



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

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

**Before:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Date:** 22 February 2024

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Public redacted version of

Decision on Prosecution Request for Records

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I.	PROCEDURAL BACKGROUND.....	2
II.	SUBMISSIONS.....	2
III.	APPLICABLE LAW .....	6
IV.	DISCUSSION .....	8
	A. Requirements for Authorisation of Special Investigative Measures .....	8
	1. Legal Basis .....	8
	2. Grounded Suspicion.....	9
	3. Necessity .....	10
	4. Unavoidability .....	11
	5. Proportionality .....	12
	6. Conclusion .....	13
	B. Format and Presentation.....	14
	C. Scope and Duration .....	15
	D. Reporting.....	16
	E. Storage, Protection and Retention of the Collected Data .....	16
	F. Notification .....	17
	G. Execution and Service of the Annexed Orders and Request.....	17
	H. Disclosure of the Annexed Orders and Request.....	18
V.	DISPOSITION.....	19

**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Articles 35(2)-(3), 39(3), 53 and 55 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rules 2, 31-35, 200, 202 and 208 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 3 November 2023, during the second Status Conference, the Defence of Sabit Januzi ("Januzi Defence") requested that the Specialist Prosecutor's Office ("SPO") disclose the "full downloads from Witness 1's communication devices" during the period before and after the interactions with Mr Januzi.<sup>2</sup>

2. On 5 January 2024, the SPO submitted a request seeking the Pre-Trial Judge to: (i) issue separate orders to Kosovo Telecom-Vala ("Vala") and IPKO Telecommunications LLC ("IPKO"), to produce call data records and subscriber information, along with relevant cell-site locations and identifying information; and (ii) 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 Witness 1 (collectively, the "Requested Records" and "Request").<sup>3</sup>

## II. SUBMISSIONS

3. The SPO submits that the Januzi Defence requested, via *inter partes* email dated 7 December 2023, that the SPO obtain and disclose the Requested Records under the same terms as the SPO's previous Call Data Records ("CDRs") requests for Sabit Januzi ("Mr Januzi") and Ismet Bahtijari ("Mr Bahtijari") and for the

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<sup>1</sup> KSC-BC-2023-10, F00001, President, *Decision Assigning a Pre-Trial Judge*, 11 September 2023, public; KSC-BC-2023-11, F00001, President, *Decision Assigning a Pre-Trial Judge*, 20 November 2023, public.

<sup>2</sup> KSC-BC-2023-10, Transcript of Hearing, 3 November 2023, confidential, p. 87, lines 10-14.

<sup>3</sup> KSC-BC-2023-10, F00143, Specialist Prosecutor, *Prosecution Request for Records*, 5 January 2024, confidential, paras 1, 25(a)-(c), with Annex 1, confidential.

same period.<sup>4</sup> It further submits that, via *inter partes* email dated 12 December 2023, the Januzi Defence added, that (i) it is essential that the circumstances in which Witness 1 initiated telephone contact and attempted to solicit a bribe 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); and that (ii) it is reasonable to infer that Witness 1's telephone records, including call data, text messages and social media communications, will contain relevant evidence in relation thereto.<sup>5</sup>

4. The SPO submits that, although it disputes the characterisation of events related to Witness 1 advanced by the Januzi Defence, the Requested Records could provide information relevant to Mr Januzi's and Mr Bahtijari's approaches to Witness 1, as well as Witness 1's communications before, during and after the period when Mr Januzi and Mr Bahtijari separately approached him.<sup>6</sup>

5. The SPO recalls the Single Judge's decisions rendered on 16 May 2023,<sup>7</sup> 7 July 2023<sup>8</sup> and 27 July 2023,<sup>9</sup> ordering Vala and IPKO to produce, *inter alia*, CDRs for Haxhi Shala ("Mr Shala"), Mr Januzi, Mr Bahtijari and [REDACTED], covering the period from 1 January 2023 up to 23 June 2023.<sup>10</sup> The SPO further recalls the decisions confirming the charges in the present case ("Case 10")<sup>11</sup> and in case

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<sup>4</sup> Request, para. 5.

<sup>5</sup> Request, para. 6.

<sup>6</sup> Request, para. 10.

<sup>7</sup> KSC-BC-2023-10, F00045, Single Judge, *Decision on the Prosecution Requests for [REDACTED] Call Data Records* ("16 May 2023 Decision"), 16 May 2023, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential.

<sup>8</sup> KSC-BC-2023-10, F00056, Single Judge, *Decision on the Prosecution Request for Call Data Records* ("7 July 2023 Decision"), 7 July 2023, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential.

<sup>9</sup> KSC-BC-2023-10, F00063, Single Judge, *Decision on Prosecution Request for Call Data Records* ("27 July 2023 Decision"), 27 July 2023, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential.

<sup>10</sup> Request, para. 3.

<sup>11</sup> KSC-BC-2023-10, F00008, *Decision on the Confirmation of the Indictment* ("Case 10 Confirmation Decision"), 2 October 2023, strictly confidential and *ex parte*. A confidential redacted version, a public redacted version, and a corrected version of the public redacted version of the decision were filed on 12 October 2023, F00008/CONF/RED, F00008/RED, F00008/RED/COR.

KSC-BC-2023-11 ("Case 11")<sup>12</sup> against Mr Januzi, Mr Bahtijari and Mr Shala for offences within the meaning of Article 15(2) of the Law.<sup>13</sup> The SPO submits that the legal and factual bases upon which the aforementioned decisions were issued support the instant application for the Requested Records.<sup>14</sup>

6. In light of the foregoing, the SPO requests that the Pre-Trial Judge issues separate orders to Vala (at Vala HQ, Dardania n/n street, Pristinë/Priština, 10000, Kosovo) and IPKO (at Ulpiana, Zija Shemsiu street no. 34, Pristinë/Priština, 10000, Kosovo) to produce the Requested Records, defined as follows:

- 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, including the following CDRs 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;

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<sup>12</sup> KSC-BC-2023-11, F00005, *Decision on the Confirmation of the Indictment* ("Case 11 Confirmation Decision"), 4 December 2023, confidential. A public redacted version of the decision was filed on 30 January 2024, F00005/RED.

<sup>13</sup> Request, paras 3-4.

<sup>14</sup> Request, para. 9.

- 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.<sup>15</sup>

7. The SPO also requests the CDRs to be provided to it as indicated in Annex 1 to the Request, and seeks the Pre-Trial Judge's authorisation for Annex 1 to be appended to any order issued.<sup>16</sup> The SPO further requests that Vala and IPKO provide certain content with each production report.<sup>17</sup>

8. Likewise, the SPO seeks from the Pre-Trial Judge a request for assistance and cooperation to the Dutch authorities to order all Dutch telecom providers to produce CDRs for any registered contacts with telephone number [REDACTED], assigned to Witness 1, starting from 1 January 2023 to 23 June 2023.<sup>18</sup>

9. The SPO submits that the relevant requirements of Rules 31 and 34-35 of the Rules, namely the existence of a grounded suspicion, necessity, unavoidability and proportionality, are satisfied.<sup>19</sup>

10. Lastly, the SPO requests the Pre-Trial Judge to: (i) authorise it to serve the relevant orders to Vala and IPKO within ninety (90) days from its issuance;<sup>20</sup> (ii) designate the SPO as the competent authority for service of the orders to Vala and IPKO, as well as to the Dutch authorities, the last of which it aims to serve by

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<sup>15</sup> Request, para. 16.

<sup>16</sup> Request, para. 17.

<sup>17</sup> Request, para. 18.

<sup>18</sup> Request, paras 1, 20, 25(c).

<sup>19</sup> Request, paras 2, 9-15.

<sup>20</sup> Request, para. 27(a)-(b).

way of a request for international assistance;<sup>21</sup> (iii) order Vala and IPKO to produce the Requested Records within seven (7) days from the service of any orders;<sup>22</sup> and (iv) authorise the SPO to disclose, as appropriate and necessary, the order(s) and/or request(s), for the purpose of execution.<sup>23</sup>

### III. APPLICABLE LAW

11. Pursuant to Article 35(2) of the Law, the SPO has the authority to conduct criminal investigations within the subject matter jurisdiction of the Specialist Chambers (“SC”). Pursuant to Article 35(2)(b) of the Law, the SPO may collect and examine information and evidence.

12. Pursuant to Rule 34(1)-(2) of the Rules, a special investigative measure, as identified in Rule 2 of the Rules, may only be undertaken when there is a grounded suspicion that a crime listed in Rule 34(1) of the Rules has been, is being or is about to be committed. Such measure may be undertaken in respect of a person or a specific location, when there is grounded suspicion that: (i) the person has committed, is committing or is about to commit any of the crimes set out in Rule 34(1) of the Rules, (ii) the person receives or transmits communication intended for or emanating from the suspect or Accused, or whose communication device the suspect or Accused is using; (iii) a specific location is being used or is about to be used for the commission of a crime as set out in Rule 34(1) of the Rules; or (iv) evidence of a crime as set out in Rule 34(1) of the Rules can be found in a specific location and the evidence sought is necessary for the investigation. Pursuant to Rules 31(1) and 34(2) of the Rules, a special investigative measure must be necessary for the investigation, unavoidable (i.e. the evidence cannot be obtained by other, less intrusive but equally effective means), as well as

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<sup>21</sup> Request, para. 21, 25(d).

<sup>22</sup> Request, paras 22, 25(a)-(b).

<sup>23</sup> Request, para. 25(e).

proportionate (i.e. the resulting interference with the concerned person's right(s) must be proportionate to the legitimate aim of the investigation and should not negate the essence of the guaranteed right(s)).

13. Pursuant to Rule 34(3) of the Rules, a person in respect of whom a special investigative measure is authorised pursuant to Rule 34(2) of the Rules shall be notified by the SPO of any measure undertaken in respect of that person as long as the objective of the measure or the conduct of proceedings are not likely to be jeopardised as a result.

14. In accordance with Rule 35(2) of the Rules, the Panel authorising the special investigative measure must indicate, among others, (i) the period for which the authorisation is granted, which may not exceed sixty (60) days, as well as (ii) the procedure for reporting on the implementation of the authorised measure and the collected material.

15. Pursuant to Rule 32(1) of the Rules, material collected as a result of any measure pursuant to Rules 34 to 41 of the Rules, shall be appropriately retained, stored and protected. The Panel authorising such measure shall indicate, *inter alia*, (i) the procedure and precautions for the storage; (ii) the duration of retention; and (iii) instructions and a timeline for the return or destruction of the material.

16. Pursuant to Article 53(1) of the Law and Rules 200 and 202(3) of the Rules, all entities and persons in Kosovo shall co-operate with the SC and SPO, and shall comply without undue delay with any request for assistance, order or decision issued by the SC, which may include the provision of records and documents, including official records and documents, as provided for in paragraph (g) of Article 53(1) of the Law.

17. Article 55(1) of the Law and Rule 208(1) of the Rules provide that the SC may request assistance and co-operation from other States, international organisations,

and other entities, as necessary for the investigation and prosecution of persons accused of committing crimes within the subject matter jurisdiction of the SC.

#### IV. DISCUSSION

##### A. REQUIREMENTS FOR AUTHORISATION OF SPECIAL INVESTIGATIVE MEASURES

18. Pursuant to Rules 2, 31 and 34 of the Rules, the requested special investigative measures (“SIMs”), specifically the orders to Vala and IPKO, as well as the request for assistance and cooperation to the Dutch authorities to produce the CDRs, may be authorised if:

- i. there is a grounded suspicion that an offence referred to in Article 15(2) of the Law, has been, is being or is about to be committed, pursuant to Rule 34(1) of the Rules;
- ii. the measures are necessary for the investigation;
- iii. the measures are unavoidable, i.e. the evidence cannot be obtained by other less intrusive but equally effective means; and
- iv. the resulting interference with the rights to personal integrity, privacy or property of the person(s) concerned is proportionate to the legitimate aim of the investigation and does not negate the essence of the guaranteed right(s).

##### **1. Legal Basis**

19. The requested orders to Vala and IPKO, as well as the request for assistance and cooperation to the Dutch authorities, to produce the CDRs concern the SIMs known as “metering of telephone calls” pursuant to Article 86(1.9) of the 2022 Kosovo Criminal Procedure Code, Code No. 08/L-032 (“KCPC”). Article 85(12) of the KCPC defines “metering of telephone calls” as obtaining a

record of telephone calls made from a given telephone number. Thus, the Pre-Trial Judge finds that the requested SIMs fall within the ambit of Article 85(12) and 86(1.9) of the KCPC and, thus, Rule 2 of the Rules.<sup>24</sup>

## **2. Grounded Suspicion**

20. The SPO contends that there is a grounded suspicion that crimes within the jurisdiction of the SC have been, are being, or are about to be committed.<sup>25</sup>

### **(a) Attribution of the Relevant Telephone Number**

21. As regards the attribution of the relevant telephone number, the Pre-Trial Judge notes the SPO's submissions that call number [REDACTED] is assigned to Witness 1's mobile telephone, which he surrendered to the SPO.<sup>26</sup> Thus, the Pre-Trial Judge is satisfied that said telephone number may be attributed to Witness 1.

### **(b) Existence of a Grounded Suspicion**

22. As regards the existence of a grounded suspicion, the Pre-Trial Judge recalls his previous findings of the existence of a well-grounded suspicion that, between at least 5 April and 12 April 2023, Mr Januzi, Mr Bahtijari and Mr Shala committed and/or attempted to commit, alone, in co-perpetration, and/or in agreement, and/or assisted in the commission of 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 2019 Kosovo Criminal Code, Law No. 06/L-074 and Articles 15(2) and 16(3) of the Law.<sup>27</sup> In that context, the Pre-Trial Judge also found a grounded suspicion that the Witness 1's mobile telephone

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<sup>24</sup> *Similarly*, 16 May 2023 Decision, para. 28; 7 July 2023 Decision, para. 23; 27 July 2023 Decision, para. 25.

<sup>25</sup> Request, para. 2.

<sup>26</sup> Request, para. 1.

<sup>27</sup> Case 10 Confirmation Decision, paras 95, 111, 123, 126, 131, 135, 139, 144. *See also* Case 11 Confirmation Decision, paras. 71-149.

[REDACTED], in support of the aforementioned allegations of offences under Article 15(2) of the Law.<sup>28</sup> Considering that call number [REDACTED] is assigned to Witness 1's mobile telephone, the Pre-Trial Judge finds that the Requested Records could provide further context to possible communications received or transmitted, intended for or emanating from Mr Januzi and Mr Bahtijari, before, during and after their visits to Witness 1.

23. In light of the foregoing, the Pre-Trial Judge is satisfied that there is a grounded suspicion that Witness 1 received or transmitted communications intended for or emanating from Mr Januzi and Mr Bahtijari, pursuant to Rule 34(2)(b) of the Rules.

### 3. Necessity

24. The SPO submits that the Requested Records are necessary for the investigation of offences within the jurisdiction of the SC. In particular, it submits that the review of Requested Records, including the subscriber information and call metering information, may (i) confirm the existence and pattern of contacts with specific numbers; and (ii) establish the identities of others potentially involved in the obstructive conduct and Witness 1's related conduct and communications.<sup>29</sup>

25. The Pre-Trial Judge observes that, during the second Status Conference on 3 November 2023, the Januzi Defence requested that the SPO disclose the "full downloads from Witness 1's communication devices" during the period before and after the interactions with Mr Januzi.<sup>30</sup> The Pre-Trial Judge further notes that, according to the SPO, the Januzi Defence justified its request via *inter partes* email

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<sup>28</sup> KSC-BC-2023-10, F00151, Pre-Trial Judge, *Decision on Prosecution Supplemental Request for an Order* ("22 January 2024 Decision"), 22 January 2024, confidential, para. 21.

<sup>29</sup> Request, paras 2, 12.

<sup>30</sup> KSC-BC-2023-10, Transcript of Hearing, 3 November 2023, confidential, p. 87, lines 10-14. According to the SPO, the Januzi Defence's request was subsequently reiterated via *inter partes* email dated 7 December 2023. See Request, para. 5.

dated 12 December 2023 on the basis of (i) the need to fully investigate the circumstances in which Witness 1 initiated telephone contact and attempted to solicit a bribe, and (ii) the reasonable inference that Witness 1's telephone records will contain relevant evidence in relation to the persons in contact with him in the lead-up to such incitement.<sup>31</sup> Bearing in mind the alleged serious and direct attempt to interfere with and obstruct [REDACTED], the Pre-Trial Judge is satisfied that the requested SIMs will assist the SPO in (i) obtaining information about Witness 1's conduct and pattern of communications before, during, and after the period when Mr Januzi and Mr Bahtijari separately approached him; and (ii) identifying other persons potentially involved in the obstructive conduct. Lastly, the Pre-Trial Judge is satisfied that the Requested Records will likely contribute to ensuring [REDACTED].<sup>32</sup>

26. In the light of the foregoing, the Pre-Trial Judge finds that the requested SIMs are necessary for the SPO investigation in accordance with Rule 31(1)(b) of the Rules.

#### **4. Unavoidability**

27. The SPO submits that the Requested Records may provide relevant information which cannot be obtained by other, less intrusive but equally effective means.<sup>33</sup>

28. The Pre-Trial Judge is persuaded that there are no other less intrusive but equally effective means to collect the sought information. In the view of the Pre-Trial Judge, no less intrusive measures can help the SPO to ascertain (i) whether communications were deleted on Witness 1's mobile telephone;<sup>34</sup>

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<sup>31</sup> Request, para. 6.

<sup>32</sup> *Similarly*, 16 May 2023 Decision, para. 33; 7 July 2023 Decision, para. 39; 27 July 2023 Decision, para. 32.

<sup>33</sup> Request, paras 2, 13.

<sup>34</sup> In this regard, the Pre-Trial Judge considers that the creation of a full forensic copy of Witness 1's mobile phone, as authorised in the 22 January 2024 Decision, may not capture deleted call records.

(ii) the timing, scope, frequency, duration and pattern of communications of Witness 1 with others, including Mr Januzi and Mr Bahtijari, around the time of their approaches; and (iii) whether further investigations into the possible involvement of other persons in the interference attempts are appropriate.<sup>35</sup>

29. In the light of the foregoing, the Pre-Trial Judge is satisfied that there are no other less intrusive but equally effective means to provide the SPO with the information and evidence it needs to further assess the potential responsibility of Mr Januzi, Mr Bahtijari and Mr Shala, for offences under Article 15(2) of the Law.

## **5. Proportionality**

30. The SPO avers that the requested SIMs are proportionate to the legitimate aim of the investigation and do not negate the essence of any guaranteed right because (i) they in accordance with the Law and Rules; (ii) their terms are tailored to the needs of the investigation/trial 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.<sup>36</sup>

31. The Pre-Trial Judge recalls that, in assessing the proportionality of the requested SIMs, account must be taken of, *inter alia*, the gravity of the alleged offence, the duration and scope of the requested measures, and any safeguards to be implemented.<sup>37</sup>

32. At the outset, the Pre-Trial Judge observes that the legitimate aim of the SPO's investigation is to examine serious allegations of obstruction of justice involving Mr Januzi, Mr Bahtijari, Mr Shala and potentially other co-perpetrators, and to

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<sup>35</sup> Similarly, 7 July 2023 Decision, para. 42.

<sup>36</sup> Request, para. 15.

<sup>37</sup> KSC-CC-PR-2017-03, F00006, Constitutional Court Chamber, *Judgment on the Referral of Revised Rules of Procedure and Evidence Adopted by Plenary on 29 May 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office* ("Constitutional Court Chamber 28 June 2017 Judgment"), 28 June 2017, public, paras 64-65.

ensure the safety and protection of witnesses and the integrity of proceedings before the SC.

33. The Pre-Trial Judge also notes that the nature, duration, and scope of the requested measures are tailored to the need to ascertain whether the communications to or from Witness 1's mobile telephone number provide evidence in relation to offences under Article 15(2) of the Law. Notably, the Pre-Trial Judge observes that the requested SIMs are limited to a specific time-frame that is relevant to the SPO's investigation, that is from 1 January 2023 to 23 June 2023, a time-frame which may encompass such potential communications between Witness 1 and individual(s) who aimed at interfering [REDACTED].<sup>38</sup> Lastly, with regard to the safeguards to be implemented, the Pre-Trial Judge takes note of the SPO's assurances and the fact that, as enshrined in Rules 31-33 and 39 of the Rules, the SPO is duty-bound to take appropriate measures with respect to the rights to personal integrity, privacy or property.

34. In the light of the foregoing, the Pre-Trial Judge finds that, to the extent that the SPO abides by the conditions set forth in the Rules and in the present decision, including the requirements regarding the time, duration and scope, and the retention of the obtained material, the requested SIMs meet the proportionality requirement.

## **6. Conclusion**

35. For these reasons, the Pre-Trial Judge authorises the orders to Vala and IPKO and issues a request for assistance and cooperation to the Dutch authorities, to provide the Requested Records, under the parameters set out in this decision.

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<sup>38</sup> Similarly, 16 May 2023 Decision, paras 38-39; 7 July 2023 Decision, paras 45-46; 27 July 2023 Decision, paras 38-39.

## B. FORMAT AND PRESENTATION

36. The SPO requests that the data be provided as indicated in Annex 1 to the Request, and the Pre-Trial Judge's authorisation for Annex 1 to be appended to any order or request issued.<sup>39</sup> To promote the efficient analysis of the Requested Records, the SPO also requests the Pre-Trial Judge to issue separate orders to Vala and IPKO, and to request the Dutch authorities, to provide the following content with each production report: (i) identification of any codes or abbreviations used in the CDRs (for example codes or abbreviations denoting incoming calls, outgoing calls, text messages etc.); (ii) explanation for any anomalies (for example if the data is not recorded); (iii) explanation for missing subscriber information (including if the calling or receiving party is not a subscriber of the telecom provider); and (iv) reasons for any exceptions (for example for missing data that is not held due to roaming) ("Additional Information").<sup>40</sup>

37. In order to facilitate the exchange of information, the Pre-Trial Judge orders Vala and IPKO, and requests the Dutch authorities, to provide the CDRs in the format laid out in Annex 1 to the Request, which should be attached by the SPO to the relevant orders and request, and to provide the Additional Information as necessary. In this regard, Vala and IPKO shall immediately inform the SPO if the requested information or specifications in Annex 1 to the Request require further clarification. The Pre-Trial Judge likewise requests that, to the extent practicable, the Dutch authorities inform the SPO whether any of the requested information or specifications in Annex 1 to the Request require further clarification.

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<sup>39</sup> Request, para. 17.

<sup>40</sup> Request, para. 18.

### C. SCOPE AND DURATION

38. The requested SIMs cover the production of the CDRs for the telephone number [REDACTED], attributed to Witness 1, starting from 1 January 2023 to 23 June 2023.

39. The Pre-Trial Judge recalls that, pursuant to Rule 35(2)(a) of the Rules, the Panel authorising a SIM must indicate, *inter alia*, the period for which the authorisation is granted, which may not exceed sixty (60) days, unless the requirements of Rule 35(3) of the Rules have been met.<sup>41</sup> The Pre-Trial Judge is mindful that a person's right to privacy cannot be unduly infringed by authorising a measure which, even if it may fall within the confines of Rule 35 of the Rules, allows for the retrieval of information without further specifications.<sup>42</sup>

40. In the present circumstances, the Pre-Trial Judge considers that, to ascertain the full nature and scope of Mr Januzi's and Mr Bahtijari's approaches to and communications with Witness 1, as well as the links with Mr Shala and other persons of interest to the SPO's investigation, it is necessary to examine the CDRs prior to, during and after the obstructive visits to Witness 1. In this light, the Pre-Trial Judge finds it appropriate to order Vala and IPKO, and to request the Dutch authorities, to provide the SPO with the CDRs for the above-mentioned telephone number attributed to Witness 1, starting from 1 January 2023 to 23 June 2023. The Pre-Trial Judge finds that this is a reasonable and specific time-frame which is confined to the period relevant for the SPO's investigation.

41. In addition, considering the nature of the alleged offences and the potential risks to information and persons protected under the legal framework of the SC, the Pre-Trial Judge further orders Vala and IPKO to provide the CDRs within seven (7) days from service of the attached orders.

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<sup>41</sup> Constitutional Court Chamber 28 June 2017 Judgment, para. 58.

<sup>42</sup> Article 36(1) and (3) of the Constitution of Kosovo.

#### D. REPORTING

42. In accordance with Rules 31(2) and 35(2)(b) of the Rules, the SPO is required to report on the implementation of the requested SIMs and the collected CDRs. Considering the time needed to prepare such a report following the execution of the requested measures, the SPO shall submit one report within fourteen (14) days of obtaining all relevant information from Vala, IPKO and the Dutch authorities. The report shall address, *inter alia*, the date(s) of service of the annexed orders and request, the implementation of the requested SIMs, as well as a summary of the information obtained.

#### E. STORAGE, PROTECTION AND RETENTION OF THE COLLECTED DATA

43. The Pre-Trial Judge finds that the Requested Records are necessary for the purpose of the ongoing investigation into offences pursuant to Article 15(2) of the Law. Therefore, the SPO may retain the collected data in accordance with Rule 33(1)(b) of the Rules until such time that they are no longer relevant for the purpose for which they were obtained. The Pre-Trial Judge further recalls that, at that point, the collected data will have to be returned or destroyed pursuant to Rule 33(2)-(3) of the Rules. Conversely, if the SPO decides that the collected data fall outside the scope of the investigation for which they were obtained, they will have to be returned or destroyed immediately pursuant to Rule 33(1)(a)(i) and (2)-(3) of the Rules, unless they are relevant for the investigation of another crime or offence within the jurisdiction of the SC.

44. Moreover, the Pre-Trial Judge orders the SPO to protect, at all times, the data collected against loss, accidental or unauthorized access, dissemination or destruction.

## F. NOTIFICATION

45. The Pre-Trial Judge notes that, pursuant to Rule 34(3) of the Rules, the notification requirement applies only in respect of a person in relation to whom measures under Rules 34-36 of the Rules are undertaken. In the present case, the requested SIMs concern Witness 1, who has voluntarily surrendered his mobile telephone, with call number [REDACTED], to the SPO.<sup>43</sup> Accordingly, the Pre-Trial Judge orders the SPO to notify Witness 1 of the measures undertaken in his respect and authorised in the present decision.

46. [REDACTED].

## G. EXECUTION AND SERVICE OF THE ANNEXED ORDERS AND REQUEST

47. The Pre-Trial Judge notes that, in accordance with Article 35(3) of the Law, the police within the SPO has the authority and the responsibility to exercise powers given to Kosovo Police under Kosovo law and it may be considered a “competent authority” under Rule 49(1) of the Rules to serve and execute orders of the SC, including the annexed orders to Vala and IPKO. Moreover, the SPO may also serve the relevant request for assistance and cooperation to the Dutch authorities, who may assist the SPO and the SC pursuant to Article 55(1)-(2) of the Law.<sup>44</sup>

48. In view of the above, the Pre-Trial Judge authorises the SPO to serve (i) the annexed orders to Vala and IPKO; and (ii) the attached request for assistance and cooperation to the Dutch authorities.

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<sup>43</sup> 22 January 2024 Decision, para. 30.

<sup>44</sup> In notifying the present decision to the SPO through Legal Workflow, the transmission is deemed fulfilled, in accordance with Rule 49(1) of the Rules.

## H. DISCLOSURE OF THE ANNEXED ORDERS AND REQUEST

49. The Pre-Trial Judge further authorises the SPO to disclose, as appropriate and necessary, including to Vala and IPKO, as well as the Kingdom of the Netherlands and the relevant Dutch telecom providers, as the case may be, the annexed orders and Request for the purpose of their execution.

## V. DISPOSITION

50. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- (a) **GRANTS** the Request and issues the annexed orders to Vala and IPKO;
- (b) **GRANTS** the Request and issues the annexed request for assistance and cooperation to the Kingdom of the Netherlands;
- (c) **ORDERS** Vala and IPKO to provide, within seven (7) days from the service of the annexed orders, the CDRs and Additional Information specified in each order, in the format defined in Annex 1 to the Request;
- (d) **ORDERS** the SPO to report on the implementation of the special investigative measures within fourteen (14) days of obtaining all data;
- (e) **ORDERS** the SPO to store, protect, and retain the collected data in accordance with the Rules and the present decision;
- (f) **ORDERS** the SPO to notify Witness 1 of the measures undertaken in his respect and authorised in the present decision;
- (g) **AUTHORISES** the SPO to disclose, as appropriate and necessary and within ninety (90) days from the issuance of the present decision, to Vala and IPKO, as well as the Kingdom of the Netherlands and relevant Dutch telecom providers, as the case may be, the annexed orders and request for assistance and cooperation for the purpose of their execution, and to attach Annex 1 to the orders and request for assistance and cooperation, to be served on Vala and IPKO, and the Kingdom of the Netherlands, respectively; and
- (h) **AUTHORISES** [REDACTED].

*[signed]*

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**Judge Nicolas Guillou**

**Pre-Trial Judge**

Dated this Thursday, 22 February 2024

At The Hague, the Netherlands.