



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

**The 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: Fidelma Donlon

Date: 7 July 2023

Language: English

Classification: Public

**Public Redacted Version of Decision on Prosecution Request to Add Intercepted
Communications to the Exhibit List**

Acting Specialist Prosecutor

Alex Whiting

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Victims

Simon Laws

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

TRIAL PANEL II (“Panel”), pursuant to Articles 21(4)(c) and (6) and 40 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 95(4)(c), 102(1)(b), and 118(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 30 May 2023, upon authorisation from the Panel,¹ the Specialist Prosecutor’s Office (“SPO”) filed its amended list of exhibits (“Exhibit List”).²
2. On 23 June 2023, the SPO filed a request to add intercepted communications of persons known to be or suspected to be KLA members between January and March 1999 (“Intercept Files”) to its Exhibit List (“Request”).³
3. On 26 June 2023, the Panel ordered the Parties and participants to submit responses and reply, if they so wish, by Monday, 3 July 2023 at 16:00 hours and Friday, 7 July 2023 at noon, respectively.⁴
4. On 3 July 2023, the Defence for all four Accused responded to the Request (collectively, “Responses”).⁵
5. On 7 July 2023, the SPO replied to the Defence Responses (“Reply”).⁶

¹ F01544, Panel, *Decision on Prosecution Request to Add Five Items Relating to Expert Witness to the Exhibit List* (“23 May 2023 Decision”), 23 May 2023.

² F01562, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 30 May 2023, with Annex 1 (“Exhibit List”), strictly confidential and *ex parte*, and Annex 2, confidential.

³ F01622, Specialist Prosecutor, *Prosecution Request to Add Intercepted Communications to the Exhibit List*, 23 June 2023, confidential.

⁴ CRSPD 248, 26 June 2023.

⁵ F01637, Specialist Counsel, *Thaçi, Selimi and Krasniqi Defence Response to ‘Prosecution Request to Add Intercepted Communications to the Exhibit List’* (“Thaçi, Selimi and Krasniqi Response”), 3 July 2023, confidential; F01638, Specialist Counsel, *Veseli Defence Response to Prosecution Request to Add Intercepted Communications to the Exhibit List* (“Veseli Response”), 3 July 2023, confidential, with Annex 1, confidential.

⁶ F01652, Specialist Prosecutor, *Prosecution Consolidated Reply to Defence Responses Concerning Addition of Intercepted Communications to the Exhibit List*, 7 July 2023, confidential.

II. SUBMISSIONS

6. The SPO requests leave to amend its Exhibit List to include the Intercept Files, which it intends to use during the examination of relevant witnesses, including with witnesses purportedly heard on intercepted communications.⁷ The SPO argues that: (i) the Request is timely, limited in scope, and concerns relevant material, which is probative of the charges;⁸ (ii) the Request should be treated with flexibility as the case is a multi-Accused case involving a considerable amount of evidence;⁹ and (iii) considering the early stages of the trial proceedings, the scope of the case, and the limited nature and scope of the Intercept Files, there is minimal impact on Defence preparations.¹⁰ The SPO submits that the Request is timely as: (i) the SPO requested recordings of intercepted communications of known or suspected KLA members between 1998 and 2000 from [REDACTED] in February 2019, June 2020 and December 2020 and has exercised due diligence in obtaining, disclosing and processing them;¹¹ (ii) the recordings received from [REDACTED] “were not (fully) responsive [to the SPO’s requests], a fact raised with [REDACTED] on a number of occasions”;¹² and (iii) the Intercept Files were provided by [REDACTED] on 22 March 2023, and the SPO has exercised due diligence in noticing them pursuant to Rule 102(3), disclosing them to the Defence and, with the finalisation of the translations on 20 June 2023, filing the Request.¹³ The SPO also submits that good cause exists for the Intercept Files as they are

⁷ Request, paras 1-2, 17, *referring to* 111491-111682 and 111687-111889 (and their corresponding translations).

⁸ Request, para. 2.

⁹ Request, para. 4.

¹⁰ Request, para. 4. *See also* Request, para. 15.

¹¹ Request, paras 5-6.

¹² Request, para. 7.

¹³ Request, paras. 7-8.

prima facie relevant and of sufficient importance to justify their addition to the Exhibit List.¹⁴

7. The Thaçi, Selimi and Krasniqi Defence respond that the Request should be rejected.¹⁵ They submit that: (i) the SPO has not shown that timely notice and good cause exist justifying the addition of almost 400 pages of allegedly intercepted communications at this stage of trial proceedings;¹⁶ (ii) adding the Intercept Files to the Exhibit List at this stage of the proceedings – after several witnesses have already testified and other witnesses are due to testify shortly – will impact the Accused’s right to have adequate time to prepare, and will have inevitable repercussions on the expeditiousness of the proceedings;¹⁷ and (iii) the Intercept Files are unreliable, lack probative value and thus should not be added to the Exhibit List.¹⁸ The Thaçi, Selimi and Krasniqi Defence further submit that, should the Panel grant the Request, the Panel should order the SPO: (i) to schedule the testimony of witnesses involved in the interception process before the Intercept Files are used during witness examinations and tendered for admission;¹⁹ and (ii) not to use the Intercept Files during the examination of W04746 or, alternatively, to re-schedule the testimony of W04746 to a later stage, as the Defence does not have enough time to prepare.²⁰

8. The Veseli Defence responds that the Request must be rejected.²¹ The Veseli Defence submits that the Request: (i) is decidedly untimely;²² (ii) fails to show good cause due to a lack of specificity;²³ and (iii) is prejudicial to Mr Veseli’s fair

¹⁴ Request, paras 9-14.

¹⁵ Thaçi, Selimi and Krasniqi Response, paras 1, 39.

¹⁶ Thaçi, Selimi and Krasniqi Response, paras 2, 13-23.

¹⁷ Thaçi, Selimi and Krasniqi Response, paras 2, 24-27.

¹⁸ Thaçi, Selimi and Krasniqi Response, paras 28-29.

¹⁹ Thaçi, Selimi and Krasniqi Response, paras 3, 38, 40(c).

²⁰ Thaçi, Selimi and Krasniqi Response, paras 3, 30-37, 40(a)-(b).

²¹ Veseli Response, paras 3, 30.

²² Veseli Response, paras 3, 14-19. *See also* Annex 1 to the Veseli Response.

²³ Veseli Response, paras 3, 20-27.

trial rights.²⁴ The Veseli Defence submits that, should the Panel deem portions of the Intercept Files to be appropriate for addition to the Exhibit List, the SPO should be ordered to refile the Request with a view to identifying specific Intercept Files that it seeks to rely on as the evidence continues to unfold.²⁵

9. The SPO replies that the Responses focus on matters going to the admissibility and weight of the Intercept Files, not the standard for Exhibit List amendments, and make unsubstantiated, speculative, and premature claims of prejudice.²⁶ The SPO submits that the Request should be granted so this relevant and important, contemporaneous record of events is available for the Prosecution to prove its case and, if ultimately admitted, the Panel to consider in its final assessment of the evidence.²⁷

III. DISCUSSION

10. Pursuant to Rule 118(2), the Panel will assess whether, at the current stage of proceedings, the SPO has provided timely notice and shown good cause for adding the Intercept Files to its Exhibit List, and that no undue prejudice is caused to the Defence by the amendment of the Exhibit List at this point in the proceedings.²⁸

²⁴ Veseli Response, paras 3, 28-29.

²⁵ Veseli Response, para. 3.

²⁶ Reply, paras 1-5.

²⁷ Reply, paras 1, 6, 8.

²⁸ 23 May 2023 Decision, para. 8. *See also* F00321, Trial Panel II, *Decision on Prosecution's Request for Leave to Amend its List of Exhibits* ("Gucati and Haradinaj Decision"), 23 September 2021, para. 16; ICTY, *Prosecutor v. Hadžić*, IT-04-75-T, *Decision on Fifth Defence Motion for Leave to Amend its Rule 65 ter Exhibit List* ("[Hadžić Decision](#)"), 19 February 2015, para. 5; *Prosecutor v. Karadžić*, IT-95-5/18-T, *Decision on Prosecution's Motion for Leave to Amend its Exhibit List* ("[Karadžić Decision](#)"), 19 October 2011, para. 9; *Prosecutor v. D. Milošević*, IT-98-29/1-T, [Decision on Prosecution's Third Motion for Leave to Amend Its Rule 65 ter Exhibit List](#), 23 April 2007, p. 3; STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, [Decision allowing the Prosecution to Add to Its Exhibit List a Statement by Mr Andrew Donaldson \(Witness PRH230\)](#), 28 April 2017, para. 18.

11. At the outset, the Panel emphasises that the primary purpose of the exhibit list is to give notice to the Defence of the documents the SPO intends to use during its case. This, in turn, should allow timely and effective Defence preparation and ensure the efficient presentation of evidence during trial.²⁹ The Panel further stresses that, in deciding whether to grant the addition of a particular item to a Party's exhibit list, the Panel need not assess whether the proposed items are admissible.³⁰ The Panel need only satisfy itself that the proposed item is *prima facie* relevant and of sufficient importance to justify the late addition.³¹ Accordingly, a decision authorising the addition of an item to a Party's exhibit list is without prejudice to the Panel's subsequent decision on whether that item should be admitted into evidence.³²

12. As regards the timeliness of the notice, the Panel is mindful that: (i) the Pre-Trial Judge set a time limit for the submission of the SPO's Exhibit List and authorised numerous amendments thereof;³³ and (ii) the Panel has already

²⁹ F01352, Panel, *Decision on Prosecution Request to Amend the Exhibit List and Related Matters* ("8 March 2023 Decision"), 8 March 2023, confidential, para. 28. See also *Gucati and Haradinaj Decision*, para. 15; ICTY, [Karadžić Decision](#), para. 10.

³⁰ 8 March 2023 Decision, para. 29. See also *Gucati and Haradinaj Decision*, para. 16; ICTY, [Karadžić Decision](#), para. 10; [Hadžić Decision](#), para. 5.

³¹ 8 March 2023 Decision, para. 29. See also *Gucati and Haradinaj Decision*, para. 16; [Hadžić Decision](#), para. 5; [Karadžić Decision](#), para. 9.

³² 8 March 2023 Decision, para. 29. See also *Gucati and Haradinaj Decision*, para. 16; ICTY, [Karadžić Decision](#), para. 10; [Hadžić Decision](#), para. 5.

³³ Transcript of Hearing, 29 October 2021, pp. 752-753; F00667, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request for Extension of Time*, 31 January 2022, confidential, para. 13 (a public redacted version was filed on the same day, F00667/RED). See also F00727, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures*, 8 March 2022, strictly confidential and *ex parte*, para. 54 (a confidential redacted version was filed on the same day, F00727/CONF/RED); F00779, Pre-Trial Judge, *Decision on Specialist Prosecutor's Rule 102(2) and Related Requests*, 22 April 2022, confidential, para. 55; F00876, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures*, 8 July 2022, strictly confidential and *ex parte*, para. 107 (a confidential redacted version was filed on the same day, F00876/CONF/RED); F00957, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures*, 6 September 2022, strictly confidential and *ex parte*, para. 107 (a confidential redacted version was filed on 7 September 2022, F00957/CONF/RED); F01057, Pre-Trial Judge, *Decision on Prosecution Rule 102(2) Submission and Related Requests*, 27 October 2022, strictly confidential and *ex parte*, para. 58 (a confidential redacted version was filed on the same day, F01057/CONF/RED); F01058, Pre-Trial Judge, *Decision on Prosecution Request to Add Two Witnesses*

authorised the amendment of the SPO's list of exhibits on two occasions.³⁴ However, in assessing the issue of timeliness of the Request, the Panel notes that the Intercept Files consist of items that were only recently received by the SPO.

13. In particular, the Panel observes that: (i) the SPO submits that it received the Intercept Files on 22 March 2023;³⁵ (ii) the Intercept Files were noticed pursuant to Rule 102(3) and disclosed to the Defence within two weeks, on 6 April 2023;³⁶ (iii) the SPO submits that draft translations of the Intercept Files became available on a rolling basis in late May 2023 and, while subject to ongoing revision, were reviewed and processed in anticipation of the Request;³⁷ (iv) the SPO submits that final translations of the Intercept Files became available on 20 June 2023; (v) the translations of the Intercept Files were disclosed to the Defence on 22 June 2023;³⁸ and (vi) the Request was filed the next day on 23 June 2023.

14. The Panel notes the Defence's argument that the SPO's claim that it followed up "on a number of occasions" with [REDACTED] about the Intercept Files – given that the materials provided were "not (fully) responsive" to the SPO's requests – is generic and unsupported.³⁹ The Panel agrees that the SPO could have been more forthcoming about providing details of its efforts to obtain the impugned information. However, the Panel notes that the initial request for the Intercept Files was submitted to [REDACTED] in February 2019, the SPO followed up on it on at least two occasions and eventually received the Intercept Files only in

and Associated Materials, 27 October 2022, strictly confidential and *ex parte*, para. 47 (a confidential redacted version was filed on the same day, F01058/CONF/RED); F01142, Pre-Trial Judge, *Decision on Prosecution Request to Amend the Exhibit List and for Protective Measures*, 6 December 2022, strictly confidential and *ex parte*, para. 304 (a confidential redacted version was filed on 7 December 2022, F01142/CONF/RED).

³⁴ 23 May 2023 Decision, para. 9; 8 March 2023 Decision, para. 36.

³⁵ Request, para. 7.

³⁶ F01432, Specialist Prosecutor, *Prosecution Supplemental Rule 102(3) Notice*, 6 April 2023, confidential, para. 2, with Annex 1, confidential; Disclosure Package 747.

³⁷ Request, para. 8.

³⁸ Request, para. 8; Disclosure Package 829.

³⁹ *See* Thaçi, Selimi and Krasniqi Response, para. 17; Veseli Response, para. 16.

March 2023.⁴⁰ There is no indication before the Panel that the SPO could have taken additional steps during that period that would have helped secure this material at an earlier time.

15. The Panel is also of the view that the three months which elapsed between the receipt of the Intercept Files, their processing and translation, their disclosure to the Defence, and the filing of the Request is not an unreasonable period of time. The Panel is therefore satisfied that the Request is timely.

16. As regards good cause, the Panel notes that leave to amend the Exhibit List should not be granted with respect to items that are obviously irrelevant and would, therefore, ultimately be denied admission into evidence.⁴¹ Such an evaluation does not call for an assessment of the admissibility of the proposed material, but of a *prima facie* evaluation only. The Panel may also take into account other factors which militate in favour of, or against, a requested addition, including whether the proposed evidence is *prima facie* relevant and of probative value to the charges against an accused, the complexity of the case, on-going investigations, and translation of documents and other materials.⁴² In addition, the Panel will carefully evaluate the effect of such an amendment onto the rights of the accused, taking into account in particular the amount of information concerned and the timing of the application.⁴³ In particular, the Panel will verify that, if granted, the amendment of the list at that stage of the proceedings does not

⁴⁰ Request, paras 6-7.

⁴¹ 23 May 2023 Decision, para. 11; 8 March 2023 Decision, para. 31. See also *Gucati and Haradinaj* Decision, para. 16. See also ICTY, [Karadžić Decision](#), para. 10; [Hadžić Decision](#), para. 5; *Prosecutor v. Stanišić and Simatović*, IT-03-69-T, Decision on Prosecution Motion for Leave to Amend its Rule 65 ter Exhibit List (“*Stanišić and Simatović* Decision”), 8 May 2008, para. 7; *Prosecutor v. Delić*, IT-04-83-T, [Decision on Urgent Prosecution Motion for Leave to Amend its Exhibit List](#), 17 October 2007, p. 4; *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-T, [Decision on Tarčulovski Motion for Permission to Add Additional Exhibits to its 2D Defence Exhibit List](#), 12 March 2008, para. 3.

⁴² 23 May 2023 Decision, para. 11; 8 March 2023 Decision, para. 31. See also ICTY, [Karadžić Decision](#), para. 9 (and authorities cited therein).

⁴³ 23 May 2023 Decision, para. 11; 8 March 2023 Decision, para. 31. See also ICTY, *Stanišić and Simatović* Decision, para. 6; [Karadžić Decision](#), para. 9.

deny the accused sufficient notice of the evidence to be presented against him and do not adversely affect his ability to prepare for trial.⁴⁴

17. The Panel observes that the SPO intends to rely upon the Intercept Files in relation to allegations pertaining to the KLA organisation and communications systems, and as contemporaneous records of events in January-March 1999 in Kosovo operational zones and at KLA-controlled bases in northern Albania.⁴⁵ In this regard, the Panel notes that the Intercept Files contains information on matters generally relevant to the allegations in the Indictment,⁴⁶ including, *inter alia*: (i) the General Staff's authority,⁴⁷ coordination,⁴⁸ and oversight of developments in the operational zones;⁴⁹ (ii) coordination between the General Staff and the zone commands,⁵⁰ between different zone commands,⁵¹ and within each zone;⁵² (iii) communications and coordination between international observers and diplomatic representatives and the General Staff and zone commands;⁵³ (iv) logistical issues (including supplies, weapons, and trainings) and the General

⁴⁴ 23 May 2023 Decision, para. 11; 8 March 2023 Decision, para. 31. See also ICTY, *Stanišić and Simatović* Decision, para. 6; [Karadžić Decision](#), para. 9.

⁴⁵ Request, para. 9.

⁴⁶ F00999, Specialist Prosecutor, *Submission of Confirmed Amended Indictment*, 30 September 2022, with Annexes 1 ("Indictment") and 2, confidential, and Annex 3, public (lesser redacted public versions were issued on 15 February 2023 and 27 February 2023, F01296/A03 and F01323/A01).

⁴⁷ See e.g. 111491-111682-ET, pp. 111511, 111531-111533, 111537, 111568-111569, 111571, 111593, 111596-111598, 111612, 111615, 111635, 111654-111655, 111659; 111687-111889-ET, p. 111780.

⁴⁸ See e.g. 111491-111682-ET, pp. 111495, 111611, 111635, 111680; 111687-111889-ET, pp. 111731, 111758-111759, 111883.

⁴⁹ See e.g. 111491-111682-ET, pp. 111578, 111594-111595, 111608; 111687-111889-ET, pp. 111791-111792, 111861.

⁵⁰ See e.g. 111491-111682-ET, pp. 111495-111500, 111515-111516, 111528-111529, 111557, 111579-111580, 111586, 111611-111612, 111635-111636, 111642-111643, 111645, 111661, 111666, 111676, 111680; 111687-111889-ET, pp. 111688, 111691, 111705, 111717, 111770-111771, 111778, 111788, 111791, 111801, 111817, 111819-111820.

⁵¹ See e.g. 111491-111682-ET, pp. 111527, 111534, 111536, 111555, 111562, 111579, 111656; 111687-111889-ET, pp. 111698-111699, 111721, 111724, 111728, 111758, 111862-111863.

⁵² See e.g. 111491-111682-ET, pp. 111493-111494, 111501-111502, 111597; 111687-111889-ET, pp. 111727-111728, 111732-111733, 111755-111756, 111792-111793, 111798-111799, 111885.

⁵³ See e.g. 111491-111682-ET, pp. 111533-111535; 111687-111889-ET, pp. 111692-111694, 111708-111709, 111712-111713, 111761-111762, 111822, 111836, 111840, 111858-111860.

Staff's involvement therein;⁵⁴ (v) finances (including contributions from abroad);⁵⁵ (vi) KLA media reporting;⁵⁶ and (vii) the alleged common purpose and implementation of the charged joint criminal enterprise, through the targeting of alleged collaborators, traitors, and other perceived opponents, including by mistreating and detention.⁵⁷ The Panel further notes that: (i) victims named in the Indictment are discussed in a number of intercepted conversations;⁵⁸ (ii) the interlocutors of a number of intercepted conversations are listed witnesses in this case;⁵⁹ and (iii) the SPO has indicated that it intends to use the Intercept Files with some of these witnesses.⁶⁰ The Panel is therefore satisfied that, contrary to the Thaçi, Selimi and Krasniqi Defence's submissions, the Intercept Files are *prima facie* relevant and sufficiently important to justify their late addition to the Exhibit List.

18. As regards the impact of the Intercept Files on the Accused's preparation for trial, the Panel notes that the Intercept Files: (i) have been disclosed to the Defence under Rule 102(3) on 6 April 2023, and their final translations have been disclosed on 22 June 2023; (ii) relate to known aspects of the SPO's case;⁶¹ and (iii) are of a similar nature to other recordings which were previously received by the SPO, were disclosed to the Defence under Rule 102(1)(b) in 2021 and are already on the

⁵⁴ See e.g. 111491-111682-ET, pp. 111516-111517, 111550, 111562-111563, 111612, 111642, 111647, 111649, 111653-111654, 111671-111672; 111687-111889-ET, pp. 111688, 111819, 111853, 111855, 111877-111878.

⁵⁵ See e.g. 111491-111682-ET, pp. 111546, 111557-111558, 111561-111562, 111571, 111584, 111598, 111617-111618, 111624, 111631, 111653, 111656; 111687-111889-ET, p. 111712.

⁵⁶ See e.g. 111491-111682-ET, pp. 111491, 111567, 111598-111599, 111603, 111668-111669; 111687-111889-ET, pp. 111688, 111704, 111749, 111769-111770, 111798, 111848, 111865, 111867, 111871.

⁵⁷ See e.g. 111491-111682-ET, pp. 111493-111494, 111503-111504, 111539-111540, 111544-111545, 111606, 111609-111610, 111618, 111628, 111630, 111632-111636, 111645, 111653, 111660-111661; 111687-111889-ET, pp. 111743, 111748-111749, 111752, 111762-111763, 111765, 111767-111768, 111780, 111785-111786, 111823-111824, 111841.

⁵⁸ See e.g. 111491-111682-ET, pp. 111595-111596, 111601, 111607, 111617, 111625, 111637; 111687-111889-ET, pp. 111734, 111737-111738, 111740-111741, 111748, 111753, 111799-111812, 111814, 111833-111834, 111857-111858, 111866.

⁵⁹ W04746, [REDACTED].

⁶⁰ Request, paras 2, 13.

⁶¹ See *above* para. 17.

Exhibit List.⁶² The Panel also notes that while sizeable, the amount of relevant information is not unmanageable. Furthermore, the addition of the Intercept Files to the Exhibit List would occur at the beginning of the trial, so that the content of such items can be fully and effectively explored by the Parties at trial.

19. The Panel further observes that the SPO has indicated that only some of these documents are likely to be used during the coming weeks of these proceedings. In particular, the Panel notes that more than ten witnesses in this case were involved in the intercepted communications, and only one of them (W04746) is anticipated to testify in the July 2023 evidentiary block. In order to assist the Defence in its preparations for W04746, the Panel orders the SPO to indicate the specific portions of the Intercept Files to be used with W04746 by Monday, 10 July 2023 at 09:00 hours. Furthermore, the Defence will be able to raise any issue arising from these documents with the witness during cross-examination, which is unlikely to commence for several days. In those circumstances, the Panel will not prohibit the SPO to make use of relevant items with W04746 and will not order the SPO to re-schedule his testimony to a later stage of the proceedings. Any residual issue arising from such use will be dealt with at the time when it arises. The Panel invites the Parties to conduct *inter partes* discussions should any of the items which the SPO proposes to use with W04746 raise any particular concern with the Defence.

20. In these circumstances, the Panel is satisfied that the Defence will be given sufficient notice and adequate time for its preparation in respect of the Intercept Files, subject to the SPO identifying, in advance of W04746's testimony, the specific portions of the Intercept Files that it might seek to rely upon in relation to the testimony of this witness.

21. Considering the early stage of the trial, the Panel is not persuaded by the Defence's argument that the addition of the Intercept Files to the Exhibit List will

⁶² See 095876-095878-095976-095976, 076937-077011, 082655-082725; Disclosure Packages 40, 58, 64; Exhibit List, items 2821-2851, 3070-3071, 4022-4105.

negatively impact the Accused's rights and the expeditiousness of the proceedings. The Panel therefore rejects the Veseli Defence's request for an order to the SPO to refile the Request with a view to identifying specific Intercept Files that it seeks to rely upon in relation to the testimonies of witnesses other than W04746. The Panel also rejects the Thaçi, Selimi and Krasniqi Defence's requests for orders to the SPO to schedule the testimony of witnesses involved in the Intercept Files before the Intercept Files are used during witness examinations and tendered for admission. The order in which witnesses are to be called and the manner of presentation of their case is the primary responsibility of the Parties concerned, and the Panel sees no justification to make the order sought. Any question regarding the admissibility of such material will be determined at the time when the information is being tendered and/or when an objection to its admission is being raised.

22. For the above-mentioned reasons, the Panel finds that the SPO has provided timely notice, shown good cause for the addition of the Intercept Files to the Exhibit List, and demonstrated that no undue prejudice will be caused to the Defence by such addition, provided that the SPO identifies the specific portions of the Intercept Files that it seeks to rely upon in relation to the testimony of W04746.

23. The Panel therefore: (i) authorises the addition of the Intercept Files to the SPO's Exhibit List; (ii) orders the SPO to file its amended Exhibit List, by no later than Monday, 10 July 2023 at 16:00 hours; and (iii) orders the SPO to identify the specific portions of the Intercept Files that it seeks to rely upon in relation to the testimony of W04746, by no later than Monday, 10 July 2023 at 09:00 hours. The Panel also orders the SPO to disclose the Intercept Files to the Defence and Victims' Counsel under Rule 102(1)(b)(ii)-(iii), by no later than Monday, 10 July 2023 at 16:00 hours.

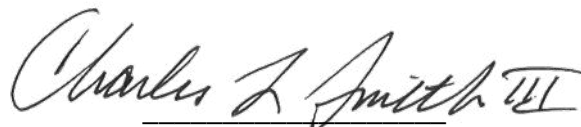
IV. CLASSIFICATION

24. The Panel notes that the Request, the Responses and the Reply were all filed confidentially. The Panel therefore orders the Parties to submit public redacted versions or request the reclassification of the Request, the Responses and the Reply, by no later than Friday, 21 July 2023.

V. DISPOSITION

25. For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS** the Request;
- b) **AUTHORISES** the SPO to add the Intercept Files to the Exhibit List;
- c) **ORDERS** the SPO to: (i) file its amended Exhibit List, by no later than **Monday, 10 July 2023 at 16:00 hours**; (ii) identify the specific portions of the Intercept Files that it seeks to rely upon in relation to the testimony of W04746, by no later than **Monday, 10 July 2023 at 09:00 hours**; and (iii) disclose the Intercept Files to the Defence and Victims' Counsel under Rule 102(1)(b)(ii)-(iii), by no later than **Monday, 10 July 2023 at 16:00 hours**; and
- d) **ORDERS** the Parties to submit public redacted versions or request the reclassification of the Request, the Responses and the Reply, by no later than **Friday, 21 July 2023**.



Judge Charles L. Smith, III

Presiding Judge

Dated this Friday, 7 July 2023

At The Hague, the Netherlands.