



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
KSC-BC-2023-11
The Specialist Prosecutor v. Haxhi Shala

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 22 January 2024

Language: English

Classification: Public

Public redacted version of
Decision on Prosecution Supplemental Request for an Order

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] ("[REDACTED] Phone"), with the assistance of [REDACTED] ("Request F00103").²

2. On 20 December 2023, the SPO submitted a supplemental filing, *inter alia*, extending its request to undertake search and seizure measures in relation to the mobile telephone of [REDACTED] ("[REDACTED] Phone"), with the assistance of [REDACTED] ("Supplemental Request").³

3. On 21 December 2023, the Pre-Trial Judge issued a decision, *inter alia*, granting the measures sought in the Request F00103 ("21 December 2023 Decision").⁴

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*. A confidential redacted version of the main filing and Annex 1 was submitted on 9 January 2024, F00103/CONF/RED, F00103/CONF/RED/A01/CONF/RED.

³ KSC-BC-2023-10, F00137, Specialist Prosecutor, *Prosecution Supplemental Request for an Order*, 20 December 2023, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*; KSC-BC-2023-11, F00025, Specialist Prosecutor, *Prosecution Supplemental Request for an Order*, 20 December 2023, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*.

⁴ KSC-BC-2023-10, F00141, Pre-Trial Judge, *Decision on Prosecution Request for an Order and Related Non-Disclosure*, 21 December 2023, confidential.

II. SUBMISSIONS

4. The SPO incorporates by reference the facts detailed in the Request F00103.⁵ Additionally, the SPO submits that, [REDACTED], [REDACTED] were used to covertly audio-record the visits [REDACTED] by Ismet Bahtijari (“Mr Bahtijari”) on 5 April 2023, and by Sabit Januzi (“Mr Januzi”) on 12 April 2023 (“April 2023 Visits”).⁶ According to the SPO, [REDACTED] to search [REDACTED] Phone for and to extract a copy of any audio recordings of the April 2023 Visits that may be stored therein, along with any metadata or associated records.⁷ The SPO also submits that, [REDACTED].⁸

5. Lastly, the SPO submits that it intends to transmit [REDACTED] Phone in its custody to [REDACTED] immediately upon receipt of the Pre-Trial Judge’s authorisation.⁹ The SPO explains that [REDACTED] will first make a full forensic image of [REDACTED] Phone, from which it will search for and extract copies of the relevant recordings and metadata, as the case may be, and prepare a report.¹⁰ According to the SPO, [REDACTED] will then securely store the forensic image of [REDACTED] Phone at [REDACTED] pending any future legal proceedings.¹¹

6. The SPO submits that the legal requirements for the requested search and seizure of [REDACTED] Phone are met.¹² Accordingly, 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 [REDACTED] Phone for storage and retention at [REDACTED] pending any potential additional forensic examination in connection with future legal proceedings; and

⁵ Supplemental Request, para. 4.

⁶ Supplemental Request, paras 5-8.

⁷ Supplemental Request, para. 7.

⁸ Supplemental Request, para. 9; Annex 1 to the Supplemental Request, pp. 2-3.

⁹ Supplemental Request, para. 15.

¹⁰ Supplemental Request, para. 16. [REDACTED].

¹¹ Supplemental Request, para. 17.

¹² Supplemental Request, paras 2, 10-14.

- b) Search [REDACTED] Phone for and, if found, provide the SPO with (i) copies of audio recordings made on 5 April 2023 and 12 April 2023 and currently stored on [REDACTED] Phone (collectively, the “April 2023 Recordings”); and (ii) a forensic report regarding the metadata and any other records related to the creation and storage of the April 2023 Recordings (“Associated Records”), if such recordings exist on [REDACTED] Phone.

III. APPLICABLE LAW

7. Pursuant to Article 35(2) of the Law, the SPO has the authority to conduct criminal investigations within the subject matter jurisdiction of the Specialist Chambers (“SC”). Pursuant to Article 35(2)(b) of the Law, the SPO may collect and examine information and evidence.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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

14. 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 [REDACTED] Phone and subsequently retain it at its premises pending future proceedings;
- b) Second, from the forensic copy of [REDACTED] Phone, [REDACTED] would extract the April 2023 Recordings and Associated Records (“Extracted Material”); [REDACTED] would subsequently transmit the Extracted Material to the SPO, which would seize it and retain it.¹³

15. 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,¹⁴ the Pre-Trial Judge proceeds on the basis that, [REDACTED], the SPO requests to be authorised to seize the Extracted Material, pursuant to Rule 37 of the Rules.¹⁵

A. REQUEST FOR SEARCH AND SEIZURE MEASURES

1. Requirements for Search and Seizure

16. 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;¹⁶
- (ii) As regards the search of [REDACTED] 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 contained therein;¹⁷

¹³ Supplemental Request, paras 15-17. *See similarly* 21 December 2023 Decision, para. 13.

¹⁴ *Compare* Supplemental Request, paras 1(b) and 23(c).

¹⁵ *See similarly* 21 December 2023 Decision, para. 14.

¹⁶ Rule 37(2) of the Rules.

¹⁷ Rule 37(2)(c) of the Rules.

- (iii) The requested measures are necessary for the investigation;¹⁸
- (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;¹⁹ 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.²⁰

(a) *Property or Reasonable Expectation of Privacy*

17. The Pre-Trial Judge notes that [REDACTED].²¹ As such, the Pre-Trial Judge is satisfied that this device is the property of [REDACTED], who thus has a reasonable expectation of privacy in relation thereto.

(b) *Grounded Suspicion*

18. 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 [REDACTED] Phone contains such evidence.²²

19. The Pre-Trial Judge recalls his previous findings of the existence of a well-grounded suspicion that, at least between 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 Haxhi Shala ("Mr Shala"), the offences of intimidation during

¹⁸ Rule 31(1)(b) of the Rules.

¹⁹ 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.

²⁰ Rule 31(1)(c) of the Rules.

²¹ Supplemental Request, para. 9; Annex 1 to the Supplemental Request, p. 2.

²² Supplemental Request, para. 2.

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.²³ Specifically, the Pre-Trial Judge found a well-grounded suspicion that, on two separate occasions, Mr Januzi and Mr Bahtijari visited Witness 1 in the presence of his family, [REDACTED], with the purpose of dissuading him from testifying in SC Proceedings.²⁴

20. Additionally, the Pre-Trial Judge takes note that, [REDACTED], [REDACTED], [REDACTED], [REDACTED] Phone was also used to surreptitiously audio-record both April 2023 Visits.²⁵ [REDACTED], [REDACTED].²⁶ The Pre-Trial Judge further takes into account Mr Januzi's admission to have visited Witness 1 around April 2023 in his home.²⁷

21. In light of the foregoing, the Pre-Trial Judge is satisfied that a grounded suspicion exists that [REDACTED] Phone contains relevant evidence²⁸ of (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*

22. The SPO submits that the requested measures are necessary to, *inter alia*, the SPO's prosecution of the pending cases against Mr Januzi, Mr Bahtijari and Mr Shala,

²³ 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. See also 21 December 2023 Decision, paras 18-20.

²⁴ Confirmation Decision, para. 88.

²⁵ Supplemental Request, paras 5, 7. See 117047-TR-ET Part 1 RED, pp. 4-8.

²⁶ Supplemental Request, para. 8. See 117751-TR-ET Part 1 RED, p. 17, lines 14-25, p. 20, lines 22-25.

²⁷ See 116063-TR-ET Part 1, p. 16, lines 23-24, p. 17, lines 14-19, p. 18, lines 2-4.

²⁸ The Pre-Trial Judge understands the evidence to encompass the April 2023 Recordings, as well as the Associated Records.

and that the evidence it seeks to collect regarding the April 2023 Recordings may be necessary to their respective defences in these cases.²⁹

23. 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 [REDACTED].³⁰ Additionally, the Pre-Trial Judge considers that requested measures will assist in confirming the roll out of events during the two April 2023 Visits, as well as in reproducing the exact wording of the conversations between the participants.

24. Thus, the Pre-Trial Judge finds that the sought measures are necessary for the SPO investigation in accordance with Rule 31(1)(b) of the Rules.

(d) Unavoidability

25. The SPO submits that the requested measures are the only effective means for the purposes of furthering the investigation and securing the evidence known or believed to be on [REDACTED] Phone.³¹

26. The Pre-Trial Judge is persuaded that 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, Mr Bahtijari's and/or Mr Shala's alleged criminal conduct is through the creation of a full forensic copy of [REDACTED] Phone, its subsequent analysis, and the extraction of the evidence in relation to the April 2023 Visits. These operations require the extraction of the

²⁹ Supplemental Request, para. 12.

³⁰ 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.

³¹ Supplemental Request, para. 13.

April 2023 Recordings from the forensic copy of [REDACTED] Phone, as well as their Associated Records, for the purpose of identifying with precision, *inter alia*, the occurrence, content, duration and timing of the obstructive visits to Witness 1.

27. While the extraction of audio-recorded evidence of the April 2023 Visits from [REDACTED] Phone was authorised in the 21 December 2023 Decision, the Pre-Trial Judge notes that either or both [REDACTED] Phone and [REDACTED] Phone may contain relevant evidence that cannot be otherwise obtained. As such, both devices must be given equal opportunity for examination.

28. 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

29. 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] for the purpose of recovering the April 2023 Recordings and Associated Records.³²

30. 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.³³ The legitimate aim of the SPO's investigation is to examine allegations of obstruction of justice involving Mr Januzi, Mr Bahtijari and/or others, 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

³² Supplemental Request, para. 14.

³³ 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.

[REDACTED] for evidence related to the April 2023 Visits. 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 Mr Januzi and Mr Bahtijari engaged, potentially with other persons, including Mr Shala, 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

31. 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

32. Concerning the timing of the requested measures, the SPO submits that, given the proceedings in Cases 10 and 11, it anticipates executing the requested measures as soon as possible.³⁴

33. Concerning the duration and scope of the requested measures, the SPO submits that it seeks to transmit [REDACTED] Phone to [REDACTED] immediately upon authorisation of the Pre-Trial Judge, for the limited purpose of allowing [REDACTED] to make a full forensic copy of [REDACTED] Phone. It adds that [REDACTED] will be searching this forensic copy for evidence related to the April 2023 Recordings and

³⁴ Supplemental Request, para. 21.

Associated 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 [REDACTED] Phone at [REDACTED] premises pending any future proceedings.³⁵

34. At the outset, the Pre-Trial Judge recalls [REDACTED]'s reasonable expectation of privacy over [REDACTED] 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 an external actor, [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.

35. 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 [REDACTED] 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.³⁶ In particular, the Pre-Trial Judge finds that the scope of the search and seizure of the forensic copy shall include copies of the April 2023 Recordings currently stored on [REDACTED] Phone, as well as the metadata and any other records related to their creation and storage, if such recordings exist on [REDACTED] Phone.

36. [REDACTED], [REDACTED], [REDACTED], [REDACTED].³⁷ [REDACTED], [REDACTED].³⁸

³⁵ Supplemental Request, paras 16-17, 23(c).

³⁶ *Similarly*, 28 April 2023 Search and Seizure Decision, para. 38; 3 May 2023 Search and Seizure Decision, para. 36; 21 December 2023 Decision, para. 32.

³⁷ Supplemental Request, para. 9; Annex 1 to the Supplemental Request, p. 3.

³⁸ Supplemental Request, para. 19.

3. Reporting on the Search and Seizure Measures

37. 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 [REDACTED] Phone, the duration and scope of the search of the forensic copy, a general description of the content of the Extracted Material, [REDACTED].

4. Retention of Seized Material

38. 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.³⁹

39. 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 [REDACTED] Phone.⁴⁰

40. The Pre-Trial Judge finds that a three-month timeframe from the creation of the forensic copy of [REDACTED] Phone is sufficient for [REDACTED] to extract the

³⁹ Supplemental Request, para. 18.

⁴⁰ See Supplemental Request, paras 17-18.

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 [REDACTED] 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 [REDACTED] 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.

41. In light of the foregoing, the Pre-Trial Judge authorises the retention of the full forensic copy of [REDACTED] 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 [REDACTED] Phone at [REDACTED], pending any potential additional forensic examination in connection with future legal proceedings.

5. Execution and Service of the Present Decision

42. 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.⁴¹ 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 purpose and the scope of feasible application, including, in particular, in the context of expert examinations.⁴²

⁴¹ Supplemental Request, para. 20.

⁴² Supplemental Request, para. 19.

43. 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.⁴³ Accordingly, the Pre-Trial Judge authorises the SPO to serve and execute the present Decision.

B. COOPERATION OF THE SPO WITH THE HOST STATE

44. The SPO seeks the assistance of [REDACTED] to execute the requested measures.⁴⁴

45. 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

46. The Pre-Trial Judge orders the SPO to make available to the Defence of Mr Bahtijari and of Mr Januzi the Supplemental Request by Friday, 26 January 2024. Further, the Pre-Trial Judge orders the SPO to disclose to Mr Januzi, Mr Bahtijari and Mr Shala, as appropriate and necessary pursuant to Rule 102 of the Rules, (i) [REDACTED]; (ii) the results of the Supplemental Request when provided to the SPO by [REDACTED], including a copy of the audio recordings, and the resulting SPO transcripts; (iii) any other relevant evidentiary item (“Disclosable Material”). The

⁴³ Notifying the present Decision to the Specialist Prosecutor, the transmission is deemed fulfilled, in accordance with Rule 49(1) of the Rules.

⁴⁴ Supplemental Request, paras 1, 10, 15-17.

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 2023,⁴⁵ the SPO is authorised to make available to the Defence of Mr Bahtijari and of Mr Januzi the Disclosable Material after the deadline, as its availability depends on the present Decision.

47. 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 Supplemental Request, or request for reclassification as confidential or public.

V. DISPOSITION

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

- a) **GRANTS** the Supplemental Request;
- b) **AUTHORISES** the search and seizure of [REDACTED] Phone, with the assistance of [REDACTED] through a request for assistance and/or cooperation, namely through the creation of a full forensic copy of [REDACTED] 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;
- c) **AUTHORISES** the search of the forensic copy of [REDACTED] 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 [REDACTED] Phone, namely (i) copies of audio recordings made on 5 April 2023 and

⁴⁵ 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.

12 April 2023 and currently stored therein, and (ii) a forensic report regarding the metadata and any other records related to their creation and storage, if such recordings exist on [REDACTED] Phone;

- d) **ORDERS** the SPO and [REDACTED] to store, protect and retain seized evidence (full forensic copy of [REDACTED] Phone and Extracted Material) in accordance with the Rules and the present Decision;
- e) **ORDERS** the SPO to submit a confidential and/or public (redacted) version of the Supplemental Request, or request its reclassification as confidential or public, by Friday, 26 January 2024;
- f) **ORDERS** the SPO to disclose the remaining Disclosable Material, as appropriate and necessary;
- g) **DESIGNATES** the SPO as the competent authority for service and execution of the present Decision; and
- h) **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 Monday, 22 January 2024

At The Hague, the Netherlands.