



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**In:** KSC-BC-2020-06

**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi,  
and Jakup Krasniqi**

**Before:** Trial Panel II

Judge Charles L. Smith III, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

**Registrar:** Fidelma Donlon

**Date:** 23 May 2023

**Language:** English

**Classification:** Public

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**Decision on Prosecution Request to Add Five Items Relating to Expert Witness to  
the Exhibit List**

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**TRIAL PANEL II** (“Panel”), pursuant to Articles 21(4)(c) and (6) and 40 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 95(4)(c), 102(1)(b), 118(2), and 149 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 25 January 2023, the Panel issued the Order on the Conduct of Proceedings,<sup>1</sup> instructing the Specialist Prosecutor’s Office (“SPO”) “to ensure before [its] case commences that the report of any expert it intends to call is finalised and ready to be tendered in evidence”.<sup>2</sup>
2. On 16 March 2023, upon authorisation from the Panel,<sup>3</sup> the SPO filed its amended list of exhibits (“Exhibit List”).<sup>4</sup>
3. On 29 March 2023, the SPO filed a request to add five items relating to expert witness W04875 to its Exhibit List (“Request”).<sup>5</sup> The Defence teams for the four Accused did not file any response to the Request.
4. On 3 April 2023, the trial proceedings started.<sup>6</sup>

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<sup>1</sup> F01226, Panel, *Order on the Conduct of Proceedings*, 25 January 2023, with Annex 1 (“Order on the Conduct of Proceedings”).

<sup>2</sup> Order on the Conduct of Proceedings, para. 122.

<sup>3</sup> F01352, Panel, *Decision on Prosecution Request to Amend the Exhibit List and Related Matters* (“8 March 2023 Decision”), 8 March 2023, confidential.

<sup>4</sup> F01376, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 16 March 2023, confidential, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential.

<sup>5</sup> F01405, Specialist Prosecutor, *Prosecution Request to Add Five Items Relating to Expert Witness to the Exhibit List*, 29 March 2023, confidential, with Annexes 1-5, confidential (a public redacted version was filed on 12 April 2023, F01405/RED).

<sup>6</sup> Transcript of Hearing, 3 April 2023, public.

## II. SUBMISSIONS

5. The SPO requests leave to amend its Exhibit List to include the following documents relating to expert witness W04875 (collectively, “Additional Exhibits”): (i) an updated DNA forensic expert report (“W04875 Supplement”<sup>7</sup>) prepared by W04875 on 6 March 2023 to supplement his original 2021 Expert Report<sup>8</sup> on, *inter alia*, the 2009 DNA Identification;<sup>9</sup> (ii) the letter containing the instructions the SPO provided to W04875 before the production of the W04875 Supplement;<sup>10</sup> (iii) the updated DNA analysis concerning a named murder victim in the Indictment (“Updated DNA Report” and “Alleged Murder Victim”, respectively), provided by W04875 and containing a newly calculated likelihood ratio of the DNA identification of the Alleged Murder Victim;<sup>11</sup> (iv) an official note concerning an email exchange with W04875, providing additional information on his expert evidence in relation to the Updated DNA Report (“W04875 Clarification”);<sup>12</sup> and (v) an official note of a 15 March 2023 meeting recording information relevant to the Updated DNA Report, the W04875 Supplement, and 2021 Expert Report (“15 March 2023 Meeting Note”<sup>13</sup>).<sup>14</sup>

6. The SPO argues that: (i) the Request should be treated with flexibility as the case is a multi-Accused case involving a considerable amount of evidence; and (ii) considering the stage of the proceedings, scope of the case, and the limited nature of the Additional Exhibits, there is minimal impact on Defence preparations.<sup>15</sup> The SPO submits that the Request is timely as: (i) it was made before the trial commences and well in advance of W04875’s testimony (who is not

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<sup>7</sup> Annex 1 to the Request.

<sup>8</sup> Item ERN 103373-103387.

<sup>9</sup> Item ERN SITF00012453-SITF00012464.

<sup>10</sup> Annex 2 to the Request.

<sup>11</sup> Annex 3 to the Request.

<sup>12</sup> Annex 4 to the Request.

<sup>13</sup> Annex 5 to the Request.

<sup>14</sup> Request, paras 1, 16.

<sup>15</sup> Request, para. 4. *See also* Request, paras 12, 14.

anticipated to be among the first 40 witnesses); and (ii) ensures that W04875's expert report is finalised and ready to be tendered in evidence.<sup>16</sup>

7. The SPO also submits that good cause exists for the Additional Exhibits as they are *prima facie* relevant and of sufficient importance to justify their addition to the Exhibit List.<sup>17</sup>

### III. DISCUSSION

8. Pursuant to Rule 118(2), the Panel will assess whether, at the current stage of proceedings, the SPO has provided timely notice and shown good cause for Additional Exhibits, and that no prejudice is caused to the Defence by the amendment of the SPO's Exhibit List.<sup>18</sup>

9. As regards timely notice, the Panel is mindful that: (i) the Pre-Trial Judge set a time limit for the submission of the SPO's Exhibit List and authorised numerous amendments thereof;<sup>19</sup> and (ii) the Panel has already authorised the amendment

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<sup>16</sup> Request, paras 2, 5-7. See also Request, para. 13.

<sup>17</sup> Request, paras 2, 9-11.

<sup>18</sup> See *Gucati and Haradinaj* Decision, para. 16; ICTY, *Prosecutor v. Hadžić*, IT-04-75-T, Decision on Fifth Defence Motion for Leave to Amend its Rule 65 *ter* Exhibit List ("[Hadžić Decision](#)"), 19 February 2015, para. 5; [Karadžić Decision](#), para. 9; *Prosecutor v. D. Milošević*, IT-98-29/1-T, [Decision on Prosecution's Third Motion for Leave to Amend Its Rule 65 \*ter\* Exhibit List](#), 23 April 2007, p. 3; STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, [Decision allowing the Prosecution to Add to Its Exhibit List a Statement by Mr Andrew Donaldson \(Witness PRH230\)](#), 28 April 2017, para. 18.

<sup>19</sup> Transcript of Hearing, 29 October 2021, pp. 752-753; F00667, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request for Extension of Time*, 31 January 2022, confidential, para. 13 (a public redacted version was filed on the same day, F00667/RED). See also F00727, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures*, 8 March 2022, strictly confidential and *ex parte*, para. 54 (a confidential redacted version was filed on the same day, F00727/CONF/RED); F00779, Pre-Trial Judge, *Decision on Specialist Prosecutor's Rule 102(2) and Related Requests*, 22 April 2022, confidential, para. 55; F00876, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures*, 8 July 2022, strictly confidential and *ex parte*, para. 107 (a confidential redacted version was filed on the same day, F00876/CONF/RED); F00957, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures*, 6 September 2022, strictly confidential and *ex parte*, para. 107 (a confidential redacted version was filed on 7 September 2022, F00957/CONF/RED); F01057, Pre-Trial Judge, *Decision on Prosecution Rule 102(2) Submission and Related Requests*, 27 October 2022, strictly confidential and *ex parte*, para. 58 (a confidential redacted version was filed on the same day, F01057/CONF/RED); F01058, Pre-Trial Judge, *Decision on Prosecution Request to Add Two Witnesses*

of the SPO's list of exhibits.<sup>20</sup> However, in assessing the issue of timeliness of the Request, the Panel notes that the Additional Exhibits consist of items that were recently created or received by the SPO.

10. In particular, the Panel observes that: (i) on 15 February 2023, the SPO instructed W04875 to produce a supplement to his original 2021 Expert Report to provide expert opinion on the Updated DNA Report of the Alleged Murder Victim, soon after learning from the expert who produced the original 2009 DNA Identification and authored the Updated DNA Report that statistical methods were now available that were better than those used for the 2009 DNA Identification;<sup>21</sup> (ii) on 6 March 2023, the SPO received W04875 Supplement and W04875 Clarification;<sup>22</sup> and (iii) on 15 March 2023, the SPO obtained the information contained in the 15 March 2023 Meeting Note.<sup>23</sup> The Panel also considers that, pursuant to the Order on the Conduct of Proceedings,<sup>24</sup> the Request was filed before the commencement of trial on 3 April 2023. The Panel is therefore satisfied that the Request is timely.

11. As regards good cause, the Panel notes that leave to amend the Exhibit List should not be granted with respect to items that are obviously irrelevant and would, therefore, ultimately be denied admission into evidence.<sup>25</sup> Such an

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*and Associated Materials*, 27 October 2022, strictly confidential and *ex parte*, para. 47 (a confidential redacted version was filed on the same day, F01058/CONF/RED); F01142, Pre-Trial Judge, *Decision on Prosecution Request to Amend the Exhibit List and for Protective Measures*, 6 December 2022, strictly confidential and *ex parte*, para. 304 (a confidential redacted version was filed on 7 December 2022, F01142/CONF/RED).

<sup>20</sup> 8 March 2023 Decision, para. 36.

<sup>21</sup> Annexes 2-3 to the Request. *See also* Request, para. 6.

<sup>22</sup> Annexes 1, 4 to the Request.

<sup>23</sup> Annex 5 to the Request.

<sup>24</sup> Order on the Conduct of Proceedings, para. 122.

<sup>25</sup> *Gucati and Haradinaj* Decision, para. 16. *See also* ICTY, [Karadžić Decision](#), para. 10; [Hadžić Decision](#), para. 5; *Prosecutor v. Stanišić and Simatović*, IT-03-69-T, Decision on Prosecution Motion for Leave to Amend its Rule 65 *ter* Exhibit List (“*Stanišić and Simatović* Decision”), 8 May 2008, para. 7; *Prosecutor v. Delić*, IT-04-83-T, [Decision on Urgent Prosecution Motion for Leave to Amend its Exhibit List](#), 17 October 2007, p. 4; *Prosecutor v. Bošković and Tarčulovski*, IT-04-82-T, [Decision on Tarčulovski Motion for Permission to Add Additional Exhibits to its 2D Defence Exhibit List](#), 12 March 2008, para. 3.

evaluation does not call for an assessment of the admissibility of the proposed material, but of a *prima facie* evaluation only. The Panel 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.<sup>26</sup> In addition, the Panel will carefully balance any amendment to the Prosecution's exhibit list with an adequate protection of the rights of the accused.<sup>27</sup> That is, the Panel 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.<sup>28</sup>

12. After carefully reviewing the Additional Exhibits, the Panel finds that they are *prima facie* relevant and sufficiently important to justify the late addition insofar as they consist of, or closely relate to, an expert witness's supplemental opinion on an updated DNA report of an alleged murder victim named in the Amended Indictment.<sup>29</sup>

13. As regards the impact of the Additional Exhibits on the Accused's preparation for trial, the Panel notes that: (i) W04875's original 2021 Expert Report has already been disclosed to the Defence;<sup>30</sup> (ii) W04875 is not amongst the first 40 witnesses to testify;<sup>31</sup> (iii) the Additional Exhibits relate to a known aspect of the SPO's case, including an expert witness on the list of witnesses, exhibits

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<sup>26</sup> ICTY, [Karadžić Decision](#), para. 9 (and authorities cited therein).

<sup>27</sup> ICTY, *Stanišić and Simatović Decision*, para. 6; [Karadžić Decision](#), para. 9.

<sup>28</sup> ICTY, *Stanišić and Simatović Decision*, para. 6; [Karadžić Decision](#), para. 9.

<sup>29</sup> F00999, Specialist Prosecutor, *Submission of Confirmed Amended Indictment*, 30 September 2022, with Annexes 1 ("Amended Indictment"), 2, confidential, and Annex 3, public.

<sup>30</sup> See Disclosure Packages 117, 657.

<sup>31</sup> F01117, Specialist Prosecutor, *Prosecution Submission of Provisional List of First 40 Witnesses To Be Called at Trial*, 18 November 2022, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential.

already on the Exhibit List,<sup>32</sup> and a known detention site and Alleged Murder Victim; and (iv) the Additional Exhibits amount to only 18 pages in total.

14. As noted, the Defence received notice of the addition of the Additional Exhibits to the Exhibit List before the commencement of trial and will have adequate time to examine the material in question. The Panel notes, furthermore, that the relevant witness to whom the material relates has yet to be scheduled to testify, which will afford the Defence enough time to review that material and prepare for his testimony in relation to this new material. The Panel is therefore satisfied that the Defence is given sufficient notice and adequate time for its preparation in respect of the Additional Exhibits.

15. For these reasons, the Panel finds that the SPO has provided timely notice, shown good cause for the Additional Exhibits, and demonstrated that no prejudice will be caused to the Defence by the addition of the Additional Exhibits to the SPO's Exhibit List. The Panel therefore authorises the addition of the Additional Exhibits to the SPO's Exhibit List and orders the SPO to file its amended Exhibit List by no later than Tuesday, 30 May 2023. The Panel also orders the SPO to disclose the Additional Exhibits under Rule 102(1)(b)(ii)-(iii) by no later than Tuesday, 30 May 2023.

#### IV. DISPOSITION

16. For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS** the Request; and
- b) **AUTHORISES** the SPO to add the Additional Exhibits to the Exhibit List and **ORDERS** the SPO to: (i) file its amended Exhibit List by no later than Tuesday, 30 May 2023; and (ii) disclose the Additional Exhibits to the

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<sup>32</sup> See 2021 Expert Report: Exhibit List, Item 4440; 2009 DNA Identification: Exhibit List, Item 6702.

Defence and Victims' Counsel by no later than Tuesday, 30 May 2023.

A handwritten signature in black ink, reading "Charles L. Smith, III". The signature is written in a cursive style with a horizontal line underneath the name.

**Judge Charles L. Smith, III**

**Presiding Judge**

Dated this Tuesday, 23 May 2023

At The Hague, the Netherlands.