



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 Smith III, Presiding
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

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Public redacted version of 'Prosecution urgent request for modification of detention conditions with confidential Annexes 1 to 5'

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I. INTRODUCTION

1. Hashim THAÇI, Kadri VESELI, and Rexhep SELIMI (the 'Three Accused') have violated the Trial Panel's orders by revealing the identities of protected witnesses and/or disseminating the content of confidential testimony to persons visiting them at the Detention Centre. The Specialist Prosecutor's Office ('SPO')'s investigations have also revealed further attempts to obstruct the proceedings, including the issuing of instructions on how witnesses should testify and planned approaches to witnesses.

2. Accordingly, and pursuant to Articles 21 and 41 of the Law,¹ Rules 23(7) and 56(6) of the Rules,² and Rule 43(3)(c) of the Rules of Detention,³ the SPO urgently requests the Trial Panel ('Panel') to:

- a. on an interim basis, immediately segregate the Three Accused and suspend all their non-privileged outside communications⁴ - including visits (whether in person or by Zoom), phone calls, written communications and import-exports - until the Panel has the opportunity to rule on the merits of this request;
- b. restrict the non-privileged communications of the Three Accused to a defined set of immediate family and consular officials to be proposed by

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise specified, all references to 'Article(s)' are to Law.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). Unless otherwise indicated, all references to 'Rule(s)' are to the Rules.

³ KSC-BD-08-Rev1, 23 September 2020 ('Detention Rules'), including its associated practice directions, in particular, the Practice Direction on Visits and Communications, KSC-BD-09-Rev1, 23 September 2023 ('Practice Direction on Visits and Communications').

⁴ This includes consular contacts, media contacts and all other non-privileged communications.

the Three Accused and pre-approved by the Panel following submissions from the SPO;⁵

- c. order the active monitoring (by an Albanian-language speaker) of all non-privileged communications in whatever form, including in particular:
 - i. the active monitoring and audio and video recording of all non-privileged zoom calls, and the preservation of such records until the conclusion of trial;
 - ii. the active monitoring and audio recording of all telephone calls, and the preservation of such records until the conclusion of trial;
 - iii. the careful review and copying of all correspondence and import-export items,⁶ and the preservation of such records until the conclusion of trial;
- d. order that no non-privileged in-person visits be permitted, and that such contacts only take place via zoom or telephone, and subject to the monitoring outlined above;⁷
- e. order that privileged visits be restricted to Counsel and Co-Counsel only, save as previously authorised by the Panel in line with paragraphs 47-49 below;

⁵ The prohibition on any other communications extends to contacts with media.

⁶ Import-export should only be permitted between the Three Accused and the same limited, and pre-approved, list of immediate family as referenced above. It should not extend to consular officials (even those pre-approved) or any other person.

⁷ This prohibition on in-person contacts includes conjugal visits.

- f. order that there should not be common visitors between the Three Accused and other detainees, as outlined in paragraph 46 below;
 - g. order that the content of all non-privileged communications to/from the Three Accused be confined to matters unrelated to the evidence and witnesses in this case (regardless of the classification of such information as public or confidential);
 - h. order the segregation of the Three Accused from all other current detainees in the Detention Centre; and
 - i. order the Registry to report to the Panel and Parties, in the manner outlined in paragraph 50 below.
3. The requested measures are necessary to address the concrete risk of (a) unlawful attempts to interfere with witnesses and obstruct their testimony; (b) the dissemination from the Detention Centre of protected witness information, including confidential testimony given in this case; and (c) further threats to the integrity of the proceedings. The requested measures are the least restrictive means to achieve the necessary objectives.
4. Finally, as the body responsible for managing the detention facilities and the well-being of the detainees, as well as the body best-placed to implement the necessary measures, the SPO suggests that the Panel invite submissions from the Registry on the SPO's submissions.

II. WORD COUNT

5. As a preliminary matter, and pursuant to Article 36 of the Practice Direction on Files and Filings,⁸ the SPO requests a limited extension of the word count to 8,150 for the purposes of this filing. The necessity of this limited extension only became apparent in the final stages of preparation of the filing, and good cause arises in this instance given the need to provide the full factual and legal basis, including providing examples of the evidentiary basis.

III. SUBMISSIONS

6. Multiple protected witnesses in this case have reported being approached by persons attempting to prevent or influence their testimony. As described below, in a number of instances, these approaches were indicated as having been directed by one or more of the Three Accused and/or persons who had visited them in The Hague. Pursuant to judicial authorisation from the Single Judge, the SPO has covertly audio-recorded non-privileged visits to the Three Accused in the Detention Centre ('Recordings').⁹

7. From just the limited selection of visits recorded, and notwithstanding certain impediments to review,¹⁰ the SPO's analysis to date shows that on numerous occasions, the Three Accused used their non-privileged visits to unlawfully disseminate protected witness information, identify witnesses, and in THAÇI's case, repeatedly instructed

⁸ Practice Direction on Files and Filings before the Kosovo Specialist Chambers, KSC-BD-15, 17 May 2019.

⁹ While authorisation was obtained to audio record all non-privileged, non-conjugal visits during the authorised period, only a limited number of such visits were selected for recording. The SPO is arranging for handover to the Defence of copies of all recorded Detention Centre visits, pursuant to Rule 103, as well as indexes identifying the scheduled participants of each visit (a copy of this index is also attached at Annex 5). Records of Detention Centre visits - which form the basis for the index provided - were also obtained pursuant to judicial authorisation from the Single Judge. The SPO has extracted (from the excel format in which they were provided) and compiled the records of all visits cited in this request at Annex 3.

¹⁰ See paragraph 19 below.

visitors to seek to manipulate witness testimony. Each of these issues is discussed in further detail below.¹¹

A. DIRECT APPROACHES TO WITNESSES

i. SPO Witness [REDACTED]

8. The [REDACTED] witness in the case, whose identity was disclosed to the Accused on 30 January 2023, reported being approached in March 2023 – just weeks before the scheduled trial commencement. During an approach by Individual 1, [REDACTED] was told that Hashim THAÇI and Kadri VESELI had directly instructed a person who visited them in The Hague to arrange for someone to reach out to [REDACTED]'s family to convey a message.¹² The message delivered to [REDACTED] was that [REDACTED] should withdraw as a witness or weaken [REDACTED] evidence against the Accused in this case.¹³

9. A second person, Individual 2, who subsequently approached [REDACTED] again confirmed that 'his circle', which included people who had visited The Hague, had discussed sending someone else to talk to [REDACTED].¹⁴ The message then conveyed from his 'group' was again that [REDACTED] either not testify or soften [REDACTED] evidence against the Accused 'for the good of Kosovo'.¹⁵

10. Significantly, Individual 2 had in fact applied to visit THAÇI in The Hague in early February 2023, along with [REDACTED] other persons. Individual 2 did not ultimately

¹¹ The incidents described in each section below are examples of the conduct in question, rather than an exhaustive recitation.

¹² 112446-112451 RED, p.112447.

¹³ 112446-112451 RED, p.112447.

¹⁴ 112639-112648 RED, p.112640.

¹⁵ 112639-112648 RED, p.112640.

participate in that visit, apparently due to his inability to obtain a lawful means of entry to the Netherlands in time. However, the [REDACTED] other visitors, who he had intended to travel with, did visit THAÇI on [REDACTED] – approximately [REDACTED] after [REDACTED]'s identity had been disclosed.¹⁶

11. A request by this same group to visit VESELI, was apparently denied.¹⁷ Nonetheless there is evidence that VESELI had indicated his intention to use the visit of the group to THAÇI to himself also meet with them. [REDACTED]:¹⁸

'[REDACTED]'

'[REDACTED]'.

12. That this would have been possible is corroborated by subsequent Detention Centre recordings, which suggest it was a regular occurrence for unscheduled detainees to enter and take part in visits for which they were not authorised to be present. In particular, from just the small sample of visits recorded, the SPO has identified multiple occasions on which VESELI dropped into the scheduled visits of other detainees, including, for example, visits to THAÇI on [REDACTED] July 2023, [REDACTED] July 2023, and [REDACTED] August 2023 and visits to SELIMI on [REDACTED] July 2023 and [REDACTED] July 2023.¹⁹

ii. SPO Witness [REDACTED]

13. [REDACTED] is a protected witness whose identity was disclosed to the accused on 30 January 2023. In April 2023, [REDACTED] reported being contacted by two

¹⁶ See Annex 3 (record of visits), p.1.

¹⁷ See Annex 1, p.1.

¹⁸ See Annex 1.

¹⁹ See Annexes 3 (record of visits) and 5 (index of recordings).

individuals with a message, delivered on behalf of others - including [REDACTED] - to withdraw his testimony against [REDACTED].²⁰

14. While there is no record of [REDACTED] having personally visited the Detention Centre during the relevant timeframe, on [REDACTED] 2023 - that is, within [REDACTED] of the disclosure of [REDACTED]'s identity – [REDACTED] visited both THAÇI and VESELI.²¹ It is recalled in this regard that [REDACTED].²²

iii. SPO Witness [REDACTED]

15. Similarly, [REDACTED] is a protected witness whose identity was disclosed to the Accused on [REDACTED] March 2023. In May 2023, [REDACTED] first reported to the SPO several attempts to interfere with his testimony by multiple individuals whom he declined to name.²³ Then, [REDACTED] reported to the SPO that, on [REDACTED] attempted to contact him through another person in order to discuss his impending testimony.²⁴

16. Detention records obtained by the SPO show that [REDACTED] visited (a) THAÇI on [REDACTED], (b) VESELI on [REDACTED], and (c) SELIMI on [REDACTED]. [REDACTED]. While [REDACTED] is not recorded as himself having a scheduled visit

²⁰ 112769-112772 RED, para.5 and 112906-TR-ET Part 1, pp.7, 18.

²¹ See Annex 3 (record of visits), pp.1, 3. As shown in the detention records, [REDACTED] had also previously visited THAÇI and VESELI on [REDACTED] 2022.

²² For example, [REDACTED].

²³ 113359-113360 RED, paras 5-10.

²⁴ 114326-114328 RED, para.3.

with one of the Three Accused on those days,²⁵ he was [REDACTED],²⁶ who did attend visits with the Three Accused on [REDACTED].²⁷

17. As context, [REDACTED].²⁸

18. These witness accounts are corroborated by the Recordings, which - as described below - demonstrate that confidential information, including witness identities and instructions to be conveyed to witnesses, are in fact being transmitted from the Detention Centre.

19. The SPO emphasises at the outset that the Three Accused made active attempts to impede monitoring of their conversations, which has also significantly impeded and delayed the process of review of the Recordings. For example, during numerous portions of the visits: (a) the Three Accused and their visitors whisper and/or speak in hushed tones;²⁹ (b) music is heard playing inside the room while people are speaking; (c) additional, non-scheduled detainees enter the room and participate in portions of the visits;³⁰ and (d) individuals in the visit rooms engage in multiple conversations at once, sometimes in a manner that appears intended to make monitoring the conversations more difficult.³¹

20. Indeed, it is apparent that the Three Accused, and their interlocutors, were aware of the risk of their conversations being monitored.³² The Recordings have been disclosed

²⁵ The SPO cannot currently exclude the possibility that [REDACTED] had a visit with a different detainee on those dates, during which he could have had direct contact with one or more of the Three Accused (*see* para.12 above on unauthorized detainees joining the scheduled visits of other detainees).

²⁶ *See* Annex 2, pp.1-8 (article from [REDACTED] 2023; in the first photograph [REDACTED]).

²⁷ *See* Annex 3 (record of visits), pp.1-3. [REDACTED].

²⁸ [REDACTED].

²⁹ *See e.g.* paras 29, 32 below.

³⁰ *See* para.12. *See also, for example,* Annex 4.1: 114037-TR-AT-ET, p.18.

³¹ *See e.g.* para.32 below.

³² *See e.g.* [REDACTED].

under Rule 103 as, in addition to being related to attempts to change Prosecution witness evidence, at times, and in various contexts, the Three Accused have made potentially exculpatory statements.³³

B. UNLAWFUL REVELATION OF PROTECTED AND CONFIDENTIAL WITNESS INFORMATION

21. The Three Accused have repeatedly used their non-privileged Detention Centre visits to reveal protected witnesses' identities and confidential details about closed or private session testimony in violation of this Panel's orders.

22. For example, during THAÇI's [REDACTED] 2023 visit with [REDACTED]³⁴ and [REDACTED], THAÇI and his visitors had the following discussion about [REDACTED]:³⁵

HASHIM THAÇI: Then the [REDACTED] one came.

[REDACTED]

HASHIM THAÇI: And for [unintelligible]. He said, "[REDACTED], but they then beat me up."

[REDACTED]: [Laughing]

HASHIM THAÇI: They did well.

23. THAÇI similarly discussed [REDACTED]. In each case, THAÇI provided identifying information, revealed the content of private session testimony and expressed ill-will towards the witness.³⁶

³³ See e.g. Annex 4.1: 114037-TR-AT-ET, p.24, line 20 (THAÇI states that he had never heard of Zllash village); Annex 4.8: 061023-130747-TR-ET, p.1 (VESELI possibly disclaiming knowledge of a particular incident).

³⁴ [REDACTED]. See Annex 3, pp.1, 3.

³⁵ Annex 4.5: 080823-090525-TR-ET, pp.2-4.

³⁶ [REDACTED]

24. During his [REDACTED], VESELI discussed the private session testimony of [REDACTED], including there being discussion of the relevant village and VESELI providing a physical description of the witness as [REDACTED].³⁷

25. Like VESELI, SELIMI also discussed the confidential evidence of [REDACTED]. During the discussion, SELIMI, *inter alia*, [REDACTED].³⁸

26. Additionally, during SELIMI's [REDACTED], SELIMI provided identifying information about and discussed the testimony of other protected witnesses, including [REDACTED]:³⁹

RS: The last one was from [REDACTED].

UM 3: Huh?

RS: This last one was from [REDACTED].

UM 1: This one from [REDACTED], this one?

RS: No, no after him.

MP 1: No, no. [overlapping speakers]

RS: There was one recently.

UM 3: This one from [REDACTED], huh? [overlapping speakers]

UM 1: The other one. [overlapping speakers]

MP 2: The other one? [overlapping speakers]

RS: The one without identity.

UM 3: Really?

UM 2: Oh, yes. The one who looked tired. [overlapping speakers]

RS: Without identity-- He has done-- He said, [REDACTED] I know him quite well...

MP 2: [Whispers] Who is he?

RS: It's nothing [indiscernible], they come from [REDACTED].⁴⁰

UM 2: Oooooh, yes!

³⁷ Annex 4.8: 061023-130747-TR-ET, pp.1-3.

³⁸ [REDACTED].

³⁹ Annex 4.7: 160923-081500-TR-ET, pp.1-3.

⁴⁰ See e.g., [REDACTED]

UM 1: [Whispers to UM 2] Do not talk because [indiscernible – overlapping speakers]

C. DIRECTIONS FROM DETENTION CENTRE TO INTERFERE WITH WITNESS TESTIMONY

27. The Recordings show that THAÇI has repeatedly abused non-privileged visits to provide instructions on how witnesses should testify and directed his visitors to approach witnesses on his behalf.

i. SPO Witness [REDACTED]

28. On [REDACTED] visited THAÇI at the Detention Centre in The Hague. During the visit, THAÇI repeatedly directed [REDACTED] to provide instructions to [REDACTED] on how to testify, including, *inter alia*: (i) to minimise his connection to the General Staff; (ii) to deny certain facts related to KLA structure; (iii) to ‘be brief’ for fear of ‘slipping’;⁴¹ (iv) how to respond when shown particular pieces of evidence;⁴² and (v) to ‘Come out of here a hero’, with THAÇI instructing [REDACTED] to ‘Tell him “You are coming here, leave this place a hero. Don’t leave shameful”’.⁴³

29. The following excerpts are provided by way of example:

[REDACTED].

HASHIM THAÇI: [Normal voice] “I was /?dealing/ with Adem DEMAÇI”.⁴⁴

[...]

HASHIM THAÇI: Be brief. [Whispers] He should answer briefly. [Door closes] No, no [Whispers] /?you know now/.

⁴¹ Annex 4.1: 114037-TR-AT-ET, p.42: ‘HASHIM THAÇI: [Whispers] And tell him “Be brief”, tell him. Tell him “Do not let them plan 12 hours to ask him questions”. He won’t escape 12 hours without slipping somewhere.’

⁴² See e.g., Annex 4.1: 114037-TR-AT-ET, p.53-54, ‘HASHIM THAÇI: All. Yes, these ones. Tell him “They will also ask you about that book [REDACTED]”. [REDACTED] HASHIM THAÇI: You tell him “About the book he can say [Whispers][REDACTED].[REDACTED]. HASHIM THAÇI: [Whispers] He must not say - [normal voice] because they will ask him “Is this true?”. [REDACTED] [Whispers] He must not say – [REDACTED].’

⁴³ Annex 4.1: 114037-TR-AT-ET, p.49.

⁴⁴ Annex 4.1: 114037-TR-AT-ET, pp.40-41.

[REDACTED]HASHIM THAÇI: [Whispers] “The boss was DEMAÇI [indiscernible] he should state it clearly, because what is [indiscernible] [Whispers] [indiscernible] Baca Adem /Baca - a traditional way of respectfully addressing older man/ [indiscernible].

[REDACTED]

HASHIM THAÇI: [Indiscernible] this is very important. “I did neither consult them, nor did they give me any orders”.

[REDACTED]

HASHIM THAÇI: Plus mmm --

HASHIM THAÇI: -- [Whispers] The communiques were propaganda.

[REDACTED]

HASHIM THAÇI: Come out of here a hero. Tell him “You are coming here, leave this place a hero. Don’t leave shameful”.⁴⁵

30. During the visit, [REDACTED],⁴⁶ and [REDACTED] discussed the means by which [REDACTED] should get in touch with [REDACTED] again to further discuss his impending testimony.⁴⁷

ii. SPO Witness [REDACTED]

31. During a [REDACTED] non-privileged visit to THAÇI by [REDACTED],⁴⁸ [REDACTED],⁴⁹ [REDACTED],⁵⁰ and [REDACTED],⁵¹ THAÇI repeatedly directed one or

⁴⁵ Annex 4.1: 114037-TR-AT-ET, pp.47-49.

⁴⁶ Annex 4.1: 114037-TR-AT-ET, p.39.

⁴⁷ Annex 4.1: 114037-TR-AT-ET, pp.50-51.

⁴⁸ [REDACTED]. See Annex 3, pp.1, 3.

⁴⁹ [REDACTED]. See Annex 3, p.1.

⁵⁰ [REDACTED] is a former an advisor of THAÇI and, in addition to [REDACTED], also visited THAÇI on [REDACTED]. See Annex 3, p.1.

⁵¹ [REDACTED]. [REDACTED]. See Annex 3, p.1.

more of his visitors to provide instructions to [REDACTED] on how to testify,⁵² characterising [REDACTED]'s evidence as 'decisive'.⁵³

32. In particular, THAÇI appears to direct that [REDACTED] should testify in a manner designed to eliminate or minimise THAÇI's culpability for and involvement in the charged offenses. By way of example:⁵⁴

HASHIM THAÇI: Yes, that's right. "I do not know; I do not remember". And because there are documents that [Indiscernible] "But the organisation and the rest was an ambition".

[REDACTED]

HASHIM THAÇI: [Whispers] [Indiscernible] "What intelligence service, man!". He must not make the mistake to talk about it because -- he is doing our heads in with his interviews, here and there.

[REDACTED]

HASHIM THAÇI: [Indiscernible] Tell him "You were not able, because all the peasants were volunteers".

iii. SPO Witness [REDACTED]

33. Similarly, during a [REDACTED] visit to THAÇI by [REDACTED], THAÇI discussed multiple witnesses, including [REDACTED]⁵⁵ and [REDACTED].⁵⁶

⁵² A copy of the SPO's partial draft transcript of the recording is attached hereto in Annex 4.6 (at ERN 115189-TR-AT-ET). The translation and transcription of the recording is still ongoing and anything material quoted herein is in draft form and subject to future revision. Furthermore, as noted above, a copy of the full audio recording is being disclosed to Defence counsel.

⁵³ Annex 4.6: 115189-TR-AT-ET, pp.11-12: 'HASHIM THAÇI: Now we are -- the main ones now are... Look: Did bad things happen? We cannot deny them. [REDACTED]: Yes, yes, [REDACTED]. HASHIM THAÇI: Can they connect these things? You cannot. [REDACTED]: You cannot. HASHIM THAÇI: [REDACTED] is now decisive. He is decisive. He is decisive. [REDACTED]

⁵⁴ Annex 4.6: 115189-TR-AT-ET, pp.31-35.

⁵⁵ Although [REDACTED] is not the subject of protective measures, his identity as an SPO witness remains confidential at this stage.

⁵⁶ See e.g., Annex 4.9: 116083-TR-AT Part 1-ET, p.129, HASHIM THAÇI: '[...] [REDACTED]'. See also e.g. pp.40 (referring to [REDACTED]), 116 (referring to [REDACTED]).

34. At certain points in the meeting, THAÇI appears to be showing the visitors, and possibly handing over a copy of, one or more witness statements, and provides instructions to be conveyed to the witness. For example:

HASHIM THAÇI: [Whispers] /?Read all of this/.

[People shuffling around the room, and there is silence during 00:01:46-00:01:53]

[REDACTED]: Shall I put it in my pocket or do you need it?

HASHIM THAÇI: [Flicks through pages] No man, [indiscernible], because I need to orientate you a little.

[REDACTED]: Huh?

HASHIM THAÇI: I must orientate you a little.

[Hashim THAÇI changes the place where he is sitting] You just sit here.

[REDACTED]: Yes.

HASHIM THAÇI: [Indiscernible] This part here. This is his /statement/ that he has given in [REDACTED].

[REDACTED].⁵⁷

[...]

HASHIM THAÇI: [Whispers very quietly][indiscernible] they call you here two days earlier.

[REDACTED]: Yes.

HASHIM THAÇI: [Whispers] He has to check [indiscernible]. They will give him all of these /documents/.

[REDACTED]: [Whispers] Ah!

HASHIM THAÇI: [Whispers] They will give them to him [indiscernible].

[REDACTED]: Is it best if I take these to him?

HASHIM THAÇI: [Whispers] No, they will give it to /him/.

[REDACTED]: Ah, they will!

⁵⁷ Annex 4.9: 116083-TR-AT Part 1-ET, pp.41-42.

HASHIM THAÇI: [Whispers][indiscernible] When you come here, before you enter the court room “Do you want to correct anything?”. Give me that part to have a look. [Indiscernible] [REDACTED] [indiscernible]. You just take this because we have others. [Indiscernible] [REDACTED].

[REDACTED]

HASHIM THAÇI: [Whispers] Tell him “He has to /?improve/ line [REDACTED]”. [indiscernible]⁵⁸

35. Additionally, [REDACTED] appears to tell THAÇI that he has met with at least two witness in advance of, and/or following, their testimony,⁵⁹ and there is discussion on how best to approach other witnesses.⁶⁰ At the end of the meeting, THAÇI conveys a message that [REDACTED].⁶¹

D. THE RESTRICTIONS REQUESTED ARE NECESSARY AND PROPORTIONATE

36. Rule 56 allows the Panel, either *proprio motu* or upon request, to impose restrictions on the communications of an accused if necessary to protect witnesses and victims, confidential information, or the integrity of the proceedings. The possibility of restricting an accused’s ability to communicate with other prisoners and with people outside of the detention facilities has been consistently recognised by the European Court of Human Rights (‘ECtHR’), which has held that such restrictions may be imposed when they are necessary and pursue a legitimate aim.⁶²

37. International criminal tribunals, too, have recognised that justified and proportionate restrictions on an accused’s ability to communicate with others may be

⁵⁸ Annex 4.9: 116083-TR-AT Part 1-ET, pp.52-53. *See also* pp.108-109.

⁵⁹ Annex 4.9: 116083-TR-AT Part 1-ET, pp.20-21, 24-25, 27.

⁶⁰ Annex 4.9: 116083-TR-AT Part 1-ET, p.118.

⁶¹ Annex 4.9: 116083-TR-AT Part 1-ET, p.166 [REDACTED].

⁶² *See e.g.* ECtHR, *Khoroshenko v. Russia*, Judgment, 30 June 2015, para.125; *Enea v. Italy*, Judgment, 17 September 2009, para.126; *Piechowiz v. Poland*, Judgment, 17 April 2012, para.212 and *Lorsé and Others v. The Netherlands*, Judgment, 4 February 2003, paras 78-86.

imposed, provided they are necessary to mitigate an objectively justifiable risk, and that the imposed restrictions are in accordance with internationally recognised human rights.⁶³ A specific instance when such restrictions may be imposed is when they are necessary to preserve the integrity of the proceedings against the accused whose segregation is sought, or of proceedings against other accused.⁶⁴

38. Restricting the contacts and communications of the Three Accused in the manner requested is both necessary and proportionate. Indeed, as detailed below, the measures requested (at this time) are the least restrictive available and necessary to achieve the relevant objective.

39. The Panel has consistently found a risk that the Three Accused will, *inter alia*, obstruct proceedings or commit further crimes.⁶⁵ The SPO's investigations demonstrate that these concerns are not only well-founded, but that the Three Accused are actively engaged in unlawful conduct that is detrimental to the safety, security and well-being of witnesses, and directly prejudicial to the integrity of proceedings. It is now apparent that the Three Accused present an extraordinarily heightened risk of obstructing KSC proceedings.

40. The existing communications restrictions and monitoring are insufficient to mitigate the risks posed by the Accused. Indeed, it is apparent that during visits the Accused have actively attempted to impede monitoring and conceal their conduct,

⁶³ International Criminal Court, *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Public redacted version of Decision on Mr Al Hassan's restrictions and access while in detention, ICC-01/12-01/18, 21 January 2020, para.10.

⁶⁴ See e.g. International Criminal Court, *Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, ICC-01/14-01/18, Public Redacted version of Decision on Mr Ngaïssona's Restrictions on Contacts and Communications in Detention, 16 February 2021, paras 16-17.

⁶⁵ See e.g., Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F01862, 16 October 2023, para.27; Decision on Periodic Review of Detention of Kadri Veseli, KSC-BC-2020-06/F01861, 16 October 2023, para.32; Decision on Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F01794, 15 September 2023, para.27.

including whispering, playing music and ensuring that simultaneous conversations amongst other visitors took place while the Accused communicated covertly with specific individuals.

41. The presentation of evidence in this case is ongoing, with many witnesses yet to testify. [REDACTED], both of whom are targets of interference attempts recounted above, are amongst those still to testify. To mitigate the impact on proceedings, the SPO is, today, disclosing the Recordings to the Defence, will continue to comply with disclosure obligations arising from its investigations, and has already taken pro-active measures to defer the testimony of the witnesses in question. Additionally, it is essential to the integrity of the ongoing proceedings that effective measures be taken to prevent further violations.

42. There is no realistic, effective lesser measure than to limit the communications of the Three Accused to actively monitored communications only, with a limited set of pre-approved persons. This pertains to all communications: visits, telephone calls, and correspondence. Non-privileged visits should be in the form of video and audio recorded and preserved Zoom-visits only.

43. With regard to the request for prior screening of attendees and active monitoring of [REDACTED],⁶⁶ there is evidence that [REDACTED] - were closely involved in the implementation of instructions from THAÇI and VESELI regarding KSC proceedings.⁶⁷ [REDACTED].⁶⁸ [REDACTED],⁶⁹ and their active monitoring in this instance is necessary to prevent further interference.

⁶⁶ [REDACTED].

⁶⁷ [REDACTED].

⁶⁸ Annex 4.9: 116083-TR-AT Part 1-ET, p.91. *See also* Annex 4.9: 116083-TR-AT Part 1-ET, pp.115-116.

⁶⁹ Rule 111.

44. In light of the demands of effective active monitoring, the volume of communications and correspondence will need to be limited, as will their frequency and duration. Given the number of (known) interlocutors with whom the Three Accused have directly engaged in unlawful conduct, and the fact that the interactions captured in the Recordings represent only a small slice of their recent communications, it is necessary that contacts be restricted to a small list of authorised contacts, to be pre-approved by the Panel following the consideration of submissions from the SPO. The SPO is particularly well-placed to provide relevant input to proposed names in light of its ongoing obstruction investigations.

45. Further, the monitoring measures requested would be meaningless without the additional segregation of the Three Accused from other detainees. Although potentially justified by the conduct at issue, and not incompatible with human rights principles,⁷⁰ the SPO is not requesting the isolation of each of the Three Accused at this time, but rather their segregation as a group. Concerns that the Three Accused could otherwise use their fellow detainees to convey messages are heightened by the fact that the majority of the other detainees were in a subordinate relationship to the Three Accused in the KLA structure, and the Three Accused continued to hold positions of significant power after the war. As concerns detainees Sabit JANUZI, Ismet BAHTIJARI, and Isni KILAJ, in particular, these persons are also directly implicated in certain of the incidents of obstructive conduct necessitating the restriction of the Three Accused in the first place.

46. To further minimise the risk of confidential information or messages being conveyed through other detainees (noting, in respect of Jakup KRASNIQI in particular, that entirely preventing all contact or communication between him and the Three

⁷⁰ ECtHR, *A.T. v. Estonia (No. 2)*, no. 70465/14, Judgment, 13 November 2018, para.72; *Öcalan v. Turkey (No. 2)*, nos. 24069/03, 197/04, 6201/06 and 10464/07, Judgment, 18 March 2014, para.104; *Rohde v. Denmark*, no. 69332/01, Judgment, 21 July 2005, para.93.

Accused at all times may be logistically difficult given the fact of the ongoing trial in which they are appearing together), the SPO additionally requests that:

- (i) the Registry be ordered to refuse visits to any of the other detainees going forward from persons who have previously, or will in the future, be permitted to visit the Three Accused and that persons who visit any of the other detainees going forward be denied visits to the Three Accused;⁷¹ and
- (ii) that details of non-privileged visits to Jakup KRASNIQI be included in the reporting requested at paragraph 50 below.

47. Consistent with Rule 111, legal privilege attaches only to the professional relationship between a person and his/her Specialist Counsel. Investigators, advisers, case managers or other team members do not themselves attract such privilege, and the context of their interactions/communications would determine whether any issue of privilege arises.⁷² In that context, with regard to the request for privileged visits to be confined to Counsel and Co-Counsel only, it is noted that at least one member of a defence team has participated in non-privileged visits with one or more of the Three Accused, other than their own clients, and appears to have had direct interactions with a person implicated in the obstructive activity. [REDACTED].⁷³ [REDACTED].⁷⁴

⁷¹ An exception to this rule (at least with respect to persons who have previously visited prior to implementation of the requested restrictions) may be required with respect to consular staff.

⁷² See similarly ICC, *Bemba et al*, ICC-01/05-01/13-48, paras 2-5.

⁷³ Annex 3 (record of visits), p.1.

⁷⁴ See Annex 2, pp.9-12 (in the photograph [REDACTED]); Annex 3 (record of visits).

48. In this regard, it is notable that VESELI had the following exchange with his visitors on 6 October 2023 which appears to link the existence of the Defence teams to the possibility of conveying messages, should a detainee want to do so:⁷⁵

KADRI VESELI: [...] if one wants to send a message, one can send a message. Nobody will be able to prevent you from doing that. It is a matter of responsibility. Nobody is able to prevent you. Everyone has his --

[REDACTED]: I meant whether they had introduced some new restrictions here inside.

KADRI VESELI: Everyone has his own group of lawyers and I swear, there is no reason to send a message from this place.

[REDACTED]: No, it is just a fact, there is no need to come here. They all know how it is -

-

KADRI VESELI: No, because I am talking but there is nothing to ... what are you going to say?

49. The SPO requests that if additional team members are needed to accompany Counsel/ Co-Counsel when visiting, prior authorisation should be sought from the Panel providing the name of the relevant team member and the reason why their presence is necessary. The SPO should be permitted to make submissions on any such request.

50. To ensure the effectiveness of the measures imposed, the Registry should be ordered to bring any (suspected or attempted) violation of the Panel's orders to the immediate attention of the Panel and Parties, and report on a monthly basis to the Panel and Parties on (i) logs of all visits and calls (both privileged and non-privileged) of all four Accused in this case, including date, time and participants, (ii) whether they have been actively monitored and/or recorded, (iii) all items/ correspondence exchanged (whether sent or received), including by way of import-export, and including the identity of the sender and receiver, the nature of the item, and whether a copy has been

⁷⁵ Annex 4.8: 061023-130747-TR-ET, p.6.

preserved,⁷⁶ (iv) whether the Registry has noted any irregularities, and (v) whether the Registry has encountered any difficulties in execution of the Panel's order.

51. Finally, given the serious nature of the conduct at issue, and the attendant risks to witnesses and the integrity of the proceedings, the SPO requests an urgent order immediately segregating the Three Accused and suspending all communications pending the Panel's determination of the merits of this request.

IV. CLASSIFICATION

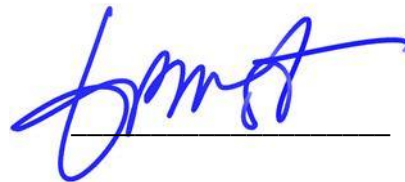
52. This filing is classified as confidential pursuant to Rule 82(4). A public redacted version will be filed in due course, subject to the requested interim measures being in place.

V. RELIEF REQUESTED

53. For the foregoing reasons, the SPO requests that the measures outlined in paragraph 2 above be ordered by the Panel, including on an urgent, but interim, basis the immediate segregation and suspension of all communications of the Three Accused.

⁷⁶ With a view to limiting volume, and ensuring better traceability, any import-export should be confined the list of pre-approved immediate family only. Other correspondence should be confined to the pre-approved list of immediate family and consular officials only.

Word count: 8,131



Kimberly P. West

Specialist Prosecutor

Friday, 17 November 2023

At The Hague, the Netherlands