



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: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Acting Specialist Prosecutor

Date: 10 March 2023

Language: English

Classification: Public

Public redacted version of 'Prosecution request to add two witnesses and associated materials with strictly confidential and *ex parte* Annexes 1-2', KSC-BC-2020-06/F00947, dated 2 September 2022

Specialist Prosecutor's Office

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I. INTRODUCTION

1. In the course of the SPO's internal streamlining exercise,¹ two witnesses were identified for addition. Pursuant to Articles 21(6), 23, 35(2)(f), and 39 of the Law² and Rules 80, 81, 95(2), 95(4)(b) and (c), 102(1)(a) and (b), 102(2), 108, and 112 of the Rules,³ the Specialist Prosecutor's Office ('SPO') requests: (i) leave to add two witnesses ([REDACTED] and [REDACTED]) and their associated materials⁴ to the Witness List⁵ and Exhibit List,⁶ respectively; and (ii) to maintain or grant necessary protective measures for them.

II. SUBMISSIONS

2. As detailed below, the request is timely, shows good cause, and would have no undue impact on Defence preparations.

A. [REDACTED]

3. [REDACTED] provides unique and important evidence about the acts and conduct of an accused ([REDACTED]) and a named JCE member ([REDACTED]). [REDACTED]. [REDACTED].

¹ Pursuant to Transcript of Hearing, 13 July 2022, p.1474 ('[i]n light of the parties' submissions, I order the SPO to file a witness list which updates the mode of questioning and presentation time for each witness by 2 September 2022').

² 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 articles of the Law, unless otherwise specified.

³ 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.

⁴ The statements/materials at issue are annexed to the present request. Annex 1 contains the materials for [REDACTED] and Annex 2 the materials for [REDACTED].

⁵ Annex 1 to 'Prosecution submission of corrected and lesser redacted witness list', KSC-BC-2020-06/F00885/A01, 18 July 2022, Strictly Confidential and Ex Parte ('Witness List').

⁶ Annex 1 to Prosecution submission of amended exhibit list, KSC-BC-2020-06/F00896/A01, 25 July 2022, Strictly Confidential and Ex Parte ('Exhibit List').

4. On one occasion [REDACTED] had a heated argument with [REDACTED]. [REDACTED].⁷ [REDACTED] was killed [REDACTED]. [REDACTED].

5. In a different incident, the witness saw the KLA with a man named [REDACTED]. [REDACTED] arrived shortly thereafter, and proceeded to beat with a stick for some time. [REDACTED] was accused of being a Serbian collaborator. At the end of the encounter, [REDACTED] was put in a car with [REDACTED], amongst others, and driven away. [REDACTED], the witness heard that [REDACTED] had been killed.

6. For the key incidents discussed – namely [REDACTED]'s beating and [REDACTED] – [REDACTED] personally witnessed these events. The murders he alleges are not charged, but [REDACTED] provides vivid detail as to [REDACTED]'s commitment to the policy underlying the joint criminal enterprise in the confirmed indictment.

7. No undue prejudice is caused from the requested addition. There are no associated exhibits used or explained in the course of [REDACTED]'s prior statements, and the only further exhibits the SPO seeks to add are [REDACTED].⁸ The only prior statement of [REDACTED] in the SPO's possession beyond his SPO interview⁹ is a detailed screening note taken in [REDACTED].¹⁰ This screening note identifies [REDACTED] by his name (plus witness code) and provides all material particulars discussed in greater detail during his SPO interview. On 20 May 2022, this screening note was disclosed under Rule 103 with standard redactions to all Defence teams.¹¹ The Defence has therefore been aware of [REDACTED]'s evidence for over three months prior to the present request. The SPO is not requesting delayed

⁷ 102761-TR-ET Part 1, p.33.

⁸ 032345-032363; 032287-032344.

⁹ 102761-TR-ET (three parts).

¹⁰ There are no associated exhibits used or explained in the course of [REDACTED]'s prior statements.

¹¹ 095407-095413 RED (Disclosure Package 252). If the relief sought is granted, comparable standard redactions would also be applied to [REDACTED]'s SPO interview (102761-TR-ET).

disclosure of [REDACTED]'s identity, so the Defence will also be able to investigate his account immediately upon disclosure.

8. This said, [REDACTED] provides a highly incriminating account accusing [REDACTED] with serious crimes mirroring the objectives of the joint criminal enterprise charged. Noting the clear and present danger of the climate of witness intimidation in Kosovo, [REDACTED]'s family would be placed at considerable risk were the public to know his identity when testifying. In-court protective measures are the only means to address these risks, specifically: a) assignment of a pseudonym; b) redaction of his name and identifying information from the court's public records; c) non-disclosure to the public of any records identifying him; d) testimony with face and voice distortion; and e) closed or private session for any in-court discussion or testimony identifying him.

B. [REDACTED]

9. [REDACTED] is a former KLA member who was detained, interrogated, and beaten [REDACTED]. [REDACTED] is able to identify his fellow detainees at the site, including the charged murder victim in the indictment. [REDACTED] is also able to contribute information underlying the climate of witness intimidation in Kosovo which is essential to understanding the evidence in this case. [REDACTED], and his support for [REDACTED] led to him receiving veiled threats from [REDACTED]. [REDACTED]'s evidence is particularly significant for the Trial Panel to hear, as he is able to give elements of a crime base victim's account, an insider witness's account, and a modern witness interference account all at the same time.

10. [REDACTED] granted in-court protective measures and delayed disclosure of his identity until 30 days prior to testimony. [REDACTED], and the present request is

to be understood as superseding the non-standard redactions previously requested for [REDACTED] in the Rule 102(3) context.¹²

11. If the present request is granted, the SPO will disclose [REDACTED]¹³ and the non-standard redacted version of [REDACTED]'s statement (with corresponding official note and photograph) granted by the Pre-Trial Judge [REDACTED].¹⁴ [REDACTED]¹⁵ would be provided in accordance with the delayed disclosure timeline. All other associated exhibits in these statements have previously been disclosed in this case, and all but one are already on the Exhibit List.¹⁶ [REDACTED]¹⁷ were also disclosed [REDACTED], and the SPO further seeks to add this item to the Exhibit List. [REDACTED]. In order to preserve the existing protective measures, the SPO requests that this [REDACTED] item be withheld until disclosure of [REDACTED]'s identity.

12. No undue prejudice is caused to the defence by the addition of [REDACTED] or these materials. [REDACTED]. The Defence is clearly aware of this account, with the Veseli Defence in particular discussing it in detail and arguing that [REDACTED] provides Rule 103 information.¹⁸[REDACTED] also only has limited materials requiring review prior to his testimony. He only has one other prior statement beyond

¹² Confidential Redacted Version of 'Prosecution request for protective measures for certain information requested by the Defence pursuant to Rule 102(3)', KSC-BC-2020-06/F0BC-2020-06/F00893, 22 July 2022, Confidential (with 21 annexes), para.11. The remainder of the relief sought in this previous request is maintained.

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ Associated exhibits [REDACTED] and [REDACTED] have previously been disclosed under Rule 102(1)(b) to all defence teams. Associated exhibit [REDACTED] is the exception, but it has already been disclosed to three defence teams pursuant to Rule 102(3). This item would be disclosed to all four defence teams if the relief sought is granted.

¹⁷ [REDACTED].

¹⁸ Veseli Defence Response to SPO Request for Protective Measures for Items Requested by the Defence Pursuant to Rule 102(3) Material (F00893), KSC-BC-2020-06/F00915, 4 August 2022, Confidential, para.8 n.6.

[REDACTED] and, of his four associated exhibits, three have already been disclosed in this case.

III. CLASSIFICATION

13. This filing and its annexes are submitted as strictly confidential and *ex parte* to protect the information of witnesses for whom protective measures are sought. A confidential redacted version of the filing will be submitted.

IV. RELIEF REQUESTED

14. The necessity of adding these witnesses became apparent in the course of the streamlining exercise for the Pre-Trial Judge's 2 September deadline. The SPO has filed the present request on the same day as that deadline. Mindful of the scrutiny given to such requests, amendments to the Witness List and Exhibit List should also be treated with flexibility in a complex multi-accused case of this kind, particularly at this stage of proceedings.¹⁹ In this regard, the requested amendments – which, considered in context, are limited in scope and cause no undue prejudice – strike an appropriate balance between the rights of the Accused and the duty of the SPO to present available evidence to prove its case.²⁰ The request is timely and, as set out above, will add evidence which makes a unique and important contribution to the determination of the truth in this case.

15. For the foregoing reasons, the Pre-Trial Judge should:


¹⁹ 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.

²⁰ Appeal Decision, KSC-BC-2020-06/IA019/F00006, para.21.

i) authorise the SPO to amend the Witness List to include [REDACTED] and [REDACTED], and amend the Exhibit List to include their associated materials;²¹ and

ii) maintain or grant protective measures for [REDACTED] and [REDACTED] in the terms specified above.

Word count: 1464



Alex Whiting

Acting Specialist Prosecutor

Friday, 10 March 2023

At The Hague, the Netherlands.

²¹ [REDACTED].