



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:** 16 October 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of 'Prosecution request to amend the Exhibit List with confidential Annexes 1-3'**

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## I. INTRODUCTION

1. Pursuant to Article 40 of the Law<sup>1</sup> and Rule 118(2) of the Rules,<sup>2</sup> the Specialist Prosecutor's Office ('SPO') requests leave to amend the Exhibit List<sup>3</sup> to include the five additional materials identified below (collectively, 'Requested Amendments').<sup>4</sup> This request – which, at this stage, solely concerns amendment of the Exhibit List and not admission<sup>5</sup> – is relatively limited in scope, allows timely and effective Defence preparations, and concerns relevant material, which is probative of the charges.<sup>6</sup>

## II. SUBMISSIONS

2. 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.<sup>7</sup> Considering the stage of the trial proceedings,<sup>8</sup> the scope of the case, and the relatively

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

<sup>2</sup> 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.

<sup>3</sup> Annex 1 to Prosecution submission of amended exhibit list, KSC-BC-2020-06/F01802/A01, 19 September 2023, Strictly Confidential and *Ex Parte* ('Exhibit List').

<sup>4</sup> Of the Requested Amendments, two have already been disclosed under Rule 102(1)(b)(i), in Disclosure packages 963 and 967, and the three annexed to the request have previously been disclosed under Rule 102(3) or Rule 103.

<sup>5</sup> See Decision on Prosecution Request to Amend the Exhibit List and Related Matters, KSC-BC-2020-06/F01352, 8 March 2023, Confidential ('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 Witness 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, Confidential, para.11; Decision on Prosecution Requests to Amend the Exhibit List (F01689 and F01747), KSC-BC-2020-06/F01785, 12 September 2023, Confidential ('12 September 2023 Decision'), para.17.

<sup>6</sup> 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 ('Appeal Decision'), para.21. See also 23 May 2023 Decision, KSC-BC-2020-06/F01544, para.11.

<sup>7</sup> See 8 March 2023 Decision, KSC-BC-2020-06/F01352, paras 29, 31; Appeal Decision, KSC-BC-2020-06/IA019/F00006, para.21; 12 September 2023 Decision, KSC-BC-2020-06/F01785, para.16.

<sup>8</sup> See 12 September 2023 Decision, KSC-BC-2020-06/F01785, para.21.

limited nature and scope of the Requested Amendments,<sup>9</sup> there is minimal impact on Defence preparations.

3. All of the Requested Amendments – which total only 12 pages<sup>10</sup> – have been disclosed under Rules 102(1), 102(3) or 103,<sup>11</sup> and relate to known aspects of the SPO's case, including witnesses on the Witness List<sup>12</sup> and known detention sites and victims. Further, the SPO notified the Defence of its intent to add four of the Requested Amendments to the Exhibit List on 2 October 2023.<sup>13</sup> The fifth item among the Requested Amendments records information obtained on 3 October 2023.

4. Moreover, it is in the interest of fair and expeditious proceedings, balancing the rights of victims, witnesses, and the Parties, that the SPO has the opportunity to rely on and/or, as appropriate, use, *inter alia*, prior statements (and related materials) of witnesses, provided they have been disclosed in a manner that enables effective Defence preparations. The quality, accuracy, and completeness of a witness's testimony and the interests of justice could otherwise be undermined.

5. Further, the Panel has cautioned the SPO that, if it foresees the possibility of tendering or using prior statements to, *inter alia*, refresh a witness's memory or confront an adverse witness (Rule 143(1)-(2)), the SPO's obligation to seek an Exhibit List amendment is triggered.<sup>14</sup> Being prior statements (and related materials) of

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<sup>9</sup> 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).

<sup>10</sup> With regard to three Requested Amendments, this page count includes the relevant translations, as the items are multilingual.

<sup>11</sup> See 12 September 2023 Decision, KSC-BC-2020-06/F01785, para.20 (where the Trial Panel considered that previous disclosure of an item indicates that the Defence has had the opportunity to review and acquaint itself with the item. 'In that sense, previous disclosure of an item considered along with other factors, could satisfy the Panel that the Defence has been provided with a degree of notice of the content of the item and that an amendment of the Exhibit List in respect of that item would not adversely affect the Defence's ability to prepare for trial'). See, similarly, 8 March 2023 Decision, KSC-BC-2020-06/F01352, para.33.

<sup>12</sup> Annex 2 to Prosecution submission of updated witness list and confidential redacted version of pre-trial brief, KSC-BC-2020-06/F01594/A02, 9 June 2023, Confidential ('Witness List').

<sup>13</sup> KSC-BC-2020-06/F01828/A01, fns 7, 10, 11, 13.

<sup>14</sup> 8 March 2023 Decision, KSC-BC-2020-06/F01352, para.20.

witnesses on the Witness List, the SPO foresees the possibility of tendering and/or using the Requested Amendments.<sup>15</sup>

#### A. REQUESTED AMENDMENTS RELATING TO SCHEDULED WITNESSES

(i) *Additional W03825 material*<sup>16</sup>

6. 108987-108990 RED is a letter from W03825 addressed to the SPO in November 2022 and relates to his anticipated testimony.<sup>17</sup> In the letter, W03825 stated, *inter alia*, that his 'patience and trust in The Specialist Chambers are lost'.<sup>18</sup> He also indicated that he retracts his 'earlier statements given to EULEX and the SPO as well as from some public statements where in an unfair and exaggerated manner [he] had raised allegations against some of those who now stand accused at the Specialist Chambers'.<sup>19</sup> As such, this Requested Amendment is *prima facie* relevant and of sufficient importance to justify the amendment of the Exhibit List. The item has been identified for addition to the Exhibit List during a document review in preparation of W03825's testimony. If authorised, the SPO intends to use this item with the witness.

7. The Requested Amendment is limited in scope, as it is two pages in length and relates to well-notified aspects of the evidence to be elicited from W03825. It was disclosed to all Defence teams on 15 December 2022,<sup>20</sup> and the Defence was put on notice that the item would be included in an upcoming request to amend the Exhibit List.<sup>21</sup> As a result, no undue prejudice would result from adding 108987-108990 RED to the Exhibit List.

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<sup>15</sup> With regard to U000-8450-U000-8452-ET, the SPO has already clarified that it does not intend to tender it pursuant to Rule 154, but could foresee the need to use this statement, for example, to refresh the witness's memory. See KSC-BC-2020-06/F01828/A01, fn.13.

<sup>16</sup> See Annex 1, 108987-108990 RED.

<sup>17</sup> The original, signed letter, in Albanian, is at pp.108987-108988, its English translation is at pp.108989-108990 (see Annex 1).

<sup>18</sup> See Annex 1, p.108990.

<sup>19</sup> See Annex 1, p.108990.

<sup>20</sup> 108987-108990 RED was disclosed under Rule 103 in Disclosure Package 628.

<sup>21</sup> KSC-BC-2020-06/F01828/A01, fn.7.

(ii) *Additional W04043 material*

8. The SPO identified the following documents, which, if authorised, it intends to use with W04043. As set out in more detail below, there is no prejudice due to the limited nature and scope of these materials.

(a) SPOE00341654-00341654 and SPOE00341655-00341655 – Missing Persons Notices<sup>22</sup>

9. SPOE00341654-00341654 and SPOE00341655-00341655 are *prima facie* relevant as they relate to the disappearance of named murder victims Nebojša DJURIČIĆ and Veljko MARKOVIĆ.<sup>23</sup> Late addition is justified because each item provides additional, corroborating details concerning these victims' disappearance, in particular in relation to the date of disappearance and the vehicle in which they were travelling, which was owned by Veljko MARKOVIĆ. The information also relates to the anticipated testimony of W04043 regarding Veljko MARKOVIĆ's forcible abduction by KLA soldiers on 9 February 1999 – W04043 encountered him after having been himself abducted on the same date – and on the information that W04043, following his escape, learned regarding Veljko MARKOVIĆ and Nebojša DJURIČIĆ.<sup>24</sup>

10. These two items 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. No prejudice is caused to the Defence as these items have been disclosed under Rule 102(3) to all Defence teams;<sup>25</sup> they were previously disclosed in a more redacted version under Rule 102(3);<sup>26</sup> they

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<sup>22</sup> Annexes 2 and 3.

<sup>23</sup> Amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, Confidential ('Indictment'), Schedule B, p.65.

<sup>24</sup> See Rule 154 motion, KSC-BC-2020-06/F01830, paras 16-18.

<sup>25</sup> Disclosure package 956.

<sup>26</sup> See SPOE00234145-00234145 and SPOE00234146-00234146, respectively; Disclosures 294 (JK), 312 (RS) and 315 (KV) in June 2022.

were notified for possible use with W04043 and inclusion in an upcoming request to amend the exhibit list;<sup>27</sup> and each consists of less than one page of content.

(b) U000-8450-U000-8452 – W04043’s Statement<sup>28</sup>

11. This item is *prima facie* relevant and of sufficient importance to justify its addition to the Exhibit List, as it is a statement of W04043 where the witness discusses the same incidents contained in his other statements on the Exhibit List, providing some additional detail concerning the period of his abduction before escaping. It is therefore corroborative of W04043’s other prior statements. It is also a statement given relatively close in time to the events, as the witness provided it on 22 July 2001, to an authorised official of the Serbian Ministry of the Interior.

12. The SPO belatedly identified this statement when preparing for the witness. Nevertheless, no prejudice will arise as the statement is consistent with other accounts that W04043 has given, it is less than three pages in length, and the request is being made sufficiently in advance of the witness’s testimony.<sup>29</sup> Moreover, the Defence has had this document since January 2023,<sup>30</sup> and was apprised that it was a statement of W04043 on 3 October 2023.<sup>31</sup> Finally, as previously indicated, the SPO does not intend to tender the statement pursuant to Rule 154, but seeks its addition to the Exhibit List as it foresees the need of using this particular statement to, for example, refresh the witness’s memory.<sup>32</sup>

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<sup>27</sup> KSC-BC-2020-06/F01828/A01, fns 10-11.

<sup>28</sup> See Disclosure Package 963, U000-8450-U000-8452, U000-8450-U000-8452-ET, U000-8450-U000-8452-ET-AT.

<sup>29</sup> W04043 is currently anticipated to appear between 30 October and 13 December 2023. See KSC-BC-2020-06/F01828/A01, p.16.

<sup>30</sup> The original in Cyrillic, U000-8450-U000-8452, was disclosed under Rule 102(3) on 13 January 2023 to all Defence teams (see Disclosure Package 645).

<sup>31</sup> KSC-BC-2020-06/F01828/A01, fn.13. On 3 October 2023, U000-8450-U000-8452 and the English and Albanian translations were disclosed under Rule 102(1)(b)(i) (see Disclosure Package 963).

<sup>32</sup> See also fn.15 above.

## B. REQUESTED AMENDMENT RELATING TO A NON-SCHEDULED WITNESS

13. 115958-115960<sup>33</sup> is an official note of an SPO phone call with W04734, dated 3 October 2023. It contains information W04734 recently provided and which directly relates to charged crimes in the Indictment – specifically, the people present at the time [REDACTED], a charged murder victim, were shot at [REDACTED]– and provides further details in relation to facts which are part of W04734’s previous statements on the Exhibit List and of [REDACTED].<sup>34</sup>

14. On 3 October 2023, [REDACTED] W04734 texted an SPO Witness Security Officer that [REDACTED] was present when [REDACTED] were shot at [REDACTED].<sup>35</sup> A screenshot with the received text messages is attached to the official note.<sup>36</sup> Later, on the same day, the SPO called W04734, who explained [REDACTED]. W04734 confirmed the information and provided additional details, including on [REDACTED]’s role in the events at the crime site. The Requested Amendment is therefore *prima facie* relevant and of sufficient importance to justify its addition to the Exhibit List.

15. The request is timely as the witness very recently provided the information to the SPO, in connection to [REDACTED], and the official note was promptly disclosed.<sup>37</sup> It is only three pages long and the witness is not yet scheduled to testify. As a result, no undue prejudice would result from adding this Requested Amendment to the Exhibit List.

## III. CLASSIFICATION

16. This request and Annexes 1-3 are confidential in accordance with Rule 82(4) and to give effect to existing protective measures. A public redacted version of the request will be filed.

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<sup>33</sup> See Disclosure Package 967, item 115958-115960.

<sup>34</sup> [REDACTED]. [REDACTED].

<sup>35</sup> See 115958-115960, p.115958.

<sup>36</sup> See 115958-115960, p.115960 (see p.115958, para.2 for its English translation).

<sup>37</sup> On 6 October 2023, under Rule 102(1)(b)(i) (see Disclosure package 967).

IV. RELIEF REQUESTED

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

**Word Count: 2120**

/signed/

**Ward Ferdinandusse**  
**Acting Deputy Specialist Prosecutor**

Monday, 16 October 2023

At The Hague, the Netherlands.