



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

**Date:** 5 January 2024

**Language:** English

**Classification:** Public

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**Public redacted version of 'Prosecution request for records  
with confidential Annex 1'**

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**Specialist Prosecutor's Office**  
Kimberly P. West

**Counsel for Sabit Januzi**  
Jonathan Elystan Rees

**Counsel for Ismet Bahtijari**  
Felicity Gerry

**Counsel for Haxhi Shala**  
Toby Cadman

## I. INTRODUCTION

1. Pursuant to Articles 35(2), 39(3) and 53 of the Law<sup>1</sup> and Rules 31 and 34 to 35 of the Rules,<sup>2</sup> the Specialist Prosecutor's Office ('SPO') requests that the Pre-Trial Judge (1) issue separate orders<sup>3</sup> to **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, and (2) request the Dutch authorities to order all Dutch telecom providers to produce the call data records for any registered contacts with the mobile phone number [REDACTED] assigned to [REDACTED] ('Witness 1') (the 'Requested Records'). The mobile phone with call number [REDACTED] has been surrendered to the SPO by Witness 1.

2. The relevant requirements are satisfied in this case. There is a grounded suspicion that crimes within the jurisdiction of the Kosovo Specialist Chambers ('KSC') have been, are being, or are about to be committed,<sup>4</sup> the Requested Records are necessary for the investigation of such offenses,<sup>5</sup> and the evidence cannot be obtained by other, less intrusive but equally effective means.<sup>6</sup> Any resulting interference with any concerned person's right to personal privacy is proportionate to

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> The SPO has confirmed that VALA administers the local prefixes 044, 045 and 046, and IPKO administers the local prefixes 043, 048 and 049. The SPO has further confirmed that the international prefix for Kosovo +383 also covers any calls made with phone numbers that still have the international prefix +377. The international prefixes for other countries that have been used in the Kosovo network, in particular +386, will no longer work with Kosovo numbers. However, the SPO notes that each of these country-code prefixes can still be associated/used with a Kosovo phone number in messaging applications such as Viber and WhatsApp.

<sup>4</sup> Rule 34(1).

<sup>5</sup> Rule 31(1)(b).

<sup>6</sup> Rule 34(2).

the legitimate aim of the investigation and does not negate the essence of any guaranteed right.<sup>7</sup>

## II. BACKGROUND

3. On 4 October 2023, the SPO filed the Case 10 Indictment,<sup>8</sup> later confirmed by the Pre-Trial Judge,<sup>9</sup> charging BAHTIJARI and JANUZI with offences within the meaning of Article 15(2). Previously, on 7 July 2023, the Single Judge issued Decision F00056 ordering VALA and IPKO to produce, *inter alia*, Call Data Records ('CDRs') for BAHTIJARI and JANUZI, which covered the period from 1 January 2023 to 23 June 2023.<sup>10</sup> On 27 July 2023, the Single Judge issued Decision F00063 regarding a related request, ordering VALA and IPKO to produce CDRs for [REDACTED] for the period from 1 January 2023 to 23 June 2023.<sup>11</sup>

4. On 6 December 2023, the SPO filed the Case 11 Indictment,<sup>12</sup> later confirmed by the Pre-Trial Judge,<sup>13</sup> charging SHALA with offences within the meaning of Article 15(2) of the Law. Previously, on 16 May 2023, the Single Judge issued Decision F00045 ordering VALA and IPKO to produce CDRs for SHALA for the period from 1 January 2023 to 23 June 2023.<sup>14</sup>

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<sup>7</sup> Rule 31(1)(c).

<sup>8</sup> Indictment, KSC-BC-2023-10/F00010/A01, 4 October 2023, Strictly Confidential ('Case 10 Indictment'). A public redacted version of the confirmed indictment was submitted on 6 October 2023, KSC-BC-2023-10/F00016/A01.

<sup>9</sup> Decision on the Confirmation of the Indictment, KSC-BC-2023-10/F00008/CONF/RED, 2 October 2023, Confidential ('Case 10 Confirmation Decision'). A corrected version of the public redacted version of the Case 10 Confirmation Decision was filed on 12 October 2023, KSC-BC-2023 10/F00008/RED/COR.

<sup>10</sup> Decision on the Prosecution Request for Call Data Records, KSC-BC-2023-10/F00056, 7 July 2023, Strictly Confidential and *Ex Parte* ('Decision F00056'), paras 51-54, 64(a)-(c).

<sup>11</sup> Decision on the Prosecution Request for Call Data Records, KSC-BC-2023-10/F00063, 27 July 2023, Strictly Confidential and *Ex Parte* ('Decision F00063'), para.57(a)-(c).

<sup>12</sup> Indictment, KSC-BC-2023-11/F00007/A01, 6 December 2023, Strictly Confidential ('Case 11 Indictment'). A public redacted version of the confirmed indictment was submitted on 12 December 2023, KSC-BC-2023-10/F00013/A01.

<sup>13</sup> Decision on the Confirmation of the Indictment, KSC-BC-2023-11/F00005, 4 December 2023, Confidential ('Case 11 Confirmation Decision').

<sup>14</sup> Decision on the Prosecution Requests for Detention Centre Information and Call Data Records, KSC-BC-2023-10/F00045, 16 May 2023, Strictly Confidential and *Ex Parte* ('Decision F00045'), paras 30-31, 33-35. 39, 61(a)-(c).

5. On 3 November 2023, during the second status conference, the JANUZI Defence requested disclosure of ‘full downloads from Witness 1’s communication devices’ during the period before and after the interaction with JANUZI.<sup>15</sup> By *inter partes* email dated 7 December 2023, the JANUZI Defence requested that the SPO obtain and disclose the Requested Records under the same terms as the SPO’s previous CDR requests for the Accused and for the same period.

6. When prompted for the reasons for the request, the JANUZI Defence provided the following response via *inter partes* email on 12 December 2023:

Your witness, Witness 1, initiated telephone contact and attempted to solicit a bribe. It is essential to the defence that the circumstances in which he did so are fully investigated by reference to who Witness 1 was in contact with in the lead-up to that incitement by him (and who else might have had prior knowledge of, and/or participation in, that act of incitement). It is reasonable to infer that his telephone records, including call data, text messages and social media communications will contain relevant evidence in relation thereto.

7. While the SPO was considering this request, at the third status conference on 14 December 2023, the Pre-Trial Judge took note of said consideration,<sup>16</sup> and invited the JANUZI Defence to make a request to the Pre-Trial Judge on the matter if the SPO declined to apply for the Requested Records itself.<sup>17</sup>

8. In an *inter partes* email dated 15 December 2023, the SPO informed the JANUZI Defence that it had considered the request and would apply for the Requested Records and provide any records obtained to the Accused.

### III. SUBMISSIONS

9. The legal and factual basis upon which the Pre-Trial Judge issued the Case 10 Confirmation Decision, the Case 11 Confirmation Decision, and Decisions F00045, F00056, and F00063 support the instant application for the Requested Records.

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<sup>15</sup> Transcript (Status Conference), 3 November 2023, p.87, lines 10-14.

<sup>16</sup> Transcript (Status Conference), 14 December 2023, p.105, lines 6-15.

<sup>17</sup> Transcript (Status Conference), 14 December 2023, p.105 lines 16-18.

10. Although the SPO disputes the Defence's characterisation of events related to Witness 1 advanced by the JANUZI Defence, the Requested Records could provide information relevant to the Accused's approaches to Witness 1, as well as Witness 1's communications before, during, and after the period when the Accused separately approached him.

11. The instant request is proportionate to the legitimate aim of the investigation and to the resulting interference with the rights of the persons involved.<sup>18</sup> The SPO addresses each legal requirement in turn below.

A. THE INFORMATION SOUGHT IS NECESSARY

12. A review of the Requested Records, which includes the subscriber information and call metering information - including incoming and outgoing call and text message records, data access records, and location information - may confirm the existence of contacts and the pattern of contacts with specific numbers, as well as establish the identities of others potentially involved in the obstructive conduct and Witness 1's related conduct and communications.

13. The Requested Records may provide relevant information which cannot be obtained by other, less intrusive but equally effective means.

B. THE REQUESTED ORDERS ARE PROPORTIONATE TO THE LEGITIMATE AIM OF THE INVESTIGATION

14. The requested orders may contain records relevant to Witness 1's conduct and communications during the relevant time period subject to investigation.<sup>19</sup>

15. The requested orders are proportionate to the legitimate aims of the investigation and do not negate the essence of any guaranteed right because (i) they are in accordance with the Law and Rules; (ii) as set out below, their terms are tailored to the needs of the investigation/trial and are designed to exclude information of no

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<sup>18</sup> See Decision F00045, KSC-BC-2023-10/F00045, paras 37-38, 40-42.

<sup>19</sup> See e.g. Articles 35(2)(f), Rule 30(2)(a) and Rule 80.

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.<sup>20</sup>

#### IV. THE TERMS OF THE REQUESTED ORDERS FOR CALL DATA RECORDS

16. The SPO requests that the Pre-Trial Judge issues separate orders to 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 Requested Records, as defined here:

- a. Call data records and text (SMS and MMS) messages to and from call number [REDACTED];
- b. starting from 1 January 2023 to 23 June 2023,<sup>21</sup> 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;

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<sup>20</sup> Articles 1(2), 35(2)(f); Rules 30(2), 62.

<sup>21</sup> 1 January 2023 to 23 June 2023 is the same date range as the CDRs for the Accused.

- 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.

17. The SPO requests that the data be provided as indicated in Annex 1 and requests the Pre-Trial Judge authorise that Annex 1 be appended to any order issued.

18. In addition, in order to further promote the efficient analysis of the data, the SPO requests that the Pre-Trial Judge issues separate orders to 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).

19. 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.

20. In addition, the SPO requests that the Pre-Trial 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 23 June 2023.

21. Pursuant to Rule 49(1), the SPO requests to be designated as the competent authority 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.

A. REQUEST FOR PRODUCTION ON A TIMELY BASIS

22. Given the nature of the incident at issue, the SPO requests the Pre-Trial Judge to order the cellular service providers to produce the requested data within seven days from service of the order.

B. RETENTION, STORAGE, AND PROTECTION OF DATA

23. Data received from the cellular service providers will be by an SPO representative authorised to exercise police powers in Kosovo, or through relevant international legal assistance channels in the case of the Dutch authorities. The chain of custody for evidence collected pursuant to this request will remain with the SPO. The data will be forensically copied and held by the SPO as follows: (a) the SPO will maintain an evidence copy in the original state and on the original media provided by the cellular service provider; and (b) a working copy, for SPO analysis and disclosure to the Accused. Appropriate measures will be taken to secure the data from loss, accidental or unauthorised access, alteration, dissemination or destruction. The data will be retained by the SPO until the completion of the investigation or until a further order of the Pre-Trial Judge issued pursuant to Rule 33.

V. CONFIDENTIALITY

24. This filing is submitted as confidential in order to protect the integrity, security and confidentiality of: (i) service and execution of any decision and order issued; and (ii) relevant evidence, witnesses, including Witness 1, and/or the subscriber and/or user associated with the number concerned by this request.



## VI. RELIEF SOUGHT

25. For the foregoing reasons, the SPO requests the Pre-Trial 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 to provide the Requested Records for phone number [REDACTED] as defined in Paragraphs 16-21 above, within seven days from service of the order;
- b. 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 IPKO to provide the Requested Records for phone number [REDACTED].
- c. 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 23 June 2023;
- d. Designate the SPO as the authority for service and execution;
- e. Authorise the SPO to disclose, as appropriate and necessary, the order(s) and/or requests, for the purpose of execution.

**Word count: 2,339**



**Kimberly P. West**

**Specialist Prosecutor**

Friday, 5 January 2024

At The Hague, The Netherlands.