²⁵
- (d) the Searches and Seizures are unavoidable, i.e. in the specific circumstances the evidence cannot be obtained by other, less intrusive but equally effective means, and the Searches and Seizures appear to be the only effective means for the purposes of the investigation;²⁶ and
- (e) the resulting interference with Mr Shala's rights to personal integrity, privacy or property is proportionate to the legitimate aim of the investigation, and does not negate the essence of the guaranteed rights.²⁷

(a) Property or Reasonable Expectation of Privacy

23. As regards Mr Shala's reasonable expectation of privacy the Single Judge notes that (i) in respect of his residence(s), the SPO anticipates that the

²² Rule 37(2)(a) of the Rules.

²³ Rule 37(2)(c) of the Rules.

²⁴ Rule 37(3) of the Rules.

²⁵ Rule 31(1)(b) of the Rules.

²⁶ Rule 37(1) of the Rules. *See also* KSC-CC-PR-2017-03, F00006, Constitutional Court Chamber, *Judgment on the Referral of Revised Rules of the 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*, 28 June 2017 ("Constitutional Court Chamber 28 June 2017 Judgment"), public, paras 62-67. A corrected version was issued on 25 July 2023, F00006/COR.

²⁷ Rule 31(1)(c) of the Rules.

[REDACTED];²⁸ and (ii) in respect of [REDACTED].²⁹ The Single Judge is satisfied that Mr Shala has a reasonable expectation of privacy in relation to said locations.³⁰

24. As regards other locations that may be affected by the Searches and Seizures, including other places(s) of residence and/or vehicle(s) of Mr Shala, as applicable,³¹ the Single Judge is of the view that, [REDACTED],³² the place(s) of execution of the present decision may entail a reasonable expectation of privacy.

25. As regards any electronic devices, that may be affected by the Searches and Seizures, including mobile telephone(s) (the number(s) being unknown at this stage), laptop computer(s), USB or other electronic storage device(s), the Single Judge is satisfied that Mr Shala has a reasonable expectation of privacy in relation thereto.

26. In light of the above, the protections set out in the Law and Rules shall apply.

(b) Grounded Suspicion

27. The Single Judge recalls that, in the 28 April 2023 Decision, he found that there is a grounded suspicion that Mr Shala, potentially acting on the instruction or direction of others and/or in co-perpetration with others, has undertaken efforts to intimidate Witness 1 and to obstruct his testimony [REDACTED].³³ In light of the above, the Single Judge held that (i) Mr Shala, acting on the instruction or direction of others and/or in co-perpetration with others, has committed, is committing or is about to commit an offence within the meaning of Article 15(2) of the Law, and the searches will result in the discovery and seizure of evidence necessary for the investigation, pursuant to Rule 37(2)(a) of the Rules; (ii) there is evidence of these offences in Mr Shala's locations of execution, including his

²⁸ Request, para. 15.

²⁹ Request, para. 15.

³⁰ [REDACTED].

³¹ [REDACTED]. [REDACTED].

³² Request, para. 16.

³³ 28 April 2023 Decision, paras 23-26.

respective residence, and respective mobile telephone, pursuant to Rule 37(2)(c) of the Rules; and/or (iii) the search of Mr Shala's persons will result in the discovery of evidence of these offences, pursuant to Rule 37(3) of the Rules.³⁴

28. The Single Judge also recalls that, in the Case 10 Confirmation Decision, the Pre-Trial Judge found that: (i) Mr Shala allegedly told Mr Bahtijari to instruct Witness 1 to withdraw his testimony [REDACTED];³⁵ (ii) Mr Shala and the Case 10 Accused coordinated between each other on several occasions throughout the period of the Case 10 Indictment;³⁶ (iii) Mr Shala may have been the conveyor of instructions to the Case 10 Accused;³⁷ and (iii) the timing, sequence, and frequency of said communications, as well as the division of tasks among Mr Shala and the Case 10 Accused are indicative of their concerted efforts to dissuade Witness 1 from testifying in SC proceedings.³⁸ Accordingly, the Single Judge is persuaded that the grounded suspicion emanating from Mr Shala's alleged efforts to intimidate Witness 1 and to obstruct his testimony [REDACTED] continues to exist and is further endorsed by the Case 10 Confirmation Decision.

29. Furthermore, the Single Judge recalls the findings of the Pre-Trial Judge in Case 10 that the meeting between Mr Shala and Mr Januzi depicted in the 4 October [REDACTED] Video is consistent with aforementioned pattern of exchanges and concerted efforts between the Case 10 Accused and Mr Shala, as found in the Case 10 Confirmation Decision.³⁹ In the Single Judge's view, the 4 October [REDACTED] Video demonstrates in particular that, after the seizure of Mr Shala's mobile telephone on 3 May 2023, communications between Mr Shala

³⁴ 28 April 2023 Decision, para. 26.

³⁵ Case 10 Confirmation Decision, paras 74-76.

³⁶ Case 10 Confirmation Decision, paras 78-81, 84, 87, 88, 90, 109, 113-116.

³⁷ Case 10 Confirmation Decision, paras 72-87, 117.

³⁸ Case 10 Confirmation Decision, paras 116-117; Request, para. 9.

³⁹ Decision on Retention of Evidence, para. 31. *See also*, Case 10 Confirmation Decision, paras 110, 116, 129.

and Mr Januzi appear to have continued regarding, most likely, ongoing SC proceedings.⁴⁰

30. Accordingly, the Single Judge finds there is grounded suspicion to believe that Mr Shala is in possession of additional evidence of said continued communications between Mr Shala and other co-perpetrators, including the Case 10 Accused, which may be found in or on the: (i) residence(s); (ii) vehicle(s); (iii) mobile telephone(s) or other electronic device(s); (iv) and/or person of Mr Shala.

31. In the light of the foregoing, the Single Judge finds that there continues to be a grounded suspicion that (i) Mr Shala, potentially acting on the instruction or direction of others and/or together with others, has committed, is committing and/or is about to commit offences within the meaning of Article 15(2) of the Law, and the searches of the Subject Locations, including the mobile telephone(s) and other electronic device(s), will result in the discovery and seizure of evidence necessary for the investigation, pursuant to Rule 37(2)(a) of the Rules; and (ii) said evidence can be found, pursuant to Rule 37(2)(c) and (3) of the Rules, in the residence(s), vehicle(s), mobile telephone(s) and other electronic device(s), and/or on the person of Mr Shala, and that the search will result in discovery of evidence of these offences.

(c) Necessity

32. The SPO submits that the Searches and Seizures are necessary to investigate the attempts to interfere with and obstruct witness testimony, and to determine what, if any, obstructive conduct occurred after the seizure of Mr Shala's mobile telephone on 3 May 2023 and specifically before and after the meeting on 4 October 2023 between Mr Shala and Mr Januzi.⁴¹

⁴⁰ Request, para. 9.

⁴¹ Request, para. 10.

33. The Single Judge is satisfied that the Searches and Seizures will assist the SPO in determining: (i) the full nature of Mr Shala's and other perpetrators' potential involvement in relation to the aforementioned obstruction of SC proceedings; and (ii) the identities, roles and conduct of other potential perpetrators, relevant exchanges and/or additional investigative leads concerning this specific occurrence of alleged witness interference, as well as [REDACTED].⁴² The Single Judge is also mindful of the SPO submissions that [REDACTED].⁴³ In that regard, the Single Judge is also satisfied that the Searches and Seizures will likely contribute to ensuring the safety of SPO protected witnesses and the integrity of the ongoing SC proceedings.⁴⁴

34. In the light of the foregoing, the Single Judge is satisfied that the Searches and Seizures are necessary measures for the investigation, in accordance with Rule 31(1)(b) of the Rules.

(d) Unavoidability

35. The SPO submits that the Searches and Seizures are the only effective means for the purposes of furthering the investigation and securing evidence that may not be otherwise obtained.⁴⁵

36. The Single Judge is persuaded that there are no other less intrusive but equally effective means to collect the sought information and evidence and the requested Searches and Seizures appear to be the only effective means for the purpose of furthering the investigation. The Single Judge is of the view that the only way to obtain an overview of Mr Shala's alleged criminal conduct, and his interaction with Mr Januzi or other co-perpetrators, is through (i) the requested

⁴² See *similarly*, 28 April 2023 Decision, para. 29.

⁴³ Request, para. 13.

⁴⁴ See *similarly*, 28 April 2023 Decision, para. 29.

⁴⁵ Request, para. 11.

Searches of the Subject Locations and Mr Shala's person, including any mobile telephone(s) and electronic device(s); and (ii) [REDACTED].⁴⁶

37. In the light of the foregoing, the Single Judge is satisfied that there are no other less intrusive but equally effective means to provide the SPO with the information and evidence it needs to assess the alleged responsibility of Mr Shala and/or others for offences within the meaning of Article 15(2) of the Law.

(e) Proportionality

38. The SPO submits that the Searches and Seizures are proportionate to the legitimate aim of the SPO investigation and do not negate the essence of any guaranteed rights since: (i) they are in accordance with the Law and Rules; (ii) their terms are tailored to the needs of the investigation, being also designed to exclude information of no foreseeable relevance; and (iii) the SPO will take appropriate measures for the protection and due respect of the victims and witnesses and the fundamental rights of (potential) suspects and/or accused.⁴⁷

39. The Single Judge recalls that, in assessing the proportionality of the requested measures, account must be taken of, *inter alia*, the gravity of the alleged offence, the duration and scope of the Searches and Seizures, and any safeguards to be implemented.⁴⁸

40. The legitimate aim of the SPO's investigation is to examine allegations of witness intimidation and obstruction of justice in relation to Witness 1's testimony [REDACTED], involving Mr Shala and other co-perpetrators, and ensure the safety and protection of witnesses and the integrity of proceedings before the SC.⁴⁹

41. With regard to the safeguards to be implemented, the Single Judge takes note of the SPO's assurances and the fact that, as enshrined in Rules 31-33 and 39 of the

⁴⁶ See *similarly*, 28 April 2023 Decision, para. 31.

⁴⁷ Request, paras 5 (p. 3), 14.

⁴⁸ Constitutional Court Chamber 28 June 2017 Judgment, paras 64-65.

⁴⁹ See *similarly*, 28 April 2023 Decision, para. 33.

Rules, the SPO is duty-bound to take appropriate measures with respect to the rights to personal integrity, privacy or property.

42. In addition to the above, and mindful of the seriousness of the allegations raised against Mr Shala in respect to Witness 1, the Single Judge finds that, insofar as the SPO abides by the conditions set forth in the Rules and the present decision, including the requirements regarding the time, duration and scope, as well as the retention of the seized material, the Searches and Seizures meet the proportionality test.

(f) Conclusion

43. For these reasons, as long as the execution of the Searches and Seizures meets the requirements set forth in the Rules and the present decision, the Single Judge hereby authorises, under Rule 37 of the Rules, the searches of the Subject Locations, including [REDACTED], and the seizure of any relevant evidence, including all electronic device(s), such as mobile telephone(s), laptop computer(s), USB or other electronic storage devices, that are believed to have been used in, connected with, or may be evidence relevant to offences under Article 15(2) of the Law.

2. Time, Duration, and Scope of the Search and Seizure

44. As regards the timing of the execution of the requested Searches and Seizures, the SPO submits that it plans to execute the requested orders [REDACTED].⁵⁰

45. As regards the duration of the Searches and Seizures, the Single Judge is mindful, on the one hand, of the complexity of this operation, as well as the possibility that the execution of said operation may have to be postponed if operational concerns so require.⁵¹ On the other hand, the Single Judge is cognizant of the reasonable expectation of privacy of Mr Shala, and the resultant need for

⁵⁰ Request, para. 26.

⁵¹ See Request, footnote 18. [REDACTED].

judicial oversight over the execution of the Searches and Seizures. Therefore, the Single Judge finds that a three (3)-month timeframe, ending on **1 March 2024**, is appropriate for the execution of the Searches and Seizures.

46. As regards the scope of the Searches and Seizure effectuated on the Subject Locations, the Single Judge finds that they must be limited to items pertaining to the above-described allegations within the meaning of Article 15(2) of the Law, or any other evidence relevant to the alleged offences. The Single Judge considers that such items may include, among others, mobile telephone(s) (the number(s) being unknown at this stage), laptop computer(s), USB and other electronic device(s), [REDACTED].⁵² Furthermore, the Single Judge finds that the authorisation extends to [REDACTED].⁵³

47. Lastly, the Single Judge recalls that the Searches and Seizures must take place in the presence of Mr Shala and his counsel(s), unless he waives his right or his counsel's(s') presence cannot be reasonably awaited, as well as in the presence of an independent observer.

3. Reporting on the Search and Seizure

48. Taking into consideration the time needed to prepare a report following the execution of the Searches and Seizures, the SPO is ordered to submit a report within fourteen (14) days of the completion of the Searches and Seizures or within fourteen (14) days of the elapse of the three-month timeframe provided for the execution, whichever is earlier. The report shall indicate the date, time and circumstances of the searches and seizures, the duration and scope of the searches, and the fulfilment of the requirements under Rule 39 of the Rules.

⁵² See Request, para. 22.

⁵³ See Request, paras 2, 28(a).

4. Retention of Seized Items

49. The SPO requests authorisation to retain any evidence seized or produced for: (i) the time necessary to complete review of the evidence; and (ii) if deemed relevant, such further period of time as may be necessary for their potential use in evidence.⁵⁴

50. The Single Judge considers it necessary for the SPO to store, protect, and transfer the seized evidence, in accordance with the standard chain of custody procedures. In so doing, the SPO must take appropriate measures to protect the seized items against loss, accidental or unauthorised access, alteration, dissemination or destruction. With respect to any electronic device(s) seized, the Single Judge notes that the data extracted from such device(s) also fall within the purview of Rules 32 and 39(5) of the Rules. Thus, it must be equally ensured that the extracted data is appropriately stored, protected and transferred. The SPO shall inform the Single Judge on the appropriate procedure and precautions for the storage and protection of any electronic device(s), and extracted data in the report.

51. The Single Judge finds that a three (3)-month timeframe from the execution of the Searches and Seizures is sufficient for the extraction and review of the seized material. At the end of this period, the items collected or seized, including any electronic device(s), shall be returned to Mr Shala, unless their further retention is necessary for the ongoing investigation or future proceedings.

52. Furthermore, if the SPO decides that the data extracted from the seized (electronic) items is necessary for the ongoing investigation or future proceedings, it may retain it in accordance with Rule 33(1)(b) of the Rules until such time that it is no longer relevant for the purpose for which it was obtained. At that point, the seized data will have to be returned or destroyed pursuant to Rule 33(2)-(3) of

⁵⁴ Request, para. 18.

the Rules. Conversely, if the extracted data falls outside the scope of the investigation for which it was obtained, it will have to be returned or destroyed immediately in accordance with Rule 33(1)(a)(i) and (2)-(3) of the Rules, unless it is relevant for the investigation of another crime within the SC's jurisdiction.

B. [REDACTED]

53. According to the SPO, [REDACTED]. The SPO specifies that it will [REDACTED]. [REDACTED], the SPO avers that it will then seek [REDACTED] by informing him that failure to comply with the order may result in criminal sanctions.⁵⁵

54. In this regard, the Single Judge recalls that, pursuant to Rule 31(1) of the Rules, investigative measures that may infringe upon fundamental human rights provided for in Chapter II of the Constitution of Kosovo may only be authorised by a Panel if:

- (a) The applicable requirements pursuant to Rules 34 to 41 of the Rules are met;
- (b) The investigative measure is necessary for the investigation; and
- (c) The resulting interference with any concerned person's right to personal integrity, privacy or property is proportionate to the legitimate aim of the SPO investigation and does not negate the essence of the guaranteed right(s).

55. The Single Judge recalls that he found grounded suspicion that Mr Shala, potentially acting on the instruction or direction of others and/or together with others, has committed, is committing and/or is about to commit offences within the meaning of Article 15(2) of the Law, as set forth in paragraphs 287-31 above.⁵⁶ The Single Judge also recalls that, pursuant to Rules 31 and 37 of the Rules, he

⁵⁵ Request, paras 22-23.

⁵⁶ See paras 27-31 above.

found that the Searches and Seizures, under the conditions granted, are necessary, unavoidable, and proportionate to the legitimate aim of the investigation and do not negate the essence of Mr Shala's rights.⁵⁷ Therefore, the Single Judge finds that the applicable requirements pursuant to Rules 34 to 41, and in particular Rule 37 of the Rules, have been met.

56. As regards the necessity of the [REDACTED] in the execution of the Searches and Seizures, the Single Judge considers that Mr Shala may have used one or more mobile devices to commit offences under Article 15(2) of the Law, notably by contacting, other witnesses, and potentially liaising with other potential co-perpetrators. The Single Judge concludes that, as a consequence, evidence relevant to the SPO's ongoing investigation may be found therein. Accordingly, the Single Judge considers that the mobile device(s) of Mr Shala may contain information concerning the alleged offences under SPO investigation. In this regard, the Single Judge also attaches importance to the SPO's assertion about [REDACTED]. The Single Judge is mindful of [REDACTED].⁵⁸ Therefore, the Single Judge is persuaded that, insofar as [REDACTED].

57. As regards the proportionality of [REDACTED] to the legitimate aim of the SPO investigation, the Single Judge recalls that he already established that, insofar as the SPO abides by the conditions set forth in the Rules and the present decision, the requested Searches and Seizures meet the proportionality test.⁵⁹ The Single Judge is also mindful of the seriousness of the alleged involvement of Mr Shala, and potentially others, in threatening the safety of witnesses and the integrity of proceedings before the SC. Moreover, the Single Judge recalls that the scope of the Searches and Seizures to be executed concerns only evidence pertaining to the aforementioned allegations regarding offences under Article 15(2) of the Law, or

⁵⁷ See paras 33-34, 36-37, 40-42 above.

⁵⁸ See *similarly*, 28 April 2023 Decision, para. 48.

⁵⁹ See para. 42 above.

any other information relevant to the alleged offences. Taking further into account the safeguards enshrined in Rules 31-33 and 39 of the Rules, the Single Judge finds that, insofar as [REDACTED]. In this regard, the Single Judge notes that Mr Shala will not be compelled to give specific details about the contents of the exchanges available on or accessible through his mobile device(s), [REDACTED].⁶⁰ Likewise, the Single Judge recalls in this context the [REDACTED].⁶¹

C. EXECUTION AND SERVICE OF THE ANNEXED ORDER

58. The SPO requests to be designated as the competent authority for the service and execution of the Searches and Seizures order pursuant to Rule 49(1) of the Rules.⁶² In this regard, the SPO submits that it will comply with the safeguards outlined in Rule 39 of the Rules, 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.⁶³

59. The Single Judge notes that pursuant to Article 35(3) of the Law, the police within the SPO has the authority and responsibility to exercise powers given to the Kosovo Police under Kosovo law, and it may be considered a "competent authority" under Rule 49(1) of the Rules to serve and execute orders of the SC.⁶⁴ Accordingly, the Single Judge authorises the SPO to serve and execute the order annexed to the present decision.

D. DISCLOSURE OF THE ANNEXED ORDER

60. The SPO is authorised to disclose, as appropriate and necessary, including to Mr Shala, the annexed orders for the purposes of their execution.

⁶⁰ See Request, footnote 15. *See similarly*, 28 April 2023 Decision, para. 49.

⁶¹ [REDACTED].

⁶² Request, paras 20, 28(d).

⁶³ Request, para. 19.

⁶⁴ Notifying the present decision and annexed order to the Specialist Prosecutor, the transmission is deemed fulfilled, in accordance with Rule 49(1) of the Rules.

E. REQUESTED SIMS

1. Requirements for Special Investigative Measures

61. At the outset, the Single Judge notes that the First SIM concerns the special investigative measure known as [REDACTED]. [REDACTED]. [REDACTED].

62. The Second SIM concerns the special investigative measure known [REDACTED]. [REDACTED]. [REDACTED].

63. The Single Judge recalls that, pursuant to Rules 2, 31 and 34 of the Rules, the SIMs may be authorised if:

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

(a) Grounded Suspicion

64. With regard to the requirement of a grounded suspicion, the Single Judge recalls his findings in paragraphs 27-31 of this decision.⁶⁵

⁶⁵ The Single Judge also recalls that, pursuant to Rules 31 and 37 of the Rules, he found that the Searches and Seizures, under the conditions granted, are necessary, unavoidable, and proportionate to the legitimate aim of the investigation and do not negate the essence of Mr Shala's rights (*see paras 33-34, 36-37, 40-42 above*).

(b) Necessity

65. [REDACTED].⁶⁶ [REDACTED].⁶⁷ [REDACTED]. [REDACTED].⁶⁸

66. [REDACTED].⁶⁹ [REDACTED]. [REDACTED].⁷⁰

(c) Unavoidability

67. [REDACTED].⁷¹ [REDACTED]. [REDACTED]. [REDACTED].

(d) Proportionality

68. [REDACTED].⁷²

69. At the outset, the Single Judge recalls that the legitimate aim of the SPO's investigation is to examine allegations of witness intimidation and obstruction of justice in relation to Witness 1's testimony [REDACTED], involving Mr Shala and potentially other co-perpetrators, and ensure the safety and protection of witnesses and the integrity of proceedings before the SC.⁷³ As regards the nature, duration, and scope of both SIMs, and any safeguards to be implemented, the Single Judge finds that, to the extent that the SPO abides by the conditions set forth in the Rules and this decision, including the requirements regarding their duration and scope, as well as the retention of the obtained material, the sought-after SIMs meet the proportionality test. The Single Judge considers in particular that both SIMs are to be carried out [REDACTED].

(e) Conclusion

70. For these reasons, the Single Judge authorises the First SIM and the Second SIM under the parameters set out in this decision.

⁶⁶ Request, paras 4 (p. 2), 24-25, 28(c).

⁶⁷ Request, paras 17, 24-25.

⁶⁸ Request, para. 25.

⁶⁹ See Request, paras 25-26.

⁷⁰ See *similarly*, 28 April 2023 Decision, para. 60.

⁷¹ [REDACTED].

⁷² Request, para. 24.

⁷³ See para. 40 above. See *similarly*, 28 April 2023 Decision, para. 33.

2. Duration and Scope of the Requested SIMs

71. [REDACTED].⁷⁴

72. The Single 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.⁷⁵ The Single Judge is mindful 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.⁷⁶

73. Noting [REDACTED],⁷⁷ on the one hand, and, considering, on the other hand, the reasonable expectation of privacy of Mr Shala, and the resultant need for judicial oversight over the execution of Searches and Seizures, [REDACTED].

74. Concerning their scope, [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

3. Delayed Notification

75. While the SPO does not expressly make a request for delayed notification, the Single Judge nonetheless finds that notifying Mr Shala of the SIMs prior to the execution thereof would jeopardize the SPO's investigation and the execution of the Searches and Seizures.⁷⁸ The Single Judge finds that any notification of the investigative measures requested by the SPO would provide Mr Shala an

⁷⁴ Request, paras 4 (p. 2), 24, 28(c).

⁷⁵ 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, public, para. 58.

⁷⁶ Article 36(1) and (3) of the Constitution.

⁷⁷ Request, footnote 18.

⁷⁸ See similarly, 28 April 2023 Decision, para. 69.

opportunity to hide or destroy evidence, alert relevant contacts, or engage in obstruction-related activities.

76. Accordingly, the Single Judge defers notification of the present decision until the conclusion of the SPO's investigation or until further order.

4. Reporting on the Requested SIMs

77. In accordance with Rules 31(2) and 35(2)(b) of the Rules, the SPO is required to report on the implementation of both SIMs and the data collected during their implementation. Taking into consideration the time needed to prepare such report, the SPO is ordered to submit a joint report on both SIMs, together with the report on the execution of the Searches and Seizures, mentioned in paragraph 48 above. The joint report shall indicate, *inter alia*, a summary of the implementation of both SIMs, including as to how said SIMs assisted in the Searches and Seizures.

5. Storage Protection, and Retention of Collected Material

78. While the SPO does not expressly submit that the [REDACTED] collected through both SIMs will be destroyed after a certain time, the Single Judge considers that any such [REDACTED] are not being collected for evidentiary purposes, but rather for the limited purpose of operational planning, namely to execute the Searches and Seizures. The Single 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 Single Judge finds that one (1) month from the conclusion of each SIM is a reasonable time period in which the SPO can destroy the [REDACTED] as a result of the SIMs, as required by Rule 33(2)-(3) of the Rules.

V. DISPOSITION

79. For the above-mentioned reasons, the Single Judge hereby:

- (a) **GRANTS** the Request and issues the annexed orders;

(b) **AUTHORISES** the search of the residence(s), vehicle(s), and other locations, if deemed necessary, as well as the person of Mr Shala, and the seizure of evidence relevant to the above-referenced allegations concerning offences under Article 15(2) of the Law, under the following conditions:

- i. the Searches and Seizures are to be executed until **1 March 2024** at the latest;
- ii. the scope of the Searches and Seizures concerns evidence pertaining the alleged responsibility of Mr Shala for offences under Article 15(2) of the Law, as detailed in the present decision;
- iii. the SPO shall [REDACTED];
- iv. to permit Mr Shala, an independent observer to be present during the execution of the authorised Searches and Seizures, and his counsel, unless Mr Shala waives his right or counsel's presence cannot reasonably be awaited; and
- v. that the SPO representatives present at the Searches and Seizures record the time, duration, scope, and all other relevant details of the execution of this decision as well as to prepare an inventory with a detailed description of and information regarding each mobile telephone seized;

(c) **ORDERS** Mr Shala to [REDACTED], recalling that, if he fails to obey, they may be subject to criminal sanctions pursuant to Article 15(2) of the Law in conjunction with Article 393 of the KCC;

- (d) **AUTHORISES** the SPO to serve and execute the attached orders in accordance with Rule 39 of the Rules;
- (e) **ORDERS** the SPO to report on the execution of the Searches and Seizures within fourteen (14) days of the completion of the searches, or within fourteen (14) days, at the latest, of the elapse of the three (3)-month time-frame provided for their execution, whichever is earlier;
- (f) **ORDERS** the SPO to store, protect, and retain any evidentiary seized in accordance with the Rules and the present decision;
- (g) **AUTHORISES** the SPO to disclose, as appropriate and necessary, including to Mr Shala, the annexed order for the purposes of their execution; and
- (h) **AUTHORISES** the conduct of [REDACTED] under the following conditions:
 - i. [REDACTED];
 - ii. the scope of the SIMs concerns [REDACTED];
 - iii. notification to Mr Shala of the present decision is deferred until the conclusion of the SPO's investigation or until further order;
 - iv. the SPO is to report on the implementation of these SIMs, together with the report on the execution of the Searches and Seizures, mentioned in paragraph 48 above; and
 - v. the SPO shall store, protect, and retain the collected material in accordance with the Rules and paragraph 778 of this decision.

[*signed*]

Judge Nicolas Guillou

Single Judge

Dated this Thursday, 30 November 2023

At The Hague, the Netherlands.