



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2023-12
**Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj,
Isni Kilaj, Fadil Fazliu, and Hajredin Kuçi**

Before: **Single Trial Judge**
Judge Christopher Gosnell

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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Language: English

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**Prosecution motion for admission of a prior statement of an Accused
with public Annex 1**

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I. INTRODUCTION

1. Pursuant to Articles 37 and 40(2) and (6)(h) of the Law,¹ and Rules 137 to 139 of the Rules,² the Specialist Prosecutor's Office ('SPO') requests the admission of the SPO's Interview of Isni KILAJ³ and Associated Exhibits⁴ (collectively, the 'Records') thereto.

2. The Records are relevant, authentic, reliable, and have probative value which is not outweighed by any prejudicial effect.⁵

II. SUBMISSIONS

A. LEGAL FRAMEWORK

3. All of the Records satisfy the four cumulative admissibility criteria that the Single Trial Judge ('STJ') shall apply when assessing the *prima facie* admissibility of evidentiary items: relevance, authenticity, probative value, and lack of prejudicial effect.⁶ Specifically, the Records are relevant and probative of the crimes alleged in the

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

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 Annex 1 listing ERNs: 116809-TR-AT; 116809-TR-AT-ET; 116809B Part 1; 116809B Part 2; 116809B Part 3; 116809B Part 4; 116809B Part 5 (collectively, the 'SPO Interview').

⁴ See Annex 1 listing ERNs: 116884-116927; SPOE00343593-SPOE00343606; 123402-123409 corrected; SPOE00343582-SPOE00343592; SPOE00343582-SPOE00343592-ET Revised; SPOE00346771-00346787; SPOE00346771-SPOE00346787-ET; SPOE00346751-00346770; SPOE00346751-SPOE00346770-ET; 116879-116883, p.5; 116883-116883-ET (collectively, the 'Associated Exhibits'). The SPO tenders only p.116883 from 116879-116883.

⁵ See Rule 138. Admission of evidence does not require definitive proof of reliability or credibility of the evidence, but rather a showing of *prima facie* reliability on the basis of sufficient indicia. See ICTY, *Prosecutor v. Prlić et al.*, Decision on Jadranko Prlić's Interlocutory Appeal Against the Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence, IT-04-74-AR73.16, 3 November 2009, paras 32-36; ICTY, *Prosecutor v. Popović et al.*, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, IT-05-88-AR73.2, 30 January 2008, para.22; IRMCT, *Prosecutor v Nzabonimpa et al.*, Decision on Augustin Ngirabatware's First Motion for Admission of Evidence from the Bar Table (Intercepted and Downloaded Communications), MICT-18-116-T, 29 April 2021, p.2.

⁶ *Specialist Prosecutor v. Thaçi et al.*, Decision on Krasniqi and Selimi Appeals against "Decision on Prosecution Motion for Admission of Accused's Statements", KSC-BC-2020-06/IA030/F00009, 31 May 2024 ('Case 6 Appeals Decision'), para.10.

Amended Indictment,⁷ and contain sufficient indicia of authenticity to warrant admission. Admission of the Records would not result in unfair prejudice to the Accused. Indeed, the Court of Appeals has already confirmed the admissibility of statements of co-Accused.⁸ For the reasons set out below, the Records meet the admissibility criteria and should be admitted into evidence.

B. FACTUAL BACKGROUND

4. Following the non-privileged 6 October 2023 Visit between Hashim THAÇI, KILAJ and Vllaznim KRYEZIU, the SPO — on 2 November 2023 — executed a judicially-authorized search and seizure at KILAJ's Pristina residence. The SPO recovered extensive materials containing confidential information about Kosovo Specialist Chambers ('KSC') proceedings and identifying information of confidential and protected Case 6 witnesses,⁹ which were seized and photographed. This material, which formed the basis of the subsequent SPO Interview included:

- a. torn up pages of Witness 4's Statement X, and two (2) pages of his Statement Y,¹⁰ all from a trash bag ('A Exhibits');¹¹

⁷ Public Redacted Amended Confirmed Indictment, KCS-BC-2023-12/F00264/A02, 16 April 2025, ('Amended Indictment'), paras 20-36, 42, 44-46, 48.

⁸ Case 6 Appeals Decision, KSC-BC-2020-06/IA030/F00009, paras 64-73.

⁹ See 117373-117380, pp.1-2 (containing an inventory of all items seized from KILAJ during the search operation, including those specifically addressed in this motion).

¹⁰ 051765-051770 RED2 ('Statement X') and 053191-TR-AT Part 6 Revised RED2 ('Statement Y'). See: SPOE00343593-SPOE00343606; 123402-123409 corrected (as reconstructed by the NFI, which collectively constitutes the: (i) Statement X, from pp.123402-123407; and (ii) Statement Y, from pp.123408-123409).

¹¹ SPOE00343593-SPOE00343606, pp.SPOE00343599-SPOE00343606. See also: 116884-116927, pp.1-2; 116809-TR-AT-ET, 116809-TR-AT Part 1-ET, pp.11-14, 16 (KILAJ stating he tore up the pages and that it is his handwriting and highlighting on these papers). The SPO notes that 'E1' and 'E2' were errantly used at one point during the interview instead of 'A1' and 'A2' respectively, although the context makes clear the error (116809-TR-AT-ET, 116809-TR-AT Part 1-ET, p.11).

- b. papers with KILAJ's handwritten notes containing, *inter alia*, the names of protected and confidential Case 6 witnesses ('B Exhibits');¹²
 - c. a black notebook containing the names and witness codes of a number of SPO witnesses in Case 6 in KILAJ's handwriting ('C Exhibits');¹³ and
 - d. a brown notebook containing, *inter alia*, the names, witness codes and SPO summaries of the anticipated testimony of SPO witnesses in Case 6 in KILAJ's handwriting ('E Exhibits').¹⁴
5. Upon completion of the search of KILAJ's Pristina residence, KILAJ elected to remain at the residence with SPO staff while other SPO officers and an independent observer, along with KILAJ's chosen representative, went to KILAJ's Lubizhdë residence to complete the judicially authorised search and seizure operations. While at his Pristina residence, KILAJ voluntarily agreed to be interviewed as a suspect by the SPO after a full recitation and waiver of his rights. During the interview, the SPO questioned KILAJ about the A, B, C, and E Exhibits, referring to them by way of those identifiers.

C. SPO INTERVIEW

6. The SPO hereby tenders the video file and corresponding English and Albanian transcripts of the SPO Interview.¹⁵ The SPO Interview is admissible pursuant to Rule 138(1).¹⁶

¹² SPOE00343582-SPOE00343592. *See also*: 116884-116927, pp.3-4; 116809-TR-AT-ET, 116809-TR-AT Part 2-ET, pp.12, 16, 18-19 (KILAJ stating it is his handwriting on these papers and that he folded them).

¹³ SPOE00346771-SPOE00346787. *See also*: 116884-116927, pp.5-18; 116809-TR-AT-ET, 116809-TR-AT Part 2-ET, p.19 (KILAJ stating it is his handwriting in the black notebook).

¹⁴ SPOE00346751-SPOE00346770. *See also*: 116884-116927, pp.30-44; 116809-TR-AT-ET, 116809-TR-AT Part 3-ET, p.3 (KILAJ stating it is his handwriting in the brown notebook). The SPO notes that 'C2' was errantly used at one point during the interview instead of 'E1', although the context makes clear the error (116809-TR-AT-ET, 116809-TR-AT Part 3-ET, p.3).

¹⁵ The video recordings of this interview (116809B Parts 1-5) was disclosed to the Defence in Disclosure Package 42 on 27 May 2025.

¹⁶ Case 6 Appeals Decision, KSC-BC-2020-06/IA030/F00009, paras 64-65.

7. Prior to and again during the SPO Interview, KILAJ was informed of: (i) his suspect status, including a brief statement of the relevant facts and law; (ii) his right to remain silent and right against self-incrimination, and that any statement he made would be recorded and could be used in evidence; (iii) his right to be assisted by counsel of his choosing and, if he was unable to afford counsel, to have counsel provided free of charge; and (iv) his right to the free assistance of an interpreter if he could not understand or speak the language used for questioning, and indeed used the free interpretation throughout his interview.¹⁷ KILAJ knowingly and intelligently waived these rights and did so after explicitly being informed, *inter alia*, that there was a criminal investigation and that there were grounds to believe that he had been involved in the commission of a crime within the jurisdiction of the KSC.¹⁸ KILAJ was also informed that he could revoke his waiver at any time¹⁹ and he did not do so. Accordingly, there are no grounds for doubting the fairness of the proceedings,²⁰ which complied with international human rights standards.

8. The SPO Interview is relevant to and probative of the crimes charged, including to KILAJ's role in the Kilaj Group and his possession of confidential SPO materials, including the SPO-disclosed statements of Witness 4, and the central object of attempted witness interference during the 6 October 2023 Visit. KILAJ's statements about how he obtained the SPO witness information²¹ – which evidence in this case shows was printed at the Detention Centre and provided by THAÇI during the 6 October 2023 Visit – bear directly on the charges in this case. The same is true of

¹⁷ 116809-TR-AT-ET, 116809-TR-AT-ET Part 1, pp.2-7.

¹⁸ 116809-TR-AT-ET, 116809-TR-AT-ET Part 1, pp.4-5. After being read his rights, KILAJ also knowingly, willingly and voluntarily waived his right to have an attorney present during this interview, both verbally and in writing (*see* 116809-TR-AT-ET, 116809-TR-AT-ET Part 1, pp.3-6 and 116879-116883, p.5; 116883-116883-ET).

¹⁹ 116809-TR-AT-ET, 116809-TR-AT-ET Part 1, p.6.

²⁰ *See* ECtHR, *Šarkiene v. Lithuania*, 51760/10, Decision, 27 June 2017, paras 35-38; ECtHR, *Sklyar v. Russia*, 45498/11, Judgment, 18 July 2017, paras 22-26.

²¹ *See for example* 116809-TR-AT-ET, 116809-TR-AT Part 2-ET, pp.19-20, 116809-TR-AT Part 3-ET, pp.4-7, *contra* 118243-118260, p.118244, para.6. KILAJ also confirmed he took notes during the 6 October 2023 Visit, which he kept upon leaving the Detention Centre (*see* 116809-TR-AT-ET, 116809-TR-AT Part 4-ET, pp.13 – 116809-TR-AT Part 5-ET, p.2).

KILAJ's denial during the SPO Interview that any Case 6 witnesses were discussed during the 6 October 2023 Visit.²²

9. The admission of the SPO Interview through a written motion will not be unduly prejudicial to the Accused, as its content is self-explanatory and its authenticity is self-evident from the interview itself, the verbatim transcripts, and the signed waiver form.

D. ASSOCIATED EXHIBITS

10. The Associated Exhibits consist of: (i) items seized from the Kilaj residence during a judicially authorised search and seizure operation, and as discussed with KILAJ during the SPO Interview;²³ and (ii) a signed rights notification and attorney waiver form.²⁴ The Associated Exhibits were used with and explained by KILAJ, thereby providing necessary context to, and forming an integral part of, the SPO Interview.²⁵ The related rights notification and waiver is also necessary for a full assessment of the SPO Interview, and the circumstances in which it was given. Therefore, without the Associated Exhibits, the SPO Interview may become less comprehensible or be of diminished probative value.

III. CONCLUSION

11. The Records are all relevant, probative, and exhibit sufficient indicia of reliability and authenticity. Their admission will serve the truth-seeking process in this case and will cause no undue prejudice to the Accused.

²² 116809-TR-AT-ET, 116809-TR-AT Part 4-ET, pp.12-13.

²³ The SPO tenders both the relevant seized items (and translations thereof), as well as (for reference) the photographs of the items as shown to KILAJ and marked during the SPO Interview. The SPO has concurrently tendered several of these items in its bar table motion to be filed today (17 December) because the items also independently meet the requirements for admission under Rule 138.

²⁴ See Annex 1, Item 8.

²⁵ See Case 6 Appeals Decision, KSC-BC-2020-06/IA030/F00009, paras 64-65, 70. See also *Specialist Prosecutor v. Thaçi et al* Decision on Prosecution Motion for Admission of Accused's Statements, KSC-BC-2020-06/F01917, 9 November 2023, paras 22, 66.

IV. RELIEF REQUESTED

12. The SPO requests that the STJ admit the Records into evidence.

Word Count: 1,734



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Wednesday, 17 December 2025

At The Hague, the Netherlands.