



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 21 December 2023

Language: English

Classification: Public

Public redacted version of
Decision on Prosecution Request for an Order and Related Non-Disclosure

Specialist Prosecutor
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THE PRE-TRIAL JUDGE,¹ pursuant to Articles 35(2)-(3), 39(3) and 55 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), as well as Rules 31-33, 37, 39, 48(2) and 49(1) 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 seeking authorisation to undertake search and seizure measures relating to the contents of the mobile telephone of [REDACTED] ("Subject Phone"), with the assistance of [REDACTED] ("Request").²

2. On 20 December 2023, the SPO submitted a supplemental filing in which it, *inter alia*, withdraws the request for temporary non-disclosure contained in the Request ("Supplemental Request").³

II. SUBMISSIONS

3. The SPO submits that Ismet Bahtijari ("Mr Bahtijari") and Sabit Januzi ("Mr Januzi") (jointly the "Accused") visited Witness 1 in his home on 5 and 12 April 2023, respectively, with the aim to dissuade him from testifying [REDACTED].⁴ It further submits that [REDACTED], [REDACTED], surreptitiously recorded the visit of Mr Januzi ("12 April 2023 Visit") on mobile telephone.⁵ [REDACTED].⁶

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

² KSC-BC-2023-10, F00103, Specialist Prosecutor, *Prosecution Request for an Order and Related Non-Disclosure*, 15 November 2023, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*.

³ KSC-BC-2023-10, F00137, Specialist Prosecutor, *Prosecution Supplemental Request for an Order*, 20 December 2023, strictly confidential and *ex parte*, para. 3.

⁴ Request, paras 4-5.

⁵ Request, paras [REDACTED].

⁶ Request, paras 12-13, 16.

[REDACTED].⁷ [REDACTED].⁸ [REDACTED].⁹ [REDACTED].¹⁰ The SPO intends that [REDACTED] makes a full forensic image of the Subject Phone, from which it will extract copies of the relevant recordings and metadata, as the case may be, and prepare a report.¹¹

4. The SPO requests an order from the Pre-Trial Judge authorising the SPO to request the assistance of [REDACTED] to:

- a) Make a full forensic copy of the Subject Phone for storage and retention at [REDACTED] pending any potential additional forensic examination in connection with future legal proceedings;
- b) Provide the SPO with (i) a copy of a 12 April 2023 audio recording currently stored on the Subject Phone (“12 April Recording”); and (ii) a forensic report regarding the metadata and any other records related to the creation and storage of the 12 April Recording; and
- c) Search the Subject Phone for and, if found, provide the SPO with (i) a copy of an audio recording made on 5 April 2023 and currently stored on the Subject Phone (“5 April Recording”) and (ii) a forensic report regarding the metadata and any other records related to the creation and storage of the 5 April Recording if such recording exists on the Subject Phone;

5. Furthermore, pursuant to Rule 108 of the Rules, and in order not to jeopardise the arrest of the Accused’s co-perpetrator, Haxhi Shala (“Mr Shala”), the SPO requests the temporary non-disclosure in the present case, until 8 January 2024, of: (i) a copy of the 12 April Recording, already in the SPO’s possession, and the resulting SPO transcript; (ii) [REDACTED]; (iii) [REDACTED]; (iv) the results of the Request when provided to

⁷ Request, para. [REDACTED].

⁸ Request, para. [REDACTED]; [REDACTED].

⁹ Request, para. [REDACTED].

¹⁰ Request, paras [REDACTED].

¹¹ Request, paras 24-25. [REDACTED].

the SPO by [REDACTED]; and (v) the Request and the present decision issued by the Pre-Trial Judge (collectively, the “Disclosable Material”).¹² In light of Mr Shala’s arrest on 11 December 2023,¹³ the SPO withdraws this request in the Supplemental Request.¹⁴

III. APPLICABLE LAW

6. 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 may collect and examine information and evidence.

7. 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.

8. Pursuant to Rules 31(1) and 37(1)-(2) 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.

¹² Request, paras 3, 31-33.

¹³ KSC-BC-2023-11, F00008, Registrar, *Notification of Arrest of Haxhi Shala Pursuant to Rule 55(4)*, 11 December 2023, public.

¹⁴ Supplemental Request, para. 3.

9. 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.

10. Pursuant to Rule 39(1) and (2) of the Rules, the search and seizure must be executed in the presence of the person concerned, 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.

11. Pursuant to Rules 32(1) and 39(5) of the Rules, material seized 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 the procedure and precautions for the storage, protection and transfer, the duration of retention, and instructions and a timeline for the return or destruction of the seized material.

12. Pursuant to Article 55(1) of the Law, the SPO may request the assistance and cooperation from states other than Kosovo, as is necessary for the investigation and prosecution of persons accused of committing crimes within the subject matter jurisdiction of the SC, and the fulfilment of the SC's other responsibilities.

IV. DISCUSSION

13. Before delving into the merits, the Pre-Trial Judge deems it necessary to distinguish the two successive forensic operations sought by the SPO:

- a) First, [REDACTED] would make a full forensic copy of the Subject Phone and subsequently retain it at its premises pending future proceedings;
- b) Second, from the forensic copy of the Subject Phone, [REDACTED] would extract the 12 April Recording and the 5 April Recording, to the extent it exists, as well as the metadata and any other related records (“Extracted Material”); [REDACTED] would subsequently transmit the Extracted Material to the SPO, which would seize it and retain it.¹⁵

14. The Pre-Trial Judge considers that the aforementioned operations constitute two consecutive search and seizure measures to be authorised under Rules 31(1) and 37(1)-(2) of the Rules (jointly, “Search and Seizure Measures”). It is clarified that, despite the SPO’s unclear position as regards the legal basis of the second operation,¹⁶ the Pre-Trial Judge proceeds on the basis that, irrespective of [REDACTED], the SPO requests to be authorised to seize the Extracted Material, pursuant to Rule 37 of the Rules.

A. REQUEST FOR SEARCH AND SEIZURE MEASURES

1. Requirements for Search and Seizure

15. Pursuant to Rules 31 and 37 of the Rules, the Search and Seizure Measures may be authorised if:

- (i) The mobile telephone is either [REDACTED]’s property, or there is a reasonable expectation of privacy in relation thereto;¹⁷

¹⁵ Request, paras 23-26.

¹⁶ Compare Request, paras 1(b) and (c) and 35(c).

¹⁷ Rule 37(2) of the Rules.

- (ii) As regards the search of the Subject Phone, it is necessary to collect and preserve evidence of a crime within the SC's jurisdiction and there is a grounded suspicion that such evidence is on the Subject Phone;¹⁸
- (iii) The requested measures are necessary for the investigation;¹⁹
- (iv) The investigative measures are unavoidable, i.e. in the specific circumstances the evidence cannot be obtained by other, less intrusive but equally effective means, and the Search and Seizure Measures appear to be the only effective means for the purposes of the investigation;²⁰ and
- (v) The resulting interference with [REDACTED]'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.²¹

(a) *Property or Reasonable Expectation of Privacy*

16. The Pre-Trial Judge notes that [REDACTED],²² where [REDACTED] confirms property over the Subject Phone. As such, the Pre-Trial Judge is satisfied that the Subject Phone is the property of [REDACTED], who thus has a reasonable expectation of privacy in relation thereto.

(b) *Grounded Suspicion*

¹⁸ Rule 37(2)(c) of the Rules.

¹⁹ Rule 31(1)(b) of the Rules.

²⁰ Rule 37(1) of the Rules. *See also* KSC-CC-PR-2017-03, F00006/COR, 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, paras 62-67.

²¹ Rule 31(1)(c) of the Rules.

²² Annex 1 to the Request, p. 2.

17. The SPO submits that the requested measures are necessary to collect and preserve evidence of crimes within the jurisdiction of the KSC and that there is a grounded suspicion that the Subject Phone contains such evidence.²³

18. The Pre-Trial Judge recalls his previous findings of the existence of a well-grounded suspicion that, between at least 5 April and 12 April 2023, Mr Januzi and Mr Bahtijari agreed to, (jointly) committed, assisted and/or attempted to commit, together or on behalf of Mr Shala, the offences of intimidation during criminal proceedings and obstructing official persons in performing official duties, within the meaning of Articles 387 and 401 of the 2019 Kosovo Criminal Code, Law No. 06/L-074 and Articles 15(2) and 16(3) of the Law.²⁴ Specifically, the Pre-Trial Judge found a well-grounded suspicion that, on two separate occasions, the Accused visited Witness 1 in the presence of his family, [REDACTED], with the purpose of dissuading him from testifying in SC Proceedings.²⁵

19. Additionally, the Pre-Trial Judge takes note that [REDACTED] recently informed the SPO that the Subject Phone (i) was used to surreptitiously audio-record the 12 April 2023 Visit;²⁶ and (ii) may have been used to surreptitiously audio-record the 5 April 2023 Visit.²⁷ The Pre-Trial Judge further takes into account Mr Januzi's admission to have visited Witness 1 around April 2023 in his home.²⁸

20. In light of the foregoing considerations, the Pre-Trial Judge is satisfied that there is a grounded suspicion that the Subject Phone contains relevant evidence²⁹ of

²³ Request, para. 2.

²⁴ KSC-BC-2023-10, F00008, Pre-Trial Judge, *Decision on the Confirmation of the Indictment* ("Confirmation Decision"), 2 October 2023, strictly confidential and *ex parte*, paras 95, 111, 123, 126, 131, 135, 139, 144. A confidential redacted version and a corrected version of the public redacted version were filed on 12 October 2023, F00008/CONF/RED and F00008/RED/COR.

²⁵ Confirmation Decision, para. 88.

²⁶ Request, paras 9, 20.

²⁷ Request, para. 16.

²⁸ Request, para. 8. *See* 116063-TR-ET Part 1, p. 16, lines 23-24, p. 17, lines 14-19, p. 18, lines 2-4.

²⁹ The Pre-Trial Judge understands the evidence to encompass the audio-recordings of the 12 April 2023 Visit and the 5 April 2023 Visit, if available, as well as any metadata and other relevant records.

- (i) Mr Januzi's obstructive approach to Witness 1 on 12 April 2023, and
- (ii) Mr Bahtijari's obstructive approach to Witness 1 on 5 April 2023, in support of the aforementioned allegations of offences under Article 15(2) of the Law.

(c) *Necessity*

21. The SPO submits that the requested measures are necessary to, *inter alia*, (i) the SPO's prosecution of the pending case against the two Accused; and (ii) the SPO's ongoing investigation of the involvement of Mr Shala in the unlawful obstructive conduct. The SPO further notes that the evidence it seeks to collect regarding the 12 April Recording, and potentially the 5 April Recording, may be necessary to Mr Januzi and Mr Bahtijari's defences in this case.³⁰

22. The Pre-Trial Judge is satisfied that the Search and Seizure Measures will: (i) assist the SPO in its investigation into the potential involvement of Mr Januzi, Mr Bahtijari and/or others, including Mr Shala, in offences under Article 15(2) of the Law; and (ii) likely contribute to ensuring the safety of protected witnesses and the integrity of the [REDACTED].³¹ Thus, the Pre-Trial Judge finds that the requested measures are necessary for the SPO investigation in accordance with Rule 31(1)(b) of the Rules.

(d) *Unavoidability*

23. The SPO submits that the requested measures are the only effective means for the purposes of furthering the investigation and securing evidence known or believed to be on the Subject Phone. The SPO further submits that, [REDACTED].³²

³⁰ Request, para. 20.

³¹ Similarly, KSC-BC-2023-10, F00041/CONF/RED, Single Judge, *Confidential Redacted Version of Decision Authorising Search and Seizure and Related Measures* ("28 April 2023 Search and Seizure Decision"), 28 April 2023, confidential, para. 29; F00043/CONF/RED, Single Judge, *Confidential Redacted Version of Decision Authorising Search and Seizure and Related Measures* ("3 May 2023 Search and Seizure Decision"), 3 May 2023, confidential, para. 27.

³² Request, para. 21.

24. The Pre-Trial Judge is persuaded that there are no other less intrusive but equally effective means to collect the sought evidence, and the requested measures appear to be the only effective means to further the investigation. The Pre-Trial Judge is of the view that the only way to obtain an overview of Mr Januzi's and/or Mr Bahtijari's alleged criminal conduct is through the creation of a full forensic copy of the Subject Phone, its subsequent analysis, and the extraction of the evidence in relation to the Accused's obstructive visits to Witness 1 in April 2023. These operations require the extraction of the 12 April Recording and the 5 April Recording, to the extent it exists, from the forensic copy of the Subject Phone, as well as their metadata and any related records, for the purpose of identifying with precision, *inter alia*, the occurrence, content, duration and timing of the obstructive visits to Witness 1.

25. In light of the above, the Pre-Trial 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 Januzi, Mr Bahtijari and/or others, including Mr Shala, for offences within the meaning Article 15(2) of the Law.

(e) *Proportionality*

26. The SPO submits that the requested measures are proportionate to the legitimate aim of the investigation and do not negate the essence of [REDACTED]'s rights to privacy and property, on the basis that [REDACTED].³³

27. The Pre-Trial 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 requested measures, and any safeguards to be implemented.³⁴ The legitimate aim of the SPO's investigation is to examine allegations of obstruction of justice involving the two Accused and other alleged co-perpetrators,

³³ Request, para. 22.

³⁴ See Constitutional Court Chamber 28 June 2017 Judgment, para. 64; 28 April 2023 Search and Seizure Decision, para. 33; 3 May 2023 Search and Seizure Decision, para. 31.

including Mr Shala, and to ensure the safety and protection of witnesses and the integrity of proceedings before the SC. Additionally, the Pre-Trial Judge considers relevant that [REDACTED] related to the 12 April 2023 Visit and the 5 April 2023 Visit. With regard to the safeguards to be implemented, the Pre-Trial Judge recalls that, as enshrined in Rules 31-33 and 39 of the Rules, the SPO is duty-bound to take appropriate measures with respect to the rights to personal integrity, privacy or property. The Pre-Trial Judge is also mindful of the seriousness of the allegations that the Accused engaged, potentially with other persons, in obstructive efforts relating to the SC proceedings, within the meaning of Article 15(2) of the Law. Accordingly, the Pre-Trial 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 Search and Seizure Measures meet the proportionality test.

(f) *Conclusion*

28. For these reasons, as long as the execution of the requested measures meet the requirements set forth in the Rules and the present Decision, the Pre-Trial Judge authorises, under Rule 37 of the Rules, the Search and Seizure Measures.

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

29. Concerning the timing of the requested measures, the SPO submits that, given the proceedings in the present case and the ongoing investigation into, *inter alia*, Mr Shala's involvement in the charged offences, it anticipates executing the requested measures as soon as possible.³⁵

30. Concerning the duration and scope of the requested measures, the SPO submits that it seeks to transmit the Subject Phone to [REDACTED] immediately upon

³⁵ Request, paras 23, 30.

authorisation of the Pre-Trial Judge, for the limited purpose of allowing [REDACTED] to make a full forensic copy of the Subject Phone. It adds that [REDACTED] will be searching this forensic copy for evidence related to the 12 April Recording and the 5 April Recording, together with any related metadata and other records. According to the SPO, [REDACTED] will transmit to the SPO said material, which the SPO will, in turn, seize. The SPO affirms that [REDACTED] will securely store the forensic copy of Subject Phone at [REDACTED] pending any future proceedings.³⁶

31. At the outset, the Pre-Trial Judge recalls [REDACTED]'s reasonable expectation of privacy over the Subject Phone, and the resultant need for judicial oversight of the execution of the search and seizure measures. The Pre-Trial Judge is also mindful that the SPO will request the assistance of [REDACTED], [REDACTED], to conduct the forensic copying and analyse it at its behest. As such, the Pre-Trial Judge finds that a three-month timeframe is appropriate for the execution of the requested measures.

32. In light of the above, the Pre-Trial Judge authorises the SPO to seek the assistance of [REDACTED] to (i) create a full forensic copy of the Subject Phone; and subsequently (ii) search the forensic copy for the limited purpose of seizing evidence pertaining to the aforementioned allegations concerning offences under Article 15(2) of the Law, or any other information relevant to the alleged offences.³⁷ In particular, the Pre-Trial Judge finds that the scope of the search and seizure of the forensic copy shall include the 12 April Recording and the 5 April Recording, to the extent it exists, including their metadata and any other related records found therein.

33. Lastly, the Pre-Trial Judge authorises the Search and Seizure Measures to take place [REDACTED].³⁸ That being said, the Pre-Trial Judge notes that the SPO [REDACTED].³⁹

³⁶ Request, paras 24-26, 35(c).

³⁷ *Similarly*, 28 April 2023 Search and Seizure Decision, para. 38; 3 May 2023 Search and Seizure Decision, para. 36.

³⁸ Request, para. 16; Annex 1 to the Request, p. 3.

³⁹ *See* Request, para. 28.

3. Reporting on the Search and Seizure Measures

34. Taking into consideration the time needed to prepare a report following the execution of the requested measures, the SPO is ordered to submit a report within fourteen (14) days of the completion of the measures 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 creation of the forensic copy of the Subject Phone, the duration and scope of the search of the forensic copy, a general description of the content of the Extracted Material, and a summary of the oral briefing of [REDACTED].

4. Retention of Seized Material

35. The SPO requests authorisation to retain the Extracted Material for: (i) the time necessary to complete the examination of the relevant content; and (ii) such further period of time as may be necessary for the material's potential use in evidence.⁴⁰

36. The Pre-Trial Judge considers it necessary for the SPO to store, protect, and transfer the seized Extracted Material, in accordance with the standard chain of custody procedures. In so doing, the SPO must take appropriate measures to protect the seized material against loss, accidental or unauthorised access, alteration, dissemination or destruction. The SPO shall inform the Pre-Trial Judge on the appropriate procedure and precautions for the storage and protection of the Extracted Material in a report. In addition, the Pre-Trial Judge reminds the SPO that the same precautionary measures must be adopted by [REDACTED] for the storage of the full forensic copy of the Subject Phone.⁴¹

⁴⁰ Request, para. 27.

⁴¹ See Request, paras 26-27.

37. The Pre-Trial Judge finds that a three-month timeframe from the creation of the forensic copy of the Subject Phone is sufficient for [REDACTED] to extract the relevant evidence and transmit it to the SPO, which subsequently seizes it. After this period, if the SPO decides that the full forensic copy of the Subject Phone and the data extracted from it are necessary for the ongoing investigation or future proceedings, it may retain them in accordance with Rule 33(1)(b) of the Rules until such time they are no longer relevant for the purpose for which they were obtained. At that point, the full forensic copy of the Subject Phone and the Extracted Material will have to be returned or destroyed pursuant to Rule 33(2)-(3) of the Rules. Conversely, if the seized 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 33(2)-(3) of the Rules, unless it is relevant for the investigation of another crime within the SC's jurisdiction.

38. In light of the foregoing, the Pre-Trial Judge authorises the retention of the full forensic copy of the Subject Phone and the Extracted Material, in accordance with the Rules, and reminds the SPO of the ruling regarding the storage of the forensic copy of the Subject Phone at [REDACTED], pending any potential additional forensic examination in connection with future legal proceedings.

5. Execution and Service of the Present Decision

39. The SPO requests to be designated as the competent authority for the service and execution of the requested measures, pursuant to Rule 49(1) of the Rules.⁴² 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 Pre-Trial Judge's findings regarding its

⁴² Request, para. 29.

purpose and the scope of feasible application, including, in particular, in the context of expert examinations.⁴³

40. 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 and it may be considered a “competent authority” under Rule 49(1) of the Rules to serve and execute orders of the SC.⁴⁴ Accordingly, the Pre-Trial Judge authorises the SPO to serve and execute the present Decision.

B. COOPERATION OF THE SPO WITH THE HOST STATE

41. The SPO seeks the assistance of [REDACTED] to execute the requested measures.⁴⁵

42. The Pre-Trial Judge notes that the SPO may request assistance and/or cooperation from the Host State as is necessary for its investigations, pursuant to Article 55(1) of the Law. In particular, the SPO may request the assistance of [REDACTED] for the execution of the Search and Seizure Measures authorised in the present Decision.

C. DISCLOSURE OF THE DISCLOSABLE MATERIAL

43. Given that Mr Shala has already been arrested,⁴⁶ and mindful of the SPO’s withdrawal of its request in relation thereto, the Pre-Trial Judge finds the temporary non-disclosure request to be moot. The Pre-Trial Judge further orders the SPO to make

⁴³ Request, para. 28.

⁴⁴ Notifying the present Decision to the Specialist Prosecutor, the transmission is deemed fulfilled, in accordance with Rule 49(1) of the Rules.

⁴⁵ Request, paras 1, 18, 23-26.

⁴⁶ KSC-BC-2023-11, F00008, Registrar, *Notification of Arrest of Haxhi Shala Pursuant to Rule 55(4)*, 11 December 2023, public.

available to the Defence the Request by Friday, 12 January 2024. To this end, it may submit a confidential and/or public (redacted) version of the Request, or request its reclassification as confidential or public. Additionally, the SPO is ordered to disclose the remaining Disclosable Material to the Defence, as appropriate and necessary pursuant to Rule 102 of the Rules. The Pre-Trial Judge clarifies that, should any of the Disclosable Material fall under Rule 102(1)(b) of the Rules, in relation to which the deadline for disclosure expired on 15 December 2023,⁴⁷ the SPO is authorised to make available to the Defence the Disclosable Material after the deadline, as its availability depends on the present Decision.

44. The present Decision will be made available to the Defence after the SPO's submission of a confidential and/or public (redacted) version of the Request, or has requested its reclassification as confidential or public.

V. DISPOSITION

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

- a) **GRANTS**, in part, the Request;
- b) **AUTHORISES** the search and seizure of the Subject Phone, with the assistance of [REDACTED] through a request for assistance and/or cooperation, namely through the creation of a full forensic copy of the Subject Phone and its retention at [REDACTED] pending any potential additional forensic examination in connection with future legal proceedings, provided that the precautionary measures are maintained, as set out in the present Decision;

⁴⁷ See Request, para. 32; KSC-BC-2023-10, F00076, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 24 October 2023, confidential, para. 122(d). A public redacted version was filed on the same day, F00076/RED.

- c) **AUTHORISES** the search of the forensic copy of the Subject Phone with the assistance of [REDACTED] through a request for assistance and/or cooperation, as set forth in the present Decision, and the seizure of the material sought to be extracted from the forensic copy of the Subject Phone, namely (i) a copy of the 12 April Recording, currently stored on the Subject Phone and a forensic report regarding the metadata and any other records related to the creation and storage of said recording; and (ii) if found, a copy of the 5 April Recording, believed to be stored on the Subject Phone, and a forensic report regarding the metadata and any other records related to the creation and storage of said recording;
- d) **ORDERS** the SPO and [REDACTED] to store, protect and retain seized evidence (full forensic copy of the Subject Phone and Extracted Material) in accordance with the Rules and the present Decision;
- e) **DISMISSES** as moot the request for temporary non-disclosure of the Disclosable Material;
- f) **ORDERS** the SPO to submit a confidential and/or public (redacted) version of the Request, or request its reclassification as confidential or public, by Friday, 12 January 2024;
- g) **ORDERS** the SPO to disclose the remaining Disclosable Material, including the present Decision, as appropriate and necessary;
- h) **DESIGNATES** the SPO as the competent authority for service and execution of the present Decision; and
- i) **AUTHORISES** the SPO to disclose the present Decision to [REDACTED], [REDACTED] and any other authority, as necessary for its execution.

[*signed*]

Judge Nicolas Guillou

Pre-Trial Judge

Dated this Thursday, 21 December 2023

At The Hague, the Netherlands.