



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: 19 February 2024

Language: English

Classification: Public

Public Redacted Version of 'Prosecution reply relating to its request to amend the Exhibit List (F02099)'

Specialist Prosecutor's Office

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1. The Response¹ fails to establish any reason why the Request² should not be granted by the Trial Panel.
2. Defence arguments concerning the total number of items added to the Exhibit List in this case³ are irrelevant to consideration of this specific Request. The Panel will decide the Request *in concreto*,⁴ applying the relevant standard to the six Requested Amendments,⁵ only two of which are opposed by the Defence.⁶ However, in addition to being irrelevant, the submissions fail to explain how the Defence determined, *inter alia*, that ‘more than 600 items have been added during the trial stage’ or how the Accused have been unfairly prejudiced.⁷ In fact, since the trial started in April 2023, the Panel has authorised the addition of approximately 54 unique items⁸ to the Exhibit

¹ Joint Defence Response to Prosecution Request to Amend the Exhibit List (F02099), KSC-BC-2020-06/F02120, 14 February 2024, Confidential (‘Response’).

² Prosecution Request to Amend the Exhibit List, KSC-BC-2020-06/F02099, 2 February 2024, Confidential (‘Request’). The term ‘Requested Amendments’, as used in this reply, is defined in para.1 of the Request. The term ‘Exhibit List’ is defined in fn.3 of the Request.

³ Response, KSC-BC-2020-06/F02120, paras 12-14.

⁴ See e.g. Decision on Prosecution Request to Amend the Exhibit List, KSC-BC-2020-06/F01785, 12 September 2023, Confidential (‘September 2023 Decision’), paras 16, 21.

⁵ Three of the Requested Amendments form part of the same [REDACTED] (and therefore can be considered to be one unique item), while three others are exhibits associated with that [REDACTED]. See Request, KSC-BC-2020-06/F02099, paras 1, 6.

⁶ Response, KSC-BC-2020-06/F02120, para.2.

⁷ Response, KSC-BC-2020-06/F02120, para.13. The Defence cites the Exhibit List filed in March 2023 (see fn.20), thereby indicating that its estimate takes into account individual entries added to the Exhibit List, including all (revised) translations and transcripts, (lesser) redacted and other versions of items already on the Exhibit List. These are included for the sake of completeness and accuracy on each version of the Exhibit List, but do not constitute new, ‘unique’ items. See also fn.8 below.

⁸ A ‘unique item’ encompasses all parts of the same interview or testimony, as well as any transcripts, translations, or (lesser) redacted versions of that same item. The SPO acknowledges that certain ‘unique items’ are comprised of multiple parts or are lengthy; however, the scope and size of an item (and any related prejudice) is considered by the Panel when deciding whether to authorise Exhibit List amendments.

List.⁹ Approximately one third of these were not opposed by the Defence.¹⁰ Before authorising any amendment, the Panel has carefully considered, *inter alia*, good cause and potential prejudice, and has refused Exhibit List amendments which it considered did not meet the relevant standard.¹¹ Accordingly, in this complex, multi-Accused trial, which is being conducted in parallel to investigations and proceedings in related cases,¹² the number of items added to the Exhibit List with the Panel's authorisation cannot demonstrate undue prejudice, whether considered cumulatively or individually. Defence submissions otherwise should therefore be disregarded.

3. Moreover, the Defence (i) relies on, *inter alia*, arguments that go to the admissibility of SPOE00229777-00229802,¹³ a standard that the Defence concedes does not apply to Exhibit List amendments;¹⁴ and (ii) fails to show prejudice when arguing that the KLA Documents¹⁵ cannot be added to the Exhibit List because W04765, who

⁹ See Decision on Prosecution Request to Add Five Items Relating to Expert Witness to the Exhibit List, KSC-BC-2020-06/F01544, 23 May 2023, Confidential ('May 2023 Decision') (5 items added; unopposed); Decision on Prosecution Request to Add Intercepted Communications to the Exhibit List, KSC-BC-2020-06/F01656, 7 July 2023, Confidential (2 items added; opposed); Oral Order from 12 July 2023, pp.5551-5553 (1 item added; opposed); Decision on Prosecution Request to Amend the Exhibit List (F01728), KSC-BC-2020-06/F01739, 24 August 2023, Confidential (1 item added; unopposed); September 2023 Decision, KSC-BC-2020-06/F01785 (11 items added; opposed); Decision on Prosecution Motion for Admission of Evidence of W03170, W04043, W04444, W04571, W04765, W04811, and W04870 Pursuant to Rule 154 and Related Request (F01830), KSC-BC-2020-06/F01901, 2 November 2023, Confidential (1 item, unopposed); Decision on Prosecution Request to Amend the Exhibit List (F01858), KSC-BC-2020-06/F01902, 3 November 2023, Confidential (5 items added; unopposed); Decision on Prosecution Request to Amend the Exhibit List (F01844), KSC-BC-2020-06/F01995, 8 December 2023, Confidential ('December 2023 Decision') (27 items added; three items opposed); Decision on Prosecution Motion for Admission of Evidence of Witnesses W01163, W02144, W02749, W04230, W04445, W04489, W04576, W04739, W04741, and W04820 Pursuant to Rule 154 and Related Request, KSC-BC-2020-06/F02044, 8 January 2024, Confidential ('January 2024 Decision') (1 item added; opposed).

¹⁰ See fn.9 above.

¹¹ See e.g. Oral Order from 24 January 2024, pp.11679-11680; September 2023 Decision, KSC-BC-2020-06/F01785, paras 84, 89, 94, 99.

¹² Notably, at least 33 of the approximately 54 items added to the Exhibit List since the start of the trial were generated, obtained, or identified in the context of these related proceedings. See May 2023 Decision, KSC-BC-2020-06/F01544; December 2023 Decision, KSC-BC-2020-06/F01995; January 2024 Decision, KSC-BC-2020-06/F02044.

¹³ See e.g. Response, KSC-BC-2020-06/F02120, para.25.

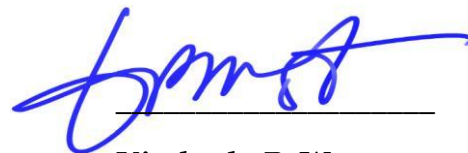
¹⁴ Response, KSC-BC-2020-06/F02120, para.29.

¹⁵ 072639-072641 and 072639-072641-ET are referred to in the Request as the 'KLA Documents'. See Request, KSC-BC-2020-06/F02099, paras 14-15.

was in a position to comment on such documents, already testified.¹⁶ In contrast, the Request identified W04764, W04752 and W04564, who are yet to testify, as well positioned to comment on the KLA Documents.¹⁷ Specifically, the documents on pages 072639 and 072641 of 072639-072641 are [REDACTED]. Further, W04764 referenced the document on page 072639 in his SPO statement, based on his memory of the ordinance.¹⁸ Similarly, the document on page 072640 was [REDACTED]. In the circumstances, addition of the KLA Documents would not pose undue prejudice to the Defence.¹⁹

4. For the foregoing reasons and those given previously, the Request should be granted.²⁰

Word Count: 1052



Kimberly P. West

Specialist Prosecutor

Monday, 19 February 2024

At The Hague, the Netherlands.

¹⁶ Response, KSC-BC-2020-06/F02120, paras 34-36.

¹⁷ Request, KSC-BC-2020-06/F2099, paras 12-14.

¹⁸ See 083717-TR-ET Part 3 Revised, pp.9-10. 072639-072641 was not in the SPO's possession at the time of W04764's interview on [REDACTED], as it was provided to the SPO on [REDACTED].

¹⁹ See, *similarly*, September 2023 Decision, KSC-BC-2020-06/F01785, paras 22, 28 (while acknowledging that a past witness could have commented on the document, finding, *inter alia*, that a future witness, who authored the document, is equally or better placed to comment upon it, and the Defence was therefore not unfairly prejudiced), 34.

²⁰ This reply is confidential pursuant to Rule 82(4).