



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

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 15 November 2023

Language: English

Classification: Public

Public redacted version of 'Prosecution request for an order and related non-disclosure with strictly confidential and *ex parte* Annex'

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Articles 35(2), 39(3), and 53 of the Law¹ and Rules 30-33, 37, 39, and 48(2) of the Rules,² the Specialist Prosecutor's Office ('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] 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 [REDACTED] (the '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 [REDACTED] for and, if found, provide the SPO with (i) a copy of an audio recording made on 5 April 2023 [REDACTED] (the '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 [REDACTED];

(collectively, the 'Search Request').

2. The relevant requirements for the Search Request are satisfied. The search is necessary to collect and preserve evidence of crimes within the jurisdiction of the KSC and there is grounded suspicion that [REDACTED] contains such evidence.³ The measures sought are necessary, insofar as the proposed limited examination of the content of [REDACTED] is the only effective means of obtaining such evidence. The

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').

³ Rule 37(2)(c).

resulting interference with [REDACTED] rights is proportionate to the legitimate aim of the investigation, and does not negate the essence of the guaranteed rights.

3. Pursuant to Rule 108 and for the reasons articulated in Section VII below, the SPO further requests the temporary non-disclosure in KSC-BC-2023-10 ('Case 10') of: (a) a copy of 12 April Recording already in the SPO's possession⁴ and the resulting SPO transcript;⁵ (b) [REDACTED];⁶ (c) [REDACTED]; (d) the results of this Search Request when provided to the SPO by [REDACTED]; and (e) this Search Request and any resulting Decision issued by the Pre-Trial Judge (collectively, the 'Disclosable Material').⁷

II. FACTUAL AND PROCEDURAL HISTORY

4. On 5 April 2023, Witness 1 reported to the SPO that he was threatened with death if he did not withdraw his testimony [REDACTED]. Specifically, as previously detailed in prior SPO filings, including in the Confirmed Indictment in this case, [REDACTED] Ismet BAHTIJARI visited Witness 1's home on 5 April 2023.⁸ Witness 1 reported to the SPO that BAHTIJARI told Witness 1 that he was acting on instructions from, among others, former KLA commander Haxhi SHALA, who is identified as Co-Perpetrator 1 in the Confirmed Indictment. BAHTIJARI related that Witness 1 should withdraw his testimony or risk death.⁹

5. [REDACTED], Witness 1 further informed the SPO that on 12 April 2023, Sabit JANUZI came to his home to follow-up on BAHTIJARI's visit.¹⁰ JANUZI told Witness

⁴ A copy of the 12 April Recording obtained by the SPO in the manner detailed herein bears ERN 116623.

⁵ The SPO is in the process of obtaining a full transcript of the 12 April Recording which, when complete, will be registered bearing ERN 116623-TR-AT Part 1-ET. [REDACTED].

⁶ [REDACTED].

⁷ [REDACTED].

⁸ Corrected Version of Public Redacted Version of the Decision on the Confirmation of the Indictment, KSC-BC-2023-10/F00008/COR, 12 October 2023, ('Confirmation Decision'), para.3.

⁹ Confirmation Decision, KSC-BC-2023-10/F00008/COR, para.3.

¹⁰ Confirmation Decision, KSC-BC-2023-10/F00008/COR, para.4.

1 that SHALA had sent BAHTIJARI to Witness 1, and that JANUZI was there to find out what Witness 1 planned to do and how the matter of his testimony could be addressed ('the Second Approach').¹¹

6. [REDACTED]. [REDACTED]. [REDACTED].

7. [REDACTED].¹² [REDACTED].

8. On 4 October 2023, the SPO conducted a video-recorded suspect interview with JANUZI.¹³ JANUZI's attorney was present for the interview. During the interview, JANUZI admitted that he visited Witness 1's residence on the evening of 12 April 2023. JANUZI told the SPO that he visited Witness 1's home to find out whether Witness 1 was, in fact, a witness in KSC proceedings. JANUZI denied that he visited Witness 1 to prevent Witness 1 from testifying before the KSC, and denied anyone directed JANUZI to visit Witness 1 to persuade Witness 1 not to testify. JANUZI also told the SPO that during his 12 April visit to Witness 1's home, Witness 1 asked JANUZI to tell Haxhi SHALA that SHALA should pay Witness 1 € 200,000. JANUZI told the SPO that JANUZI later reported this to SHALA and that SHALA responded by laughing and stating he did not know who Witness 1 is.

9. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

10. [REDACTED], Witness 1 also told the SPO that during JANUZI's 12 April visit, JANUZI told Witness 1 that he could be compensated. Witness 1 then told JANUZI, in sum and substance, to tell those who wanted him not to testify to pay Witness 1 € 200,000 in exchange for not testifying. [REDACTED].

11. [REDACTED]. [REDACTED]. [REDACTED].

¹¹ Confirmation Decision, KSC-BC-2023-10/F00008/COR, para.4.

¹² [REDACTED].

¹³ ERN 116063-TR-ET Parts 1-4.

12. [REDACTED].
13. [REDACTED]. [REDACTED].
14. [REDACTED].
15. [REDACTED].¹⁴ [REDACTED].
16. [REDACTED]. [REDACTED].¹⁵ [REDACTED]. [REDACTED].
17. [REDACTED].¹⁶

III. APPLICABLE LAW

18. The SPO now requests the Pre-Trial Judge to authorise the SPO to request [REDACTED] to search [REDACTED] for the limited purposes described herein. The Single Judge has identified the relevant requirements for search and seizure of a [REDACTED] as follows:¹⁷

- a. the [REDACTED] is the property of the person concerned;
- b. there is grounded suspicion that, *inter alia*, evidence of a crime within the jurisdiction of the KSC is on the [REDACTED];
- c. the seizure is necessary for the investigation;
- d. the measure sought is unavoidable (in that, in the specific circumstances, evidence may not be otherwise obtained and the requested seizures

¹⁴ [REDACTED]

¹⁴ [REDACTED]

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ See e.g. Decision Authorising Search and Seizure and Related Measures, KSC-BC-2023-10/F00043, 3 May 2023, Strictly Confidential and *Ex Parte*; Decision Authorising Search and Seizure and Related Measures, KSC-BC-2023-10/F00041, 28 April 2023, Strictly Confidential and *Ex Parte*.

appear to be the only effective means for the purposes of the investigation); and

- e. the resulting interference into the person's right to personal integrity, privacy or property is proportionate to the legitimate aim of the investigation and does not negate the essence of the guaranteed right.

IV. SUBMISSIONS

A. THE RELEVANT REQUIREMENTS HAVE BEEN MET

19. The SPO recalls that the Pre-Trial Judge has already found, *inter alia*, that there is a well-grounded suspicion that between at least 5 April and 12 April 2023, BAHTIJARI and JANUZI committed and/or attempted to commit 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 KCC and Article 15(2) of the Law.¹⁸

20. [REDACTED] provides a sufficient legal basis to authorise the Requested Search for the limited purpose of recovering (a) the 12 April Recording and all of the metadata associated with the recording [REDACTED], and (b) any recording [REDACTED]. The collection of such evidence is necessary to, *inter alia*, (a) the SPO's prosecution of the pending case against BAHTIJARI and JANUZI and (b) the SPO's ongoing investigation of Co-Perpetrator 1's involvement in the unlawful obstructive conduct. The SPO further notes that the evidence the SPO seeks to collect regarding the 12 April Recording is potentially necessary also to BAHTIJARI's and JANUZI's defence in this case. The same is potentially true of any audio recording [REDACTED].

21. The requested search of [REDACTED] is unavoidable because it is the only effective means of furthering the investigation and securing the evidence

¹⁸ See Confirmation Decision, KSC-BC-2023-10/F00008/COR, paras 95, 111.

[REDACTED]. There is no other less intrusive but equally effective means to collect the sought evidence. [REDACTED]. [REDACTED].

22. Finally, the requested search is proportionate to the legitimate aim of the investigation and does not negate the essence of [REDACTED] rights to privacy and property. [REDACTED].

B. TIME, DURATION, AND SCOPE OF THE SEARCH

23. [REDACTED] is currently in the custody of the SPO. The SPO intends to transmit [REDACTED] to [REDACTED] immediately after receiving the requested authorisation from the Pre-Trial Judge.

24. [REDACTED] will first make a full forensic image of [REDACTED] (the 'Forensic Image'). [REDACTED] will then will extract from the Forensic Image a copy of the 12 April Recording. [REDACTED] will then examine the Forensic Image and provide to the SPO a detailed report containing any and all metadata and other records related to the 12 April Recording. [REDACTED] will then provide to the SPO the 12 April Recording and the metadata report.

25. [REDACTED] will then search the Forensic Image for any audio recording made [REDACTED] on 5 April 2023. If [REDACTED] locates any such audio recording(s), [REDACTED] will provide to the SPO a copy of such audio recording(s) and a report containing any and all metadata and other records related to such recording(s). The SPO will then provide to the SPO the any 5 April 2023 audio recording(s) found on the Forensic Image as well as the metadata report on any such recording(s).

26. [REDACTED] will securely store the Forensic Image [REDACTED] at [REDACTED] pending any future proceedings.

V. TERMS OF THE REQUESTED ORDER

27. The SPO requests that the Pre-Trial Judge authorise the retention of the (a) extracted 12 April Recording and any 5 April 2023 audio recording(s) and accompanying report(s) on the metadata, and (b) the full forensic copy of [REDACTED] to be stored at [REDACTED] for: (1) the time necessary to complete the examination of the relevant content and; and (2) such further period of time as may be necessary for their potential use in evidence.

28. In its execution of the requested search order, the SPO will comply with the safeguards outlined in Rule 39, 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. [REDACTED].

29. Pursuant to Rule 49(1), the SPO also requests to be designated as the competent authority¹⁹ for service and execution of the requested search order.

VI. TIMING OF REQUEST

30. Given the proceedings in Case 10 and the ongoing investigation into, *inter alia*, Co-Perpetrator 1's involvement in the charged offences, the SPO anticipates executing the requested search as soon as possible.

VII. [REDACTED]

31. [REDACTED]. [REDACTED]. [REDACTED].²⁰

32. [REDACTED],²¹ [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

33. [REDACTED]. [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ [REDACTED].

VIII. CONFIDENTIALITY

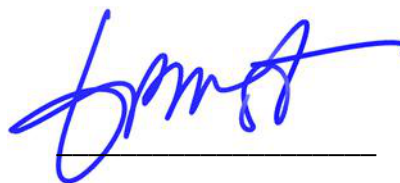
34. This filing is classified as strictly confidential and *ex parte* for the reasons articulated above. The SPO requests an opportunity to make submissions before any reclassification or redacted version is ordered.

IX. RELIEF REQUESTED

35. The SPO hereby requests the Pre-Trial Judge to grant this request, in the terms set out in Paragraph 1 above, and to:

- a. authorise the limited search of [REDACTED] as set forth in Paragraph 1, and for expert technical examination of [REDACTED] and potential use in evidence of the findings;
- b. designate the SPO as the competent authority for service and execution; and authorise the SPO to disclose the order, as appropriate and necessary, for the purpose of execution; and
- c. authorise the SPO to store, protect, and retain seized evidence and any extracted data in accordance with the Rules.

Word count: 3,744



Kimberly P. West

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Wednesday, 15 November 2023

At The Hague, The Netherlands.