



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

In: KSC-BC-2023-10
Specialist Prosecutor v. Sabit Januzi and Ismet Bahtijari
KSC-BC-2023-11
Specialist Prosecutor v. Haxhi Shala

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 20 December 2023

Language: English

Classification: Public

Public redacted version of 'Prosecution supplemental request for an order
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') hereby supplements its earlier request for an order from the Pre-Trial Judge in Search Request F00103.³ The SPO now also requests that any forthcoming order authorise 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; and
- b. Search [REDACTED] for and, if found, provide the SPO with (i) copies of audio recordings made on 5 April 2023 and 12 April 2023 [REDACTED] (collectively, the 'April Recordings'), and (ii) a forensic report regarding the metadata and any other records related to the creation and storage of the April Recordings ('Associated Records') if such recordings exist [REDACTED];

(collectively, the 'Supplemental Search Request').

2. The relevant requirements for the Supplemental 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.⁴ The measures sought are necessary, insofar as the proposed limited examination of the content of [REDACTED] is the only effective means of obtaining

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 Prosecution request for an order and related non-disclosure with strictly confidential and *ex parte* Annex, KSC-BC-2023-10/F00103, 15 November 2023, Strictly confidential and *Ex Parte* ('Search Request F00103').

⁴ Rule 37(2)(c).

such evidence. The 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. In light of the arrest of Haxhi SHALA on 11 December 2023, the SPO hereby withdraws its non-disclosure request for the Disclosable Material, as defined in Search Request F00103.⁵

II. FACTUAL AND PROCEDURAL HISTORY

4. On 15 November 2023, the SPO filed Search Request F00103 in relation to [REDACTED]. The facts detailed in Search Request F00103 are hereby incorporated by reference and the SPO will not repeat them here. However, the SPO briefly recounts here the factual and procedural background critical to the Supplemental Search Request as well as key new facts.

5. [REDACTED].

6. [REDACTED].⁶ [REDACTED].

7. [REDACTED].⁷ [REDACTED].⁸

8. [REDACTED].⁹

9. [REDACTED].¹⁰

⁵ Search Request F00103, KSC-BC-2023-10/F00103, paras. 3 (defining 'Disclosable Material'), 31-33 (non-disclosure request).

⁶ See [REDACTED].

⁷ [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

III. APPLICABLE LAW

10. The SPO now makes the Supplemental Search Request to 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 [REDACTED] as follows:¹¹

- a. [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 [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 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

11. 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

¹¹ 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*.

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.¹²

12. [REDACTED] provide a sufficient legal basis to authorise the Supplemental Search Request for the limited purpose of recovering the April Recordings and all of the related metadata and Associated Records. The collection of such evidence is necessary to, *inter alia*, the SPO's prosecution of the pending cases against BAHTIJARI, JANUZI and SHALA. The SPO further notes that the evidence the SPO seeks to collect regarding the April Recordings is potentially necessary also to BAHTIJARI's, JANUZI's and SHALA's respective defences in these cases.

13. The Supplemental Search Request is unavoidable because it is the only effective means of furthering the investigation and securing the evidence known or believed to be on [REDACTED]. There is no other less intrusive but equally effective means to collect the sought evidence.

14. Finally, the Supplemental Search Request is proportionate to the legitimate aim of the investigation and does not negate the essence of [REDACTED] rights to privacy and property. Indeed, as detailed above, [REDACTED] to the proposed limited examination of [REDACTED] for the purpose of recovering the April Recordings and any related metadata and Associated Records as described above.

B. TIME, DURATION, AND SCOPE OF THE SEARCH

15. [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.

¹² See Confirmation Decision, KSC-BC-2023-10/F00008/COR, paras 95, 111.

16. [REDACTED] will first make a full forensic image of [REDACTED] (the 'Forensic Image'). [REDACTED] will then search the Forensic Image for any audio recordings made using [REDACTED] on 5 April 2023 and/or 12 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 Associated Records related to such recording(s).

17. [REDACTED] will securely store the Forensic Image of [REDACTED] at [REDACTED] premises pending any future proceedings.

V. TERMS OF THE REQUESTED ORDER

18. The SPO requests that the Pre-Trial Judge authorise the retention of any April Recordings and accompanying metadata report(s), 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.

19. 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. In particular, considering [REDACTED] the limited search and its results once [REDACTED] has completed the requested imaging and limited examination of [REDACTED].

20. Pursuant to Rule 49(1), the SPO also requests to be designated as the competent authority¹³ for service and execution of the requested search order.

¹³ See Decision on Prosecution Requests for the Extension of Measures Authorised in F00377 and F00394 and Access to Preserved Records, KSC-BC-2023-10/F00067, 21 August 2023, Strictly Confidential and *Ex Parte*, para.53.

VI. TIMING OF REQUEST

21. Given the proceedings in Cases 10 and 11, the SPO anticipates executing the requested search as soon as possible.

VII. CONFIDENTIALITY

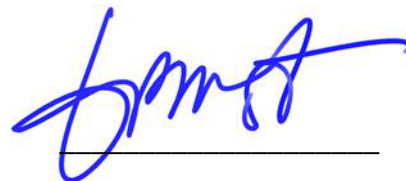
22. This filing is classified as strictly confidential and *ex parte* for the reasons articulated above. The SPO requests an opportunity to make submissions before any reclassification or redacted version is ordered.

VIII. RELIEF REQUESTED

23. 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: 1965



Kimberly P. West

Specialist Prosecutor

Wednesday, 20 December 2023
At The Hague, The Netherlands.