



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: **Trial Panel II**
Judge Charles L. Smith, III, Presiding Judge
Judge Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 22 August 2023

Language: English

Classification: Public

Public Redacted Version of 'Prosecution request to amend the Exhibit List with confidential Annex 1'

Specialist Prosecutor's Office

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Counsel for Victims

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Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagenda

I. INTRODUCTION

1. Pursuant to Article 40 of the Law,¹ and Rule 118(2) of the Rules,² the Specialist Prosecutor's Office ('SPO') requests leave to amend the Exhibit List³ to include materials [REDACTED], namely [REDACTED] which contains footage from September 1998⁴ and its accompanying transcripts⁵ (collectively, 'Requested Amendments'). This request – which, at this stage, solely concerns amendment of the Exhibit List and not admission⁶ – is limited in scope, allows timely and effective Defence preparations, and concerns relevant material, which is probative of the charges.⁷

2. As set out below, the SPO consulted *inter partes* before filing this request. The THAÇI Defence, VESELI Defence, KRASNIQI Defence, and Victims' Counsel all indicated that they do not object to the Requested Amendments.

II. SUBMISSIONS

3. In this complex multi-Accused case, involving a considerable amount of evidence, amendments to the Exhibit List should be treated with flexibility, provided

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

² 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.

³ Annex 1 to Prosecution submission of amended exhibit list, KSC-BC-2020-06/F01669/A01, 12 July 2023, Strictly Confidential and *Ex Parte* ('Exhibit List').

⁴ 113189-02.

⁵ 113189-02-TR; 113189-02-TR-ET. *See* Annex 1.

⁶ *See* Decision on Prosecution Request to Amend the Exhibit List and Related Matters, KSC-BC-2020-06/F01352, 8 March 2023 ('8 March 2023 Decision'), para.31 (an evaluation of proposed amendments to the Exhibit List does not call for an assessment of admissibility, but a *prima facie* evaluation only); Decision on Prosecution Request to Add Five Items Relating to Expert Witnesses to the Exhibit List, KSC-BC-2020-06/F01544, 23 May 2023 ('23 May 2023 Decision'), para.11; Decision on Prosecution Request to Add Intercepted Communications to the Exhibit List, KSC-BC-2020-06/F01656, 7 July 2023, para.11.

⁷ *See* 8 March 2023 Decision, KSC-BC-2020-06/F01352, paras 29, 31, 33; 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 ('Thaçi Appeal Decision'), para.21. *See also* 23 May 2023 Decision, KSC-BC-2020-06/F01544, para.11.

that – as is the case here – there is adequate protection of the Accused’s rights.⁸ Considering the stage of the trial proceedings, the scope of the case, and the limited nature and scope of the Requested Amendments,⁹ there is minimal impact on Defence preparations. Therefore, the Requested Amendments strike an appropriate balance between the rights of the Accused and the duty of the SPO to present available evidence to prove its case.¹⁰

A. GOOD CAUSE EXISTS FOR THE REQUESTED AMENDMENTS

4. The video 113189-02 [REDACTED]. [REDACTED] the circumstances surrounding the visit of a delegation to Qirez/Ćirez in September 1998 [REDACTED].

5. As such, the Requested Amendments are *prima facie* relevant and of sufficient importance to justify addition to the Exhibit List, as the footage refers to a charged incident in the indictment. The relevance is also apparent from its use by the THAÇI Defence during its opening statements.¹¹

6. [REDACTED].¹² The SPO therefore intends to rely on the Requested Amendments [REDACTED].

B. THE REQUEST IS TIMELY

7. In its opening statement in this case, the THAÇI Defence used part of the video.¹³ The SPO obtained the video, transcribed and translated it, and disclosed it pursuant to Rule 103.¹⁴ The SPO thereafter determined its importance, including for use with relevant witnesses, [REDACTED]. [REDACTED], on 26 July 2023, the SPO

⁸ See 8 March 2023 Decision, KSC-BC-2020-06/F01352, paras 29, 31; Thaçi Appeal Decision, KSC-BC-2020-06/IA019/F00006, para.21.

⁹ Compare Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023, para.82 (where new material is of significant nature, an opposing Party may seek appropriate relief for preparations).

¹⁰ Thaçi Appeal Decision, KSC-BC-2020-06/IA019/F00006, paras 21, 23, fn.48 (citing case law from international criminal tribunals, which consider, in favour of amendment, the fact that the trial is still in its early stages); 23 May 2023 Decision, KSC-BC-2020-06/F01544, para.11.

¹¹ See Transcript, 4 April 2023, pp.2338-2343.

¹² [REDACTED], para.10.

¹³ See Transcript, 4 April 2023, pp.2338-2343.

¹⁴ Disclosure 805.

notified the Defence and Victims' Counsel of its intention – if authorised – to use the Requested Amendments [REDACTED], and requested that they respond with any objections. Victims' Counsel and the THAÇI, VESELI, and KRASNIQI Defence teams responded that they did not object to the Requested Amendments.¹⁵

C. THERE IS LIMITED, IF ANY, PREJUDICE TO THE DEFENCE

8. No undue prejudice would result from adding the Requested Amendments to the Exhibit List. All Parties have been aware of the video's existence since its partial display in court by the THAÇI Defence.¹⁶ Furthermore, the SPO subsequently obtained the full video and formally disclosed it, along with the transcripts, to all Defence teams pursuant to Rule 103.¹⁷ The SPO notified the Parties and participants of its intention to use the materials well in advance [REDACTED]. The absence of objections is a factor that militates in favour of granting this request. Finally, given their limited size, the Requested Amendments will have minimal, if any, impact on the Defence's ability to prepare, [REDACTED].

III. CLASSIFICATION

9. This filing is confidential in order to give effect to existing protective measures. A public redacted version will be submitted.

IV. RELIEF REQUESTED

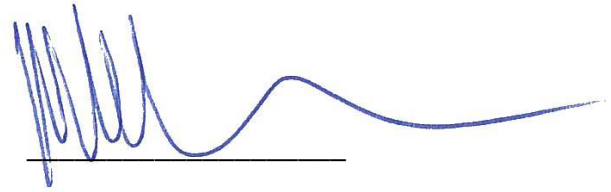
10. For the foregoing reasons, the Panel should authorise the Requested Amendments.

¹⁵ See Email from VESELI Defence to SPO dated 22 August 2023 at 12.16; Email from KRASNIQI Defence to SPO dated 21 August 2023 at 18.58; Email from Victims' Counsel to SPO dated 14 August 2023 at 10.04; Email from THAÇI Defence to SPO dated 2 August 2023 at 18.14.

¹⁶ See Transcript, 4 April 2023, pp.2338-2343.

¹⁷ Disclosure 805.

Word count: 1018

A handwritten signature in blue ink, consisting of several vertical strokes followed by a series of loops and a long horizontal tail.

Ward Ferdinandusse

Acting Deputy Specialist Prosecutor

Tuesday, 22 August 2023

At The Hague, the Netherlands.