



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2018-01

Before: Single Judge Panel
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Acting Specialist Prosecutor

Date: 20 April 2023

Language: English

Classification: Public

**Public redacted version of 'Prosecution requests for [REDACTED] call data
records**

with strictly confidential and *ex parte* Annexes 1-3'

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I. INTRODUCTION

1. Pursuant to Articles 35(2), 39(3) and 53 of the Law¹ and Rules² 31 and 34-35, the Specialist Prosecutor's Office ('SPO') requests that the Single Judge (i) order Kosovo Telecom-Vala ('VALA'), and IPKO Telecommunications LLC ('IPKO'), to produce the call data records and subscriber information, along with relevant cell-site locations and identifying information as detailed herein and in Annex 1, for telephone number [REDACTED]; (ii) request the Dutch authorities to order all Dutch telecom providers to produce the call data records for any registered contacts with telephone number [REDACTED]; and (iii) [REDACTED] (collectively, the 'Requested Records'):

- a. [REDACTED];
- b. [REDACTED];
- c. [REDACTED];
- d. [REDACTED]; and
- e. Preservation of all of the above categories of records pertaining to [REDACTED].

II. STATEMENT OF FACTS

2. [REDACTED].³
3. [REDACTED].⁴ [REDACTED].

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' herein refer to articles of the Law, unless otherwise specified.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ See e.g., [REDACTED].

⁴ [REDACTED].

4. On 5 April 2023, [REDACTED] reported to the SPO that he was threatened with death if he did not withdraw his testimony. Relevant information concerning this incident is included [REDACTED].⁵

5. On 5 April 2023, [REDACTED] reported to the SPO that earlier that day, [REDACTED] Ismet BAHTJARI visited his home and delivered a message on behalf of others to withdraw his testimony [REDACTED].⁶

6. Specifically, [REDACTED] informed the SPO that BAHTJARI, also known as 'Shema,' used the Facebook Messenger application to call [REDACTED] mobile phone on the afternoon of 5 April 2023. [REDACTED] answered the incoming call because [REDACTED] was napping at the time. BAHTJARI asked if [REDACTED] was home. [REDACTED] confirmed that he was home and asked BAHTJARI if [REDACTED] should wake him up to talk. BAHTJARI said not to wake [REDACTED].

7. Thirty minutes later, BAHTJARI arrived at [REDACTED] home. BAHTJARI is not a frequent visitor to [REDACTED] home, nor are the two in frequent communication.

8. When [REDACTED] asked BAHTJARI why he had come to his home, BAHTJARI stated, 'I haven't come for good' and added an Albanian phrase meaning 'I have something to do for the evil.' BAHTJARI then stated, in sum and substance, 'I have been sent here to tell you that you are [REDACTED] and that [REDACTED] should withdraw his testimony. BAHTJARI told [REDACTED] that Haxhi SHALA, also known as 'Topi,' sent BAHTJARI to deliver this message to [REDACTED]. BAHTJARI also told [REDACTED] that SHALA had recently approached BAHTJARI at a café that BAHTJARI frequents in the area between Fushtice and Komoran. SHALA told BAHTJARI 'Go and tell [REDACTED] that he's [REDACTED] and tell him to

⁵ See [REDACTED].

⁶ [REDACTED].

withdraw.’ [REDACTED] was not certain, but believed BAHTJARI’s encounter with SHALA occurred a day or two before BAHTJARI’s 5 April 2023 visit to [REDACTED].

9. During their discussion at [REDACTED] home, BAHTJARI appeared nervous and uncomfortable and kept his head down and avoided eye contact with [REDACTED]. [REDACTED] asked BAHTJARI if he was recording their conversation, which BAHTJARI denied.

10. [REDACTED] asked BAHTJARI, ‘Have they told you if I don’t withdraw they will kill me or my son?’ and ‘Will they kill me if I testify?’ BAHTJARI kept his head down and replied, ‘Yes, yes.’ When the SPO asked who [REDACTED] was referring to when he asked if ‘they will kill’ him, [REDACTED] stated that by ‘they’ he meant [REDACTED].

11. [REDACTED] then told BAHTJARI ‘Tell [REDACTED], that if The Hague calls me, I will fuck all their mothers’ and ‘Tell them if I see them in front of me I will kill them if they don’t kill me first.’ [REDACTED] explained to the SPO that [REDACTED] and others tried to kill [REDACTED] years ago, and that [REDACTED] believes that [REDACTED] and SHALA are responsible for the current message that he should withdraw his testimony now.

12. After the discussion finished, BAHTJARI appeared nervous. [REDACTED] asked BAHTJARI if he needed a taxi, because he knows BAHTJARI does not drive. BAHTJARI told [REDACTED] that he did not need a taxi because ‘I have this guy who works with me from Fushtice,’ which [REDACTED] understood to mean BAHTJARI had someone to drive him home.

13. BAHTJARI then left [REDACTED] home and walked down the street toward a [REDACTED], which appeared to be waiting approximately 200 meters away. [REDACTED], who was watching BAHTJARI from the window, alerted [REDACTED] that two men were standing near [REDACTED] and appeared to be

getting into it. [REDACTED] went to the window and, based on what he observed, he believes that [REDACTED] and two other men entered [REDACTED] which was driven by a fourth person. [REDACTED] is certain BAHTJARI was not driving. [REDACTED] believes the two other men had likely been watching his home while BAHTJARI visited.

14. [REDACTED].

15. [REDACTED].

16. [REDACTED].

17. On 6 April 2023, the SPO obtained [REDACTED] the Facebook Messenger call record of BAHTJARI's 5 April 2023 call to [REDACTED].⁷

III. SUBMISSIONS

18. The 5 April 2023 message BAHTJARI delivered to [REDACTED] was unambiguous: withdraw his testimony [REDACTED] or face reprisal. The message, delivered [REDACTED], was clearly intended to intimidate [REDACTED] and obstruct both [REDACTED] testimony and the work the SPO and KSC. [REDACTED].

19. [REDACTED].

20. The SPO further submits that there is grounded suspicion that others, including both BAHTJARI and SHALA, have also engaged in intimidating and obstructive conduct and thus that they have been, are, or are about to commit offences under Article 15(2).

21. Accordingly, the SPO now seeks the Requested Records which are necessary to investigate the intimidating and obstructive conduct.⁸

⁷ See [REDACTED].

⁸ [REDACTED].

22. Noting especially Rules 31(1), 34(1)-(2), and 35, the SPO incorporates by reference the Single Judge's recent decision on the legal basis permitting it to obtain records of telephone calls [REDACTED].⁹ Each request is discussed in turn below.

A. CALL DATA RECORDS

23. According to [REDACTED] account, BAHTJARI explicitly stated that SHALA sent BAHTJARI to deliver the intimidating message to [REDACTED]. Further, the SPO's analysis of its existing records show that SHALA is listed [REDACTED]. In several instances, the contact entries for this number associated with SHALA's name [REDACTED]¹⁰ [REDACTED].¹¹ [REDACTED].

24. In light of SHALA's apparent direct involvement in the obstructive message's delivery to [REDACTED], the requested call data records for SHALA's phone number [REDACTED] are necessary to the SPO's investigation. The call data records – including incoming and outgoing call and text message records, data access records, and location information – are necessary to confirm the existence of contacts and the pattern of contacts with specific numbers, as well as to establish the identities of others potentially involved. More specifically, the records are necessary to determine, *inter alia*, (1) the scope of SHALA's role in the intimidation of [REDACTED] and the attempted obstruction of [REDACTED] testimony, as well the potential of similar efforts to obstruct the testimony of other SPO witnesses, and (2) the identity and role of other individuals involved in the same conduct, including the individual(s) who may be directing SHALA to act.

25. There are no other less intrusive means to obtain this information – which is directly related and necessary to determining SHALA's interactions with individuals who may be involved in the delivery of the threat to [REDACTED].

⁹ [REDACTED].

¹⁰ +383 is the international dialling prefix for Kosovo.

¹¹ +377 is the international dialling prefix for Monaco but is often assigned to phone numbers in Kosovo.

26. The requested order for call data records is proportionate to the legitimate aim of the investigation. Indeed, the SPO recalls that the Single Judge has already found that [REDACTED].¹² [REDACTED]. The additional evidence gathered to date, including the apparent involvement of [REDACTED] in a threat to [REDACTED], strongly indicates that the long-recognised climate of witness intimidation surrounding the KSC and SPO has only intensified.

27. Indeed, the requested order for call data records is proportionate to the legitimate aim of the investigation and does not negate the essence of any guaranteed rights because (i) it is in accordance with the Law and Rules; (ii) as set out below, its terms are tailored to the needs of the investigation and are designed to exclude information of no foreseeable relevance; and (iii) the SPO will take appropriate measures for the protection and due respect of victims and witnesses, and the fundamental rights of (potential) suspects and/or accused.

28. Finally, in order to protect the confidentiality of the investigation, the SPO [REDACTED].

B. [REDACTED]

29. [REDACTED].

30. [REDACTED].

31. [REDACTED].

32. [REDACTED].

33. [REDACTED].¹³ [REDACTED].

¹² [REDACTED].

¹³ See Annex 1 to Prosecution response to defence requests for adjournments and witness rearrangement, KSC-BC-2020-06/F01290/A01, 14 February 2023, Strictly Confidential and *Ex Parte*.

34. [REDACTED].

IV. THE TERMS OF THE REQUESTED ORDER FOR CALL DATA RECORDS

35. The SPO requests that the Single Judge order VALA (Kosovo Telecom-Vala, doing business as Vala, at Vala HQ, Dardania n/n street, Pristinë, 10000, Kosovo) and Ipko (IPKO Telecommunications LLC, doing business as IPKO, at Ulpiana, Zija Shemsiu street no.34, Pristinë, 10000, Kosovo) to produce the following information (the 'Specified CDRs'):

- a. Call data records and text (SMS and MMS) messages to and from number [REDACTED], starting from 1 January 2023 to 19 April 2023, including the following data records in readable electronic format schedules, namely comma-separated values ('CSV') format:
 - i. Subscriber information;
 - ii. Subscriber information for all numbers called/received;
 - iii. Log of incoming and outgoing calls;
 - iv. Log of incoming and outgoing text (SMS and MMS) messages;
 - v. Date of call/text message;
 - vi. Time of call/text message;
 - vii. Duration of call;
 - viii. Data usage for each call/text message, including data connection duration and kilobytes of data used;
 - ix. IMSI and IMEI of the calling party for each call and of the sending party for each text message;
 - x. Cell-site information for each participant in the call, including the cell-site initiating and ending each call, including the cell-site name and/or identifier; and
 - xi. Geographic location of each cell-site at the start of each call and geographic location of each cell-site at the end of each call specifically cell-site latitude, longitude and Azimuth direction.

36. The SPO requests that the data be provided as indicated in Annex 1 and requests the Single Judge authorise that Annex 1 be appended to any order issued.

37. In addition, in order to further promote the efficient analysis of the data, the SPO requests that the Single Judge order VALA and Ipko to provide the following content with each production report:

- a. Identification of any codes or abbreviations used in the call data records (for example codes or abbreviations denoting incoming calls, outgoing calls, text messages etc);
- b. Explanation for any anomalies (for example if data is not recorded);
- c. Explanation for missing subscriber information (including if the calling or receiving party is not a subscriber of the telecom provider); and
- d. Reasons for any exceptions (for example for missing data that is not held due to roaming).

38. Recognising the value of the existing technical dialogue, the providers are encouraged to inform the SPO, at the earliest, if the requested information or specifications in Annex 1 require clarification.

39. In addition, the SPO requests that the Single Judge authorise the SPO to request the Dutch authorities to order all Dutch telecom providers to produce call data records for any registered contacts with telephone number [REDACTED] starting from 1 January 2023 to 19 April 2023.

40. Pursuant to Rule 49(1), the SPO requests to be designated as the competent authority¹⁴ for service on VALA and Ipko. The SPO will serve the requested authorisation in respect of the Dutch authorities by way of a request for international legal assistance.

¹⁴ Decision on the Prosecution request for the production of call data records and text (SMS and MMS) messages, KSC-BC-2018-01/F00030, 5 April 2019, Strictly Confidential and *Ex Parte*, para.32.

V. DELAYED NOTIFICATION AND CLASSIFICATION

41. In the present instance, notifying [REDACTED] SHALA of any of the requested measures concerning them is likely to jeopardize the investigation for which the measures are sought.¹⁵

42. Indeed, informing [REDACTED] SHALA of the measures sought prior to the execution thereof would directly alert them – and any other co-perpetrators – of the SPO's awareness of, and investigation into, these acts of potential witness interference, and thus give them and any co-perpetrators an opportunity to hide or destroy evidence, alert relevant contacts, or engage in obstruction-related activities. Alerting [REDACTED] SHALA at this time might also [REDACTED]. Accordingly, the SPO requests that the Single Judge issue an order permitting the SPO to delay notification to [REDACTED] SHALA until the conclusion of the related criminal investigation.

43. This filing is classified as strictly confidential and *ex parte* in order to protect SPO witnesses and active obstruction investigations. The SPO requests an opportunity to make submissions before any reclassification or redacted version is ordered.

VI. RELIEF SOUGHT

44. For the foregoing reasons, the SPO requests the Single Judge to:

- a. Issue an order valid for a term that allows the SPO to serve the order within 90 days from the date the order is signed, in the terms set out above, requiring VALA and Ipko to provide the Specified CDRs for phone number [REDACTED] as defined in Paragraphs 35-37 above, within 5 days from service of the order;

¹⁵ See Rule 34(3).

- b. Request the Dutch authorities to order all Dutch telecom providers to produce call data records for any registered contacts with the telephone number [REDACTED] starting from 1 January 2023 to 18 April 2023;
- c. Designate the SPO as the authority for service and execution;
- d. Authorise the SPO to disclose, as appropriate and necessary, the order(s) and/or requests, for the purpose of execution;
- e. [REDACTED];
- f. [REDACTED]; and
- g. Defer notification to [REDACTED] SHALA until the conclusion of the investigation.

Word count: 3,858

/signed/

Alex Whiting
Acting Specialist Prosecutor

Thursday, 20 April 2023

At The Hague, The Netherlands.