



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA 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: 24 August 2023

Language: English

Classification: Public

**Public Redacted Version of
Decision on Prosecution Request to Amend the Exhibit List (F01728)**

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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, trial proceedings started.²
3. On 30 May, 10 and 12 July 2023, upon authorisation from the Panel,³ the Specialist Prosecutor's Office ("SPO") amended its list of exhibits ("Exhibit List").⁴
4. On 22 August 2023, the SPO filed its request to amend the Exhibit List ("Request").⁵

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"), 8 March 2023, confidential; 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* ("7 July 2023 Decision"), 7 July 2023, confidential.

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.

⁵ F01728, Specialist Prosecutor, *Prosecution Request to Amend the Exhibit List*, 22 August 2023, with Annex, confidential.

5. On 24 August 2023, pursuant to an order for expedited responses,⁶ the Defence for Hashim Thaçi (“Thaçi Defence”) responded to the Request (“Thaçi Response”).⁷ The other Defence teams did not respond.

II. SUBMISSIONS

6. The SPO requests to amend the Exhibit List to include two further items, which it intends to tender or use during the examination of [REDACTED], namely a 2020 video interview with W03825 containing footage from September 1998 and the transcript of the same video (“Additional Items”).⁸ The SPO argues that: (i) the Request is limited in scope, allows timely and effective Defence preparations, and concerns relevant material, probative of the charges;⁹ (ii) there are adequate protection of the Accused’s rights; (iii) considering the stage of the proceedings, the scope of the case and the limited nature of the Request, it has minimal impact on Defence preparations; and (iv) it strikes an appropriate balance between the rights of the Accused and the duty of the SPO to prove its case.¹⁰ The SPO avers that: (i) the Request is timely as it was notified of the Additional Items on 4 April 2023 and thereafter obtained, transcribed, translated, and disclosed the Additional Items and made the Request;¹¹ (ii) good cause exists as the Additional Items are *prima facie* relevant to [REDACTED] and of sufficient importance to justify addition to the Exhibit List;¹² and (iii) no prejudice will arise from addition of the Additional Items to the Exhibit List as all Parties have been aware of the Additional Items since its partial display in court by the Thaçi Defence.¹³ Lastly,

⁶ CRSPD290, Email from Trial Panel II to the Court Management Unit, 23 August 2023, confidential.

⁷ F01738, Specialist Counsel, *Thaçi Defence Response to ‘Prosecution request to amend the Exhibit List’*, 23 August 2023, confidential.

⁸ Request, para. 1 *referring to* 113189-02 and 113189-02-TR.

⁹ Request, para. 1.

¹⁰ Request, para. 3.

¹¹ Request, para. 7.

¹² Request, paras 4-6.

¹³ Request, para. 8.

the SPO submits that it has consulted with the Thaçi Defence, Veseli Defence, Krasniqi Defence and Victims' Counsel who have indicated that they do not object to the Request.¹⁴

7. The Thaçi Defence confirms its *inter partes* correspondence that it does not object to the Request.¹⁵ The Thaçi Defence emphasises, however, that this response is subject to two points, namely that: (i) the SPO shall immediately disclose all statements or comments made in relation to this video by any relevant witnesses testifying about the incident in Qirez/Ćirez and Baice/Banjica in September 1998, or confirm if no such statements or comments have been received ("First Condition");¹⁶ and (ii) as a matter of principle, the SPO should not be permitted to continue adding new documents to the Exhibit List without limitation, in particular where the SPO could have obtained the material earlier ("Second Condition").¹⁷

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 the Request, and that no prejudice is caused to the Defence by the amendment of the Exhibit List.¹⁸

¹⁴ Request, para. 2

¹⁵ Thaçi Response, para. 1.

¹⁶ Thaçi Response, para. 2.

¹⁷ Thaçi Responses, paras 3-5.

¹⁸ 7 July 2023 Decision, para. 10; 23 May 2023 Decision, para. 8; *See also* F00321, Trial Panel II, *Decision on Prosecution's Request for Leave to Amend its List of Exhibits* ("Gucati and Haradinaj Decision"), 23 September 2021, para. 16; International Criminal Tribunal for the Yugoslavia ("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; *Prosecutor v. Karadžić*, IT-95-5/18-T, [Decision on Prosecution's Motion for Leave to Amend its Exhibit List](#), ("Karadžić Decision"), 19 October 2011, para. 9; *Prosecutor v. 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; Special Tribunal of Lebanon, *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.

9. The Panel recalls that the primary purpose of the exhibit list is to give notice to the Defence of the documents the SPO intends to use during its case. This, in turn, should allow timely and effective Defence preparation and ensure the efficient presentation of evidence during trial.¹⁹ In deciding whether to grant the addition of a particular item to a Party's exhibit list, the Panel need not assess whether the proposed item is admissible.²⁰ The Panel only needs to satisfy itself that the proposed item is *prima facie* relevant and of sufficient importance to justify the late addition.²¹ Accordingly, a decision authorising the addition of an item to a Party's exhibit list is without prejudice to the Panel's subsequent decision on whether that item should be admitted into evidence.²²

10. As regards the timeliness of the Request, the Panel is mindful that: (i) the Pre-Trial Judge set a time limit for the submission of the Exhibit List and authorised numerous amendments thereof;²³ and (ii) the Panel has already

¹⁹ 7 July 2023 Decision, para. 11; 8 March 2023 Decision, para. 28; *See also* *Gucati and Haradinaj* Decision, para. 15; [Karadžić Decision](#), para. 10.

²⁰ 7 July 2023 Decision, para. 11; 8 March 2023 Decision, para. 29; *See also* *Gucati and Haradinaj* Decision, para. 16; [Karadžić Decision](#), para. 10; [Hadžić Decision](#), para. 5.

²¹ 7 July 2023 Decision, para. 11; 8 March 2023, para. 29; *See also* [Karadžić Decision](#), para. 9; [Hadžić Decision](#), para. 5.

²² 7 July 2023 Decision, para. 11; 8 March 2023 Decision, para. 29. *See also* *Gucati and Haradinaj* Decision, para. 16; [Karadžić Decision](#), para. 10; [Hadžić Decision](#), para. 5.

²³ 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 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,

authorised the amendment of the SPO's list of exhibits on three occasions.²⁴ However, in assessing the issue of timeliness of the Request, the Panel notes that the Additional Items were recently received by the SPO.

11. In particular, the Panel observes that: (i) on 4 April 2023, the Thaçi Defence used part of the video in its opening statements notifying the SPO of its existence;²⁵ (ii) thereafter, the SPO obtained, transcribed and translated the Additional Items and disclosed them to the Defence pursuant to Rule 103 on 7 June and 27 July 2023 respectively;²⁶ and (iii) on 4 August 2023, the Additional Items were [REDACTED].²⁷ The Panel considers that the four months which elapsed between being notified of the Additional Items and obtaining, transcribing, translating and disclosing the Additional Items to the Defence, [REDACTED] and filing the Request is not unreasonable in the circumstances. The Panel is therefore satisfied that the Request is timely.

12. 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.²⁸ Such an 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

strictly confidential and *ex parte*, para.304 (a confidential redacted version was filed on 7 December 2022, F01142/CONF/RED).

²⁴ 7 July 2023 Decision, paras 23, 25; 23 May 2023 Decision, paras 15-16; 8 March 2023 Decision, paras 34, 36.

²⁵ Request; para. 7; Transcript of Hearing, 4 April 2023, p. 2239, line 16 to p. 2341, line 21.

²⁶ Request, para. 7; Disclosures 805 and 877.

²⁷ Request, para. 7.

²⁸ 7 July 2023 Decision, para. 16; 23 May 2023 Decision, para. 11; 8 March 2023 Decision, para. 31. See also *Gucati and Haradinaj* Decision, para. 16. See also ICTY, [Karadžić Decision](#), para. 10; [Hadžić Decision](#), para. 5; *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. Boškoski 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.

value to the charges against an accused, the complexity of the case, on-going investigations, and translation of documents and other materials.²⁹ In addition, the Panel will carefully evaluate the effect of such an amendment onto the rights of the accused, taking into account the amount of information concerned and the timing of the application.³⁰ In particular, the Panel will verify that, if granted, the amendment of the list at that stage of the proceedings does not deny the accused sufficient notice of the evidence to be presented against him and do not adversely affect his ability to prepare for trial.³¹

13. The Panel notes that the Additional Items contain footage of a press conference where W03825 purports to speak about the circumstances surrounding the visit of a delegation to Qirez/Ćirez in September 1998, an event which informs part of the facts and circumstances pleaded in the Indictment.³² The Panel further observes that [REDACTED] in the Additional Items.³³ The Panel is therefore satisfied that the Additional Items are *prima facie* relevant and sufficiently important to justify their late addition to the Exhibit List.

14. As regards prejudice to the Accused's preparation for trial, the Panel notes that: (i) the Thaçi Defence, Veseli Defence, and Krasniqi Defence do not object to the Request and that the Selimi Defence did not formally oppose the Request; (ii) the Additional Items are limited in scope; and (iii) the Defence were notified of the existence of the Additional Items on 4 April 2023, at the latest, when the Thaçi Defence used the video during their opening statement. The Panel is

²⁹ 7 July 2023 Decision, para. 16; 23 May 2023 Decision, para. 11; 8 March 2023 Decision, para. 31. See also ICTY, [Karadžić Decision](#), para. 9 (and authorities cited therein).

³⁰ 7 July 2023 Decision, para. 16; 23 May 2023 Decision, para. 11; 8 March 2023 Decision, para. 31. See also [Karadžić Decision](#), para. 9.

³¹ 7 July 2023 Decision, para. 16; 23 May 2023 Decision, para. 11; 8 March 2023 Decision, para. 31. See also [Karadžić Decision](#), para. 9.

³² F00999/A01, Specialist Prosecutor, *Annex 1 to Submission of Confirmed Amended Indictment*, 30 September 2022, strictly confidential and *ex parte* (reclassified as confidential on 26 January 2023), paras 46, 76, 110-111.

³³ See 114539-114543, para. 10.

therefore satisfied that the Defence is given sufficient notice and adequate time for its preparation in respect of the Additional Items.

15. The Panel notes the Taçi Defence's conditions, but considers that the First Condition is an *inter partes* disclosure request, which is regulated by the Rules and if a document falls within this regime, it should be disclosed. It does not require a finding by the Panel at this stage. In respect of the Second Condition, the Panel notes that an item's availability to the public does not exclude that its relevance may become apparent to a Party in the course of the proceedings. The Panel, nonetheless, reiterates that it is mindful of the number of requests by the SPO to amend the Exhibit List,³⁴ but emphasises that any requests for amendments to the Exhibit List have been and will be assessed on its own merit in accordance with the legal test provided for in Rule 118(2).

16. For these reasons, the Panel finds that the SPO has provided timely notice, shown good cause, and demonstrated that no prejudice will be caused to the Defence by the addition of the Additional Items to the Exhibit List. The Panel therefore authorises the addition of the Additional Items to the Exhibit List and orders the SPO to file its amended Exhibit List by no later than **Friday, 25 August 2023**. The Panel also orders the SPO to disclose the Additional Items under Rule 102(1)(b)(ii)-(iii) by no later than **Friday, 25 August 2023**.

IV. CLASSIFICATION

17. The Panel notes that the Request and the Taçi Response were filed confidentially and that the SPO indicated that it will file a public redacted version of the Request. No public redacted versions have been filed to date. The Panel therefore orders the Parties to submit public redacted versions or request the

³⁴ See *supra*, para. 10.

reclassification of the Request, and the Thaçi Response, by no later than **Thursday, 31 August 2023**.

V. DISPOSITION

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

- a) **GRANTS** the Request;
- b) **AUTHORISES** the SPO to add the Additional Items to the Exhibit List;
- c) **ORDERS** the SPO to: (i) file its amended Exhibit List by no later than **Friday, 25 August 2023**; and (ii) disclose the Additional Items to the Defence and Victims' Counsel by no later than **Friday, 25 August 2023**; and
- d) **ORDERS** the Parties to submit public redacted versions or request the reclassification of the Request and the Thaçi Response by no later than **Thursday, 31 August 2023**.



Judge Charles L. Smith, III
Presiding Judge

Dated this Thursday, 24 August 2023

At The Hague, the Netherlands.