

In: KSC-BC-2023-12
Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi

Before: Single Trial Judge
Judge Christopher Gosnell

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Isni Kilaj and Hashim Thaçi

Date: 26 January 2026

Language: English

Classification: Public

Public Redacted Version of 'Joint Defence response to Prosecution request for amendment of the Exhibit List (F00676)'

Specialist Prosecutor's Office
Kimberly P. West

Specialist Counsel for Hashim Thaçi
Sophie Menegon
Luka Mišetić

Specialist Counsel for Bashkim Smakaj
Jonathan Elystan Rees KC
Huw Bowden

Specialist Counsel for Isni Kilaj
Iain Edwards
Joe Holmes

Specialist Counsel for Fadil Fazliu
David Young

Specialist Counsel for Hajredin Kuçi
Alexander Admiraal

I. INTRODUCTION

1. The Defence for Messrs Isni Kilaj and Hashim Thaçi ("Defence") hereby submit this joint response to the request of the Specialist Prosecutor's Office ("SPO") for amendment of the Exhibit List ("Request").¹

2. Concerning some of the documents referred to in the Request, the Defence make it clear that they take no position. However, the Request should be denied in respect of the remainder of the documents. Contrary to the SPO's submissions, only one of the six Kilaj Phone Items is *prima facie* relevant and of sufficient importance to the charges against him, or any Accused, in the Indictment to justify the late addition.

3. The SPO has failed to demonstrate that the [REDACTED] Document is *prima facie* relevant and of sufficient importance to justify its late addition to the Exhibit List.

II. APPLICABLE LAW

4. Pursuant to Rule 118(2) of the Rules, the Panel may permit, upon timely notice and a showing of good cause, the amendment of the SPO's Exhibit List filed pursuant to Rule 95(4)(b).

5. Trial Panels have considered that as proceedings advance, further requests to amend the list of exhibits will be subjected to greater scrutiny.²

6. In deciding whether to grant the addition of an item to a Party's Exhibit List, the Panel needs to satisfy itself that the proposed item is *prima facie* relevant and of sufficient importance to justify the late addition.³ Thus, the Prosecution should not be

¹ Prosecution request for amendment of the exhibit list, KSC-BC-2023-12/F00676, 16 January 2026, confidential (public redacted version filed on 23 January 2026)

² Case 6, Public redacted version of Decision on Prosecution Request to Amend the Exhibit List (F02279) and on the Thaçi Defence Motion for Exclusion of Materials in Limine, KSC-BC-2020-06/F02501/RED, 20 December 2024, public, para. 23

³ Case 6, Public Redacted Version of Decision on Prosecution Requests to Amend the Exhibit List (F01689 and F01747), KSC-BC-2020-06/F01785/RED, 12 September 2023, public, para. 17

granted leave to add to its list of exhibits items that are obviously irrelevant and would, therefore, ultimately be denied admission into evidence;⁴ the Panel needs to consider “whether the proposed evidence is *prima facie* relevant and of probative value to issues raised in the indictment.”⁵

7. Other factors which speak in favour of or against amending the Exhibit List include whether the moving Party has exercised due diligence in identifying at the earliest opportunity the documents that it seeks to add to its Exhibit List and whether the opposing Party would suffer undue prejudice as a result of amendment.⁶ A Party's decision not to file a motion for the addition of certain exhibits until new, separate material is first received does not constitute good cause for the lack of timeliness in this request.⁷ The Panel may also consider the stage of the proceedings and whether granting the amendment would result in undue delay.⁸

III. SUBMISSIONS

(i) *Six Kilaj Phone items*

8. [REDACTED]

The Defence recalls that the two charges against Mr Kilaj in the Amended Confirmed Indictment are temporally situated between “at least 6 October and 2 November 2023”. However, in the body of the Amended Confirmed Indictment, Mr Kilaj is

⁴ IT-95-5/18-T, *Radovan Karadžić*, [Decision on the Third Prosecution Motion for Leave to Amend its Rule 65 ter Exhibit List](#), 28 January 2011, para. 8; IT-04-83-T, *Rasim Delić*, [Decision on Urgent Prosecution Motion for Leave to Amend its Exhibit List](#), 17 October 2007, p. 4

⁵ IT-05-88-T, *Popović et al.*, [Decision on the Admissibility of the Borovčanin Interview and the Amendment of the Rule 65 ter Exhibit List](#), 25 October 2007, para. 18, with reference to Decision Permitting the Addition of One Exhibit to the Prosecution's Rule 65 ter List and Denying an Oral Request for Certification Pursuant to Rule 73(B), 16 January 2007, p. 4

⁶ IT-08-91-T, *Milo Stanišić and Stojan Zupljanin*, [Decision Granting in Part Mico Stanišić's Motion for Leave to Amend his Rule 65ter Exhibit List](#), 19 July 2011, para. 23

⁷ STL-14-06/PT/CJ, *Akhbar Beirut S.A.L., Ibrahim Mohamed Ali Al Amin*, [Public Redacted Version of Decision on Motion for Amendment of the Rule 91\(g\)\(iii\) Exhibit List and for Admission of Evidence Pursuant to Rule 154](#), 2 March 2016, para. 26

⁸ STL-11-01/T/TC, *Ayyash et al.*, [Decision Authorising the Prosecution to Amend its Witness and Exhibit Lists Re Witnesses PRH685 and PRH609](#), 4 March 2015, para. 10

accused of criminal behaviour from no earlier than 6 October 2023. Although a single reference is made to Mr Kilaj's visit to Mr Thaçi on 2 February 2023 at paragraph 119 of the Prosecution Pre-Trial Brief, no allegation of criminality against Mr Kilaj is made. The SPO prefers to rely on unsubstantiated insinuation and innuendo.

9. This single WhatsApp message falls far outside the temporal scope of the charges against Mr Kilaj. It is also, on its face, an entirely innocent communication. There is evidence that [REDACTED] knows Mr Kilaj.⁹

10. In addition, it is important to note that on [REDACTED], when asked if he had any information since his last contact suggesting that people knew he is an SPO witness, [REDACTED] indicated the following to the SPO:

[REDACTED] said he has not been directly contacted. [...] [REDACTED] confirmed that no one made clear they actually knew he was an SPO witness in these conversations, nor did he ever feel threatened or concerned for his safety.¹⁰

11. Further, on [REDACTED], [REDACTED] reiterated to the SPO that no one had contacted him in relation to his witness status.¹¹

12. This WhatsApp message adds no context to the wider case. The SPO's attempt to link it to the 2 February visit is based on pure speculation. It is neither *prima facie* relevant nor of probative value to issues raised in the Indictment. Its addition to the list of exhibits should be denied.

13. [REDACTED]

As with the preceding WhatsApp message, these exchanges fall far outside the temporal scope of the charges against Mr Kilaj. Communications relating to Messrs Kilaj and [REDACTED]'s visit to Mr Thaçi together on [REDACTED] are no evidence

⁹ See [REDACTED]:

[REDACTED]

[REDACTED]

¹⁰ KSC-BC-2023-12-115141-115142 RED

¹¹ KSC-BC-2023-12-119768-119769 RED

of any criminality. The links the SPO attempts to draw between [REDACTED] and W04403, based purely on the fact they both happened to [REDACTED], are remote to the point of absurdity. The reference to [REDACTED] (W04278) is clearly made in jest: “[REDACTED]”. The exchange is probative of nothing.

14. The SPO also entirely fails to take into account, and fails to mention in the Request, that it had a telephone call with W04403 on [REDACTED]. After being told that Case 12 is related to alleged offences against the administration of justice involving Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu, and Hajredin Kuçi, W04403 said that “he has nothing to do with that case” and that “none of the persons mentioned have contacted him to influence his testimony.”¹²

15. Contrary to the SPO’s submissions, these exchanges add no context to the wider case. Again, the SPO’s attempt to link them to the 2 February visit is based on pure speculation. This material is neither *prima facie* relevant, let alone *highly* relevant, nor of probative value to issues raised in the Indictment. Its addition to the list of exhibits should be denied.

16. [REDACTED]

As with the preceding items, these exchanges fall far outside the temporal scope of the charges against Mr Kilaj. They are exchanges between persons who clearly know each other and are on friendly terms. The exchanges start with W04278 initiating contact with Mr Kilaj. None of the exchanges are of a confidential nature. Contrary to the Prosecution’s submission at paragraph 15 of the Request, nothing in these exchanges demonstrate Mr Kilaj’s possession of confidential material.

17. This material is neither *prima facie* relevant, nor of probative value to issues raised in the Indictment. Its addition to the list of exhibits should be denied.

18. [REDACTED])

¹² KSC-BC-2023-12-127164-127165

[REDACTED]

These exchanges too fall far outside the temporal scope of the charges against Mr Kilaj. Once again, they are exchanges between persons who evidently know each other and are on friendly terms. Contrary to the Prosecution's submission at paragraph 15 of the Request, nothing in these exchanges specifically demonstrate Mr Kilaj's possession of confidential material as opposed to his being prepared to share his *belief or opinion* that [REDACTED] was [REDACTED].

19. Even if these exchanges demonstrate that Mr Kilaj did know that [REDACTED] was [REDACTED], it was a matter of public knowledge in Kosovo since September 2020 that [REDACTED]'s name had been disclosed to the War Veterans Association in Kosovo in leaked documents, and thereafter made public in news outlets.¹³ Further, there is substantial evidence suggesting that it was known that [REDACTED] had been [REDACTED].¹⁴

20. This material is neither *prima facie* relevant, nor of probative value to issues raised in the Indictment. Its addition to the list of exhibits should be denied.

21. [REDACTED]

The Defence takes no position to the addition of this item to the SPO's list of exhibits. It is accepted that, as corroborative evidence of the fact of Messrs Kilaj and Kryeziu's visit to Mr Thaçi at the DC on 6 October 2023, the item is relevant. However, since no issue is taken with the fact of the 6 October visit, the STJ may conclude that its addition to the list of exhibits is unnecessary and will simply contribute to the overloading of the trial record.

(ii) [REDACTED] document

22. [REDACTED]

The Defence opposes the SPO request to add the [REDACTED] Document to the list

¹³ See [REDACTED]

¹⁴ See eg [REDACTED]; [REDACTED]; [REDACTED]

of exhibits.¹⁵ The Defence reiterates and incorporates by reference its prior objections regarding this document.¹⁶ In particular, the SPO has failed to show good cause pursuant to Rule 118(2), since: (i) there is no evidence that the [REDACTED] Document was printed by Mr Thaçi; and (ii) the visit of 22 September 2023 is not charged in the Indictment. Therefore, this document lacks any relevance and probative value and its addition to the list of exhibits at this advanced stage of the proceedings would be prejudicial for the Defence and would contravene the Accused's rights.¹⁷

23. The SPO maintains that the item is relevant because it would demonstrate Mr Thaçi's use of the DC computer and printing systems to printings in furtherance of his alleged obstructive conduct, including his alleged use of the systems to print documents used to target [REDACTED].¹⁸ The SPO submission are devoid of any merit since the SPO is not in a position to establish who printed the [REDACTED] Document. The [REDACTED] Document is extracted from a list of files allegedly printed from the KSC Detention Unit ("DU"), recorded in Appendix A of the Forensic Firm Report. Appendix A contains an "Overview of printed files". The Forensic Firm explained that it "identified 61 print jobs [REDACTED] with creation timestamps falling within the specified time frame. Additionally, [REDACTED] found related log entries [REDACTED] indicating that the print jobs were successfully printed using the printer [REDACTED]."¹⁹ Pursuant to the Forensic Firm, [REDACTED] corresponds to the [REDACTED], "located in the printing room of the detention facility in Scheveningen."²⁰ The Registry indicated that all detainees and detention officers could

¹⁵ Request, para. 18, referring to SPOE00409315-SPOE00409316-ET / SPOE00409315-00409316

¹⁶ Thaçi Defence Response to Prosecution request for second EFC follow-up (F00545), KSC-BC-2023-12/F00561, 20 November 2025

¹⁷ Guaranteed by Article 21(2) and (4)(a)-(c) of the KSC Law and Article 6(1) and (3)(a)-(b) of the European Convention on Human Rights

¹⁸ Request, para. 19

¹⁹ KSC-BC-2023-12/F00539/A01, ANNEX 1 to Decision further to "Independent Counsel Report pursuant to Decision F00437", strictly confidential and *ex parte* ("Forensic Firm Report"), p. 16

²⁰ Forensic Firm Report, p. 6

operate the laptop with this serial number at the KSC Detention Facilities during the relevant period, to print documents.²¹

24. Accordingly, the printed files listed in Appendix A, including the [REDACTED] Document, may have been printed by any detainee and/or detention officer present at the time. The Forensic Firm confirmed that it was “unable to determine which printed files were printed exclusively by or for Mr Thaçi”, noting that the forensic sources it used “contain a *generic* user account that was used to print a file”.²²

25. In consequence, it is not established that the files listed in Appendix A, including the [REDACTED] Document, were printed by Mr Thaçi. Even if the content of the [REDACTED] Document was related to [REDACTED], the Defence stresses that at the relevant time, Mr Thaçi was detained with three co-accused in Case 6, who had been disclosed [REDACTED] interview and related SPO material at the same time as Mr Thaçi, and had the same opportunities as Mr Thaçi to print notes or SPO material related to [REDACTED], and thus could have printed the [REDACTED] Document. Accordingly, the addition of the [REDACTED] Document to the list of exhibits is not justified since it is not able to materially advance the SPO’s case.

26. The SPO further asserts that the [REDACTED] Document is relevant because it would corroborate portions of the 22 September Visit during which the SPO alleges that Mr Thaçi and Mr Ahmetaj discussed [REDACTED] interview.²³ Yet, neither the visit of 22 September 2023, nor any exchanges between Mr Thaçi and Mr Ahmetaj, are charged in the Indictment and are not mentioned or discussed in the Confirmation

²¹ KSC-BC-2023-12/F00461, *Registrar’s Submissions Pursuant to Decision F00437*, 22 September 2025, confidential (public redacted version 24 October 2025), paras 6, 8-9. The Defence reserves the right to challenge the admissibility and accuracy of the Registrar’s Submissions

²² Forensic Firm Report, p. 10

²³ Request, para. 19

Decision.²⁴ Similarly, [REDACTED] is not mentioned in the Indictment. Therefore, the SPO has failed to demonstrate the relevance and probative value of this item in light of the current scope of the Indictment. The Defence reiterates and incorporates by reference its prior submissions pursuant to which material related to events outside the Indictment are not admissible.²⁵ Given that this item relates to events outside the Indictment, and taking into account the advanced stage of the trial, which is scheduled to start within a month, the addition of this item to the list of exhibits is not justified and would be extremely prejudicial for the Defence.

27. The Defence emphasizes that Mr Thaçi has a right to be on notice about the case that is being put against him. Any post-confirmation change in the scope of the SPO case “has *by its nature* a disruptive effect” on the proceedings and “hence on the fundamental rights of the accused”.²⁶

28. As noted by the ICTR Appeals Chamber, “in pleading an indictment, the Prosecution is required to specify the alleged legal prohibition infringed (the count or charge) and the acts or omissions of the Accused that give rise to that allegation of infringement of a legal prohibition (material facts)”.²⁷ Thus, “it is to be assumed that an Accused will prepare his defence on the basis of material facts contained in the indictment, not on the basis of all the material disclosed to him that may support any

²⁴ The Pre-Trial Judge merely makes a single passing reference to the delay in [REDACTED] testimony in a

footnote. See Confirmation Decision, [REDACTED]

²⁵ KSC-BC-2023-12/F00688, Joint Defence Response to SPO motion for admission of material through the bar table with confidential Annexes 1-6, 8-10 and public Annex 7, 23 January 2026, Confidential, paras. 133-148

²⁶ ICC, *Yekatom and Ngaïssona*, ICC-01/14-01/18-538, Pre-Trial Chamber II, [Decision on the Prosecutor’s request to amend the charges against Alfred Yekatom](#), 1 June 2020, para. 14 (emphasis in original), quoting ICC, *Yekatom and Ngaïssona*, ICC-01/14-01/18-517, [Decision on the ‘Prosecution’s Request to Amend Charges pursuant to Article 61\(9\) and for Correction of the Decision on the Confirmation of Charges, and Notice of Intention to Add Additional Charges’](#), 14 May 2020, para. 24

²⁷ ICTR, *Prosecutor v. Muvunyi*, Case No. ICTR-00-55A-AR73, Appeals Chamber, [Decision on Prosecution Interlocutory Appeal against Trial Chamber II Decision of 23 February 2005](#), 12 May 2005 (“*Muvunyi* Appeal Decision”), para. 12 (our emphasis)

number of additional charges, or expand the scope of existing charge.”²⁸

29. In the instant case, the SPO did not plead in the Indictment that Mr Thaçi allegedly discussed [REDACTED] during a 22 September 2023 visit with Mr Ahmetaj. It cannot allege now, on the eve of the trial, that this uncharged visit and the [REDACTED] Document are relevant for its case.²⁹

30. Accordingly, this item is neither *prima facie* relevant nor of sufficient importance to justify its late addition to the list of exhibits.

(iii) *Items related to Redacted File [REDACTED]*

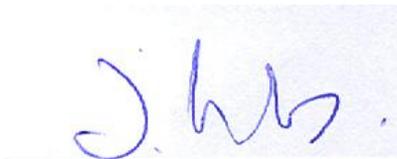
31. The Defence take no position to the addition of these final eight items to the SPO’s list of exhibits.

IV. CONCLUSION

32. For the foregoing reasons, it is respectfully submitted that the Request should be dismissed in respect of those documents to which specific objection has been taken.



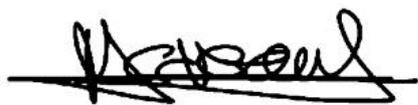
Iain Edwards
Counsel for Isni Kilaj



Joe Holmes
Co-Counsel for Isni Kilaj

²⁸ *Muvunyi* Appeal Decision, para. 22. See also ICC, *Prosecutor v. Ruto and Sang*, ICC-01/09-01/11859, Pre-Trial Chamber II, [Decision on the "Prosecution's Request to Amend the Updated Document Containing the Charges Pursuant to Article 61\(9\) of the Statute"](#), 16 August 2013, para. 40: “[p]arties and participants in a case are expected to prepare on the basis of the charges as confirmed which shape the subject matter of the case, and thus, to take into consideration the evidence that is only relevant to the charges confirmed.”

²⁹ The Defence further notes that the 22 September 2022 visit cannot characterise any (attempted) obstruction under article 401(2) of the Kosovo Criminal Code, since Mr Ahmetaj visited Mr Thaçi alone, and thus one constitutive element of the offence under article 401(2) is not present, the existence of a group.

A handwritten signature in black ink, appearing to read 'Sophie Menegon', written over a horizontal line.

Sophie Menegon
Counsel for Hashim Thaçi

26 January 2026

The Hague, Netherlands

Word count: 3,027