



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06
Before: Pre-Trial Judge
Judge Nicolas Guillou
Registrar: Dr Fidelma Donlon
Date: 26 October 2020
Language: English
Classification: Public

**Public Redacted Version of
Decision Authorising Search and Seizure**

Specialist Prosecutor
Jack Smith

THE PRE-TRIAL JUDGE,¹ pursuant to Articles 39(3), 53, 54, and 55 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 31, 32, 33, 37, 39, 62, and 208(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders the following decision.

I. PROCEDURAL BACKGROUND

1. On 24 April 2020, the Specialist Prosecutor's Office ("SPO") submitted for confirmation a strictly confidential and *ex parte* indictment together with evidentiary material in support of the factual allegations and a detailed outline linking each item of evidentiary material to each allegation.²

2. On 28 May 2020, the SPO requested, *inter alia*, that the Pre-Trial Judge authorise search and seizure with respect to the person of Hashim Thaçi ("Mr Thaçi"), the location of his arrest, and Mr Thaçi's residences, offices, and vehicles.³

3. On 2 July 2020, the Pre-Trial Judge ordered the SPO to file a revised indictment by 24 July 2020.⁴

4. On 24 July 2020, the SPO submitted a revised indictment for confirmation ("Revised Indictment").⁵

¹ KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

² KSC-BC-2020-06, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation*, 24 April 2020, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

³ KSC-BC-2020-06, F00005, Specialist Prosecutor, *Request for Arrest Warrants and Related Orders*, 28 May 2020 ("Request"), strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

⁴ KSC-BC-2020-06, F00010, Pre-Trial Judge, *Order to the Specialist Prosecutor Pursuant to Rule 86(4) of the Rules*, 2 July 2020, strictly confidential and *ex parte*.

⁵ KSC-BC-2020-06, F00011, Specialist Prosecutor, *Submission of Revised Indictment for Confirmation*, 24 July 2020, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*.

5. On 11 September 2020, the Pre-Trial Judge ordered the SPO to submit, *inter alia*, information concerning the current or last known residence of Mr Thaçi by 30 September 2020.⁶

6. On 30 September 2020, the SPO submitted the requested information.⁷

7. On 19 October 2020, the Pre-Trial Judge issued an order setting a target date for the issuance of the decision reviewing the Revised Indictment.⁸

8. On 26 October 2020, the Pre-Trial Judge issued a decision confirming the Revised Indictment (“Confirmation Decision”)⁹ and issued an arrest warrant for Mr Thaçi.¹⁰

II. SUBMISSIONS

9. Along with the issuance of an arrest warrant against Mr Thaçi and corresponding transfer order, the SPO requests, *inter alia*, that the Pre-Trial Judge authorise its request for search and seizure.¹¹ The SPO requests that the Pre-Trial Judge authorise the SPO and/or the authorities executing the arrest warrant, in cooperation with the SPO, to: (a) search the person of Mr Thaçi, his location of arrest, and Mr Thaçi’s residences, offices, and vehicles; and (b) seize any evidence that is believed to have been used in, is connected with, or may be relevant to the charged crimes, any recent efforts to interfere with the administration of justice, and [REDACTED] (“Requested Search and Seizure”).¹² In particular, the SPO seeks, *inter alia*, any evidence relevant to Mr Thaçi’s

⁶ KSC-BC-2020-06, F00015, Pre-Trial Judge, *Order to the Specialist Prosecutor for Further Submissions*, 11 September 2020, strictly confidential and *ex parte*.

⁷ KSC-BC-2020-06, F00019, Specialist Prosecutor, *Further Submissions Pursuant to Order KSC-BC-2020-06/F00015*, 30 September 2020, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*.

⁸ KSC-BC-2020-06, F00023, Pre-Trial Judge, *Order Setting Target Date for a Decision Pursuant to Article 39(2)*, 19 October 2020, strictly confidential and *ex parte*.

⁹ KSC-BC-2020-06, F00026, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, strictly confidential and *ex parte*.

¹⁰ KSC-BC-2020-06, F00027/A01, Pre-Trial Judge, *Arrest Warrant for Hashim Thaçi*, 26 October 2020, strictly confidential and *ex parte*.

¹¹ Request, paras 2, 42, 60(b).

¹² Request, para. 42.

activities between 1998 and 1999, relationship or interactions with the Kosovo Liberation Army (“KLA”) and/or the Provisional Government of Kosovo (“PGoK”) or members thereof, or with victims, witnesses or alleged accomplices.¹³ The SPO indicates that the objects to be seized may include the following: records of contacts or meetings, financial or property records, diaries, logbooks, decisions, photographs, video and audio recordings, orders, instructions, directives, reports, policies, protocols or regulations, as well as computers, telephones, and other devices that reasonably could be expected to contain relevant evidence.¹⁴

10. The SPO submits that there is a grounded suspicion that Mr Thaçi has committed crimes within the Specialist Chambers’ jurisdiction as well as a grounded suspicion that he may have evidence necessary to the investigation on his person or in his residences, offices, or vehicles.¹⁵

11. The SPO further submits that, in light of the risks of interference and obstruction,¹⁶ any evidence in Mr Thaçi’s possession will not otherwise be obtained and the requested search and seizure is the only effective means of obtaining the evidence for the purposes of the investigation.¹⁷

12. The SPO submits that the resulting interference with Mr Thaçi’s privacy and property rights is proportionate to the legitimate aim of the investigation and does not negate the essence of those rights.¹⁸

13. Finally, the SPO requests that retention of any evidence seized be authorised for the time necessary to review the evidence, and if the evidence is deemed relevant,

¹³ Request, para. 42(b).

¹⁴ Request, para. 42(b).

¹⁵ Request, para. 43.

¹⁶ Request, paras 34-38, 43.

¹⁷ Request, para. 43.

¹⁸ Request, para. 44.

authorisation be given for such further period as necessary for investigations and proceedings.¹⁹

III. APPLICABLE LAW

14. In accordance with Article 35(2)(b) of the Law, the Specialist Prosecutor may collect and examine information and evidence.

15. Pursuant to Rules 31 and 37 of the Rules, the search of a person, their property, or other locations or objects as well as the seizure of any evidence therefrom may be authorised if:

- (a) There is a reasonable expectation of privacy with respect to the places to be searched and items to be seized;²⁰
- (b) In relation to searches of places and objects, there is grounded suspicion that (i) a person has committed, is committing or is about to commit a crime within the jurisdiction of the Specialist Chambers; and (ii) the search will result, *inter alia*, in the discovery and seizure of evidence necessary for the investigation.²¹ In relation to the search of a person, there is grounded suspicion that the search will result in the discovery of evidence of a crime within the jurisdiction of the Specialist Chambers and seizure thereof;²²
- (c) The search is necessary for the investigation;²³

¹⁹ Request, para. 45.

²⁰ Rule 37(2) of the Rules. *See also*, 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* ("KSC Constitutional Court Chamber 28 June 2017 Judgment"), 28 June 2017, para. 69.

²¹ Rule 37(2)(a) of the Rules.

²² Rule 37(3) of the Rules.

²³ Rule 31(1)(b) of the Rules.

- (d) The investigative measure is unavoidable, i.e. in the specific circumstances the evidence may not be otherwise obtained and the requested search and seizure appears to be the only effective means for the purposes of the investigation;²⁴ and
- (e) The resulting interference with 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.²⁵

16. According to Rule 37(4) of the Rules, any decision authorising search and seizure shall include: (a) the time, duration, and scope of its execution, including an indication of the person or property, location, premises or object in relation to which the measure is authorised; and (b) the procedure for reporting on its implementation and the seized material in accordance with Rule 31(2) of the Rules.

17. Pursuant to Rule 39(1) and (2) of the Rules, the search and seizure must be executed in the presence of the person concerned, unless he or she cannot be found or refuses to attend the search, and if the delay in execution would jeopardise the investigation or the safety or property of a witness, victim or other person at risk. The Specialist Prosecutor must also: (a) provide the person concerned with the decision authorising the search and seizure; (b) inform the person of his or her rights; (c) ensure the presence of counsel, unless the person waives this right or counsel's presence cannot reasonably be awaited; and (d) ensure the presence of an independent observer to the search and seizure.

18. Pursuant to Rule 32(1) of the Rules, any material seized shall be appropriately retained, stored, and protected. The Panel authorising such seizure shall indicate: (a) the procedure and precautions for the storage, protection, and transfer of the seized

²⁴ Rule 37(1) of the Rules. *See also*, KSC Constitutional Court Chamber 28 June 2017 Judgment, paras 62-67.

²⁵ Rule 31(1)(c) of the Rules.

material; (b) the duration of the retention of the seized material; and (c) instructions and a timeline for the return or destruction of the seized material.

19. According to Rule 62 of the Rules, in performing his functions, the Specialist Prosecutor shall, *inter alia*, take measures for the protection and due respect of the victims and the fundamental rights of the accused.

20. Article 35(3) of the Law provides that the police within the SPO have the authority and responsibility to exercise powers given to Kosovo police under Kosovo law. Pursuant to Article 53(1) of the Law, all entities and persons in Kosovo shall comply without undue delay with any request for assistance, order or decision issued by the Specialist Chambers. Pursuant to Rule 202(2) of the Rules, the Pre-Trial Judge may impose any conditions deemed necessary, including relating to confidentiality and protective measures. Any such order shall be complied with without undue delay, pursuant to Article 53(1) of the Law and Rule 202(3) of the Rules.

21. In accordance with Article 55 of the Law and Rule 208(1) of the Rules, the Pre-Trial Judge may request the cooperation and assistance of a Third State as is necessary for the investigation and prosecution of persons accused of having committed crimes within the jurisdiction of the Specialist Chambers.

IV. DISCUSSION

A. REQUIREMENTS OF SEARCH AND SEIZURE

22. The Requested Search and Seizure involves a search of Mr Thaçi's person, location of arrest, residences, offices, and vehicles. The Pre-Trial Judge finds that a person's residence, property, including vehicles, and offices entail a reasonable expectation of privacy. By the same token, while the location of arrest is not known at this point in

time, the place of arrest may entail a reasonable expectation of privacy.²⁶ Accordingly, the protections set out in the Law and the Rules shall apply.

23. For the purposes of the search of Mr Thaçi's residence(s), office(s), vehicle(s), and/or location of arrest, and related seizure of items, the Pre-Trial Judge recalls his findings in the Confirmation Decision that there is a well-grounded suspicion that Mr Thaçi committed crimes under the jurisdiction of the Specialist Chambers.²⁷ Also, having considered the submissions of the Specialist Prosecutor and the material submitted in support thereto,²⁸ the Pre-Trial Judge finds that there is a grounded suspicion that Mr Thaçi has undertaken efforts to interfere with SPO investigative activities through witness interference, which constitutes an offence under Article 15(2) of the Law, also falling within the jurisdiction of the Specialist Chambers. Specifically, there is a grounded suspicion that Mr Thaçi, *inter alia*, was involved in government pay-outs to potential SPO witnesses,²⁹ [REDACTED],³⁰ enquired about the family situation of an individual to be interviewed by the SPO, following which [REDACTED] offered that same individual various benefits on behalf of Mr Thaçi,³¹ and hired individuals summoned by the SPO to government positions shortly after the issuance of such summons.³² Furthermore, the Pre-Trial Judge finds that, in light of the above, there is a grounded suspicion that the Requested Search and Seizure regarding the aforementioned places and items may result in evidence or information that is necessary for the SPO investigation into the charged crimes and offences under Article 15(2) of the Law, including the preservation of the victims' rights. In addition, the Pre-Trial Judge finds that there is grounded suspicion that such evidence or information may be found on Mr Thaçi's residence(s), office(s), vehicle(s) and/or

²⁶ See KSC Constitutional Court Chamber 28 June 2017 Judgment, para. 69.

²⁷ Confirmation Decision, paras 474, 478, 482, 491.

²⁸ Request, paras 8, 10-18 and the references contained therein; Annex 1 to Request, pp. 2-3; Annex 3 to Request, p. 8.

²⁹ Request, paras 10-11 and the references contained therein.

³⁰ Request, para. 12; Annex 1 to Request, pp. 3-4.

³¹ Request, para. 15 and the references contained therein.

³² Request, para. 17 and the references contained therein; Annex 3 to Request, p. 8.

location of arrest. For the purposes of the search of Mr Thaçi, since he is alleged to have committed crimes and offences within the jurisdiction of the Specialist Chambers, the Pre-Trial Judge finds grounded suspicion that the search may result in the discovery and seizure of evidence related to such crimes and offences. In light of the foregoing, the Pre-Trial Judge finds that there is grounded suspicion warranting the Requested Search and Seizure.

24. Moreover, given that Mr Thaçi's residence(s), office(s), vehicle(s), and/or location of arrest may contain relevant information that relates to the confirmed charges and alleged offences under Article 15(2) of the Law, including information relevant to the preservation of the victims' rights, the Pre-Trial Judge finds that the Requested Search and Seizure is necessary for the SPO investigation. Likewise, the search of Mr Thaçi is necessary because, in the context of his arrest or search of his premises, he may attempt to hide on his person such evidence. In light of the foregoing, the Pre-Trial Judge finds that the Requested Search and Seizure is necessary for the SPO investigation of the confirmed charges and any future proceedings, including in relation to offences under Article 15(2) of the Law.

25. As concerns the requirement of unavailability, the Pre-Trial Judge notes that Mr Thaçi has publicly attacked the mandate of the Specialist Chambers and attempted to delegitimize it,³³ and recalls that there is a grounded suspicion that he has undertaken efforts to interfere with SPO investigative activities through witness interference. It is reasonable to believe that his public attacks on the Specialist Chambers and his apparent willingness to obstruct proceedings through witness interference is demonstrative of a willingness to interfere with evidence. Accordingly, the Pre-Trial Judge finds that any evidence or information in Mr Thaçi's possession may not otherwise be obtained and the Requested Search and Seizure in the context of his arrest may be the only effective means of obtaining the evidence or information.

³³ Request, para. 7; Annex 2 to Request, pp. 2-8 (Letter of Hashim Thaçi to Michael Pompeo Reported in Gazeta Express).

26. Finally, regarding the proportionality of the resulting interference with Mr Thaçi's rights *vis-à-vis* the legitimate aim of the investigation, the Pre-Trial Judge may consider, *inter alia*, the gravity of the confirmed charges³⁴ and of alleged offences under Article 15(2) of the Law, the duration and scope of the requested measures, and any safeguards to be implemented.³⁵ The legitimate aim of the investigation is the prosecution of Mr Thaçi for the crimes charged and the gathering of evidence in relation to alleged offences under Article 15(2) of the Law, including the preservation of the victims' rights. With regard to the safeguards to be implemented, the Pre-Trial Judge takes note of 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. Equally important is the SPO assurance that it will tailor the execution of the Requested Search and Seizure and/or provide the necessary information and instructions to any other authorities assisting in executing it to ensure that it is conducted in a manner that excludes information of no foreseeable relevance and in accordance with the safeguards outlined in Rule 39 of the Rules.³⁶ Accordingly, to the extent that its execution abides by the conditions set forth in the Rules and this decision, the Pre-Trial Judge finds that the Requested Search and Seizure is proportionate to the legitimate aim of the investigation.

27. Having found that the aforementioned conditions have been met, the Pre-Trial Judge authorises the Requested Search and Seizure as it complies with the requirements of Rules 31 and 37 of the Rules.

³⁴ The charges involve the crimes against humanity of persecution, imprisonment, other inhumane acts, torture, murder, and enforced disappearance and the war crimes of arbitrary detention, cruel treatment, torture, and murder in violation of Articles 13(1) and 14(1)(c) of the Law, respectively.

³⁵ KSC Constitutional Court Chamber 28 June 2017 Judgment, para. 64.

³⁶ Request, para. 44.

B. TIME, DURATION, AND SCOPE OF THE SEARCH AND SEIZURE

28. The SPO does not indicate the timeframe for the execution of the search of Mr Thaçi, his residence(s), office(s), vehicle(s), and/or location of arrest and the related seizure of items. Nonetheless, it is clear from the Request that the Requested Search and Seizure is to take place in the context of Mr Thaçi's arrest. Balancing, on the one hand, the time-sensitive nature of the investigative acts and the time necessary for the SPO, or any other relevant authorities, to organise the Requested Search and Seizure, and, on the other hand, Mr Thaçi's reasonable expectation of privacy as well as the need for judicial oversight of the execution of these measures, the Pre-Trial Judge finds that 14 days from Mr Thaçi's arrest are sufficient for the execution of the Requested Search and Seizure.

29. The scope of the Requested Search and Seizure must be limited to any evidence or information that is believed to have been used in, be connected with or be relevant to the confirmed charges and alleged offences under Article 15(2) of the Law, including the preservation of the victims' rights. This concerns in particular evidence relevant to Mr Thaçi's activities between 1998 and 1999, relationship or interactions with the KLA and/or PGoK or members thereof, or with victims, witnesses or alleged accomplices, and any other evidence relevant to the preservation of the victims' rights. Items to be seized may include: records of contacts or meetings, financial or property records, diaries, logbooks, decisions, photographs, video and audio recordings, orders, instructions, directives, reports, policies, protocols or regulations, as well as computers, telephones, and other devices that reasonably could be expected to contain relevant evidence.

C. REPORTING ON THE SEARCH AND SEIZURE

30. In accordance with Rules 31(2) and 37(4)(b) of the Rules, the SPO is required to report on the execution of the requested measures. Taking into consideration the time

needed to prepare a report following the execution of the requested measure, the SPO must submit a report within 14 days of the completion of the Requested Search and Seizure or within 14 days of the lapse of the 14-day timeframe provided for the execution of the Requested Search and Seizure, whichever is earlier. The report shall indicate: (a) the date, time, duration, location, scope, and circumstances of the search and seizure; and (b) the fulfilment of the requirements under Rule 39 of the Rules. If the Requested Search and Seizure or any part thereof is to be executed in Mr Thaçi's absence, the report shall further indicate the exceptional circumstances justifying such execution, as well as the fulfilment of the additional safeguards, as further specified in paragraph 36 below.

D. RETENTION, STORAGE, AND PROTECTION OF SEIZED MATERIAL

31. The Pre-Trial Judge considers it necessary for the SPO to store, protect, and transfer the seized material, in accordance with the standard chain of custody procedures. In so doing, the SPO must take appropriate measures to protect the seized material against loss, accidental or unauthorized access, alteration, dissemination or destruction. The SPO shall inform the Pre-Trial Judge on the appropriate procedure and precautions for the storage and protection of the material seized in a report.

32. The Pre-Trial Judge finds that a four-month timeframe from the execution of the Requested Search and Seizure is sufficient for the review of the relevance of the seized material. If such material is deemed relevant to the investigation or any stage of future proceedings related to the confirmed charges or to alleged offences under Article 15(2) of the Law, the SPO may, in accordance with Rule 33(1)(b) of the Rules, retain the material until it is no longer relevant for the purpose for which it was obtained. The seized material will then have to be returned or destroyed pursuant to Rule 33(2)-(3) of the Rules. If the seized material falls outside the scope of the investigation for which it was obtained, and is not relevant for the investigation of any other crime under the

jurisdiction of the Specialist Chambers, then the seized material must be returned or destroyed immediately, in accordance with Rule 33(1)(a)(i) and (2)-(3) of the Rules.

E. EXECUTION AND SERVICE OF THE REQUESTED ORDER

33. If the execution of the Requested Search and Seizure or any part thereof is to take place in Kosovo, the Pre-Trial Judge recalls that, pursuant to Article 35(3) of the Law, the police within the SPO have the authority and responsibility to exercise powers given to Kosovo police under Kosovo law. Therefore, the SPO may also be considered a “competent authority” under Rule 49(1) of the Rules capable of executing and serving orders of the Specialist Chambers, including the Requested Search and Seizure. Accordingly, the Pre-Trial Judge authorises the SPO to serve and to execute the present decision.³⁷ Where necessary, the SPO may do so in cooperation with the competent authorities in Kosovo.

34. If the execution of the Requested Search and Seizure or any part thereof is to take place in a Third State, the Pre-Trial Judge requests, pursuant to Article 55 of the Law and Rule 208(1) of the Rules, the competent authorities to serve and execute the present decision in the presence of representatives of the SPO.

35. The SPO submits that the Requested Search and Seizure may be conducted in the absence of Mr Thaçi and that it intends to impose a temporary prohibition on the use of non-essential communications at the site of any search and seizure.³⁸ Since these conditions affect the rights of Mr Thaçi during the Requested Search and Seizure, the Pre-Trial Judge considers it necessary to assess and, if necessary, include these conditions in the present decision.

³⁷ Notifying the present decision to the Specialist Prosecutor, the transmission is deemed fulfilled, in accordance with Rule 49(1) of the Rules.

³⁸ Request, footnote 130.

36. As noted above, the Requested Search and Seizure is to be executed in the context of Mr Thaçi's arrest and within 14 days. In this respect, the Pre-Trial Judge notes that, pursuant to Article 41(5) of the Law and Rule 50(1) of the Rules, any person deprived of liberty by or on behalf of the Specialist Chambers shall be transferred and brought before a Specialist Chambers Judge without delay. The Pre-Trial Judge further notes Mr Thaçi's high-profile status due to his past and current positions³⁹ and the possible heightened security concerns his arrest either within Kosovo or a Third State may bring about. In light of the foregoing, the Requested Search and Seizure or any part thereof may, exceptionally, be executed in the absence of Mr Thaçi, if the SPO can demonstrate that this is strictly necessary in order to ensure Mr Thaçi's own safety, his right to appear before the Pre-Trial Judge without delay, and/or the preservation of evidence and the integrity of the investigation. In such a situation, Mr Thaçi shall have the right to designate a representative who shall be present during the Requested Search and Seizure or any part thereof, together with an independent observer and Mr Thaçi's counsel, unless the exception provided for in Rule 39(1)(c) of the Rules applies.

37. Moreover, irrespective of whether Mr Thaçi will be present at the Requested Search and Seizure, the Pre-Trial Judge considers that, in order to ensure the integrity of the investigation and related proceedings, the SPO or the authorities assisting in the execution may impose on him a temporary prohibition on the use of non-essential means of electronic communication throughout the execution of the Requested Search and Seizure or any part thereof.

³⁹ Revised Indictment, paras 2-3.

V. DISPOSITION

38. For the above reasons, as concerns **Mr Hashim Thaçi**, born on 24 April 1968, of Kosovan nationality (personal identification number [REDACTED]), with last known personal address at [REDACTED], Graçanica/Gračanica municipality, Kosovo, and last known business address at The President Building of the Parliament of Kosovo, Rruga Nëna Terezë, 10000 Prishtinë/Priština, Kosovo, the Pre-Trial Judge hereby:

- a. **AUTHORISES** the Requested Search and Seizure relating to the search of Mr Thaçi, the location of his arrest, and his residence(s), office(s), and vehicle(s), as well as the seizure of any evidence or information that is believed to have been used in, is connected with or may be relevant to the investigation or any stage of future proceedings related to the confirmed charges or to alleged offences under Article 15(2) of the Law, including the preservation of the victims' rights, as further specified in paragraph 29 of this decision;
- b. **AUTHORISES**, upon demonstration of exceptional circumstances, the Requested Search and Seizure or any part thereof to be carried out in Mr Thaçi's absence, subject to the additional safeguards and as further specified in paragraph 36 above;
- c. **AUTHORISES** the SPO or the authorities assisting in the execution to impose on Mr Thaçi a temporary prohibition on the use of non-essential means of electronic communication, with the exception of his privileged communication with counsel, throughout the execution of the Requested Search and Seizure or any part thereof; and
- d. **AUTHORISES** the SPO to disclose, as appropriate and necessary, including to the authorities executing the Requested Search and Seizure, this decision.

39. If the Requested Search and Seizure or any part thereof is to take place in Kosovo, the Pre-Trial Judge **AUTHORISES** the SPO to serve and to execute this decision pursuant to paragraphs 28-29 and 33 mentioned above and in accordance with Rule 39 of the Rules.

40. If the Requested Search and Seizure or any part thereof is to take place in a Third State, the Pre-Trial Judge:

- a. **DIRECTS** the Registrar to transmit this decision to the competent authorities for service and execution;
- b. **DIRECTS** the SPO to consult with the Registrar on the necessary arrangements to be made for the execution and service of this decision;
- c. **REQUESTS** the competent authorities to carry out the Requested Search and Seizure, in the presence of an SPO representative and under the following conditions, where such conditions do not interfere with applicable domestic law:
 - i. The Requested Search and Seizure to be completed, within 14 days from the arrest of Mr Thaçi;
 - ii. To permit Mr Thaçi or his chosen representative, as the case may be, his counsel (unless Rule 39(1)(c) of the Rules applies), and an independent observer to be present during the execution of the Requested Search and Seizure;
 - iii. To impose on Mr Thaçi a temporary prohibition on the use of non-essential means of electronic communication, with the exception of his privileged communication with counsel, throughout the duration of the execution of the Requested Search and Seizure;
 - iv. To permit the SPO representative present to record the time, duration, scope, and all other relevant details of the execution of

this decision as well as to prepare an inventory with a detailed description of and information regarding each item seized; and

- v. The seized material, which may include records of contacts or meetings, financial or property records, diaries, logbooks, decisions, photographs, video and audio recordings, orders, instructions, directives, reports, policies, protocols or regulations, as well as computers, telephones, and other devices that reasonably could be expected to contain relevant evidence or information, to be transferred to and be retained, stored and protected by the SPO;

- d. **REQUESTS** the competent authorities to raise any technical or logistical difficulties or impediments in the execution of this decision with the SPO representative present during the execution of the Requested Search and Seizure; and
- e. **REQUESTS** the competent authorities to treat the Requested Search and Seizure as confidential and only to disclose the existence of this decision and its contents to those entities and persons whose involvement is strictly necessary for executing the Requested Search and Seizure.

41. Irrespective of where the Requested Search and Seizure or any part thereof takes place, the Pre-Trial Judge:

- a. **ORDERS** the SPO to report on the execution of the Requested Search and Seizure within 14 days of its completion or within 14 days of the lapse of the 14-day timeframe provided for its execution, whichever is earlier, in accordance with paragraph 30 of this decision;
- b. **ORDERS** the SPO to store, retain, and protect the seized material and to report on the procedure and precautions for the storage and protection, in accordance with paragraph 31 of this decision; and

- c. **ORDERS** the SPO to review the relevance of the seized material within four months from the execution of the Requested Search and Seizure and to retain, return or destroy the seized material as prescribed by Rule 33 of the Rules, in accordance with paragraph 32 of this decision.



Judge Nicolas Guillou

Pre-Trial Judge

Dated this Monday, 26 October 2020

At The Hague, the Netherlands.