



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: Acting Specialist Prosecutor

Date: 20 April 2023

Language: English

Classification: Public

Public redacted version of 'Prosecution request for orders authorising search and seizure of mobile telephones'

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I. INTRODUCTION

1. Pursuant to Articles 35(2), 39(3) and 53 of the Law¹ and Rules 30-33, 37, 39 and 48(2) of the Rules,² the Specialist Prosecutor's Office ('SPO') requests two separate orders from the Single Judge authorising the search and seizure by the SPO of all mobile telephones (collectively, 'the Subject Phones') of Ismet BAHTJARI [REDACTED], including the search and seizure [REDACTED]. The SPO further requests that each order include the authority to search the respective residences and persons of BAHTJARI [REDACTED] for the limited purpose of searching and seizing mobile phones at each individual's residence.

2. [REDACTED].

3. [REDACTED].

4. The relevant requirements are satisfied in this case. There is grounded suspicion that evidence of a crime within the jurisdiction of the Kosovo Specialist Chambers ('KSC') is to be found on the Subject Phones. The measures sought are necessary, insofar as the examination of the content of the Subject Phones is the only effective means of obtaining such evidence. The resulting interference with BAHTJARI's [REDACTED] rights is proportionate to the legitimate aim of the investigation, and does not negate the essence of the guaranteed rights.

II. FACTUAL AND PROCEDURAL HISTORY

5. [REDACTED].³

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 See e.g., [REDACTED].

6. [REDACTED].⁴ [REDACTED].

7. [REDACTED].⁵ [REDACTED].

8. On 5 April 2023, [REDACTED] reported to the SPO that he was threatened [REDACTED] if he did not withdraw his testimony.

9. Specifically, [REDACTED] reported to the SPO that earlier that day, [REDACTED] Ismet BAHTJARI visited his home and delivered a message on behalf of others to withdraw his testimony [REDACTED].⁶ [REDACTED] informed the SPO that BAHTJARI, also known as 'Shema', used [REDACTED] to call [REDACTED]'s mobile phone on the afternoon of 5 April 2023. [REDACTED]'s wife answered the incoming call because [REDACTED] was napping at the time. BAHTJARI asked if [REDACTED] was home. [REDACTED]'s wife confirmed that he was home and asked BAHTJARI if she should wake him up to talk. BAHTJARI said not to wake [REDACTED].

10. Thirty minutes later, BAHTJARI arrived at [REDACTED]'s home. BAHTJARI is not a frequent visitor to [REDACTED]'s home, nor are the two in frequent communication.

11. When [REDACTED] asked BAHTJARI why he had come to his home, BAHTJARI stated, 'I haven't come for good' and added an Albanian phrase meaning 'I have something to do for the evil.' BAHTJARI then stated, in sum and substance, 'I have been sent here to tell you that you are [REDACTED] and that [REDACTED] should withdraw his testimony. BAHTJARI told [REDACTED] that [REDACTED] sent BAHTJARI to deliver this message to [REDACTED]. BAHTJARI also told [REDACTED] that [REDACTED] had recently approached BAHTJARI at a café [REDACTED]. [REDACTED] told BAHTJARI 'Go and tell [REDACTED] that he's

⁴ [REDACTED].

⁵ [REDACTED].

⁶ [REDACTED].

[REDACTED] and tell him to withdraw.’ [REDACTED] was not certain, but believed BAHTJARI’s encounter with [REDACTED] occurred a day or two before BAHTJARI’s 5 April 2023 visit to [REDACTED].

12. During their discussion at [REDACTED]’s home, BAHTJARI appeared nervous and uncomfortable and kept his head down and avoided eye contact with [REDACTED]. [REDACTED] asked BAHTJARI if he was recording their conversation, which BAHTJARI denied.

13. [REDACTED] asked BAHTJARI, ‘Have they told you if I don’t withdraw they will [REDACTED]’ and ‘Will they [REDACTED]?’ BAHTJARI kept his head down and replied, ‘Yes, yes.’ When the SPO asked who [REDACTED] was referring to when he asked if [REDACTED], [REDACTED] stated that by ‘they’ he meant [REDACTED].

14. [REDACTED] then told BAHTJARI, ‘Tell [REDACTED] that if The Hague calls me, I will fuck all their mothers’ and ‘Tell them if I see them in front of me I will kill them if they don’t kill me first.’ [REDACTED] explained to the SPO that [REDACTED] and others [REDACTED], and that [REDACTED] believes that [REDACTED] are responsible for the current message that he should withdraw his testimony now.

15. After the discussion finished, BAHTJARI appeared nervous. [REDACTED] asked BAHTJARI if he needed a taxi, because he knows BAHTJARI does not drive. BAHTJARI told [REDACTED] that he did not need a taxi because ‘I have this guy who works with me from Fushtice,’ which [REDACTED] understood to mean BAHTJARI had someone to drive him home.

16. BAHTJARI then left [REDACTED]’s home and walked down the street toward a [REDACTED], which appeared to be waiting approximately 200 meters away. [REDACTED]’s wife, who was watching BAHTJARI from the window, alerted [REDACTED] that two men were standing near [REDACTED] and appeared to be getting into it. [REDACTED] went to the window and, based on what he observed, he

believes that [REDACTED] and two other men entered [REDACTED] which was driven by a fourth person. [REDACTED] is certain BAHTJARI was not driving. [REDACTED] believes the two other men had likely been watching his home while BAHTJARI visited.

17. [REDACTED] told the SPO several times that while he is not concerned for his own safety, he is very concerned for the safety [REDACTED] as a result of BAHTJARI's visit.

18. [REDACTED].

19. [REDACTED].

III. APPLICABLE LAW

20. The SPO requests authorisation from the Single Judge for search and seizure of the Subject Phones, including the authority to search the residences and persons of BAHTJARI [REDACTED] for the purpose of executing the seizure of the Subject Phones. The Single Judge has identified the relevant requirements for such measures as follows:⁷

- a. the mobile telephone is the property of the person concerned;
- b. there is grounded suspicion that, *inter alia*, evidence of a crime within the jurisdiction of the Specialist Chambers is on the mobile telephone;
- c. the seizure is necessary for the investigation;
- d. the measure sought is unavoidable (in that, in the specific circumstances, evidence may not be otherwise obtained and the requested seizure appears to be the only effective means for the purposes of the investigation); and

⁷ See [REDACTED].

- e. the resulting interference into the person's right to personal integrity, privacy or property is proportionate to the legitimate aim of the investigation and does not negate the essence of the guaranteed right.

IV. SUBMISSIONS

A. THERE IS GROUNDED SUSPICION THAT THE SUBJECT PHONES CONTAIN EVIDENCE OF A CRIME WITHIN THE JURISDICTION OF THE KSC

21. Based on the facts set forth above, there is grounded suspicion that both BAHTJARI [REDACTED], acting on the instruction or direction of others and/or in co-perpetration with others, have committed, are committing or are about to commit an offence within the meaning of Article 15(2). Indeed, as detailed above, BAHTJARI told [REDACTED] approached and instructed BAHJTARI to tell [REDACTED] and to withdraw his testimony and that if he did not, he could [REDACTED]. [REDACTED] understood this message to be coming from [REDACTED].

22. [REDACTED]⁸ and [REDACTED].⁹ [REDACTED].

23. As to BAHTJARI's communications, the SPO notes that [REDACTED] reported he was contacted by BAHTJARI on his mobile phone [REDACTED]. Accordingly, there is grounded suspicion that BAHTJARI used a smartphone to communicate with [REDACTED] immediately before visiting [REDACTED] on 5 April 2023.

24. There is thus grounded suspicion that the Subject Phones contain evidence of the criminal conduct described above, [REDACTED]. More specifically, the Subject Phones used by BAHTJARI [REDACTED] likely contain evidence of [REDACTED] contacts [REDACTED] before and after the 5 April 2023 threat to [REDACTED], as

⁸ [REDACTED].

⁹ [REDACTED].

well as contacts with other individuals involved in directing or executing the threat. [REDACTED]. [REDACTED].

25. The SPO intends to execute any authorised seizure of the Subject Phones at the residences of BAHTJARI [REDACTED]; however, this will depend on operational and security requirements and the seizures may be executed in another location as deemed necessary.

26. [REDACTED].

27. [REDACTED].

B. THE INFORMATION SOUGHT IS NECESSARY

28. Search and seizure of the content of the Subject Phones is a necessary measure to investigate the ongoing witness intimidation and interference with obstruction of criminal proceedings.

29. Specifically, the Subject Phones are likely to contain relevant evidence, [REDACTED]. Such evidence is necessary and indeed critical to determining, *inter alia*, (1) the full nature and scope of BAHTJARI's [REDACTED] obstructive conduct in relation to [REDACTED] and potentially to other witnesses, and (2) [REDACTED].

30. Based on the totality of the circumstances described above, the requested seizure is the only effective means for the purposes of furthering the investigation and securing evidence that may not be otherwise obtained.

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

31. 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 by collecting relevant evidence and identifying all of the individuals

involved in such offences and their respective roles in those offences, and ensuring the safety and protection of witnesses at risk because of information they have provided to the SPO.

32. The SPO further notes that [REDACTED]. This context thus further necessitates the requested search and seizure, which is the only effective means of obtaining the evidence in question.

33. Finally, the requested orders are proportionate to the legitimate aim of the investigation and do not negate the essence of any guaranteed rights 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 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.

V. THE TERMS OF THE REQUESTED ORDERS

34. The SPO requests that the Single Judge authorise retention of the Subject Phones for: (i) the time necessary to complete extraction, as applicable, and examination of its relevant content; and (ii) such further period of time as may be necessary for its potential use in evidence. The SPO further requests that each order include the authorisation to search the respective locations, anticipated to be the residences, and persons of BAHTJARI [REDACTED] for the limited purpose of searching and seizing their mobile phones.

35. In execution of the search and seizure, the SPO will comply with the safeguards outlined in Rule 39, in a manner consistent with the Single Judge's findings regarding

its purpose and the scope of feasible application, including, in particular, in the context of expert examinations.¹⁰

36. Pursuant to Rule 49(1), the SPO also requests to be designated as the competent authority¹¹ for service and execution of the requested search and seizure order.

37. The SPO further requests the Single Judge to include, as part of the search and seizure order for BAHTJARI's [REDACTED] mobile phones, [REDACTED].

38. Such an order is both necessary and appropriate to ensure the proper execution of the requested search and seizure orders. In particular, [REDACTED]. [REDACTED].¹² [REDACTED].

39. Accordingly, [REDACTED]. [REDACTED].¹³ The same rationale applies here.

40. Finally, the SPO requests that the Single Judge include, as part of each search and seizure order for the mobile phones, [REDACTED]. [REDACTED]. [REDACTED].¹⁴

41. [REDACTED].

VI. TIMING OF REQUEST

42. [REDACTED], the SPO anticipates executing the requested searches and seizures as soon as practicable. [REDACTED].¹⁵

VII. CONFIDENTIALITY

¹⁰ Cf. [REDACTED].

¹¹ See [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

43. This filing is classified as strictly confidential and *ex parte* to protect [REDACTED]. The SPO requests an opportunity to make submissions before any reclassification or redacted version is ordered.

VIII. RELIEF REQUESTED

44. The SPO hereby requests the Single Judge to grant this request, in the terms set out above, and:

- a. authorise the search and seizure of the mobile telephones of BAHTJARI [REDACTED];
- b. include in each search and seizure order the authority to search the respective locations of execution, anticipated to be the residences, and persons of BAHTJARI [REDACTED] for the limited purpose of searching and seizing their mobile phones;
- c. include in each search and seizure order a provision ordering [REDACTED];
- d. [REDACTED]; and
- e. designate the SPO as the competent authority for service and execution; and authorise the SPO to disclose the order, as appropriate and necessary, for the purpose of execution.

Word count: 4,315

\signed\

Alex Whiting

Acting Specialist Prosecutor

Thursday, 20 April 2023

At The Hague, The Netherlands.