



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: 29 August 2023

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

Specialist Prosecutor's Office

Ward Ferdinandusse

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

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 material for use with upcoming SPO witness W03880, namely a [REDACTED] interview with W03880 published in [REDACTED] that discusses his detention in 1998 ('Requested Amendment').⁴ W03880 is anticipated to testify the week of 11 September 2023.

2. This request – which, at this stage, solely concerns amendment of the Exhibit List and not admission⁵ – is limited in scope, allows timely and effective Defence preparations, and concerns relevant material, which is probative of the charges.⁶

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 that – as is the case here – there is adequate protection of the Accused's rights.⁷ Considering the stage of the trial proceedings, the scope of the case, and the limited

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/F01744/A01, 25 August 2023, Strictly Confidential and *Ex Parte* ('Exhibit List').

⁴ [REDACTED].

⁵ 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.

⁶ 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.

⁷ See 8 March 2023 Decision, KSC-BC-2020-06/F01352, paras 29, 31; Thaçi Appeal Decision, KSC-BC-2020-06/IA019/F00006, para.21.

nature and scope of the Requested Amendment,⁸ there is minimal impact on Defence preparations. Therefore, the Requested Amendment strikes an appropriate balance between the rights of the Accused and the duty of the SPO to present available evidence to prove its case.⁹

A. GOOD CAUSE EXISTS FOR THE REQUESTED AMENDMENT

4. The document 114275-114289 is an interview with W03880 published in [REDACTED]. In it, W03880 discusses many of the same events contained in his statements that have been provisionally admitted pursuant to Rule 154,¹⁰ and W03880 makes reference to this interview in his SPO statement.¹¹ As such, the Requested Amendment is *prima facie* relevant and of sufficient importance to justify addition to the Exhibit List, as the interview refers to a charged incident in the indictment.

5. The SPO intends to rely on the Requested Amendment with the witness during W03880's upcoming testimony – as the interview partially corroborates and complements the witness's account, giving important context to it.

B. THE REQUEST IS TIMELY

6. While the SPO acknowledges that it could have identified the Requested Amendment earlier, this request is being made promptly after its collection, translation, assessment, and processing, and sufficiently in advance of the witness's testimony.

7. In preparing for the testimony of W03880, the SPO noted his reference to an interview he had given to [REDACTED]. The SPO located that interview, and had it translated to English from its original Serbian. The translation was completed and

⁸ 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).

⁹ 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.

¹⁰ Decision on Prosecution Motion for Admission of Evidence of W03724, W03832, W03880, W04368, W04566, and W04769 Pursuant to Rule 154, KSC-BC-2020-06/F01700, 24 July 2023.

¹¹ 070725-TR-ET Part 1 RED2, p.14.

registered on 14 July 2023. The SPO thereafter determined the importance of the Requested Amendment, including for use with relevant witnesses, such as W03880.

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

8. No undue prejudice would result from adding the Requested Amendment to the Exhibit List. The Defence has been aware that W03880 gave an interview to [REDACTED] since W03880's SPO interview was disclosed in December 2020. Moreover, all Parties could access W03880's [REDACTED] interview as it is [REDACTED]. Finally, given its limited size and the fact that it contains information that is corroborative of and complementary to W03880's prior statements, the Requested Amendment will have minimal, if any, impact on the Defence's ability to prepare, including for W03880's examination. In this respect, as noted above, W03880 is anticipated to testify the week of 11 September 2023.

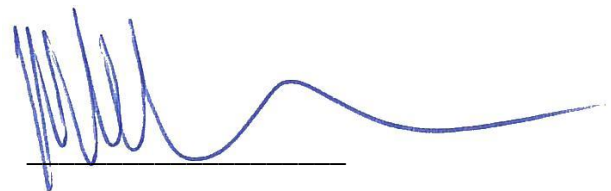
III. CLASSIFICATION

9. This filing and its annex are confidential as they relate to a witness whose identity is not public. A public redacted version will be submitted.

IV. RELIEF REQUESTED

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

Word count: 898



Ward Ferdinandusse

Acting Deputy Specialist Prosecutor

Tuesday, 29 August 2023

At The Hague, the Netherlands.