



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-07
The Prosecutor v. Hysni Gucati and Nasim Haradinaj

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 18 May 2021

Language: English

Classification: Public

**Public redacted version of 'Prosecution request to add items to the Exhibit List'
dated 29 April 2021**

Specialist Prosecutor's Office

Jack Smith

Counsel for Mr Gucati

Jonathan Elystan Rees

Counsel for Mr Haradinaj

Toby Cadman

I. SUBMISSIONS

1. Pursuant to Rules 9(5), 95(2) and 95(4)(c) of the Rules,¹ the Specialist Prosecutor's Office ('SPO') requests the Pre-Trial Judge to authorise the addition of W04841's 14 April 2021 declaration ('Declaration')² and its translation³ to the Exhibit List ('Request').⁴

2. The Declaration was disclosed under Rule 102(1)(b) on 14 April 2021,⁵ pursuant to a deadline set by the Pre-Trial Judge, who ordered such disclosure as a counterbalancing measure for the non-disclosure of Batch 4.⁶ It provides a relevant, highly probative summary of Batch 4. The Albanian translation of the Declaration was finalised on 26 April 2021 and disclosed on 28 April 2021.⁷

3. The addition of the Declaration and its translation to the Exhibit List would not cause any undue prejudice to the Defence and would be in the interests of justice.⁸ In

¹ 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.

² 095162-095239 (plus two annexes).

³ 095162-095239-AT.

⁴ Annex 3 to Submission of Pre-Trial Brief, witness and exhibit lists, and Rule 109(c) chart, KSC-BC-2020-07/F00181/A03, 9 April 2021, Confidential ('Exhibit List').

⁵ KSC-BC-2020-07, Disclosure 22.

⁶ Confidential Redacted Version of the Decision on the Non-Disclosure of Information Requested by the Defence, KSC-BC-2020-07/F00171/CONF/RED, 1 April 2021, Confidential, paras 23-24, 39. 'Batch 4' refers to confidential documents [REDACTED].

⁷ KSC-BC-2020-07, Disclosure 24.

⁸ It is within a chamber's discretion to authorise requested amendments to an exhibit list if satisfied that it is in the interests of justice to do so, *see* ICTY, *Prosecutor v. Popović et al.*, IT-05-88-AR73.1, Decision on Appeals Against Decision Admitting Material Related to Borovčanin's Questioning, 14 December 2007, para.37; ICTY, *Prosecutor v. Karadžić*, Decision on Prosecution's Motion for Leave to Amend Its Exhibit List, IT-95-5/18-T, 19 October 2011, paras 9-10 (citations removed: '[w]hen exercising this discretion, the Chamber examines whether the Prosecution has shown good cause for its request and whether the items sought to be added are relevant and of sufficient importance to justify their late addition. The Chamber 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. Finally, the Chamber must carefully balance any amendment to the

particular: (i) W04841 appears on the SPO's witness list,⁹ other declarations by W04841 feature on the Exhibit List, and the Declaration was only finalised after the deadline for submitting the Exhibit List; (ii) the request is being made less than a month after the deadline set by the Pre-Trial Judge for the filing of the Exhibit List;¹⁰ and (iii) the Defence has been put on timely notice of this intended addition.¹¹

II. CONFIDENTIALITY

4. Pursuant to Rule 82(4), this request is confidential since it refers to filings bearing the same classification.

II. RELIEF REQUESTED

5. For the foregoing reasons, the SPO asks that the Pre-Trial Judge grant the Request. Should the Request be granted, the SPO will file an amended Exhibit List shortly thereafter.

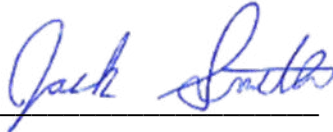
Prosecution's exhibit list with an adequate protection of the rights of the accused. That is, the Chamber must be satisfied that amendments to the exhibit list at that stage of the proceedings provide an accused sufficient notice and do not adversely affect his ability to prepare for trial. The Chamber emphasises again that there is a clear difference between the addition of an item to the Prosecution's list of potential exhibits pursuant to Rule 65 *ter* of the Rules and its admission into evidence. [...] Thus, in deciding whether to grant leave to add a particular item to the Rule 65 *ter* exhibit list the Chamber need not assess its authenticity, relevance, and probative value in the same way as it would when determining its admission at trial. [...]).

⁹ Annex 2 to Submission of Pre-Trial Brief, witness and exhibit lists, and Rule 109(c) chart, KSC-BC-2020-07/F00181/A02, 9 April 2021, Confidential.

¹⁰ Pursuant to Rules 9(5) and 95(4), and upon timely notice and a showing of good cause, the Pre-Trial Judge may extend the time limit ordered for the list of exhibits so as to permit such amendments, *See* IRMCT, *Prosecutor v. Turinabo et al.*, Order to File an Amended Exhibit List Pursuant to Rule 70(E)(iii), MICT-18-116-PT, 14 October 2020; IRMCT, *Prosecutor v. Turinabo et al.*, Decision on the Prosecution Motion to Amend the Rule 70(E)(iii) Exhibit List to Include Additional Wiretaps, MICT-18-116-PT, 22 September 2020; ICTY, *Prosecutor v. Blagojević et al.*, Decision on Prosecution's Motion for Leave to Supplement Exhibit List, IT-02-60-PT, 20 March 2003 (all allowing amendments to the list of exhibits ordered under rules equivalent to Rule 95(4)). *See also* Rule 118(2).

¹¹ *See* Prosecution's consolidated Rule 102(3) notice, KSC-BC-2020-07/F00183, 14 April 2021, Confidential, para.2, fn.7. Further notice was provided through the disclosure of the Declaration and its translation under Rule 102(1)(b) and their categorization, in Legal Workflow, as evidence to be presented by the SPO.

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Jack Smith

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Tuesday, 18 May 2021

At The Hague, the Netherlands