



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

In: KSC-BC-2020-06
Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Trial Panel II
Judge Charles L. Smith, III, Presiding Judge
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Acting Specialist Prosecutor

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Public Redacted Version of 'Prosecution request to add intercepted communications to the Exhibit List', KSC-BC-2020-06/F01622, dated 23 June 2023

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Article 40 of the Law,¹ and Rules 102(1)(b), 112, and 118(2) of the Rules,² the Specialist Prosecutor's Office ('SPO') requests leave to amend the Exhibit List³ to include recently obtained and processed compilations of [REDACTED] records of intercepted communications of persons known to be or suspected to be KLA members between January and March 1999 ('Intercept Files' or 'Requested Amendments').⁴

2. This request – which, at this stage, solely concerns amendment of the Exhibit List and not admission⁵ – is timely, limited in scope, and concerns relevant material, which is probative of the charges.⁶ The SPO intends to tender the Intercept Files or use them during the examination of relevant witnesses, including certain interlocutors on the intercepted communications. One such interlocutor, W04746, is anticipated to testify in the July 2023 evidentiary block. Accordingly, the SPO respectfully requests the Panel to authorise the Requested Amendments by the start of the July 2023 evidentiary block, to enable the SPO to use relevant parts of the Intercept Files with W04746.⁷

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 Annex 1 to Prosecution submission of amended exhibit list, KSC-BC-2020-06/F01562/A01, 30 May 2023, Strictly Confidential and *Ex Parte* ('Exhibit List').

⁴ The intercepts and their corresponding translations are available through Legal Workflow. *See* 111491-111682 and 111687-111889 (and their corresponding translations).

⁵ *See* Decision on Prosecution Request to Amend the Exhibit List and Related Matters, KSC-BC-2020-06/F01352, 8 March 2023 ('8 March 2023 Decision'), para.31 (an evaluation of proposed amendments to the Exhibit List does not call for an assessment of admissibility, but a *prima facie* evaluation only); Decision on Prosecution Request to Add Five Items Relating to Expert Witness to the Exhibit List, KSC-BC-2020-06/F01544, 23 May 2023 ('23 May 2023 Decision'), para.11.

⁶ *See* 8 March 2023 Decision, KSC-BC-2020-06/F01352, paras 29, 31, 33; Decision on Thaçi's Appeal against "Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures", KSC-BC-2020-06/IA019/F00006, 12 July 2022 ('Appeal Decision'), para.21; *see also* 23 May 2023 Decision, KSC-BC-2020-06/F01544, para.11.

⁷ For this reason, the SPO expedited this request. Before the judicial recess, the SPO intends to file a further request for a limited number of additional amendments to the Exhibit List. Such amendments do not concern documents it anticipates using for the witnesses scheduled or identified as reserve witnesses for the July 2023 evidentiary block.

II. SUBMISSIONS

4. In this complex multi-Accused case, involving a considerable amount of evidence, amendments to the Exhibit List should be treated with flexibility, provided that – as is the case here – there is adequate protection of the Accused’s rights.⁸ Considering the early stages of the trial proceedings, the scope of the case, and the limited nature and scope of the Requested Amendments,⁹ which relate to known aspects of the SPO’s case and have been available to the Defence since April 2023, there is minimal impact on Defence preparations. Therefore, the Requested Amendments strike an appropriate balance between the rights of the Accused and the duty of the SPO to present available evidence to prove its case.¹⁰

A. THE REQUEST IS TIMELY

5. The SPO first requested the Intercept Files in 2019 and has exercised due diligence in obtaining, disclosing and processing them, and, with the finalisation of the translations on 20 June 2023, filing this request.

6. On 12 February 2019, the SPO requested recordings of intercepted communications of known or suspected KLA members between 1998 and 2000 from [REDACTED] (‘Initial ILA’¹¹).¹² On 19 June 2020, the SPO reiterated and complemented the Initial ILA (‘Second ILA’).¹³ On 9 December 2020, the SPO made an additional request related to intercepted communications.¹⁴ Following these ILAs, the SPO obtained compilation records of intercepted communications, which were

⁸ See 8 March 2023 Decision, KSC-BC-2020-06/F01352, paras 29, 31; Appeal Decision, KSC-BC-2020-06/IA019/F00006, para.21.

⁹ Compare Conduct of Proceedings Order, KSC-BC-2020-06/F01226/A01, para.82 (where new material is of significant nature, an opposing Party may seek appropriate relief for preparations).

¹⁰ Appeal Decision, KSC-BC-2020-06/IA019/F00006, paras 21; 23, fn.48 (citing case law from international criminal tribunals which consider the early stages of a trial to be a factor in favour of adding evidence to the exhibit list); 23 May 2023 Decision, KSC-BC-2020-06/F01544, para.11.

¹¹ The term ‘ILA’ refers to a request for international legal assistance.

¹² 5013313-5013392 RED (Disclosure 668), p.5013332.

¹³ 5010349-5010394 RED (Disclosure 668), p.5010360.

¹⁴ 5011346-5011393 RED (Disclosure 668). Together with the Initial ILA and Second ILA, ‘ILAs’.

disclosed under Rule 102(1)(b) on 13 July 2021,¹⁵ 30 July 2021,¹⁶ and 11 August 2021.¹⁷ These records are on the Exhibit List.¹⁸

7. The records received from [REDACTED] were not (fully) responsive to the ILAs, a fact raised with [REDACTED] on a number of occasions. On 22 March 2023, [REDACTED] provided the Intercept Files in a supplemental response to the Second ILA.

8. On 6 April 2023, the Intercept Files were noticed pursuant to Rule 102(3).¹⁹ On the same day, they were disclosed to the Defence.²⁰ Draft translations were available on a rolling basis in late May 2023 and, while subject to ongoing revision, were reviewed and processed in anticipation of this request. Final translations of the Intercept Files were available on 20 June and were disclosed to the Defence under Rule 102(3).²¹ This request is being filed promptly thereafter.

B. GOOD CAUSE EXISTS FOR THE REQUESTED AMENDMENTS

9. The Intercept Files are *prima facie* relevant and of sufficient importance to justify their addition to the Exhibit List. In their entirety,²² the Intercept Files are highly probative of the KLA communications systems and organisation,²³ as well as the use of satellite phones.²⁴ They constitute direct evidence of, *inter alia*, the communications,

¹⁵ 095876-095878-095976-095976 (Disclosure 40).

¹⁶ 076937-077011 (Disclosure 58).

¹⁷ 082655-082725 (Disclosure 64).

¹⁸ See Exhibit List, KSC-BC-2020-06/F01562/A01, 095876-095878-095976-095976 as 4022-4105, 076937-077011 as 2821-2851, and 082655-082725 as 3070-3071.

¹⁹ Prosecution supplemental Rule 102(3) notice, KSC-BC-2020-06/F01432, 6 April 2023, Confidential, para.2 (noting that they required translation and further processing and review).

²⁰ Disclosure 747.

²¹ Disclosure 829.

²² In order to demonstrate *prima facie* relevance and importance, a non-exhaustive selection of the communications recorded in the Intercept Files are cited herein. Further, cited communications are frequently relevant to different matters, while in this filing, they have generally been cited only once. For the reason given, the entire Intercept Files are relevant and important and should be available for the Prosecution to use with witnesses and tender at the appropriate time.

²³ See Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief', KSC-BC-2020-06/ F01296/A01, dated 15 February 2023', KSC-BC-2020-06/F01594/A03, 9 June 2023, Confidential ('Pre-Trial Brief'), paras 126-134.

²⁴ See Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, para.133.

instructions, and reported actions of interlocutors such as the Accused,²⁵ named JCE members,²⁶ other General Staff members,²⁷ zone commanders,²⁸ deputy zone commanders,²⁹ other zone command staff,³⁰ and brigade and unit commanders.³¹ Moreover, they are contemporaneous records of events in January-March 1999 in Kosovo operational zones³² and at KLA-controlled bases in northern Albania.³³

²⁵ See, for example, Hashim THACI and Jakup KRASNIQI: 111491-111682 / 111491-111682-ET, p.111548; Jakup KRASNIQI: 111491-111682 / 111491-111682-ET, pp.111558-111559, 111591-111592; 111687-111889 / 111687-111889-ET, pp.111710, 111712, 111832-111833, 111845, 111862-111863; Jakup KRASNIQI and Rexhep SELIMI: 111491-111682 / 111491-111682-ET, pp.111607-111608; 111687-111889 / 111687-111889-ET, pp.111714-111715.

²⁶ See, for example, Lahi BRAHIMAJ (Maxhupi): 111687-111889 / 111687-111889-ET, pp.111742, 111786-111787; Fatmir LIMAJ (Celiku): 111491-111682 / 111491-111682-ET, p.111650; Latif GASHI: 111687-111889 / 111687-111889-ET, pp.111851-111852; Shukri BUJA: 111491-111682 / 111491-111682-ET, pp.111590, 111610; Rustem MUSTAFA (Remi): 111491-111682 / 111491-111682-ET, pp.111509-111510, 111536, 111574; 111687-111889 / 111687-111889-ET, pp.111751, 111775; [REDACTED]: 111491-111682 / 111491-111682-ET, pp.111563, 111636, 111678.

²⁷ See, for example, [REDACTED]: 111491-111682 / 111491-111682-ET, pp.111519, 111577-111578; 111687-111889 / 111687-111889-ET, pp.111723, 111796-111797, 111882-111883; [REDACTED]: 111687-111889 / 111687-111889-ET, pp.111812-111813, 111863, 111879-111880; Xheladin GASHI: 111687-111889 / 111687-111889-ET, pp.111759, 111882; Adem GRABOVCI: 111687-111889 / 111687-111889-ET, pp.111701-111702, 111764.

²⁸ See, for example, Ramush HARADINAJ: 111491-111682 / 111491-111682-ET, pp.111504-111505, 111602, 111638; 111687-111889 / 111687-111889-ET, pp.111817-111818, 111873; Ekrem REXHA (Drini): 111491-111682 / 111491-111682-ET, p.111673; 111687-111889 / 111687-111889-ET, pp.111736-111737, 111776-111777, 111827-111829; Rahman RAMA: 111491-111682 / 111491-111682-ET, pp.111504, 111628, 111645; 111687-111889 / 111687-111889-ET, pp.111814-111815.

²⁹ See, for example, [REDACTED]: 111491-111682 / 111491-111682-ET, p.111648; 111687-111889 / 111687-111889-ET, pp.111798, 111842, 111847-111848.

³⁰ See, for example, [REDACTED]: 111491-111682 / 111491-111682-ET, pp.111513-111514, 111542; 111687-111889 / 111687-111889-ET, p.111722.

³¹ See, for example, Idriz SHABANI (Luta) 152 Brigade: 111687-111889 / 111687-111889-ET, pp.111744, 111756, 111869-111870; [REDACTED] 124 Brigade: 111491-111682 / 111491-111682-ET, pp.111565-111566, 111613, 111638; 111687-111889 / 111687-111889-ET, p.111800.

³² See, for example, Drenica: 111491-111682 / 111491-111682-ET, pp.111611-111612; 111687-111889 / 111687-111889-ET, pp.111759, 111770; Pashtrik: 111491-111682 / 111491-111682-ET, pp.111572, 111632; 111687-111889 / 111687-111889-ET, pp.111793-111794, 111849; Dukagjin: 111491-111682 / 111491-111682-ET, pp.111556, 111582, 111584-111585; 111687-111889 / 111687-111889-ET, p.111838; Shala: 111491-111682 / 111491-111682-ET, pp.111557, 111619-111620; 111687-111889 / 111687-111889-ET, pp.111745-111746, 111883; Llap: 111491-111682 / 111491-111682-ET, pp.111522-111523, 111573-111574, 111655; 111687-111889 / 111687-111889-ET, pp.111696, 111776, 111844; Nerodime: 111491-111682 / 111491-111682-ET, pp.111566, 111580, 111586, 111612-111613; 111687-111889 / 111687-111889-ET, pp.111809, 111847; Karadak: 111491-111682 / 111491-111682-ET, pp.111651-111652.

³³ See, for example, 111491-111682 / 111491-111682-ET, pp.111616, 111641; 111687-111889 / 111687-111889-ET, p.111759.

10. The Intercept Files are highly relevant to, *inter alia*, General Staff authority;³⁴ coordination within the General Staff;³⁵ General Staff oversight of (operational and other) developments in the zones;³⁶ coordination between the General Staff and the zone commands,³⁷ including reports to³⁸ and instructions by the General Staff;³⁹ communications and coordination between international observers and diplomatic representatives and the General Staff⁴⁰ and zone commands;⁴¹ coordination between different zone commands;⁴² coordination and organisation within each zone;⁴³ logistics (including supplies, weapons, and trainings)⁴⁴ and the General Staff's

³⁴ See, for example, 111491-111682 / 111491-111682-ET, pp.111511, 111531-111533, 111537, 111568-111569, 111571, 111593, 111596-111598, 111612, 111615, 111635, 111654-111655, 111659; 111687-111889 / 111687-111889-ET, p.111780.

³⁵ See, for example, 111491-111682 / 111491-111682-ET, pp.111495, 111611, 111635, 111680 (Xhavit HALITI's alias is Zeka); 111687-111889 / 111687-111889-ET, pp.111731, 111758-111759, 111883. See also related references when the interlocutors are the Accused or other General Staff members.

³⁶ See Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, para.108. See, for example, 111491-111682 / 111491-111682-ET, pp.111578, 111594-111595, 111608; 111687-111889 / 111687-111889-ET, pp.111791-111792, 111861.

³⁷ See Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 13 and 133. See, for example, in addition to those included below in footnotes about conversations related to all detention incidents: 111491-111682 / 111491-111682-ET, pp.111611, 111636, 111643, 111645, 111666; 111687-111889 / 111687-111889-ET, pp.111788, 111791, 111801.

³⁸ See Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 13 and 108. See, for example, 111491-111682 / 111491-111682-ET, pp.111499-111500, 111557, 111579-111580, 111661, 111680; 111687-111889 / 111687-111889-ET, pp.111691, 111705, 111778, 111817, 111819-111820.

³⁹ See Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, para.127. See, for example, 111491-111682 / 111491-111682-ET, pp.111495-111497, 111515-111516, 111528-111529, 111586, 111612, 111635, 111642, 111676; 111687-111889 / 111687-111889-ET, pp.111688, 111717, 111770-111771.

⁴⁰ See, for example, 111687-111889 / 111687-111889-ET, pp.111692-111694, 111708-111709, 111712-111713, 111840, 111858-111860.

⁴¹ See, for example, 111491-111682 / 111491-111682-ET, pp.111533-111535; 111687-111889 / 111687-111889-ET, pp. 111761-111762, 111822, 111836.

⁴² See, for example, 111491-111682 / 111491-111682-ET, pp.111527, 111534, 111536, 111555, 111562, 111579, 111656; 111687-111889 / 111687-111889-ET, pp.111698-111699, 111721, 111724, 111728, 111758, 111862-111863.

⁴³ See Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 108 and 133. See, for example, 111491-111682 / 111491-111682-ET, pp.111493-111494, 111501-111502, 111597; 111687-111889 / 111687-111889-ET, pp.111727-111728, 111732-111733, 111755-111756, 111792-111793, 111798-111799, 111885.

⁴⁴ See Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 136-137. See, for example, 111491-111682 / 111491-111682-ET, pp.111516-111517, 111562-111563, 111642, 111647, 111649, 111653-111654; 111687-111889 / 111687-111889-ET, pp.111688, 111819, 111853, 111855, 111877-111878.

involvement therein;⁴⁵ finances (including contributions from abroad);⁴⁶ and KLA media reporting.⁴⁷

11. The Intercept Files shed further light on the alleged joint criminal enterprise, both the common purpose and its implementation through the targeting of alleged collaborators, traitors, and other perceived opponents,⁴⁸ including by mistreatment⁴⁹ and detention.⁵⁰ Among others, the following victims are discussed in a number of intercepted conversations: Blerim KUQI,⁵¹ Veljko MARKOVIĆ and Nebojsa DJURIČIĆ;⁵² [REDACTED];⁵³ [REDACTED];⁵⁴ and Ymer XHAFIQI.⁵⁵

12. Many of the intercepted conversations are part of longer communication channels and their full meaning or context requires consideration together with previous and subsequent conversations found in other parts of the Intercept Files.⁵⁶ In the same vein, the numbers and names of interlocutors indicated in the beginning and in the course of each intercepted conversation allow for the attribution of certain

⁴⁵ See Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, para.102. See, for example, 111491-111682 / 111491-111682-ET, pp.111517, 111550, 111612, 111671-111672.

⁴⁶ See Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 139-140. See, for example, 111491-111682 / 111491-111682-ET, pp.111546, 111557-111558, 111561-111562, 111571, 111584, 111598, 111617-111618, 111624, 111631, 111653, 111656; 111687-111889 / 111687-111889-ET, p.111712.

⁴⁷ See Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 58-60. See, for example, 111491-111682 / 111491-111682-ET, pp. 111491, 111567, 111598-111599, 111603, 111668-111669; 111687-111889 / 111687-111889-ET, pp.111688, 111704, 111749, 111769-111770, 111798, 111848, 111865, 111867, 111871.

⁴⁸ See, for example, 111491-111682 / 111491-111682-ET, pp.111493-111494, 111503-111504, 111544-111545, 111609-111610, 111618, 111653, 111660-111661; 111687-111889 / 111687-111889-ET, pp.111752, 111765, 111767-111768, 111823-111824, 111841.

⁴⁹ See, for example, 111687-111889 / 111687-111889-ET, pp.111785-111786, 111823-111824.

⁵⁰ See, for example, 111491-111682 / 111491-111682-ET, pp.111539-111540, 111606, 111628, 111630, 111632-111636, 111645; 111687-111889 / 111687-111889-ET, pp.111743, 111748-111749, 111762-111763, 111780.

⁵¹ See Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 502-503. See, for example, 111491-111682 / 111491-111682-ET, pp.111595-111596, 111601, 111607, 111617, 111625, 111637.

⁵² See Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, para.514. See, for example, 111687-111889 / 111687-111889-ET, pp.111734, 111737-111738, 111740-111741, 111748, 111753.

⁵³ See Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, para.504. See, for example, 111687-111889 / 111687-111889-ET, pp.111799-111812.

⁵⁴ See Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, para.505. See, for example, 111687-111889 / 111687-111889-ET, pp.111814, 111833-111834, 111866.

⁵⁵ See Pre-Trial Brief, KSC-BC-2020-06/F01594/A03, paras 506-508. See, for example, 111687-111889 / 111687-111889-ET, pp.111857-111858, 111866.

⁵⁶ See, for example, 111491-111682 / 111491-111682-ET, pp.111663-111664.

phone/satellite numbers to certain persons, zones, and units.⁵⁷ In turn, the Intercept Files must be considered holistically, as well as in light of intercept records already on the Exhibit List.⁵⁸ When read together, they corroborate and complement each other.

13. The interlocutors of a number of intercepted conversations are also witnesses in this case,⁵⁹ including W04746 (who the SPO intends to call during the July 2023 evidentiary block). Further, a number of [REDACTED] are anticipated to testify about the interception of communications by known and suspected KLA members in 1998 and 1999.⁶⁰ The SPO intends to use the Intercept Files, or parts thereof, with such witnesses.

14. Accordingly, the Intercept Files are relevant and important; they should be available to the SPO in proving its case and the Panel in considering the charges.

C. THERE IS LIMITED, IF ANY, PREJUDICE TO THE DEFENCE

15. The Requested Amendments provide the Accused sufficient notice and do not unduly prejudice the Defence's ability to prepare for trial. The proposed materials relate to known aspects of the SPO's case, and are of a similar nature to other materials already disclosed to the Accused.⁶¹ Further, the Defence has had access to the Intercept Files since 6 April 2023, shortly after the SPO obtained them.

III. CLASSIFICATION

16. This filing and its annexes are confidential to give effect to existing protective measures and provider-applied confidentiality restrictions. A public redacted version will be filed.

⁵⁷ See, for example, 111491-111682 / 111491-111682-ET, pp.111522-111523, 111549, 111564, 111636; 111687-111889 / 111687-111889-ET, pp.111716, 111753-111754, 111868, 111882.

⁵⁸ See para.6 above.

⁵⁹ See, for example, W04746, [REDACTED].

⁶⁰ See, for example, [REDACTED].

⁶¹ See paras 6, 9-14 above.

IV. RELIEF REQUESTED

17. For the foregoing reasons, the Panel should authorise the Requested Amendments. To enable their use with W04746, the SPO respectfully requests a ruling on this request by the start of the July 2023 evidentiary block.

Word Count: 2474



Alex Whiting

Acting Specialist Prosecutor

Thursday, 13 July 2023

At The Hague, the Netherlands.