



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: 3 April 2023

Language: English

Classification: Public

Public redacted version of 'Prosecution request to amend the exhibit list and for protective measures with confidential Annexes 1 and 4-9 and strictly confidential and *ex parte* Annexes 2-3', KSC-BC-2020-06/F00767, dated 13 April 2022

Specialist Prosecutor's Office

Alex Whiting

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

David Young

Counsel for Jakup Krasniqi

Venkateswari Alagendra

I. INTRODUCTION

1. Pursuant to the Framework Decision,¹ Articles 21(6), 23, 35(2)(f), and 39(1), (3) and (11) of the Law² and Rules 80, 81, 95(2), 102(1)(b), 108, and 112 of the Rules,³ the Specialist Prosecutor's Office ('SPO') requests: (i) leave to amend the Exhibit List⁴ to include additional Rule 102(1)(b) materials ('Additional Materials');⁵ and (ii) authorisation to apply non-standard redactions to certain of the Additional Materials to give effect to existing protective measures for [REDACTED].⁶

II. SUBMISSIONS

2. As set out in more detail below in relation to each of the Additional Materials, the SPO has provided timely notice and shown good cause for the requested amendments to the Exhibit List.⁷

3. The SPO provided notice foreshadowing this request.⁸ The Additional Materials were obtained or identified following the Rule 102(1)(b) disclosure deadline on 31 January 2022. In particular: (i) four of the items were generated in March 2022 as a result either of disclosure received by the SPO in other cases or by a witness voluntarily initiating contact to provide additional information; (ii) two of the items are supplemental

¹ Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-06/F00099, 23 November 2020 ('Framework Decision').

² Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'), Art.21(6).

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 are to the Rules, unless otherwise specified.

⁴ Annex 1 to Prosecution submission of amended exhibit list, KSC-BC-2020-06/F00738/A01, Strictly Confidential and *Ex Parte* ('Exhibit List').

⁵ The Additional Materials include the items at Annexes 1-9, as well as certain translations of previously disclosed documents [REDACTED], SITF00245505-00245703, SPOE00209279-00209288, SPOE00083436-SPOE00083437, [REDACTED], and [REDACTED].

⁶ Proposed non-standard redactions are marked on the items included at ex parte Annexes 2-3.

⁷ Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures, KSC-BC-2020-06/F00727, 8 March 2022, Strictly Confidential and *Ex Parte* ('Decision'), paras 23-24 (requiring the SPO to provide timely notice and show good cause).

⁸ Status Conference Transcript, 24 March 2022, p.1068.

version of already disclosed statements, which have been identified as containing certain additional detail; and (iii) the remaining items are of very limited scope, comprising between only one to four pages, and in two instances were not readily associated with the witness in question given that the name of the person is not indicated on the face of the document. Once identified, the SPO promptly took necessary measures, including, as appropriate, translation and transcription, to review and, as relevant, prepare the Additional Materials for disclosure.

4. Considering the stage of proceedings, overall scope of the case, the number of witnesses and Rule 102(1)(b) materials previously disclosed, the limited nature of the Additional Materials, which relate to witnesses whose other prior statements have already been disclosed, and the fact that the requested amendments would ensure a complete and more accurate Exhibit List,⁹ no prejudice arises from this request and good cause has been shown.

1. Annex 1: 039769¹⁰

5. Item 039769 is an audio record pertaining to W01453's prior, previously disclosed, UNMIK statement bearing ERN SITF00452593-00452615. During disclosure review of certain audio records, the SPO identified 039769, which is of poor quality, compared it against SITF00452593-00452615, and determined, following the 31 January 2022 deadline, that 039769 contained certain additional information not reflected in SITF00452593-00452615. As soon as this was identified, transcripts were prepared, which became available on 8 April 2022. There is no prejudice: the additional, relevant information contained in 039769 is limited, it is being promptly disclosed at the pre-trial stage, and

⁹ See, *similarly*, Decision, KSC-BC-2020-06/F00727, para.24 (concerning memorialisation of Rule 102(1)(b) disclosure through the Exhibit List).

¹⁰ The transcripts for 039769-02, 039769-03, 039769-06, 039769-07, 039769-09, and 039769-11 are included at Annex 1, rather than the underlying video. (039769-01, 039769-04, 039769-05, 039769-08, 039769-10, and 039769-12 are duplicates of the foregoing records and therefore have not been included.)

the related written statement¹¹ and other prior statements of W01453 have been disclosed. Accordingly, considering also that 039769 is a more complete record of a statement already on the Exhibit List, good cause exists for its addition.

2. Annex 2: [REDACTED]

6. Document [REDACTED] is a handwritten record of a meeting with [REDACTED]. This record relates to the same meeting concerned by document [REDACTED],¹² which was previously disclosed under 102(1)(b). Both records include overlapping information, but it has recently been determined that [REDACTED] also includes certain information not contained in [REDACTED]. There is no prejudice: the meeting in question is already known to the Defence through the disclosure of [REDACTED]; the additional, relevant information in [REDACTED] is limited – it is cumulative or similar in nature to that contained in other statements of [REDACTED], or simply adds further detail to those statements; it is being promptly disclosed at the pre-trial stage; and both the related statement and other prior statements of [REDACTED] have previously been disclosed. Accordingly, considering also that [REDACTED] is a more complete record of a statement already on the Exhibit List, good cause exists for its addition.

7. [REDACTED] was previously granted protective measures, including delayed disclosure of his identity until 30 days before testimony.¹³ The proposed non-standard redactions in document [REDACTED] to the witness's initials, his personal data, and certain details only he would be in a position to know are necessary to give effect to the witness's protective measures and are consistent with the redactions authorised for document [REDACTED].¹⁴ These protective measures are also proportionate. The

¹¹ SITF00452593-00452615 was disclosed in Disclosure Package 72, 24 August 2021.

¹² Disclosure Package 38, 30 June 2021.

¹³ Corrected Version of First Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00133/COR, 10 December 2020, Strictly Confidential and *Ex Parte* ('First Decision'), para.132(l).

¹⁴ Fifth Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00338, 4 June 2021, Strictly Confidential and *Ex Parte*, para.76(d).

Defence has received redacted versions of the witness's other prior statements, will receive a redacted version of [REDACTED], and will receive the witness's complete evidence sufficiently in advance of testimony to enable adequate preparations.

3. Annex 3: [REDACTED]

8. Documents [REDACTED] are records of contacts with [REDACTED] which occurred on [REDACTED], after [REDACTED]. They were thereafter promptly processed, translated, and reviewed for disclosure and protective measures. Considering that documents [REDACTED] include information that supplements details in the witness's other statements, which have been previously disclosed, and its addition ensures a complete and more accurate Exhibit List, no prejudice arises and good cause has been shown.

9. [REDACTED] has previously been granted protective measures, including delayed disclosure of his identity until 30 days before testimony.¹⁵ The proposed non-standard redactions to [REDACTED], including to his name, personal data, and unique information relating to the specific events he experienced and witnessed, are necessary to give effect to his protective measures and consistent with the authorised non-standard redactions to his other prior statements. Such protective measures are also proportionate. The Defence has received redacted versions of the witness's prior statements, will receive a redacted version of [REDACTED], and will receive the witness's complete evidence sufficiently in advance of his testimony to enable adequate preparations.

4. Annexes 4-5: [REDACTED] and [REDACTED]

10. Documents [REDACTED] and [REDACTED] pertain to [REDACTED] and [REDACTED], respectively. They are dated [REDACTED] 2022 and [REDACTED] 2022, respectively, and were obtained by the SPO on 14 March 2022. After obtaining

¹⁵ First Decision, KSC-BC-2020-06/F00133/COR, para.132(k).

[REDACTED], it was promptly disclosed under Rule 103 following review.¹⁶ The other prior statements of both witnesses have also previously been disclosed and the addition of [REDACTED] and [REDACTED] to the Exhibit List ensures a complete and more accurate representation of Rule 102(1)(b) disclosure relating to these witnesses.

5. Annex 6: SITF00408812-SITF00408815

11. Document SITF00408812-SITF00408815 is a prior statement of W00083, which was only identified in the SPO evidentiary databases in late March 2022 and was thereafter promptly translated and reviewed. The statement, which existed only in [REDACTED] and formed part of a compilation of documents, had been inadvertently overlooked during prior searches and reviews. Document SITF00408812-SITF00408815 is cumulative of the numerous other statements of W00083 previously disclosed, including the transcripts of her SITF interview in [REDACTED]¹⁷ and five other statements taken between [REDACTED]. Accordingly, considering also that the requested addition would ensure a complete and more accurate Exhibit List, there is no prejudice and good cause has been shown.

6. Annex 7: SPOE00183809-SPOE00183810

12. Document SPOE00183809-SPOE00183810 is an exhibit associated with the prior statement of W01743 bearing ERN SPOE00183807-SPOE00183807.¹⁸ This associated exhibit – which was not expressly referenced in the related statement and consequently had initially been overlooked during previous searches for associated exhibits – was only identified after the 31 January 2022 deadline during review and assessment of the continuing necessity of the redactions applied to SPOE00183807-SPOE00183807. The item is only two pages, and comprised photographic content. Considering that the related

¹⁶ Disclosure Package 186, 15 March 2022.

¹⁷ 000516-TR.

¹⁸ See Disclosure Package 31, 28 April 2021.

statement, as well as the witness's other statements, have previously been disclosed, SPOE00183809-SPOE00183810 forms part of SPOE00183807-SPOE00183807, and its addition will ensure a complete and more accurate Exhibit List, there is no prejudice and good cause has been shown.

7. Annex 8: [REDACTED]

13. Document [REDACTED] is a [REDACTED] statement of W04741, with attached associated exhibits. This statement – which does not use the witness's name, was inadvertently overlooked previously, and was subject to Rule 107 conditions – was identified in March 2022. Upon identification, the SPO promptly requested clearance from the provider, which was obtained on 31 March 2022. The statement is less than a page in length and complements information contained in the witness's prior statements. Considering that the witness's other statements have previously been disclosed and its addition will ensure a complete and more accurate Exhibit List, there is no prejudice and good cause has been shown.

8. Annex 9: SPOE00078190-SPOE00078192

14. Document SPOE00078190-SPOE00078192 has recently been identified as a record of a prior statement of W03886. The statement is one page in length and is similar to the information contained in a formal statement taken shortly thereafter, reflected in already disclosed item SPOE00070598-SPOE00070610 RED. Considering that the witness's other statements, including SPOE00070598-SPOE00070610 RED, have previously been disclosed and its addition will ensure a complete and more accurate Exhibit List, no prejudice arises and good cause has been shown.

9. Translations

15. The SPO identified, including following *inter partes* requests by the VESELI and THAÇI Defence, certain exhibits the translations of which were inadvertently not

disclosed. Once identified, the SPO promptly requested (as relevant), processed, and reviewed the relevant translations.¹⁹ Considering the limited number of translations subject of this request, the stage of the proceedings, the fact that the underlying items themselves have already been disclosed, and the fact that the addition of these translations will both provide clarity concerning the portions of these documents the SPO intends to rely upon and ensure a complete and more accurate Exhibit List, no prejudice arises.

III. CLASSIFICATION

16. This filing is confidential as it refers to protected witnesses and specific items of evidence.

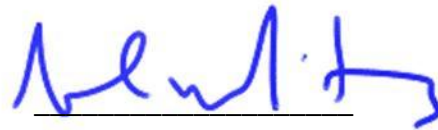
IV. RELIEF REQUESTED

17. For the foregoing reasons, the Pre-Trial Judge should authorise: (i) the SPO to amend the Exhibit List to include the Additional Materials; and (ii) protective measures to certain of the Additional Materials, as specified above. Considering that another submission is pending that may result in amendments to the Exhibit List,²⁰ the SPO requests, in the interests of efficiency, that any deadlines imposed permit the SPO to file one consolidated amended list including any authorised additions arising from pending requests.

¹⁹ The ERNS of items for which undisclosed translations have been identified are listed in fn.5 above.

²⁰ Prosecution Rule 102(2) submission and related requests, KSC-BC-2020-06/F00708, 24 February 2022, Confidential.

Word count: 1932



Alex Whiting

Acting Specialist Prosecutor

Monday, 3 April 2023

At The Hague, the Netherlands.