



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: Specialist Prosecutor's Office

Date: 1 May 2024

Language: English

Classification: Public

Public Redacted Version of 'Prosecution request to amend the Exhibit List with confidential Annex 1'

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Article 40¹ and Rule 118(2),² the Specialist Prosecutor's Office ('SPO') requests the Panel's authorisation to amend the Exhibit List³ to include materials obtained in the course of recent investigations into obstruction and interference with [REDACTED] witnesses, including [REDACTED], namely, [REDACTED] (collectively, 'Requested Amendments').⁴

2. Consistent with the Panel's prior direction,⁵ the SPO seeks the Requested Amendments because it foresees the potential need to tender or use these materials to clarify, challenge, and/or contextualise the evidence of, *inter alia*, [REDACTED]. The Requested Amendments are also relevant to other witnesses, the charges, and the serious climate of witness interference and intimidation in which these proceedings are being conducted. Considering the degree of flexibility with which Exhibit List amendments should generally be treated,⁶ this request – which, at this stage, solely concerns amendment of the Exhibit List and not admission⁷ – should be granted, as it

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' herein refer to the Law, unless otherwise specified.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ Annex 1 to Prosecution submission of amended exhibit list, KSC-BC-2020-06/F02254/A01, 19 April 2024, Strictly Confidential and *Ex Parte* ('Exhibit List').

⁴ The Requested Amendments are listed by ERN in footnotes 16, 21, 24, 30, 34, 38, 47, 53, 58, 62 below and in Annex 1.

⁵ In this regard, the Panel has cautioned the SPO that, if it foresees the possibility of tendering or using materials to, *inter alia*, refresh a witness's memory or confront an adverse witness (Rule 143(1)-(2)), the SPO's obligation to seek an Exhibit List amendment is triggered. *See* Decision on Prosecution Request to Amend the Exhibit List and Related Matters, KSC-BC-2020-06/F01352, 8 March 2023, Confidential ('8 March 2023 Decision'), para.20.

⁶ 8 March 2023 Decision, KSC-BC-2020-06/F01352, paras 29, 31; 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; Decision on Prosecution Requests to Amend the Exhibit List (F01689 and F01747), KSC-BC-2020-06/F01785, 12 September 2023, Confidential ('12 September 2023 Decision'), para.16.

⁷ *See* 8 March 2023 Decision, KSC-BC-2020-06/F01352, para.31; 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; Decision on Prosecution Request to Add Intercepted Communications to

allows timely and effective Defence preparations, and concerns materials that are not only relevant and probative,⁸ but essential to the determination of the truth and the proper administration of justice.

II. SUBMISSIONS

A. THE REQUESTED AMENDMENTS ARE RELEVANT AND IMPORTANT

3. A heightened responsibility with regard to the determination of the truth arises where there are possible efforts to distort witness evidence or the truth-finding process.⁹ The Panel has already acknowledged the relevance and importance of evidence concerning witness interference and intimidation in both these and prior proceedings, including to its final, holistic assessment of the evidence at the conclusion of the trial.¹⁰ In this respect, the Requested Amendments are relevant to the evidence of [REDACTED],¹¹ [REDACTED],¹² [REDACTED],¹³ and other witnesses;¹⁴

the Exhibit List, KSC-BC-2020-06/F01656, 7 July 2023, Confidential, para.11; 12 September 2023 Decision, KSC-BC-2020-06/F01785, para.17; Decision on Prosecution Request to Amend the Exhibit List (F01844), KSC-BC-2020-06/F01995, 8 December 2023, Confidential ('8 December 2023 Decision'), para.26.

⁸ 8 March 2023 Decision, KSC-BC-2020-06/F01352, paras 29, 31, 33; Appeal Decision, KSC-BC-2020-06/IA019/F00006, para.21. *See also* 23 May 2023 Decision, KSC-BC-2020-06/F01544, para.11.

⁹ ICC, *Prosecutor v. Ngudjolo Chui*, ICC-01/04-02/12-271-Corr, Judgment on the Prosecutor's appeal against the decision of Trial Chamber II entitled "Judgment pursuant to article 74 of the Statute", 7 April 2015, paras 256, 275-276. *See also* ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84-A, Appeal Judgement, 19 July 2010, paras 35, 48-49; Articles 1(2), 40; Rules 62, 132, 137(1), 143(4)(a).

¹⁰ *See* Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F01603, 14 June 2023, Confidential, para.50; Decision on Prosecution Third Motion for Admission of Evidence pursuant to Rule 155, KSC-BC-2020-06/F02013, 15 December 2023, para.51; Decision on Prosecution Further Request for Non-Disclosure, KSC-BC-2020-06/F01552, 25 May 2023, Confidential, para.7.

¹¹ *See* para.4 below.

¹² *See* para.5 below.

¹³ *See* para.6 below.

¹⁴ As indicated above, the Requested Amendments are being sought at this stage due to [REDACTED]; however, certain Requested Amendments are also relevant to and may be used or tendered in the context of the testimony of, *inter alia*, [REDACTED]. They also concern certain witnesses [REDACTED].

the charges;¹⁵ and the serious climate of witness interference and intimidation in which this trial is being conducted.

4. The following Requested Amendments relate to, *inter alia*, the evidence of [REDACTED]:

a. *Records of [REDACTED].*¹⁶ [REDACTED]:¹⁷ (i)[REDACTED];¹⁸ (ii) [REDACTED];¹⁹ and (iii) [REDACTED].²⁰

b. *Documents [REDACTED].*²¹ On [REDACTED], the SPO recovered: (i) [REDACTED];²² and (ii) [REDACTED].²³

¹⁵ See e.g. Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief', KSC-BC-2020-06/F01594/A03, 9 June 2023, Confidential, para.266.

¹⁶ Requested Amendments: 116083 061023-111500-135746-TR-AT; 116083 061023-111500-135746-TR-AT-ET; 117793-117796. [REDACTED] concerned by the material covered by the Requested Amendments.

¹⁷ 117793-117796, p.117793.

¹⁸ See e.g. 116083 061023-111500-135746-TR-AT-ET, pp.20-21, 24-25, 27, 118-119, 129.

¹⁹ See e.g. 116083 061023-111500-135746-TR-AT-ET, pp.108-109, 122.

²⁰ See e.g. 116083 061023-111500-135746-TR-AT-ET, pp.41-42, 45-46, 52-53. See also 116083 061023-111500-135746-TR-AT-ET, pp.108-109.

²¹ Requested Amendments: SPOE00343599-00343599; SPOE00343600-00343600; SPOE00343601-00343601; SPOE00343602-00343602; SPOE00343603-00343603; SPOE00343604-00343604; SPOE00343605-00343605; SPOE00343606-00343606; SPOE00343585-SPOE00343585; SPOE00343585-SPOE00343585-ET; SPOE00343589-00343589; SPOE00343589-SPOE00343589-ET; SPOE00346751-00346770; SPOE00346751-SPOE00346770-ET; SPOE00346771-00346787; SPOE00346771-SPOE00346787-ET.

²² SPOE00343599-00343599; SPOE00343600-00343600; SPOE00343601-00343601; SPOE00343602-00343602; SPOE00343603-00343603; SPOE00343604-00343604; SPOE00343605-00343605; SPOE00343606-00343606.

²³ SPOE00343585-SPOE00343585; SPOE00343585-SPOE00343585-ET; SPOE00343589-00343589; SPOE00343589-SPOE00343589-ET; SPOE00346751-00346770; SPOE00346751-SPOE00346770-ET; SPOE00346771-00346787; SPOE00346771-SPOE00346787-ET.

c. [REDACTED] SPO interview.²⁴ During an interview on [REDACTED], [REDACTED], *inter alia*: (i) stated that he [REDACTED],²⁵ identified persons referenced,²⁶ and confirmed he [REDACTED];²⁷ (ii) explained his relationship and contacts with [REDACTED];²⁸ and (iii) provided evidence of his own role and activities during the Indictment period.²⁹

d. [REDACTED]'s [REDACTED] SPO interview.³⁰ During [REDACTED] : (i) explained his contacts and relationship with, *inter alia*, [REDACTED];³¹ (ii) indicated that no one had attempted to interfere with his testimony;³² and (iii) stated that '[REDACTED]'.³³

²⁴ Requested Amendments: 116809-TR-AT Parts 1-5; 116809-TR-AT Parts 1-5 ET. Considering that [REDACTED] is not a Prosecution witness, the SPO does not intend to tender this statement. However, it foresees the potential need to use the interview with relevant witnesses to clarify, confront, and/or contextualise their evidence. *See, similarly*, 8 December 2023 Decision, KSC-BC-2020-06/F01995, paras 25-27 (where the Trial Panel authorised Exhibit List amendments consisting of the testimony and related reports of an expert witness who was not on the witness list, but whose evidence related to a witness who was on the witness list).

²⁵ 116809-TR-AT Part 2-ET, pp.11-12, 17-19.

²⁶ 116809-TR-AT Part 2-ET, pp.12-14.

²⁷ 116809-TR-AT Part 1-ET, pp.12-13 (*see* SPOE00343600-00343600). *See also* 116089-TR-AT Part 3-ET, pp.3-4.

²⁸ 116809-TR-AT Part 2-ET, pp.4-11.

²⁹ 116809-TR-AT Part 2-ET, pp.14-15.

³⁰ Requested Amendment: 119146-119147.

³¹ 119146-119147, paras 3-4.

³² 119146-119147, paras 5-6.

³³ 119146-119147, para.6.

5. The following Requested Amendments relate to, *inter alia*, the evidence of [REDACTED]:

- a. [REDACTED].³⁴ During [REDACTED]: (i) [REDACTED]³⁵ [REDACTED];³⁶ and (ii) [REDACTED].³⁷

6. The following Requested Amendments relate to, *inter alia*, the evidence of [REDACTED]:

- a. Records of [REDACTED].³⁸ [REDACTED],³⁹ [REDACTED],⁴⁰ [REDACTED],⁴¹ [REDACTED],⁴² [REDACTED],⁴³ and [REDACTED]⁴⁴ [REDACTED],⁴⁵ [REDACTED].⁴⁶

³⁴ Requested Amendments: 115629 220923-121435-135935-TR-AT; 115629 220923-121435-135935-TR-AT-ET.

³⁵ [REDACTED]. Compare e.g. 115629 220923-121435-135935-TR-AT-ET, p.23 ([REDACTED]) with [REDACTED]. At 115629 220923-121435-135935-TR-AT-ET, p.41 (see also p.26), [REDACTED]. [REDACTED]. See e.g.. [REDACTED]. See 115629 220923-121435-135935-TR-AT-ET, pp.27-28. [REDACTED]. See 115629 220923-121435-135935-TR-AT-ET, p.44. Finally, [REDACTED]. See 115629 220923-121435-135935-TR-AT-ET, pp.72-73.

³⁶ See e.g. 115629 220923-121435-135935-TR-AT-ET, pp.21-46, 71-84.

³⁷ See e.g. 115629 220923-121435-135935-TR-AT-ET, pp.18-20.

³⁸ Requested Amendments: 115009 030923-072219-101409-TR-AT; 115009 030923-072219-101409-TR-AT-ET.

³⁹ 117793-117796, p.117793.

⁴⁰ 115009 030923-072219-101409-TR-AT-ET, pp.84-90.

⁴¹ 115009 030923-072219-101409-TR-AT-ET, pp.12-40.

⁴² 115009 030923-072219-101409-TR-AT-ET, pp.69-70.

⁴³ 115009 030923-072219-101409-TR-AT-ET, pp.9-10, 17.

⁴⁴ 115009 030923-072219-101409-TR-AT-ET, pp.40-56.

⁴⁵ [REDACTED].

⁴⁶ In relation to, see e.g. 115009 030923-072219-101409-TR-AT-ET, pp.43, 45, 51, 53, 56. For similar [REDACTED], see e.g. 115009 030923-072219-101409-TR-AT-ET, pp.23, 30, 87.

- b. *Records of* [REDACTED].⁴⁷ [REDACTED]:⁴⁸ (i) [REDACTED],⁴⁹ [REDACTED];⁵⁰ (ii) [REDACTED];⁵¹ and (iii) [REDACTED].⁵²
- c. *Records of* [REDACTED].⁵³ [REDACTED]:⁵⁴ (i) [REDACTED];⁵⁵ (ii) [REDACTED];⁵⁶ and (ii) [REDACTED].⁵⁷
- d. *Document* [REDACTED].⁵⁸ [REDACTED], the SPO recovered a document from [REDACTED]. [REDACTED],⁵⁹ and [REDACTED]: (i) [REDACTED];⁶⁰ and (ii) [REDACTED].⁶¹
- e. [REDACTED] *SPO Interview*.⁶² During an interview on [REDACTED] 2023, [REDACTED], *inter alia*: (i) explained that he and [REDACTED], who were [REDACTED], were in contact, including in [REDACTED];⁶³ and (ii)

⁴⁷ Requested Amendments: 115189 090923-071500-101500-TR-AT; 115189 090923-071500-101500-TR-AT-ET.

⁴⁸ 117793-117796, p.117793.

⁴⁹ *See e.g.* 115189 090923-071500-101500-TR-AT-ET, p.179.

⁵⁰ *See e.g.* 115189 090923-071500-101500-TR-AT-ET, pp.197-198.

⁵¹ *See e.g.* 115189 090923-071500-101500-TR-AT-ET, pp.87-88, 179-202.

⁵² 115189 090923-071500-101500-TR-AT-ET, p.179. [REDACTED].

⁵³ Requested Amendments: 116083 071023-113000-135500-TR-AT; 116083 071023-113000-135500-TR-AT-ET.

⁵⁴ 117793-117796, p.117793.

⁵⁵ *See e.g.* 116083 071023-113000-135500-TR-AT-ET, pp.110-113.

⁵⁶ *See e.g.* 116083 071023-113000-135500-TR-AT-ET, pp.108-109, 111-113.

⁵⁷ 116083 071023-113000-135500-TR-AT-ET, pp.107-108.

⁵⁸ Requested Amendments: SPOE00344952-00344961; SPOE00344952-SPOE00344961-ET.

⁵⁹ *Compare e.g.* 115189 090923-071500-101500-TR-AT-ET, pp.181-182, 191 *with* SPOE00344952-SPOE00344961-ET, p.1; 116083 071023-113000-135500-TR-AT-ET, pp.110-111 *with* SPOE00344952-SPOE00344961-ET, pp.1-2; 115189 090923-071500-101500-TR-AT-ET, pp.183, 191 *with* SPOE00344952-SPOE00344961-ET, p.5; 115189 090923-071500-101500-TR-AT-ET, pp.184, 191, 200 *with* SPOE00344952-SPOE00344961-ET, pp.6, 8; 115189 090923-071500-101500-TR-AT-ET, p.186 *with* SPOE00344952-SPOE00344961-ET, p.8.

⁶⁰ *Compare* [REDACTED] *with* 116083 071023-113000-135500-TR-AT-ET, p.110; SPOE00344952-SPOE00344961-ET, pp.1-2.

⁶¹ *Compare* [REDACTED]; *with* 115189 090923-071500-101500-TR-AT-ET, pp.199-200; SPOE00344952-SPOE00344961-ET, p.9.

⁶² Requested Amendments: 118214-TR-ET Part 1 Revised; 118214-TR-ET Part 2.

⁶³ 118214-TR-ET Part 1 Revised, pp.7-10.

stated that he did not speak about the subject-matter of his testimony with [REDACTED] and was never shown a document by him.⁶⁴

7. For the reasons detailed above, the materials encompassed by the Requested Amendments are relevant and important.

B. THE REQUEST IS TIMELY AND THERE IS LIMITED, IF ANY, PREJUDICE

8. This request is timely as the materials encompassed by the Requested Amendments were relatively recently obtained, and were then transcribed, translated, reviewed, analysed, and assessed, including in light of any necessary protective measures and for the purposes of this request. While, in the interest of judicial economy and fair and expeditious proceedings, the SPO has prioritised this request in relation to [REDACTED], the SPO intends to file a further consolidated request for Exhibit List amendment and/or admission of materials obtained during investigations into witness interference and obstruction in due course, taking into account the circumstances of relevant witnesses, ongoing investigations, and the need to provide the Defence adequate opportunities to prepare.

9. The timing of this request balances the need to protect the integrity of ongoing investigations and the potential need to tender or use the materials to clarify, confront, and/or contextualise the evidence of, *inter alia*, [REDACTED] and [REDACTED]. In this respect, (i) the request follows the disclosure of certain of the materials, which had been withheld with judicial authorisation until [REDACTED] to protect the integrity of ongoing investigations; and (ii) [REDACTED].⁶⁵

⁶⁴ 118214-TR-ET Part 1 Revised, pp.10-11.

⁶⁵ In relation to [REDACTED], *see, inter alia*, SPO Email to the Panel, Parties, and participants dated [REDACTED]

10. Considering the timing of the request, the scope of the case, and the nature and scope of the Requested Amendments,⁶⁶ there is sufficient time for the Defence to prepare in relation to them. All of the materials encompassed by the Requested Amendments have been disclosed,⁶⁷ and relate to witnesses on the Witness List,⁶⁸ evidence already on the Exhibit List, and known aspects of the SPO's case.

III. CLASSIFICATION

11. This filing and Annex 1 are confidential in accordance with Rule 82(4), because they relate to (i) protected witnesses and witnesses whose identities are not public; and (ii) confidential investigations. For the same reasons given previously in related filings, namely, to protect the integrity of ongoing investigations,⁶⁹ and due to the extent of necessary redactions, it is not currently possible to issue a meaningfully redacted public version.

IV. RELIEF REQUESTED

12. For the foregoing reasons, the Panel should authorise the Requested Amendments.

⁶⁶ Compare Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023, para.82 (where new material is of significant nature, an opposing Party may seek appropriate relief for preparations).

⁶⁷ See Disclosure Packages 1086, 1185, 1194, 1218. See also 12 September 2023 Decision, KSC-BC-2020-06/F01785, para.20 (where the Trial Panel considered that previous disclosure of an item indicates that the Defence has had the opportunity to review and acquaint itself with the item. 'In that sense, previous disclosure of an item considered along with other factors, could satisfy the Panel that the Defence has been provided with a degree of notice of the content of the item and that an amendment of the Exhibit List in respect of that item would not adversely affect the Defence's ability to prepare for trial'). See also 8 March 2023 Decision, KSC-BC-2020-06/F01352, para.33.

⁶⁸ Annex 2 to Prosecution submission of updated witness list and confidential redacted version of pre-trial brief, KSC-BC-2020-06/F01594/A02, 9 June 2023, Confidential ('Witness List').

⁶⁹ Confidential Redacted Version of 'Prosecution request for temporary non-disclosure with strictly confidential and *ex parte* Annexes 1-4', KSC-BC-2020-06/F02016, 15 December 2023, Confidential, para.16; Prosecution Notification with confidential Annex 1, KSC-BC-2020-06/F02233, 12 April 2024, Confidential, para.8.

Word Count: 2869



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Wednesday, 1 May 2024

At The Hague, the Netherlands.