



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: 3 November 2023

Language: English

Classification: Public

Decision on Prosecution Request to Amend the Exhibit List (F01858)

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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), and 118(2) 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.¹
2. On 3 April 2023, the trial proceedings started.²
3. On 30 May, 10 and 12 July, 25 August, and 19 September 2023, upon authorisation from the Panel,³ the Specialist Prosecutor’s Office (“SPO”) amended its list of exhibits (“Exhibit List”).⁴

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

² Transcript of Hearing, 3 April 2023.

³ F01352, Panel, *Decision on Prosecution Request to Amend the Exhibit List and Related Matters* (“8 March 2023 Decision”), 8 March 2023, confidential (a public redacted version was issued on 1 November 2023, F01352/RED); F01544, Panel, *Decision on Prosecution Request to Add Five Items Relating to Expert Witness to the Exhibit List* (“23 May 2023 Decision”), 23 May 2023; Transcript of Hearing, 12 July 2023, p. 5551, line 9 to p. 5553, line 19; F01656, Panel, *Decision on Prosecution Request to Add Intercepted Communications to the Exhibit List* (“Intercepts Decision”), 7 July 2023, confidential; F01739, Panel, *Decision on Prosecution Request to Amend the Exhibit List (F01728)*, 24 August 2023, confidential; F01785, Panel, *Decision on Prosecution Requests to Amend the Exhibit List (F01689 and F01747)*, 12 September 2023, confidential (“12 September 2023 Decision”).

⁴ F01562, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 30 May 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F01662, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 10 July 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F01669, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 12 July 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F01744, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 25 August 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F01802, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 19 September 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential.

4. On 16 October 2023, the SPO filed a request to further amend the Exhibit List (“Request”).⁵

5. The Defence did not respond to the Request.

II. SUBMISSIONS

6. The SPO requests to amend the Exhibit List to include five additional items (“Requested Amendments”),⁶ which it may wish to use with witnesses it intends to call.⁷ The SPO argues that the Request is relatively limited in scope, allows timely and effective Defence preparations, and concerns relevant and probative material.⁸ The SPO further argues that the Requested Amendments appropriately balance the rights of the Accused,⁹ and that no undue prejudice would result from their addition to the Exhibit List, particularly as: (i) all Requested Amendments are limited in size, have already been disclosed to the Defence under Rules 102(1), 102(3) or 103 and relate to known aspects of the SPO’s case; and (ii) the SPO notified the Defence of its intent to add four out of the five additional items to the Exhibit List on 2 October 2023.¹⁰

III. DISCUSSION

7. Pursuant to Rule 118(2), the Panel may permit, upon timely notice and a showing of good cause, the amendment of the lists of witnesses and exhibits filed pursuant to Rule 95(4)(b) and (c). As proceedings advance, any further requests to

⁵ F01858, Specialist Prosecutor, *Prosecution Request to Amend the Exhibit List*, 16 October 2023, confidential, with Annexes 1-3, confidential.

⁶ 108987-108990 RED; SPOE00341654-00341654; SPOE00341655-00341655; U000-8450-U000-8452 (with its English and Albanian translations); 115958-115960.

⁷ Request, paras 1, 4, 17.

⁸ Request, para. 1.

⁹ Request, para. 2.

¹⁰ Request, para. 3. *See also* Request, paras 7, 10, 12, 15.

amend the Exhibit List will be subject to greater scrutiny.¹¹ As previously stated,¹² the Panel has already permitted the SPO to add items to the Exhibit List several times and the Exhibit List is already, by any standards, voluminous. With this in mind, the Panel will assess whether, at the current stage of proceedings, the SPO has provided timely notice and shown good cause for the Requested Amendments, and that no undue prejudice is caused to the Defence by the amendment of the Exhibit List.¹³ The Panel refers, in particular, to the principles set out in the 12 September 2023 Decision.¹⁴

A. ADDITIONAL MATERIAL RELATING TO W03825

8. 108987-108990 RED (“Letter”) is a November 2022 letter from W03825 addressed to the SPO and relating to W03825’s anticipated testimony.¹⁵

9. As regards the timeliness of notice, the Panel notes the SPO’s submission that the Letter has been identified for addition to the Exhibit List during a document review in preparation of W03825’s testimony.¹⁶ The Panel further notes that: (i) the Letter was disclosed to all Defence teams on 15 December 2022 pursuant to Rule 103;¹⁷ (ii) the SPO notified the Defence of its intent to add the Letter to the Exhibit List on 2 October 2023;¹⁸ and (iii) while W03825’s testimony is now

¹¹ See 12 September 2023 Decision, para. 15, referring to 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. 30 (a confidential redacted version was filed on the same day, F00727/CONF/RED). See also Transcript of Hearing, 15 February 2023, pp. 2017-2018.

¹² 12 September 2023 Decision, para. 16.

¹³ 12 September 2023 Decision, para. 16. Similarly 23 May 2023 Decision, para. 8; Intercepts Decision, para. 10.

¹⁴ 12 September 2023 Decision, in particular, paras 15-21.

¹⁵ See Annex 1 to the Request.

¹⁶ Request, para. 6.

¹⁷ Disclosure Package 628.

¹⁸ F01828/A01, Specialist Prosecutor, *Prosecution Submission of List of Witnesses for 30 October to 13 December 2023 (“2 October 2023 Witness List”)*, 2 October 2023, confidential, fn. 7.

imminent,¹⁹ the Defence did not contest the timeliness of notice. Bearing in mind that a certain degree of flexibility must be maintained in the context of a complex multi-accused trial,²⁰ and considering the very limited size of the item and the fact that the document had been in possession of the Defence for some time, the Panel finds the notice provided by the SPO to be timely.

10. As regards good cause and the question of the relevance and importance of the Letter, the Panel recalls its previous finding that inadvertent omission, on its own and at this stage of the proceedings, does not constitute good cause.²¹ However, while a Party's late realisation of an item's importance alone is normally not sufficient to demonstrate good cause, the Panel acknowledges that the relevance and importance of certain items may become more apparent to a Party as the trial proceeds.²² The Panel notes that in the Letter, W03825 states, *inter alia*, that he wishes to retract his earlier statements.²³ The Panel understands that the relevance and importance of the Letter and/or the need to use it with the witness became apparent to the SPO only recently, during its preparations for the testimony of this witness. Furthermore, the Panel observes that the Letter could be relevant for assessing W03825's credibility. The Panel also notes that the Defence did not contest the good cause for the late addition of the Letter to the Exhibit List or the relevance and importance thereof. In light of the above, the Panel is satisfied that the Letter is *prima facie* relevant and of sufficient importance and that there is good cause for its late addition to the Exhibit List.

11. As regards prejudice, the Panel recalls that: (i) the Letter is limited in size (two pages in English); (ii) the SPO disclosed it to the Defence in December 2022

¹⁹ CRSPD347, *Email from SPO to Parties re Updated Witness Order for 30 October – 16 November Evidentiary Block* ("CRSPD347"), 26 October 2023, confidential. See already 2 October 2023 Witness List, p. 10.

²⁰ 12 September 2023 Decision, paras 32, 38, 65, 71, 77, 88; IA019/F00006, Court of Appeals Panel, *Decision on Thaçi's Appeal against Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures* ("Appeal Decision"), 12 July 2022, para. 21.

²¹ 12 September 2023 Decision, para. 27; 8 March 2023 Decision, para. 30.

²² See also 12 September 2023 Decision, para. 27.

²³ See Annex 1 to the Request, in particular, p. 108990.

pursuant to Rule 103;²⁴ (iii) the SPO notified the Defence of its intent to add the Letter to the Exhibit List on 2 October 2023;²⁵ and (iv) while W03825's testimony is now imminent,²⁶ the Defence did not object to the addition of the Letter to the Exhibit List. The Panel is satisfied that the Defence has had sufficient time to adequately prepare before W03825's testimony and that the effectiveness of the rights of the Accused is being preserved. In turn, the Panel is also satisfied that no undue prejudice is caused by the addition of the Letter to the Exhibit List.

12. The Panel therefore grants leave to add the Letter (108987-108990 RED) to the Exhibit List.

B. ADDITIONAL MATERIAL RELATING TO W04043

1. Missing Persons Notices

13. SPOE00341654-00341654 and SPOE00341655-00341655 (collectively, "Missing Persons Notices") are missing persons notices relating to the disappearance of two alleged murder victims named in the Indictment.²⁷

14. As regards the timeliness of notice, the Panel notes the SPO's submission that the Missing Persons Notices have only been identified for addition to the Exhibit List now, as a review of correspondence revealed that the Rule 107 provider agreed to the lifting of redactions concerning the identity of the victims.²⁸ The Panel further notes that: (i) the Missing Persons Notices were disclosed to the Defence on 29 September 2023 pursuant to Rule 102(3);²⁹ (ii) the SPO notified the Defence of its intent to add the Missing Persons Notices to the Exhibit List on

²⁴ See above, fn. 17.

²⁵ See above, fn. 18.

²⁶ See above, fn. 19.

²⁷ See Annexes 2-3 to the Request.

²⁸ Request, para. 10.

²⁹ Disclosure Package 956. They had already been previously disclosed in more redacted form to three Defence teams in June 2022 (SPOE00234145-00234145 and SPO00234146-00234146; Disclosure Packages 294, 312 and 315).

2 October 2023,³⁰ and (iii) while W04043's testimony is now imminent,³¹ the Defence did not contest the timeliness of notice. Bearing in mind that a certain degree of flexibility must be maintained in the context of a complex multi-accused trial,³² and considering the very limited size of the items, the Panel finds the notice provided by the SPO to be timely.

15. As regards good cause and the question of the relevance and importance of the Missing Persons Notices, the Panel recalls that inadvertent omission, on its own and at this stage of the proceedings, does not normally constitute good cause.³³ However, the Panel understands that the possibility to use the Missing Persons Notices during W04043's testimony became apparent to the SPO only recently, during a review of related correspondence. The Panel further observes that the Missing Persons Notices relate to the disappearance of two alleged murder victims named in the Indictment and to W04043's anticipated testimony in this respect.³⁴ It also observes that the Defence did not contest the good cause for the late addition of the Missing Persons Notices to the Exhibit List or the relevance and importance thereof. In light of the above, the Panel is satisfied that the Missing Persons Notices are *prima facie* relevant and of sufficient importance and that there is good cause for their late addition to the Exhibit List.

16. As regards prejudice, the Panel recalls that: (i) the Missing Persons Notices are limited in size (two pages in total); (ii) the SPO disclosed them to the Defence in late September 2023 pursuant to Rule 102(3);³⁵ (iii) the SPO notified the Defence on 2 October 2023 of its intent to add the Missing Persons Notices to the Exhibit List;³⁶ and (iv) while W04043's testimony is now imminent,³⁷ the Defence did not

³⁰ 2 October 2023 Witness List, fns 10-11.

³¹ CRSPD347. *See already* 2 October 2023 Witness List, p. 16.

³² 12 September 2023 Decision, paras 32, 38, 65, 71, 77, 88; Appeal Decision, para. 21.

³³ *See above*, para. 10.

³⁴ *See also* Request, para. 9.

³⁵ *See above*, fn. 29.

³⁶ *See above*, fn. 30.

³⁷ *See above*, fn. 31.

object to the admission of the Missing Persons Notices to the Exhibit List. The Panel is satisfied that the Defence has had sufficient time to adequately prepare before W04043's testimony and that the effectiveness of the rights of the Accused is being preserved. In turn, the Panel is also satisfied that no undue prejudice is caused to the Defence by the addition of the Missing Persons Notices to the Exhibit List.

17. The Panel therefore grants leave to add the Missing Persons Notices (SPOE00341654-00341654 and SPOE00341655-00341655) to the Exhibit List.

18. Noting that the Missing Persons Notices appear to not have been disclosed to Victims' Counsel, the Panel orders the SPO to disclose, by **Friday, 3 November 2023, at 4 pm**, a copy of the Missing Persons Notices to Victims' Counsel, if it has not already done so.

2. Statement of W04043 to Ministry of Interior of Serbia

19. U000-8450-U000-8452 ("Statement") appears to be a statement provided by W04043 in 2001 to an official of the Serbian Ministry of the Interior.³⁸

20. As regards the timeliness of notice, the Panel notes the SPO's submission that it belatedly identified this statement when preparing for the witness.³⁹ The Panel further notes that: (i) the original version of the Statement (in Cyrillic) was disclosed to the Defence on 13 January 2023 pursuant to Rule 102(3);⁴⁰ (ii) the SPO notified the Defence of its intent to add the Statement to the Exhibit List on 2 October 2023;⁴¹ (iii) the SPO disclosed the English, Albanian and Serbian versions of the Statement on 3 October 2023 pursuant to Rule 102(1);⁴² and

³⁸ See Disclosure Package 963 (U000-8450-U000-8452, U000-8450-U000-8452-ET and U000-8450-U000-8452-ET-AT).

³⁹ Request, para. 12.

⁴⁰ Disclosure Package 645.

⁴¹ 2 October 2023 Witness List, fn 13.

⁴² Disclosure Package 963.

(iv) while W04043's testimony is now imminent,⁴³ the Defence did not contest the timeliness of notice. Bearing in mind that a certain degree of flexibility must be maintained in the context of a complex multi-accused trial,⁴⁴ and considering the limited size of the Statement, the Panel finds the notice provided by the SPO to be timely.

21. As regards good cause and the question of the relevance and importance of the Statement, the Panel recalls that inadvertent omission, on its own and at this stage of the proceedings, does not normally constitute good cause.⁴⁵ However, the Panel understands that the relevance and importance of the Letter and/or the need to (potentially) use it with W04043, became apparent to the SPO only recently during its preparations for the testimony of this witness. The Panel further observes that the Statement relates to other statements given by W04043 and could thus be relevant for the corroboration of their contents and/or to the credibility of the witness.⁴⁶ The Panel also observes that the Defence did not contest the good cause for the late addition of the Statement to the Exhibit List or the relevance and importance thereof. In light of the above, the Panel is satisfied that the Statement is *prima facie* relevant and of sufficient importance and that there is good cause for its late addition to the Exhibit List.

22. As regards prejudice, the Panel recalls that: (i) the Statement is limited in size (three pages in English); (ii) the Defence has been in possession of the original version of the Statement since January 2023 and all three language versions were disclosed to the Defence on 3 October 2023;⁴⁷ (iii) the SPO notified the Defence on 2 October 2023 of its intent to add the Statement to the Exhibit List;⁴⁸ and (iv) while

⁴³ CRSPD347. *See already* 2 October 2023 Witness List, p. 16.

⁴⁴ 12 September 2023 Decision, paras 32, 38, 65, 71, 77, 88; Appeal Decision, para. 21.

⁴⁵ *See above*, para. 10.

⁴⁶ *See also* Request, para. 11.

⁴⁷ *See above*, para. 20.

⁴⁸ *See above*, fn. 41.

W04043's testimony is now imminent,⁴⁹ the Defence did not object to the admission of the Statement to the Exhibit List. The Panel is satisfied that the Defence has had sufficient time to adequately prepare before W04043's testimony and that the effectiveness of the rights of the Accused is being preserved. In turn, the Panel is also satisfied that no undue prejudice is caused to the Defence by the addition of the Statement to the Exhibit List.

23. The Panel therefore grants leave to add the Statement (U000-8450-U000-8452) to the Exhibit List.

C. ADDITIONAL MATERIAL RELATING TO W04734

24. 115958-115960 ("Official Note") is an official note of an SPO phone call with W04734, dated 3 October 2023, relating to information provided by W04734 earlier that day.

25. As regards the timeliness of notice, the Panel notes that the Official Note, dated 3 October 2023, relates to information provided by W04734 to the SPO earlier that day. Three days later, the SPO disclosed the Official Note to the Defence pursuant to Rule 102(1),⁵⁰ and after a further ten days, the SPO filed the Request. The Panel is of the view that these are reasonable time periods, considering also that W04734's testimony is currently not yet scheduled.⁵¹ In light of the above, the Panel finds the notice provided by the SPO to be timely.

26. As regards good cause and the question of the relevance and importance of this material, the Panel observes that the information provided by W04734 as contained in the Official Note: (i) directly relates to details about crimes charged in the Indictment, specifically in relation to an alleged murder victim named in the Indictment; and (ii) provides further details in relation to previous statements

⁴⁹ See above, fn. 43.

⁵⁰ See Disclosure Package 967.

⁵¹ See also Request, para. 15.

of W04734. The Panel further observes that the Defence did not contest the good cause for the late addition of the Official Note to the Exhibit List or the relevance and importance thereof. In light of the above, the Panel is satisfied that the Official Note is *prima facie* relevant and of sufficient importance and that there is good cause for its late addition to the Exhibit List.

27. As regards prejudice, the Panel notes that: (i) the Official Note is limited in size (three pages); (ii) it was disclosed to the Defence on 6 October 2023;⁵² and (iii) W04743's testimony has yet to be scheduled.⁵³ The Panel is therefore satisfied that the Defence has sufficient time to adequately review the Official Note and prepare for W04743's testimony, and that no undue prejudice is caused to the Defence by the addition of this item to the Exhibit List.

28. The Panel therefore grants leave to add the Official Note (115958-115960) to the Exhibit List.

IV. CLASSIFICATION

29. The Panel notes that the Request was filed confidentially and no public redacted version was filed to date. The Panel therefore orders the SPO to submit a public redacted version of the Request, by no later than **Friday, 10 November 2023**.

V. DISPOSITION

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

- a) **GRANTS** the Request;
- b) **GRANTS** the SPO leave to add the following items to the Exhibit List:

⁵² See above, fn. 50.

⁵³ See above, fn. 51.

108987-108990 RED; SPOE00341654-00341654; SPOE00341655-00341655;
U000-8450-U000-8452, U000-8450-U000-8452-ET and U000-8450-U000-
8452-ET-AT; 115958-115960;

- c) **ORDERS** the SPO to: (i) file its amended Exhibit List by no later than **Friday, 3 November 2023, at 4 pm**; and (ii) disclose, **by the same deadline**, SPOE00341654-00341654 and SPOE00341655-00341655 to Victims' Counsel, if it has not already done so; and
- d) **ORDERS** the SPO to submit a public redacted version of the Request, by no later than **Friday, 10 November 2023**.



Judge Charles L. Smith, III
Presiding Judge

Dated this Friday, 3 November 2023

At The Hague, the Netherlands.