

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: Counsel for Kadri Veseli

Date: 15 September 2022

Language: English

Classification: Public

Public Redacted Version of Veseli Defence Response to SPO Request to add two Witnesses and Associated Materials (F00947/CONF/RED, dated 15 September 2022)

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I. INTRODUCTION

1. The Defence for Mr. Veseli (“Defence”) hereby responds to SPO Request to add two witnesses and associated materials (“Request”).¹

II. SUBMISSIONS

A. The Request is Untimely

2. The Defence notes that the Request was filed more than nine months after the expiration of the deadline to file a witness list pursuant to Rule 95(4)(b).² The SPO contends that the necessity of adding the two witnesses “became apparent in the course of the streamlining exercise for the Pre-Trial Judge’s 2 September deadline”.³ However, that exercise did not require the SPO to identify any evidence which may have previously been overlooked.⁴ The purpose of the streamlining exercise was to find ways of improving the efficiency and expeditiousness of the proceedings – *i.e.*, reducing the size of the case by updating the mode of questioning and presentation times for existing witnesses – with the possibility of dropping some witnesses, rather than adding new ones.⁵ The Pre-Trial Judge’s Second Oral Order issued during the Status

1 F00947/CONF/RED, Confidential redacted version of Prosecution request to add two witnesses and associated materials with strictly confidential and ex parte Annexes 1-2, 2 September 2022 (“Request”).

2 See, Transcript, 29 October 2021, pp. 752-753 (“I order the SPO to file its pre-trial brief and related material, pursuant to Rule 95(4)(a) to (c) of the Rules, by 17 December 2021”).

3 F00947/CONF/RED, para. 14. See also, F00947/CONF/RED, para. 1.

4 See, Transcript, 13 July 2022, Second Oral Order, p. 1474.

5 See, Transcript, 13 July 2022, pp. 1419-1420 (JUDGE GUILLOU: And, Madam Prosecutor, do I understand correctly that at the moment you do not anticipate to reduce the number of witnesses, but you already anticipate that there will changes related to the mode of testimony and the estimated number of hours per witness? Did I understand correctly?

MS. LAWSON: Yes, Your Honour. Largely that's correct. It is case presentation proposals, including the hours estimates specifically and use of the various other rules provided for in the framework that would be changing”).

Conference of 13 July 2022 may not be invoked as an appropriate legal basis to bypass the existing deadline of 17 December 2021.

3. Further, the present Request cannot be equated to a request to amend the Exhibit List.⁶ Unlike individual pieces of evidentiary material, witnesses cannot be simply “overlooked” and identified for addition “in the course of the SPO’s internal streamlining exercise”.⁷ Coupled with the lack of valid reasons for not seeking to add the two witnesses within the prescribed deadline, the Defence submits that the SPO has failed to show good cause for the Pre-Trial Judge to grant the Request.

B. The Addition of the two Witnesses is not in the Interests of Justice

4. Neither of the proposed witnesses are sufficiently relevant to the case to justify their late addition. Regarding [REDACTED], the SPO concedes that [REDACTED] testimony will not support any specific charge contained in the Indictment.⁸ While the SPO fails to explain why it does not seek to charge the two murders that the witness alleges, it is worth noting that one falls outside the temporal scope of the Indictment,⁹ and the other appears to be attributable to Serbian forces.¹⁰
5. As for [REDACTED], the SPO fails to indicate whether [REDACTED] will provide any evidence which adds to (rather than duplicates) the evidence of other existing witnesses on the Witness List which are expected to provide

6 F00947/CONF/RED, para. 14. The Defence notes that the authority cited by the SPO at footnote 19 refers specifically to amendments to the Exhibit List. It does not, therefore, support the claim that amendments to the Witness List should be treated with flexibility.

7 F00947/CONF/RED, para. 1.

8 F00947/CONF/RED, para. 8. In its attempt to show an appearance of relevance, the SPO talks of an account [REDACTED].

9 [REDACTED]

10 [REDACTED]

evidence relating to the [REDACTED] detention site. Indeed, it appears that the SPO's primary reason for adding this witness is to provide [REDACTED].

C. Prejudice Caused to the Defence

6. Finally, despite SPO assurances to the Pre-Trial Judge that the Defence would be given advanced notice should there be any proposal to change the Witness List,¹¹ the Defence submits that the Request constitutes a surprise and encroaches upon the rights of Mr Veseli to be accorded reasonable time to prepare his Defence.¹² In addition, the Request goes against the very rationale of case streamlining by adding to the already untenable amount of evidentiary material and forcing the Defence to divert its limited resources from other pressing matters.


III. CONCLUSION

7. For the foregoing reasons, the Request should be denied.

Word Count: 1051



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¹¹ See, Transcript, 13 July 2022, pp. 1418-1419 where the SPO made the following statements regarding amendments to the witness list: "And should there be any change to that, we would promptly notify the Defence of that in advance of anymore consolidated streamlining proposals being made" [...] "But as I indicated, should there be other changes, such as witnesses being dropped from the case in advance of that, we would certainly provide notice before then".

¹² On the element of surprise as a factor in assessing similar requests, see, ICTR, Prosecutor v. Kamuhanda, ICTR-99-54A-T, [Decision on the Prosecutor's Motion to add witnesses GKI, GKJ and GKL](#), 6 February 2002, para. 9.