



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

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

Specialist Prosecutor's Office

Kimberly P. West

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 Alagenda

I. INTRODUCTION

1. Pursuant to Article 40 of the Law¹ and Rule 118(2) of the Rules,² the Specialist Prosecutor's Office ('SPO') requests leave to amend the Exhibit List³ to include the eight additional materials identified below (collectively, 'Requested Amendments'). The Requested Amendments consist of:⁴ (i) [REDACTED] testimony transcripts in [REDACTED] along with associated exhibits;⁵ (ii) one item the SPO intends to use (if authorised) during the examination of witness W01453;⁶ and (iii) one additional item, of 3-pages, consisting of contemporaneous KLA documents.⁷

2. This request – which, at this stage, solely concerns amendment of the Exhibit List and not admission⁸ – is relatively limited in scope, allows timely and effective Defence preparations, and concerns relevant material, which is probative of the charges.⁹

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/F02061/A01, 15 January 2024, Strictly Confidential and *Ex Parte* ('Exhibit List').

⁴ The SPO has only annexed those items that have not been previously disclosed under Rules 102(1) or 103. *See* Section II(C) below and Annex 1.

⁵ *See* Section II(A) below.

⁶ *See* Section II(B) below.

⁷ *See* Section II(C) below.

⁸ *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; Decision on Prosecution Request to Amend the Exhibit List (F01844), KSC-BC-2020-06/F01995, 8 December 2023, Confidential, para.26.

⁹ *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.

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.¹⁰ Considering the stage of the trial proceedings, the scope of the case, and the relatively limited nature and scope of the Requested Amendments,¹¹ there is minimal impact on Defence preparations.

4. All of the Requested Amendments have been disclosed under Rules 102(1), 102(3) or 103,¹² and relate to known aspects of the SPO’s case, including witnesses on the Witness List¹³ and known detention sites.

5. 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)¹⁴ of witnesses, provided they have been disclosed in a manner that enables effective Defence preparations.¹⁵ The quality, accuracy, and completeness of a witness’s testimony and the interests of justice could otherwise be undermined.

¹⁰ 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.

¹¹ 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).

¹² See 12 September 2023 Decision, KSC-BC-2020-06/F01785, para.20 (whether 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.

¹³ 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’).

¹⁴ The Requested Amendments addressed under Section II(A) below consist of prior statements and associated exhibits.

¹⁵ In this regard, 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. See 8 March 2023 Decision, KSC-BC-2020-06/F01352, para.20.

A. ADDITIONAL MATERIAL RELATED TO [REDACTED]

6. [REDACTED] are transcripts of [REDACTED]'s testimony in the [REDACTED] case on [REDACTED], along with three associated exhibits, [REDACTED].

7. The material is *prima facie* relevant and of sufficient importance to justify its addition to the Exhibit list. The transcripts relate to a charged crime site – [REDACTED]. During his testimony in the [REDACTED] case, [REDACTED], *inter alia*, identified a number of buildings he had previously sketched [REDACTED];¹⁶ clarified the use of certain parts of [REDACTED];¹⁷ identified specific locations on an aerial map of the site,¹⁸ and provided evidence concerning the presence of certain KLA members at [REDACTED] during the months of [REDACTED]1999.¹⁹ The witness's testimony and associated exhibits will assist the Trial Panel in its assessment of the charges in this case.

8. No undue prejudice would result from adding these items to the Exhibit List. The request is timely as it originates from [REDACTED]. It is also limited in scope, and provides the Accused with sufficient notice, as the testimony of [REDACTED] in these proceedings is yet to be scheduled. The proposed amendments were disclosed to all Defence teams on 25 January 2024 pursuant to Rule 102(1)(b)(i).²⁰ Further, before this disclosure, the Defence had access to [REDACTED] testimony, which was [REDACTED]. As to the associated exhibits, the photographs and sketch which have been now marked or further marked by [REDACTED] are already on the Exhibit List.²¹

¹⁶ [REDACTED]; [REDACTED].

¹⁷ [REDACTED]; [REDACTED].

¹⁸ [REDACTED]; [REDACTED]; [REDACTED].

¹⁹ *See, e.g.*, [REDACTED].

²⁰ Disclosure Package 1085.

²¹ *See* Exhibit List, Items 3436 (083525-083534 RED, for pp.083525-083527), and 19254 (SPOE00330362-00330362).

B. ADDITIONAL MATERIAL RELATED TO WITNESS W01453

9. SPOE00229777-00229802 is part of a set of documents seized from Jakup KRASNIQI's residence (SPOE00229777-00229840). The item is *prima facie* relevant and of sufficient importance to justify its addition to the Exhibit List, as, *inter alia*, it contains multiple references to W01453, in particular his contact and discussions with Jakup KRASNIQI, Hashim THAÇI and Rexhep SELIMI during [REDACTED] and their discussions on [REDACTED], W01453's nickname [REDACTED], and W01453's [REDACTED].²² The specific evidential importance of this item only became apparent in preparing for the examination of W01453, as the SPO intends to use this item during the examination of W01453 to explore and clarify the witness's evidence on, *inter alia*, the above matters.

10. No undue prejudice would result from adding this item to the Exhibit List. The request is timely since W01453 is currently the [REDACTED],²³ and therefore the very earliest he would be called would be [REDACTED], providing the Accused with sufficient notice and preparation time. Moreover, the original item SPOE00229777-00229840 and the English translation of the Requested Amendment (SPOE00229777-SPOE00229802-ET) were disclosed under Rule 103 to all Accused on 8 October 2021 and 22 April 2022, respectively,²⁴ with enough time for the Accused to acquaint themselves with the content.

C. KLA DOCUMENTS²⁵

11. 072639-072641/072639-072641-ET is *prima facie* relevant and of sufficient importance to justify addition to the Exhibit list. It consists of three KLA documents

²² SPOE00229777-00229802, pp.SPOE00229778-SPOE00229779. Further, based on the document's contents, it can be deduced that the author was or purports to be [REDACTED]. *See for example* SPOE00229777-SPOE00229802-ET, p.SPOE00229799.

²³ *See* KSC-BC-2020-06/F02007/A01.

²⁴ *See* Disclosure Packages 92 and 219. They were also previously disclosed to the Krasniqi Defence, under Rule 102(3) in September 2021 in Disclosure Package 89.

²⁵ Annex 1.

which were provided by KLA [REDACTED] during his [REDACTED] interview with the SPO on [REDACTED] and were discussed during the interview.²⁶ [REDACTED] served, *inter alia*, as [REDACTED], and was present in [REDACTED], including after the departure of the Serbian forces in June 1999. [REDACTED] and other KLA soldiers were present at two KLA bases [REDACTED] where detained persons were mistreated. The SPO does not intend to call [REDACTED]; however, these KLA documents that he provided to the SPO are relevant and important to the SPO's case.

12. The first document is a transfer ordinance signed by [REDACTED]. The ordinance confirms the assignments of [REDACTED] in [REDACTED] 1999, his affiliation with [REDACTED], [REDACTED], and the association between [REDACTED]. Several SPO witnesses are well-positioned to speak about these and other aspects of the document, including W04764 and W04564.

13. The second document is a permanent travel permit issued by the General Staff in [REDACTED] 1999 to [REDACTED]. The permit is signed by Chief of the General Staff Bislim ZYRAPI.

14. The third document is a decision on [REDACTED], issued on [REDACTED] 1999 under the authority of [REDACTED]. This KLA document confirms [REDACTED]'s position [REDACTED] and specifies the date of [REDACTED]'s transition to reserve status. Further, it specifies that [REDACTED] was in charge of implementing the decision. SPO witnesses including W04764, W04564 and W04752 are well-positioned to speak about this document. In their SPO interviews, W04764 and W04564, [REDACTED], respectively, discussed the [REDACTED], including of [REDACTED], in [REDACTED] 1999.²⁷

15. While the request could have been made earlier, the importance of these documents was identified in the course of witness preparations, and addition to the

²⁶ See 072632-TR-ET Part 3, pp.17-23. The transcript of the SPO interview with [REDACTED] (072632-TR-ET Parts 1 to 5) was disclosed under Rule 102(3) to the Defence teams of three Accused on 15 September 2022 (Disclosure Package 457).

²⁷ See e.g. 083717-TR-ET Part 3, pp.7-14; 072736-TR-ET Part 3 RED2, pp.24-31.

Exhibit List at this stage would cause no prejudice. The Requested Amendment is limited in scope—the item is only three pages long—and provides the Accused with sufficient notice. The item is part of a larger item 072637-072645 disclosed under Rule 102(3) to all Accused on 21 December 2023.²⁸ None of the witnesses who will be asked to comment on this item are anticipated to testify until after [REDACTED],²⁹ allowing the Accused sufficient time to assess the documents and timely familiarise themselves with them.

III. CLASSIFICATION

16. This filing and Annex 1 are confidential in accordance with Rule 82(4), because they relate to witnesses whose identities are not public, and to give effect to existing protective measures.

IV. RELIEF REQUESTED

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

Word Count: 2032



Kimberly P. West
Specialist Prosecutor

Friday, 2 February 2024

At The Hague, the Netherlands.

²⁸ Disclosure Package 1051.

²⁹ See KSC-BC-2020-06/F02007/A01.