



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: 21 November 2024

Language: English

Classification: Public

Public Redacted Version of 'Prosecution request to amend the Exhibit List and related request'

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Article 40 of the Law¹ and Rule 118(2) of the Rules,² the Specialist Prosecutor's Office ('SPO') requests leave to amend the Exhibit List³ to include the following documents shown to and commented on by W03873 during his preparation session: (i) a report dated 6 July 1999, signed by W03873 and his deputy, Isuf KRASNIQI;⁴ (ii) a notification, dated 18 August 1999, authored and signed by W03873;⁵ (iii) a set of photographs depicting, *inter alia*, W03873 and Kadri VESELI,⁶ W03873 and KLA soldiers in uniform in March/April 1998,⁷ W03873 in KLA uniform with Selim GASHI around July 1999,⁸ W03873 and Isuf KRASNIQI in the dormitory in Prizren,⁹ and W03873 and Nezir KRYEZIU in KLA uniform¹⁰ (collectively the 'Requested Amendments'). The SPO requests an expedited briefing schedule to enable a decision before the testimony of W03873, which is anticipated to commence on 25 November 2024.

2. The Report and Notification – which total two pages and contextualise and corroborate already admitted exhibits – were only very recently obtained, while the Photographs were part of a previous request to amend the Exhibit List. The information provided by W03873 during his preparation session demonstrates the importance and relevance of the Requested Amendments, which the SPO intends, if authorised, to use during W03873's direct examination. Their very limited size and

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'). Unless otherwise indicated, all references to 'Rule' or 'Rules' are to the Rules.

³ Annex 1 to Prosecution submission of amended exhibit list with strictly confidential and ex parte Annex 1 and confidential Annex 2, KSC-BC-2020-06/F02511/A01, 27 August 2024, Strictly Confidential and *Ex Parte* ('Exhibit List')

⁴ 123452-123453 ('Report').

⁵ 123451-123451, 123451-123451-ET ('Notification').

⁶ SPOE00361052-00361056 ('Photographs'), p.SPOE00361052 (069934).

⁷ SPOE00361052-00361056, p.SPOE00361053 (069938).

⁸ SPOE00361052-00361056, p.SPOE00361054 (069944).

⁹ SPOE00361052-00361056, p.SPOE00361055 (069948).

¹⁰ SPOE00361052-00361056, p.SPOE00361056 (069962).

scope enables the Defence to undertake effective preparation.

II. SUBMISSIONS

3. Exhibit List amendments should be treated with a degree of flexibility in a complex multi-Accused case involving a considerable amount of evidence, provided that there is adequate protection of the Accused's rights.¹¹ Notably, the SPO was only able to assess the full evidentiary value of the Requested Amendments after W03873 authenticated and substantially commented upon them in the preparation session. As set out below, the Request is timely, supported by good cause, and enables effective Defence preparation.

A. THE REQUEST TO ADD THE REPORT AND NOTIFICATION IS TIMELY AND FOR GOOD CAUSE

4. *Timeliness.* The Report and Notification – which were authenticated and discussed during W03873's preparation session this week – were obtained from [REDACTED] on 7 November 2024 and disclosed on 11 November 2024,¹² after numerous past attempts to obtain them were unsuccessful.

5. Specifically, in 2017 and 2018, the SPO filed requests for assistance to [REDACTED] seeking the handover of police case files and associated evidence collections, including items related to [REDACTED]. [REDACTED]. The searches yielded a number of files and documents, but not the Report and Notification. In 2021, [REDACTED] noted that [REDACTED] may be in possession of documents falling within the scope of the SPO inquiry.

¹¹ See Decision on Prosecution Request to Amend the Exhibit List and Related Matters, KSC-BC-2020-06/F01352, 8 March 2023, Confidential, paras 29, 31; Decision on Thaci'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, para.21; Decision on Prosecution Requests to Amend the Exhibit List (F01689 and F01747), KSC-BC-2020-06/F01785, 12 September 2023, Confidential, para.16.

¹² Disclosure 1486.

6. In parallel, multiple inquiries were made to [REDACTED] since 2016 which resulted in the discovery of documents related to [REDACTED] files. The SPO carefully reviewed the documents, yet only a few individual documents seized from W03873 – not including the Report and Notification – were obtained.¹³

7. On 30 October 2024, [REDACTED]. A review of these files was immediately undertaken, resulting in the discovery of the Report and Notification. The SPO then obtained these documents following an immediate request to [REDACTED] in early November 2024.

8. *Good cause.* The documents, which bear sufficient indicia of reliability and have probative value, are relevant to W03873's evidence and directly connected to known aspects of the SPO's case, in particular the structure, organisation, role, and reporting lines relevant to W03873 and KLA intelligence and counter-intelligence units ('ZKZ').

9. The Notification consists of one page dated 18 August 1999 and signed by W03873 as Head of the ZKZ within the KLA Pashtrik Operational Zone ('POZ'). It bears the KLA logo, POZ header, date, and remarks that copies thereof should be provided to, among others, the ZKZ Sector of the General Staff and the POZ Commander. In his preparation session, W03873 authenticated the document and recognised his signature.¹⁴

10. The document is similar, but not identical, to P00709, which is dated 19 August 1999 and contains a handwritten note and signature, as well as a KLA stamp not contained in the Notification. The Notification and P00709 corroborate each other and are directly connected to P01445.¹⁵ The Notification is of particular evidentiary value

¹³ See e.g. P00500, SITF00069361-SITF00069362, SITF00020951-SITF00020951, SITF00020957-SITF00020959.

¹⁴ 123832-123859, paras 68-69.

¹⁵ KSC Transcript of 11 July 2024, KSC-BC-2020-6, pp. 18119-18125 in reference to SITF00033376-SITF00033376, SITF00033376-SITF00033376-ET Revised.

in that regard as it suggests that it was initially drafted by W03873 and then passed on to the POZ commander, as the copy field indicates.

11. The Report consists of one page dated 6 July 1999 and signed by W03873 as Head of ZKZ and Isuf KRASNIQI as Deputy Head of ZKZ within the POZ. It bears the KLA logo, POZ header and a protocol number. In his preparation session, W03873 authenticated the document, stating that he recalls that it was written by Isuf KRASNIQI and that W03873 received it.¹⁶

12. The Report is connected to and contextualises the Notification and P00709, providing information about the same topic, the possible transfer of a named KLA soldier, and being dated within a similar time frame.

B. THE REQUEST TO ADD THE PHOTOGRAPHS IS TIMELY AND FOR GOOD CAUSE

13. The Panel previously denied the addition to the Exhibit List of a version of the Photographs, noting that their evidentiary importance was not apparent.¹⁷ Following W03873's preparation session, during which W03873 provided information and handwritten annotations on the Photographs,¹⁸ the evidentiary importance thereof is clear. The Photographs are relevant, *inter alia*, to interactions and the relationship between W03873, Kadri VESELI and multiple other KLA members, their presence at locations relevant to the Indictment, the KLA's organisation and structure, and the existence of an armed conflict during the Indictment period.

14. In particular, (i) in the first photograph,¹⁹ W03873 identified, *inter alia*, himself, his deputy within the POZ G2, Isuf KRASNIQI, and Kadri VESELI, noting it was taken

¹⁶ 123832-123859, para 67.

¹⁷ Decision on Prosecution Requests to Amend the Exhibit List (F01689 and F01747), KSC-BC-2020-06/F01785, 12 September 2023, Confidential, para.53.

¹⁸ 123832-123859, para 77.

¹⁹ SPOE00361052-00361056, p.SPOE00361052 (069934).

in Nishor in March 1999;²⁰ (ii) the second photograph²¹ was taken in or before April 1998 and features, *inter alia*, W03873 and Gani KRASNIQI;²² (iii) in the third photograph,²³ W03873 identified himself and Selim GASHI and noted that it was taken on the first anniversary of the Rahovec/Orahovac battle on 17 July 1999;²⁴ (iv) W03873 identified himself and his deputy Isuf KRASNIQI in the fourth photograph²⁵ and noted that it was taken in the dormitory in Prizren;²⁶ and (v) the last photograph²⁷ depicts W03873 and Nezir KRYEZIU in uniform, and doctor Haki GASHI.

C. THERE IS NO UNDUE PREJUDICE

15. No undue prejudice would result from granting the Requested Amendments.²⁸ The Requested Amendments were timely disclosed, and are limited in scope, amounting to a total of seven pages. W03873's comments on the documents have already been provided in the disclosed preparation notes. As set out above, the content, subject-matter, and specific individuals discussed in the Requested Amendments relate to known aspects of the SPO's case, already admitted exhibits, and witnesses on the witness list. Accordingly, considering their nature, limited scope, and size, the Defence will have sufficient time to prepare and will have the opportunity to cross-examine W03873 on the Requested Amendments.

III. CLASSIFICATION

16. This submission is confidential pursuant to Rule 82(4). Exceptionally, and considering that W03873 does not have protective measures and is anticipated to

²⁰ 123832-123859, para 77.

²¹ SPOE00361052-00361056, p.SPOE00361053 (069938).

²² 123832-123859, para 77.

²³ SPOE00361052-00361056, p.SPOE00361054 (069944).

²⁴ 123832-123859, para 77.

²⁵ SPOE00361052-00361056, p.SPOE00361055 (069948).

²⁶ 123832-123859, para 77.

²⁷ SPOE00361052-00361056, p.SPOE00361056 (069962).

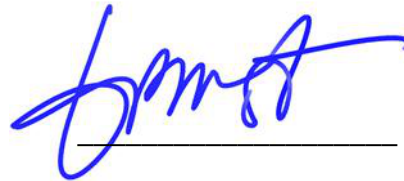
²⁸ Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023, para.82.

commence testimony next week, the SPO does not intend to file a public redacted version of this request at this time. Instead, considering that a number of details herein would only require redaction until W03873's testimony commences, the SPO will file a public redacted version promptly thereafter.

IV. RELIEF REQUESTED

17. For the foregoing reasons, the SPO requests that the Panel: (i) order an expedited briefing schedule to facilitate a decision before W03873's testimony commences; and (ii) authorise the Requested Amendments.

Word Count: 1570



Kimberly P. West

Specialist Prosecutor

Thursday, 21 November 2024

At The Hague, the Netherlands.