



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

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Public redacted version of 'Prosecution request for records
with strictly confidential and *ex parte* Annex 1'

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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 of the Rules, the Specialist Prosecutor's Office ('SPO') requests that the Single Judge (1) issue separate orders³ 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:

- a. Sabit JANUZI's mobile phone number [REDACTED] ('First Request');
- b. Ismet BAHTJARI's mobile phone number [REDACTED] ('Second Request');
- c. [REDACTED]'s mobile phone number [REDACTED] ('Third Request');
- d. [REDACTED]'s mobile phone numbers [REDACTED] and [REDACTED] ('Fourth Request'); and
- e. [REDACTED]'s mobile phone numbers [REDACTED] and [REDACTED] ('Fifth Request'),

(collectively, the 'Requested Records').

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 The SPO recently 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.

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, or about to be committed,⁴ the Requested Records are necessary for the SPO's investigations of such offenses,⁵ and the evidence cannot be obtained by other, less intrusive but equally effective means.⁶ Any resulting interference with any concerned person's right to personal privacy is proportionate to the legitimate aim of the investigation and does not negate the essence of any guaranteed right.⁷

II. BACKGROUND

3. [REDACTED].⁸ [REDACTED].

4. On 20 April 2023, the SPO submitted its request for, *inter alia*, the Call Data Records ('CDRs') for a telephone number attributed to Haxhi SHALA. The SPO requested the records in relation to its investigation into SHALA's potential involvement in the efforts by, *inter alia*, Ismet BAHTJARI and Sabit JANUZI to intimidate and obstruct the testimony of [REDACTED].⁹

5. On 16 May 2023, the Single Judge issued Decision F00355 ordering VALA and IPKO to produce the Haxhi SHALA CDRs.¹⁰ The Single Judge noted that 'he already found a grounded suspicion that Mr Shala and Mr Bahtjari, likely acting on the instructions or directions of others have committed, are committing, or are about to

⁴ Rule 34(1).

⁵ Rule 31(1)(b).

⁶ Rule 34(2).

⁷ Rule 31(1)(c).

⁸ See e.g., [REDACTED].

⁹ Prosecution Requests for [REDACTED] Call Data Records, KSC-BC-2018-01/F00333, 20 April 2023, Strictly Confidential and *Ex Parte* ('the 20 April Records Request').⁹ Prosecution Requests for [REDACTED] Call Data Records, KSC-BC-2018-01/F00333, 20 April 2023, Strictly Confidential and *Ex Parte* ('20 April Records Request').

¹⁰ Decision on the Prosecution Requests for [REDACTED] Call Data Records, KSC-BC-2018-01/F00355, 16 May 2023, Strictly Confidential and *Ex Parte* ('Decision F00355').

commit an offence within the meaning of Article 15(2) of the Law.¹¹ The SPO further recalls that in Decision F00348, the Single Judge found a grounded suspicion that Sabit JANUZI, 'potentially acting on the instruction or direction of others and/or in co-perpetration with others, including Mr Bahtjari and Mr Shala, has committed, is committing or is about to commit an offence within the meaning of Article 15(2) of the Law'.¹²

III. SUBMISSIONS

6. The legal and factual basis upon which the Single Judge issued Decisions F00342, F00348, and F00355¹³ supports the SPO's instant request for the CDRs of the phone numbers attributed to Sabit JANUZI, Ismet BAHTJARI, [REDACTED]. The SPO is mindful that the Single Judge is well-versed in the factual and legal submissions supporting Decisions F00342, F00348, and F00355 and other related decisions, as well as the SPO's requests underpinning them. The SPO thus incorporates by reference those prior decisions and requests and will not repeat the facts here. However, the SPO provides below a brief summary of the operative facts and newly collected evidence which further support the current request.

7. As an initial matter, the SPO recalls that [REDACTED] reported that BAHTJARI and JANUZI visited [REDACTED] home on 5 and 12 April 2023, respectively. Both men delivered messages to [REDACTED] aimed at obstructing his testimony [REDACTED].¹⁴ BAHTJARI and JANUZI both told [REDACTED] that their messages were delivered at the instruction of Haxhi SHALA. [REDACTED] believes that the messages ultimately emanated from SHALA, [REDACTED].

¹¹ Decision F00355, KSC-BC-2018-01/F00355, para.30, *citing* Decision F00342, KSC-BC-2018-01/F00342, para.26.

¹² Decision Authorising Search and Seizure and Related Measures, KSC-BC-2018-01/F00348, 3 May 2023, Confidential and *Ex Parte* ('Decision F00348'), para.24.

¹³ See Decision F00355, KSC-BC-2018-01/F00355, paras 26-43.

¹⁴ See Supplemental Request, KSC-BC-2018-01/F00358, paras 8-12.

8. The SPO further recalls that the investigation has shown that BAHTJARI first called [REDACTED] via Facebook Messenger at approximately 15:10 on 5 April 2023, and then visited [REDACTED] home approximately 30 minutes later. During this visit, BAHTJARI told [REDACTED], *inter alia*, (1) to withdraw his testimony and (2) that Haxhi SHALA had instructed BAHTJARI to deliver this message.¹⁵

9. Pursuant to search and seizure orders issued by the Single Judge,¹⁶ the SPO seized the mobile phones of BAHTJARI, JANUZI, and Haxhi SHALA in early May 2023.

10. The SPO's preliminary – and ongoing – analysis of the seized phones shows numerous phone communications corroborating [REDACTED] account to the SPO and strengthening the grounded suspicion of obstruction offences committed by BAHTJARI, JANUZI, Haxhi SHALA, and others.¹⁷

11. The initial search results show, for example, that after approximately two months without any apparent phone communication between them, Haxhi SHALA and JANUZI began actively communicating in early April 2023, just days before BAHTJARI's 5 April 2023 obstruction-related visit to [REDACTED].

12. On 2 April 2023, SHALA tried to call JANUZI at approximately 12:21. At approximately 13:21, SHALA called JANUZI. JANUZI then returned SHALA's call. The conversation lasted approximately 36 seconds.

13. Then, at approximately 08:32 on 5 April 2023, SHALA called JANUZI. This call lasted approximately 45 seconds. SHALA's phone then received three missed calls from JANUZI's phone at approximately 14:53, 14:54, and 15:44. At approximately 17:47 that same day, SHALA received a WhatsApp message from JANUZI stating: *'When you finish your meal, call me.'*

¹⁵ See Prosecution request for orders authorising search and seizure of mobile telephones, KSC-BC-2018-01/F00335, 20 April 2023, Strictly Confidential and *Ex Parte*, ('BAHTJARI and SHALA Search and Seizure Request'), para.32.

¹⁶ See BAHTJARI and SHALA Search and Seizure Decision, KSC-BC-2018-01/F00342. See also JANUZI Search and Seizure, KSC-BC-2018-01/F00348.

¹⁷ The SPO notes that the analysis of the records obtained from the seized mobile phones is ongoing, and subject to further revision.

14. Records from Haxhi SHALA's mobile phone show three more phone calls between JANUZI and SHALA on the evening of 12 April 2023. JANUZI initiated the first two calls at approximately 19:47 and 20:52. These calls lasted approximately 1 minute and 20 seconds and 44 seconds, respectively. SHALA initiated the third call at approximately 21:34. The call lasted approximately 8 seconds.

15. As context, the SPO recalls that [REDACTED] reported to the SPO that JANUZI visited his home in the late evening of 12 April 2023. [REDACTED] further informed the SPO that JANUZI called [REDACTED] several times on the evening of 12 April, first to state that he was coming over and then to tell [REDACTED] that he had arrived at [REDACTED] home. [REDACTED] phone logs show two connected phone calls between JANUZI and [REDACTED] on 12 April 2023, at 21:23 and 21:41, and a final missed call at 21:57. The SPO assesses that this final missed call at 21:57 likely indicates the approximate time JANUZI arrived at [REDACTED] home. These three phone calls do not appear in the call records in JANUZI's seized phone, indicating JANUZI may have deleted the records.

16. Haxhi SHALA's phone records and CDRs show that the next phone contact between JANUZI and SHALA occurred at 22:52, when JANUZI called SHALA. The call lasted approximately 44 seconds. Based on the evidence obtained to date, the SPO assesses that this phone call pertained to JANUZI's visit [REDACTED].

17. [REDACTED].¹⁸

18. [REDACTED].

19. [REDACTED].

20. [REDACTED].

21. The SPO recalls also that [REDACTED] informed the SPO that the contact between him and JANUZI on 12 April 2023 was established through a series of exchanges between and among their common contact [REDACTED]. Consistent with

¹⁸ See, e.g., [REDACTED].

[REDACTED] account, JANUZI's phone records show that on 12 April 2023 at 17:59, JANUZI used the Facebook Messenger application to send [REDACTED].

22. [REDACTED].

23. [REDACTED].

24. [REDACTED].

25. [REDACTED].

26. [REDACTED]¹⁹ [REDACTED].

27. [REDACTED].²⁰ [REDACTED].

28. [REDACTED].

29. [REDACTED].²¹ [REDACTED].²² [REDACTED].

30. [REDACTED].²³

31. In sum, the SPO submits that the additional facts detailed above further demonstrate the necessity for the Requested Records. Furthermore, the SPO's request is proportionate to the legitimate aim of the investigation and to the resulting interference with the rights of the persons involved.²⁴

32. Noting especially Rules 31(1), 34(1)-(2), and 35, the SPO incorporates by reference the Single Judge's recent decisions setting forth the legal basis permitting the SPO to obtain CDRs.²⁵ The SPO addresses each legal requirement in turn below.

A. THE INFORMATION SOUGHT IS NECESSARY

33. A review of the Requested Records, which includes the subscriber information and call metering information - including incoming and outgoing call and text

¹⁹ See [REDACTED].

²⁰ See [REDACTED].

²¹ [REDACTED].

²² See *generally* [REDACTED].

²³ See *e.g.*, [REDACTED].

²⁴ See Decision F00355, KSC-BC-2018-01/F00355, paras 37-38, 40-42.

²⁵ Decision F00355, KSC-BC-2018-01/F00355, paras 19-25, 27-28; Decision on Urgent Prosecution Supplemental Requests in Relation F00318 and F00321, KSC-BC-2018-01/F00330, 14 April 2023, Strictly Confidential and *Ex Parte*, paras 19-25, 27. See also Urgent Prosecution supplemental requests in relation to F00318 and F00321, KSC-BC-2018-01/F00326, 5 April 2023, Strictly Confidential and *Ex Parte*, para.17; Prosecution request for order [REDACTED] and for call data records, KSC-BC-2018-01/F00318, 23 March 2023, Strictly Confidential and *Ex Parte*, para.3.

message records, data access records, and location information - is 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 in the obstructive conduct under investigation.

The Requested BAHTJARI and JANUZI CDRs

34. The SPO is requesting the CDRs for BAHTJARI phone number [REDACTED], the number registered to his seized phone. The SPO is also requesting the CDRs for JANUZI's phone number [REDACTED], the number registered to his seized phone.

35. The BAHTJARI and JANUZI CDRs are necessary despite the fact that the SPO has already seized their physical phones. The SPO notes that based on its initial review of the seized phones, it appears that certain call logs, including calls between JANUZI and [REDACTED] and JANUZI and Haxhi SHALA, may have been deleted from the relevant devices. The records of these calls from the requested CDRs are necessary to the SPO's investigation and cannot be obtained by other, less intrusive but equally effective means. Furthermore, the CDRs for JANUZI and BAHTJARI are necessary also to confirm the records in their seized phones and to provide information regarding what other call logs may have been deleted from their phones prior to the SPO's seizure of the phones.

[REDACTED]

36. The requested CDRs for [REDACTED] are necessary to the investigation. [REDACTED] number was used to contact both [REDACTED] and JANUZI at times critical to the SPO investigation. [REDACTED] was the conduit used by JANUZI to connect with [REDACTED], first by phone and then in person, on 12 April 2023. The requested CDRs are thus necessary, *inter alia*, to confirm [REDACTED] account and provide proof of the contacts, and to determine the timing and scope of JANUZI's use of [REDACTED] to contact and meet with [REDACTED]. The CDRs are necessary also to determine what other role, if any, [REDACTED] may have had in the obstructive acts directed at [REDACTED].

[REDACTED]

37. [REDACTED].
38. [REDACTED].
[REDACTED]
39. [REDACTED].
40. [REDACTED].

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

41. For the reasons detailed above and in prior related filings, the requested orders are relevant to corroborating the fact that an Article 15(2) crime was, is being or is about to be committed, enabling the SPO to advance the investigation and ensuring the safety and protection of witnesses at risk on account of information provided to the SPO.²⁶

42. The requested orders are proportionate to the legitimate aim of the investigation and does not negate the essence of any guaranteed right 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.²⁷

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

43. The SPO requests that the Single 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 Shemsu street no.34, Pristinë, 10000, Kosovo) to produce the Requested Records, as defined here:

²⁶ See e.g. Articles 35(2)(f), Rule 30(2)(a) and Rule 80.

²⁷ Law, Articles 1(2), 35(2)(f); Rules 30(2), 62.

- a. Call data records and text (SMS and MMS) messages to and from number [REDACTED];
 - b. starting from 1 January 2023 to 23 June 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.
44. 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.
45. In addition, in order to further promote the efficient analysis of the data, the SPO requests that the Single 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).

46. 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.

47. 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 numbers [REDACTED] starting from 1 January 2023 to 23 June 2023.

48. Pursuant to Rule 49(1), the SPO requests to be designated as the competent authority²⁸ 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

49. Given the nature of the incident at issue, the SPO requests the Single 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

50. Data received from the cellular service providers will be by an SPO representative authorised to exercise police powers in Kosovo, or through relevant

²⁸ 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.

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. 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 Single Judge issued pursuant to Rule 33.

V. REQUEST FOR DELAYED NOTIFICATION

51. Rule 34(3) provides that a person identified in Rule 34(2) shall be notified by the Specialist Prosecutor of any special investigative measure taken so long as the objective of the measure is not likely to be jeopardized. In the present instance, notifying JANUZI, BAHTJARI, [REDACTED] is likely to jeopardize the investigation in which the special investigative measures are sought. In fact, informing them of the special investigative measures sought prior to the execution thereof would directly alert them – and any interlocutors of theirs - of the SPO's awareness of an investigation into this act of potential witness interference, and thus give them an opportunity to hide or destroy evidence, alert relevant contacts, or engage in obstruction-related activities.

52. Accordingly, the SPO requests that the Single Judge issue an order permitting the SPO to delay notification to JANUZI, BAHTJARI, [REDACTED] until the conclusion of the related criminal investigation.

VI. CONFIDENTIALITY

53. This filing is submitted as strictly confidential in order to protect the integrity, security and confidentiality of: (i) service and execution of any decision and order issued; (ii) relevant evidence, potential suspects and witnesses including [REDACTED] and the subscribers and/or users associated with the number concerned

by this Request; and (iii) the SPO's investigations at this stage of proceedings. The filing should not be reclassified until the SPO confirms that the related investigations have been fully concluded. In light of the risks outlined, the SPO requests the opportunity to make submissions before any reclassification of this Request is ordered.

VII. RELIEF SOUGHT

54. 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 to provide the Specified CDRs for phone numbers [REDACTED] as defined in Paragraphs 43-48 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 Specified CDRs for phone numbers [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;
- f. Defer notification to Sabit JANUZI, Ismet BAHTJARI, [REDACTED] until the conclusion of the investigation.

Word count: 4,848

/signed/

Alex Whiting
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Friday, 23 June 2023

At The Hague, The Netherlands.