



In: KSC-BC-2020-06
Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor

Date: 2 September 2022

Language: English

Classification: Public

Prosecution submission of revised witness list
with strictly confidential and *ex parte* Annex 1 and confidential Annexes 2-3

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1. As ordered by the Pre-Trial Judge,¹ the Specialist Prosecutor's Office ('SPO') hereby annexes its latest witness list with updated hours estimates following an internal streamlining review ('Updated Estimates').
2. The Updated Estimates are the product of extensive internal SPO deliberations, aimed at identifying opportunities to streamline the case in accordance with the Pre-Trial Judge's order and mindful of the right of the accused to be tried without undue delay. Discussions centred on forecasting what would be necessary and sufficient evidence to prove every element of every crime charged.
3. The analysis also reflected the unique circumstances of the case and its impact on evidence acquisition and presentation. The Kosovo Liberation Army ('KLA') operated as a secretive non-state actor behind its public face. Proving command and control within such an organisation presents particular challenges, ranging from increased reliance on witness evidence (in contrast to documentation stemming from long-established institutions) to a code of silence instilled over time. The Accused dispute and downplay key facts concerning their roles in the KLA, despite using the KLA's successes to springboard into positions of power in Kosovo during and after the war. Remarkably, they now affirmatively deny that the KLA had any authority or structure at all, as can be seen in Hashim Thaçi's initial, so-called 'secret' interview in

¹ Transcript of Hearing, 13 July 2022, p.1474 ('In light of the parties' submissions, I order the SPO to file a witness list which updates the mode of questioning and presentation time for each witness by 2 September 2022').

The Hague² or the public statement made by Kadri Veseli upon his arrest.³ The Accused do not have to agree to any such facts, but the fact - not to mention the extent - of their denials have necessary implications for the time required to establish the elements of proof beyond reasonable doubt.

4. Additionally, many significant witnesses in this case are loyal to the Accused, or are intimidated and afraid to testify. It is inescapable that certain witnesses will be reluctant or unwilling to acknowledge prior evidence that they provided. Uncooperative witnesses will require additional time to examine, and additional witnesses may be required to establish the truth behind an uncooperative witness's account. The SPO has attempted to ensure that the Updated Estimates did not ignore these realities, but it cannot be predicted with certainty the degree to which a witness will not cooperate or how much this may impact the progress of the case.⁴

5. The Accused's wide range of criminality must be captured in this trial in order to assess their full responsibility. The SPO is reasonably entitled to present a case of sufficient length to prove the elements of all crimes charged, including contextual

² Interview of Hashim Thaci of 13 January 2020, 083689-TR-ET Part 4, p.20 ('I can't say that we took any operational military -- military operation decisions as a General Staff during the spring and the summer of 1998. Why? The situation was way ahead of us. The massivisation of the KLA was huge and the people were armed, the people that had weapons in their hands. In particular, in Drenica, Dukagjin, and Pashtrik, Shala, the situation had moved way ahead of the General Staff. The General Staff had minimum capacity to follow these developments. On the other hand, the operational zones were completely autonomous in their decision-making at the time, spring and summer of 1998. The General Staff only -- would only get told later of what events had happened in the operational zones.'). *See also* BIRN, Kosovo's Ousted Government, Secret Deals and War Crimes Charges, 27 March 2020, available at <https://balkaninsight.com/2020/03/27/kosovos-ousted-government-secret-deals-and-war-crimes-charges/> ('[t]here were rumours that Thaci was summoned for interview too, but he declined to confirm this to BIRN').

³ Annex 3 to Application for Interim Release of Kadri Veseli, KSC-BC-2020-06/F0BC-2020-06/F00151/A03, 17 December 2020, p.2 (Statement of Kadri Veseli of 5 November 2020: '[b]ut I am quite confident that when the judges have heard all the evidence, they will conclude beyond reasonable doubt that the Kosovo Liberation Army was a people's movement, an uprising in self-defence, with brave men and women doing their honest best, in almost impossible circumstances, without formal structures, to protect the civilian population against a carefully planned and genocidal military onslaught by Serbian forces').

⁴ *See* Rule 143(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020.

elements like the widespread or systematic attack element for crimes against humanity. Victims also have been waiting over 20 years to tell their stories before a court. They cannot be deprived of this opportunity simply to hurry the proceedings.

6. Balancing these and other considerations, the SPO's overall case is now 709 hours. The Updated Estimates are aimed at presenting a streamlined case overall. Isolated witness estimates increased and two additional witnesses were identified,⁵ but greater reductions were made elsewhere to off-set these changes. The SPO made final decisions this week to not rely on six witnesses from its previous witness list,⁶ but most reductions come from introducing testimonial evidence in writing through the use of procedures such as Rules 153-55.⁷ In particular, there are now 196 proposed Rule 154 witnesses and 83 more are proposed to provide evidence entirely in writing.⁸

7. The Updated Estimates are plainly conditional on the Trial Panel granting relief which the SPO intends to seek under Rules 153-55. These rules derive from the statutory scheme at the *ad hoc* tribunals and ICC and, when also considered with Article 37, show the KSC's commitment to expedite trial proceedings through the admission of evidence in written form when it is consistent with rights of, *inter alia*, victims and the Accused. These provisions are particularly apt and appropriate in this case, given how much prior testimony has been generated in past Kosovo investigations and trials.

8. For Rule 154 in particular, due weight must be given to Rule 154 witnesses' prior accounts when they appear for cross-examination. For those envisaged as

⁵ An application to add these witnesses has been filed. *See* Prosecution request to add two witnesses and associated materials, 2 September 2022, Strictly Confidential and *Ex Parte*. There is also a pending application to add two further witnesses. *See* Confidential redacted version of 'Prosecution Rule 102(2) submission and related requests', KSC-BC-2020-06/F00890, dated 20 July 2022, KSC-BC-2020-06/F00890/CONF/RED, 21 July 2022, Confidential.

⁶ The relevant witness codes are set out in Annex 3.

⁷ *See also* Article 37 of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015.

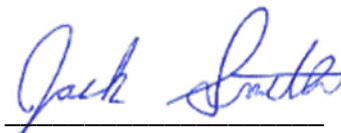
⁸ 51 proposed under Rule 153 and 32 under Rule 155.

testifying under Rule 154, essential supplemental questioning is provided for each individual witness estimate. For any request under these rules which is rejected, the SPO will require an opportunity to make a further revised estimate for those witnesses.

9. The SPO will continue to keep the Updated Estimates under review during the proceedings in order to identify additional efficiencies whenever possible.

10. This filing's Annex 1 is submitted strictly confidential and *ex parte* in order to protect the identity of delayed disclosure witnesses. A confidential redacted version is submitted as Annex 2.

Word count: 1180



Jack Smith
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Friday, 2 September 2022

At The Hague, the Netherlands.