



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: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Acting Specialist Prosecutor

Date: 16 January 2023

Language: English

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Public Redacted Version of 'Corrected Version of "Prosecution request to amend the exhibit list and for protective measures"', KSC-BC-2020-06/F00891/COR, dated 8 August 2022

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I. INTRODUCTION

1. Pursuant to the Framework Decision,¹ Articles 21(6), 23, 35(2)(f), and 39(1), (3) and (11) of the Law,² and Rules 80, 81, 95(2), 95(4)(b) and (c), 102(1)(a) and (b), 102(2), 107, 108, and 112 of the Rules,³ the Specialist Prosecutor's Office ('SPO') requests: (i) leave to amend the Exhibit List to include the additional Rule 102(1) materials identified below ('Additional Materials'); (ii) authorisation to apply non-standard redactions to and withhold certain Additional Materials to give effect to existing protective measures; and (iii) disclosure relief for certain Rule 107 information contained in two documents.⁴

2. In this complex multi-accused case involving a considerable amount of evidence, amendments to the Exhibit List⁵ should be treated with flexibility, particularly at this stage of proceedings.⁶ In this regard, the requested amendments – which, considered in context, are limited in scope and cause no undue prejudice – strike an appropriate balance between the rights of the Accused and the duty of the Prosecution to present available evidence to prove its case.⁷

¹ Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-06/F00099, 23 November 2020 ('Framework Decision').

² Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

³ 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.

⁴ Annex 1 comprises an index of the materials included at Annexes 2-14. Where relevant, the annexed materials include the original document followed by the English translation and proposed non-standard redactions. Where non-standard redactions are not requested and to enable the Defence to fully respond to this request, appropriate standard redactions have already been applied. Further, (i) a separate, strictly confidential and *ex parte* disclosure package containing the video referenced in Section II(x) below will be released to the Pre-Trial Judge through Legal Workflow; and (ii) the unredacted version of the Rule 107 document referenced in Section II(d) below will be provided directly to the Pre-Trial Judge in hard copy due to applicable restrictions.

⁵ Annex 1 to 'Prosecution submission of amended exhibit list', KSC-BC-2020-06/F00788/A01, 29 April 2022, Strictly Confidential and *Ex Parte* ('Exhibit List').

⁶ 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.

⁷ Appeal Decision, KSC-BC-2020-06/IA019/F00006, para.21.

II. SUBMISSIONS

3. As set out in more detail below in relation to each of the Additional Materials, the SPO has provided timely notice and shown good cause for the requested amendments to the Exhibit List.

4. This request is being made at the pre-trial stage of proceedings and before a trial date has been set. In the interest of judicial economy and to avoid piecemeal requests which could ultimately cause delay and disruption, the SPO consolidated the Additional Materials into a combined request. In this context, the amendments are being requested promptly after (i) receiving Rule 107 clearance for certain Additional Materials; (ii) obtaining certain Additional Materials and completing related assessments and reviews; or (iii) identifying certain Additional Materials during recent disclosure reviews.⁸ Once identified, the SPO promptly took necessary measures, including, as appropriate, translation and transcription, to review and, as relevant, prepare this request and the Additional Materials for disclosure.

5. The Additional Materials all relate to known aspects of the SPO's case, including witnesses already on the Witness List,⁹ exhibits already on the Exhibit List, and charged detention sites and victims.¹⁰ The availability of the Additional Materials is important to the Prosecution's case and, at this stage of proceedings, ensures the completeness and accuracy of the Exhibit List. The Additional Materials will also promote a better understanding of the evidence and allow the Defence to further test the reliability and credibility of the evidence already in its possession. Accordingly, considering also the overall scope of the case and number of disclosed materials, and the limited nature and scope of the Additional Materials, no undue prejudice arises from this request and good cause has been shown.

⁸ The SPO notes that the materials concerned by this request were all obtained, identified, or subject of assessments and reviews completed after March 2022. In this regard, the previous amendment requests were made in April 2022. See KSC-BC-2020-06/F00767; KSC-BC-2020-06/F00774.

⁹ Annex 1 to 'Prosecution submission of corrected and lesser redacted witness list', KSC-BC-2020-06/F00885/A01, 18 July 2022, Strictly Confidential and *Ex Parte* ('Witness List').

¹⁰ See, similarly, Appeal Decision, KSC-BC-2020-06/IA019/F00006, paras 21-22.

(a) Annex 2: Additional W04868 materials¹¹

6. 105816-106095 is a collection of documents that relate to W04868.¹² This collection was cleared for disclosure by the relevant authorities on 19 April 2022 and is an important addition to W04868's evidence. It includes (i) the terms of reference for W04868's military operation in Kosovo; (ii) photographs of that military operation; (iii) W04868's personal journal; and (iv) official reports that W04868 prepared during the charged timeframe.

7. As with W04868's previous materials, the requested addition is relevant and important to understanding the organisation, structure, and personnel of the KLA at the charged detention site at the Gjilan/Gnjilane Dormitory, as well as the charged Novobërdë/Novo Brdo detention site.¹³ Adding this item would not prejudice the Defence, as W04868's SPO interview, associated exhibits, and other materials discussing many of the same events have already been disclosed.

8. On an additional matter relating to W04868's materials, the SPO notes that the Pre-Trial Judge previously deferred his determination regarding SPOE00215203-SPOE00215209 until the SPO concluded consultations with the relevant information provider or gave an additional explanation.¹⁴ The SPO clarifies that its discussions with the provider are not ongoing in relation to this document and it does not seek any disclosure relief in relation to SPOE00215203-SPOE00215209. The SPO is not in possession of an unredacted version of SPOE00215203-SPOE00215209. A lesser-redacted version revealing all information of which the SPO is aware has been

¹¹ At the time of this request, an additional interview conducted with W04868 on 5 May 2022 is pending clearance with the relevant authorities. Upon receiving clearance, the SPO will promptly make appropriate requests and disclosures.

¹² The Pre-Trial Judge previously found good cause to add a group of W04868's statements and associated exhibits on a delayed basis, in part because the clearance needed from the relevant government prior to disclosure had only recently been granted. *See* Rule 102(2) Decision, KSC-BC-2020-06/F00779, paras 32-36.

¹³ Rule 102(2) Decision, KSC-BC-2020-06/F00779, para.33.

¹⁴ *See* Rule 102(2) Decision, KSC-BC-2020-06/F00779, paras 54, 55(g); Prosecution Rule 102(2) submission and related requests, KSC-BC-2020-06/F00708, 24 February 2022 ('Prosecution Rule 102(2) Request'), Confidential, paras 1, 20, fn.43.

disclosed.¹⁵ Accordingly, as previously submitted,¹⁶ the SPO has disclosed the versions of the document revealing all information of which it is aware, and with respect to the parts of the document that remain redacted in both versions, the SPO is unaware of their content.

(b) Annexes 3-4: Additional W01193 materials¹⁷

9. The SPO seeks to add the interview transcripts and associated exhibits from its April 2022 interview with W01193. The SPO previously interviewed this witness in September and October 2020, but during the October 2020 interview, he expressed [REDACTED] that led the SPO to terminate the interview before it was completed. The witness subsequently experienced a number of [REDACTED]. In 2021, the SPO received documents it had previously requested that were relevant to W01193. These documents were reviewed and assessed before the interview. This review and assessment coincided with significant pre-trial deadlines in this case. The April 2022 interview gave the SPO the ability to, *inter alia*, address important topics that had not yet been discussed due to the premature termination of the October 2020 interview, including W01193's knowledge of documents. The SPO was also able to undertake the closing formalities that had been left outstanding due to the abrupt halt of the prior interview. After the April 2022 interview, preparations were made for purposes of this Request, including transcription and protective measures assessments. The transcripts of this interview were not registered until June 2022.

¹⁵ Prosecution Rule 102(2) Request, KSC-BC-2020-06/F00708, para.20 (noting that it had disclosed SPOE00217146-SPOE00217152, which contains some lesser redacted pages), fn.42 (setting out the additional information revealed in SPOE00217146-SPOE00217152).

¹⁶ Prosecution Rule 102(2) Request, KSC-BC-2020-06/F00708, para.20.

¹⁷ Annex 3 includes an index of W01193's materials, including those associated exhibits that were previously disclosed under Rule 102(1) and are therefore not part of this request. Annex 4 includes W01193's interview transcripts and the associated exhibits that the SPO seeks to add to the Exhibit List. To the extent that certain redactions were applied to documents in items 13-17 and 19-21 of Annex 4, the SPO clarifies that it received the items with these redactions applied and is not in possession of lesser redacted or unredacted versions.

10. The Defence is already in possession of the bulk of materials relevant to this witness, including his prior statements and associated exhibits.¹⁸ The requested addition of W01193's April 2022 interview transcripts and associated exhibits would therefore not be unduly prejudicial and good cause has been shown for their addition to the Exhibit List.

(c) Annex 5: Additional [REDACTED] interview transcripts

11. To ensure the completeness and accuracy of the Exhibit List, the SPO seeks to add [REDACTED] 2022 interview.¹⁹ [REDACTED] was initially interviewed in [REDACTED] 2019. Following further assessment, including while preparing the Rule 95 materials, it was determined that a follow-up interview was necessary to clarify certain matters. Due to logistical and resource constraints, such as restrictions arising from the COVID-19 pandemic and pre-trial deadlines, the interview took place on [REDACTED] 2022. Thereafter, preparations were made for purposes of this Request, including transcription and protective measures assessments. The revised transcripts of the interview were registered on 20 June 2022 and thereafter underwent redaction review. Considering that the Defence will receive [REDACTED]'s complete evidence, including the interview subject of this request, sufficiently in advance of his testimony to enable adequate preparations, no prejudice will be caused.

12. The Pre-Trial Judge has granted protective measures for [REDACTED], including delayed disclosure of his identity until 30 days before trial.²⁰ The redactions to his 2022 interview are consistent with those authorised for his 2019 interview²¹ and

¹⁸ See, for example, Disclosure 58.

¹⁹ See Annex 5. The exhibits associated with this interview have already been disclosed under Rule 102(1)(b) and are therefore not part of this request. See [REDACTED].

²⁰ Seventh Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00407, 21 July 2021 ('Seventh Decision'), Strictly Confidential and *Ex Parte*, para.13(iv).

²¹ 071056-TR Parts 1-8 RED. See also Seventh Decision, KSC-BC-2020-06/F00407, para.71. Redactions are also made to the date of the interview considering that [REDACTED]. See Annex 5: 105773-TR-ET Part 1, p.11.

are therefore necessary to give effect to existing protective measures. For the same reasons given previously,²² they are also proportionate.

(d) Annex 6: Additional [REDACTED] materials

13. The SPO seeks to add the transcripts and associated exhibits from its May 2022 interview with [REDACTED]. The SPO previously interviewed [REDACTED] in December 2020. During that interview, [REDACTED] noted that he was [REDACTED], so the interview was suspended for 48 hours until [REDACTED] [REDACTED]. As a consequence of this interruption, the SPO was not able to finalise the interview in the remaining time available. During the SPO's May 2022 interview with [REDACTED], the SPO was able to, *inter alia*, address the topics that were left incomplete because of the December 2020 interruption, seek clarification on topics only briefly addressed during the prior interview, and explore [REDACTED]'s knowledge in relation to a number of other relevant issues. As the Defence is already in possession of materials relevant to [REDACTED], including redacted versions of his December 2020 SPO interview, adding the requested items would not be unduly prejudicial to the Defence.

14. The Pre-Trial Judge has previously authorised the delayed disclosure of [REDACTED]'s identity and the withholding of certain items related to [REDACTED] until 30 days before testimony.²³ For the same reasons which formed the basis of that decision, the SPO requests authorisation to apply non-standard redactions to the transcripts of [REDACTED]'s May 2022 SPO interview and to withhold certain related items that may reveal his identity ('[REDACTED] Associated Exhibits').²⁴

15. The [REDACTED] Associated Exhibits include marked photographs of the witness and related locations, marked maps, [REDACTED] documentation relating

²² Seventh Decision, KSC-BC-2020-06/F00407, paras 72-73.

²³ Eighth Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00438, 24 August 2021 ('Eighth Decision'), Strictly Confidential and *Ex Parte*, paras 62, 93(h) and (m).

²⁴ See Annex 6, items 2-3 ([REDACTED]).

specifically to the witness,²⁵ and a [REDACTED] discussing the witness's relatives.²⁶ They were provided or marked by W044577 during and/or referenced in the May 2022 SPO interview, and are, by their nature and contents, identifying. Accordingly, due to the nature of these exhibits and/or the manner in which they were discussed by the witness, withholding them until disclosure of [REDACTED]'s identity is necessary to give effect to the protections already granted. Adequate counterbalancing measures exist. The Defence has received, *inter alia*, redacted versions of [REDACTED]'s December 2020 SPO interview and will receive redacted versions of [REDACTED]'s May 2022 SPO interview. Further, the Defence will receive [REDACTED]'s complete evidence, including all of [REDACTED]'s associated exhibits, sufficiently in advance to enable adequate preparation for trial.

16. Finally, the SPO notes that one associated exhibit, [REDACTED],²⁷ used during the interview of [REDACTED] contains Rule 107 provider-applied redactions. These redactions are not applied to the portions of the document used in the interview.²⁸ Further, the information which has been redacted by the provider in [REDACTED] is either not relevant or is available to the Defence by means of other disclosed items. The information which is redacted includes (i) detail on the report's sender and recipients; (ii) [REDACTED]; (iii) [REDACTED]; (iv) reference to [REDACTED]; and (v) internal comments by [REDACTED] staff members concerning, *inter alia*, next steps to be taken by [REDACTED]. The identities of [REDACTED] in [REDACTED] 1999 are of no known relevance to the charges. The remaining redacted information concerns internal [REDACTED] information, assessments, and work product. Insofar as such internal work product includes references to another witness's ([REDACTED])

²⁵ Annex 5: [REDACTED].

²⁶ Annex 5: [REDACTED].

²⁷ See Annex 6, item 3. The unredacted version of the document will be provided to the Pre-Trial Judge in hard copy due to applicable restrictions.

²⁸ Annex 6: [REDACTED] (the cleared, redacted version was used during the interview).

role during the Indictment period,²⁹ this information is available in already disclosed documents.³⁰ Accordingly, no further counterbalancing measures are necessary and, pursuant to Rule 107(2), the SPO should be relieved of its disclosure obligations in relation to the redacted portions of [REDACTED].

(e) Annex 7: Photographs relating to the Novobërdë/Novo Brdo detention site

17. The SPO requests authorisation to add seven photographs to its Exhibit List that it downloaded from [REDACTED]'s Facebook page in late March 2022, after [REDACTED]. After identifying and downloading the photographs, the SPO reviewed them and assessed their importance to the case.

18. [REDACTED].³¹ The requested photographs were taken within the same general timeframe of the crimes charged at the site. One photograph shows what appears to be the Novobërdë/Novo Brdo detention site in 1999. The remaining photographs show [REDACTED] with other KLA members. Adding the requested materials at this time poses minimal prejudice to the Defence, as the photographs are limited in number and scope.

(f) Annex 8: Forensic documents relating to the Gjilan/Gnjilane crime site

19. The SPO seeks to amend its Exhibit List with a group of documents selected from a voluminous batch of documents received from EULEX on 17 March 2022. After receipt, these documents were reviewed and assessed, including against other documents already on the Exhibit List to remove duplicates and limit this request to those that are necessary. The selected documents relate to the forensic investigations that identified the remains of [REDACTED]. On 22 April 2022, the Pre-Trial Judge

²⁹ [REDACTED]. Other references to [REDACTED]'s role do not concern the indictment period (rather, they refer to his role as a [REDACTED] in [REDACTED] 1999). In any event, such information is also available to the Defence.

³⁰ See, for example, [REDACTED].

³¹ See Confidential Redacted Pre-Trial Brief, KSC-BC-2020-06/F00631/RED/A01, 17 December 2021, Confidential, para.687.

authorised amendments to the Indictment pertaining to these victims.³² The relevance of these additional forensic documents to the case was therefore contingent upon that decision.

20. These documents all relate to KFOR, UNMIK, ICTY, and EULEX investigations concerning these victims, in particular, the examination of the grave sites and related exhumations, autopsies, and identifications. They are important because they are better quality versions of documents already on the Exhibit List or provide unique and/or contextual evidence that promotes a better understanding of the events and related documents on the Exhibit List.

(g) Annex 9: Document that uniquely corroborates [REDACTED]'s abduction

21. The SPO seeks to add one document to its Exhibit List that provides unique contemporaneous corroboration of [REDACTED]'s abduction.³³ The importance of this contemporaneous Dutch language record – with the entry relating to [REDACTED] located on page 27 – was only determined in mid-May 2022, in the course of recent Rule 102(3) reviews. The English translation was received in June 2022.

22. The requested document contains contemporaneous reports of [REDACTED]'s mother reporting her son's kidnapping to KFOR and KFOR's follow-up actions.³⁴ While the reason the document is being proposed at this stage arises primarily from this entry, the remaining pages are also relevant and important, insofar they provide context to the [REDACTED]-related entries and record, *inter alia*, certain KLA activities in the relevant area and time period.

³² Decision on the Confirmation of Amendments to the Indictment, KSC-BC-2020-06/F00777, 22 April 2022, Strictly Confidential and *Ex Parte*, para.185(b). *See also* Annex 1 to Submission of amended Indictment and related documents, KSC-BC-2020-06/F00789/A01, 29 April 2022 ('Indictment'), Strictly Confidential and *Ex Parte*, para.174, Schedule B at #8, Confidential.

³³ *See* Indictment, KSC-BC-2020-06/F00789/A01, paras 132, 173, Schedule B at #35.1.

³⁴ Annex 9: SITF00441546-00441623, p.SITF00441572.

23. Addition of this document causes minimal prejudice to the Defence, as it has previously been notified and/or disclosed under Rule 102(3).³⁵

(h) Annex 10: Prior statements [REDACTED]

24. The SPO requests authorisation to add four prior statements [REDACTED]. These statements were the subject of a protective measures decision in which the Pre-Trial Judge gave permission to withhold them from disclosure to give effect to existing protective measures granted to four delayed disclosure witnesses.³⁶ The SPO inadvertently failed to add the statements to the Exhibit List thereafter, but adding them now would cause no prejudice given that the authorisation to withhold them is still in effect.

(i) Annex 11: Accused's rights notifications

25. The SPO seeks to add four documents in which Hashim THAÇI and Rexhep SELIMI acknowledged they had been notified of their rights before their SPO interviews. The addition of these documents would cause no prejudice to the Defence, as the Accused are aware of their existence and content and the substantive portions of the related interviews and associated exhibits have already been disclosed.

Annex 12

(j) [REDACTED]³⁷

26. In the course of its ongoing Rule 102(3) review, the SPO discovered that this document is likely a prior statement of [REDACTED]. It was not previously identified because the document refers to the speaker only as [REDACTED]. [REDACTED], but considering the information in the statement, the SPO has concluded that it is likely a prior statement of [REDACTED].

³⁵ See Disclosures 141, 147, and 246.

³⁶ See Sixth Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00373, 25 June 2021 ('Sixth Decision'), Strictly Confidential and *Ex Parte*, paras 91-98.

³⁷ Annex 12, item 1.

27. [REDACTED] has been granted protective measures, including delayed disclosure of his identity until 30 days before trial.³⁸ Disclosure of this statement under Rule 102(1)(b) would create a clear link between the statement-maker and [REDACTED], which no level of redaction could avoid without rendering the statement unintelligible.³⁹ Noting that the SPO has disclosed a redacted interview with [REDACTED]⁴⁰ along with other prior statements, no undue prejudice is caused by withholding this statement until 30 days prior to trial.

(k) SITF00301506-00301509⁴¹

28. The first page of this document SITF00301506-00301509 relates to another witness. During recent disclosure reviews in July 2022, it was determined that the remaining pages constitute a limited statement of [REDACTED], as indicated by his handwritten name. This is a delayed disclosure witness relevant to the Drenoc/Drenovac crime site,⁴² and non-standard redactions are necessary to maintain the protective measures previously granted. Redactions to very similar information have already been granted in relation to [REDACTED]'s SPO interview and other statements.⁴³ Noting that [REDACTED]'s identity is yet to be disclosed, no undue prejudice is caused by disclosing a redacted version of the document at this time.

(l) SITF00013585-00013586⁴⁴

29. SITF00013585-00013586 is a one-page EULEX record of a meeting with [REDACTED] and primarily relates to a summons served on the witness for a hearing on [REDACTED]. However, it contains a limited statement insofar as it records

³⁸ Seventh Decision, KSC-BC-2020-06/F00407, para.148(c).

³⁹ Other statements of [REDACTED] have been similarly withheld. *See* Seventh Decision, KSC-BC-2020-06/F00407, paras 75-79.

⁴⁰ 092856-TR-ET Parts 1-2.

⁴¹ Annex 12, item 2.

⁴² Corrected Version of First Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00133/COR, 10 December 2020 ('First Decision'), Strictly Confidential and *Ex Parte*, para.132(h).

⁴³ 074780-TR-ET Parts 1-4; SITF00305070-00305079 RED; SITF00318649-00318649 RED

⁴⁴ Annex 12, item 3.

[REDACTED]'s brief response to one question asked by investigators, namely, whether he was ever abducted, beaten, tortured, or interrogated by the KLA. The statement was recently identified during Rule 102(3) reviews and had previously been overlooked due to the incorrect spelling of the witness's name, the nature of the document and the limited extent of the statement therein, and due to its close connection with [REDACTED] statement, which explored in detail his detention by the KLA and has already been disclosed.⁴⁵

30. [REDACTED] has been granted protective measures, including delayed disclosure of his identity until 30 days before trial.⁴⁶ The redactions to identifying information in SITF00013585-00013586, including his name, month and length of detention, and interview dates, are consistent with those previously authorised for other statements⁴⁷ and are proportionate and necessary.

(m) [REDACTED]⁴⁸

31. [REDACTED] is a prior statement of [REDACTED]. The Pre-Trial Judge granted [REDACTED] protective measures, including delayed disclosure of his identity until 30 days before trial, and, *inter alia*, authorised the SPO to withhold his prior statements, [REDACTED].⁴⁹ For the same reasons,⁵⁰ this statement must be withheld, [REDACTED] and no degree of redaction would therefore suffice. Accordingly, adding this document to the Exhibit List causes no prejudice, as the Defence will receive [REDACTED]'s complete evidence sufficiently in advance of his testimony for adequate preparation.

⁴⁵ SITF00013515-00013550 RED.

⁴⁶ Decision on Specialist Prosecutor's Second Request for Protective Measures and Renewed Request for Protective Measures and Procedural Matters, KSC-BC-2020-06/F00190, 5 February 2021 ('Second Decision'), Strictly Confidential and *Ex Parte*, para.144(e).

⁴⁷ See, for example, SITF00013515-00013550 RED.

⁴⁸ Annex 12, item 4.

⁴⁹ Eighth Decision, KSC-BC-2020-06/F00438, para.93(h), (j).

⁵⁰ Eighth Decision, KSC-BC-2020-06/F00438, para.60. See also Eighth request for protective measures, KSC-BC-2020-06/F00387, 8 July 2021, Strictly Confidential and *Ex Parte*, paras 64-65.

(n) SPOE00078270-00078271 and SPOE00078312-00078314⁵¹

32. SPOE00078270-00078271 and SPOE00078312-00078314 each contain short, one paragraph prior statements of [REDACTED] identified during disclosure reviews after March 2022. The statements primarily concern the witness's willingness to cooperate with EULEX and only contain limited, relevant information additional to [REDACTED]'s previously disclosed EULEX statement,⁵² namely, the identity of one fellow prisoner.

33. The Pre-Trial Judge granted [REDACTED] protective measures, including delayed disclosure of his identity until 30 days before trial.⁵³ The redactions to identifying information in SPOE00078270-00078271 and SPOE00078312-00078314, including his name, residence, [REDACTED]'s name, detention location and period, particular details relating to his treatment, and the name and residence of a fellow detainee, are consistent with those previously authorised to other statements and are necessary and proportionate.⁵⁴

(o) 081900-081907⁵⁵

34. 081900-081907 is a *procès-verbale* relating to an interview with [REDACTED], who has been granted protective measures that include delayed disclosure of his identity until 30 days before testimony.⁵⁶ Transcripts of the same interview documented in 081900-081907 have been disclosed with authorised non-standard redactions,⁵⁷ as has a summary of the interview.⁵⁸ This document – which includes no information additional to the related interview transcripts – was previously

⁵¹ Annex 12, items 5-6. The statement of [REDACTED] is on p.SPOE00078312 of SPOE00078312-00078314; the other two pages of this document concern other witnesses in prior investigations who are not witnesses in this case.

⁵² See SITF00010849-00010853 RED.

⁵³ First Decision, KSC-BC-2020-06/F00133/COR, para.132(h).

⁵⁴ See, for example, SITF00010849-00010853 RED.

⁵⁵ Annex 12, item 7.

⁵⁶ First Decision, KSC-BC-2020-06/F00133/COR, para.132(l).

⁵⁷ 071102-TR Parts 1-2 RED. See First Decision, KSC-BC-2020-06/F00133/COR, para.94.

⁵⁸ 081880-081881-ET RED. See Seventh Decision, KSC-BC-2020-06/F00407, para.25.

overlooked and was only recently identified as requiring disclosure. In the circumstances, there is no prejudice to the Defence and 081900-081907 should be added to the Exhibit List for the sake of accuracy and completeness. In order to give effect to existing protective measures, the proposed non-standard redactions, which are consistent with those previously authorised for records concerning the same interview,⁵⁹ are necessary and proportionate.

(p) [REDACTED]⁶⁰

35. The SPO seeks to add [REDACTED], which is a statement that was given by [REDACTED] to the ICTY on [REDACTED] as a follow-up to his first [REDACTED] statement.⁶¹ The statement was previously overlooked until recent disclosure reviews. Despite the delay in adding this document, it would cause little to no prejudice to the Defence since [REDACTED] adds limited detail to information provided in [REDACTED]'s ICTY statement that has already been disclosed.⁶²

36. [REDACTED] is a delayed disclosure witness whose identity is to be protected until 30 days before trial.⁶³ The proposed non-standard redactions to [REDACTED] are consistent with those previously authorised to other statements and are therefore proportionate and necessary.

(q) 107022-107022⁶⁴

37. This document is an extract of a statement of [REDACTED] from an SPO official note dated 22 March 2022. The limited statement therein was provided at the witness's initiative during a regular contact call in March 2022. Due to the limited nature and contents of the information, disclosure at this stage and addition to the Exhibit List causes no undue prejudice to the Defence.

⁵⁹ 071102-TR Parts 1-2 RED; 081880-081881-ET RED.

⁶⁰ Annex 12, item 8.

⁶¹ See [REDACTED].

⁶² See [REDACTED].

⁶³ First Decision, KSC-BC-2020-06/F00133/COR, para.132(h).

⁶⁴ Annex 12, item 9.

38. The Pre-Trial Judge granted [REDACTED] protective measures, including delayed disclosure of his identity until 30 days before trial.⁶⁵ Non-standard redactions are necessary to identifying information in 107022-107022, including [REDACTED] the victim and the identity of the alleged perpetrator, to give effect to his existing protective measures.

Annex 13

(r) 107023-107023⁶⁶

39. This document is an extract of a statement of [REDACTED] from an SPO official note. The information was provided at the witness's initiative on 14 April 2022 and concerned the contents of a television interview given by the witness. Due to the limited nature and contents of the information, which is also publicly available, disclosure at this stage and addition to the Exhibit List causes no undue prejudice to the Defence.

(s) W02160 associated exhibits⁶⁷

40. Eight photographs referenced in W02160's SPO statement⁶⁸ were previously overlooked until recent disclosure reviews. Considering that the Defence had access to the statement, including detailed discussion of the relevant meeting recorded in these photographs, there is limited, if any, prejudice.

(t) 100976-100976⁶⁹

41. This document is an SPO official note of a phone call with W04174, which includes a limited statement pertaining to the witness's interactions with a former KLA member. Due to the purpose of the call – including security-related concerns –

⁶⁵ First Decision, KSC-BC-2020-06/F00133/COR, para.132(h).

⁶⁶ Annex 13, item 1.

⁶⁷ Annex 13, items 2-9.

⁶⁸ 103262-103282 (Disclosure Package 103), para.88.

⁶⁹ Annex 13, item 10.

and limited nature of the information, this item was not previously identified as a statement until closer examination in the context of recent Rule 103 reviews. The statement contains information included in another statement of W04174.⁷⁰ In the circumstances, adding this document to the Exhibit List would cause minimal, if any, prejudice to the Defence and is being sought only for the sake of completeness.

(u) SPOE00291854-00291861⁷¹

42. This document consists of two prior statements of W03724 (at ranges SPOE00291854-00291856 and SPOE00291857-00291861). A less redacted duplicate version of SPOE00291857-00291861 has already been disclosed and is on the Exhibit List.⁷² Similarly, the information contained in SPOE00291854-00291856 (being an official note reflecting an early contact with the witness) was used in compiling, and is reflected in, W03724's signed statement,⁷³ which was previously disclosed under Rule 102(1) and is included on the Exhibit List.⁷⁴ This document is consequently being provided for the sake of completeness. Considering, however, that SPOE00291854-00291861 does not include any additional, substantive information beyond that contained in W03724's previously disclosed statements, adding this document to the Exhibit List would cause no prejudice.

43. To the extent pages SPOE00291857-SPOE00291860 include certain provider-applied redactions, all redacted information is available in another version of the statement (076162-076199 RED2) previously disclosed. Accordingly, pursuant to Rule 107(2), the SPO should be relieved of its disclosure obligations in relation to the Rule 107 information at pages SPOE00291857-SPOE00291860.

⁷⁰ DNH2617-DNH2619.

⁷¹ Annex 13, item 11.

⁷² Disclosed statement 076162-076199 RED2 is a lesser redacted version of the statement at pp.SPOE00291857-00291861 of SPOE00291854-00291861.

⁷³ 085942-085979.

⁷⁴ Disclosure 64.

(v) SITF00408985-SITF00408986⁷⁵

44. This document is a prior statement that W00207 made to Serbian authorities on 15 May 2000. It was only available in Cyrillic and was previously overlooked until recent disclosure reviews. Considering that it includes substantively the same information as W00207's other previously disclosed materials, including other statements recorded by the Serbian authorities in May 2000,⁷⁶ there is limited, if any, prejudice to the Defence.

(w) Annex 14: [REDACTED] materials

45. The SPO requests authorisation to amend its Exhibit List to include additional Rule 102(1)(b) materials that were generated during [REDACTED].⁷⁷ The requested materials include [REDACTED].⁷⁸ With the exception of [REDACTED], the witnesses are subject to protective measures, including delayed disclosure of their identities.⁷⁹

46. The request to add these materials is timely, as they were only recently generated [REDACTED],⁸⁰ and the final remaining official [REDACTED] was not provided until 1 July 2022.⁸¹ The addition of the materials would not unduly prejudice the Defence because the contents significantly overlap with the witnesses' previously disclosed materials, meaning there is limited new information not already within the Defence's possession. The proposed non-standard redactions to two transcripts and

⁷⁵ Annex 13, item 12.

⁷⁶ See 007613-TR (Disclosures 9-10); 007605-007612 (Disclosures 66, 109, and 159).

⁷⁷ [REDACTED]. See [REDACTED].

⁷⁸ Annex 14. The remaining exhibits associated with these transcripts – other than the two included in Annex 14 – were previously disclosed and/or are subject of prior requests to amend and are therefore not part of this request.

⁷⁹ See Fifth Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00338, 4 June 2021, Strictly Confidential and *Ex Parte*, paras 24-27; First Decision, KSC-BC-2020-06/F00133/COR, paras 132k, 132q; Second Decision, KSC-BC-2020-06/F00190, para.144a-b; Sixth Decision, KSC-BC-2020-06/F00373, para.18.

⁸⁰ In the interest of judicial economy, the SPO consolidated these materials into a combined request following completion of [REDACTED]. The SPO has already requested to add transcripts from the [REDACTED] to the Case 06 Exhibit List. See Prosecution request to amend the exhibit list and for protective measures ([REDACTED]), KSC-BC-2020-06/F00774, 20 April 2022, Strictly Confidential and *Ex Parte*; Prosecution supplement to filing F00774, KSC-BC-2020-06/F00888, 19 July 2022, Confidential.

⁸¹ See the Legal Workflow entry for the 1 June 2022 Albanian transcript.

one associated exhibit⁸² are necessary to give effect to protective measures granted these witnesses and are consistent with redactions previously authorised.

(x) Video of [REDACTED]⁸³

47. The SPO seeks to amend its Exhibit List with the addition of video [REDACTED], which was obtained on 7 February 2022 and was thereafter reviewed and considered, including against evidence and videos of the same event to determine its relevance and importance to the case. The [REDACTED] video depicts a small group of victims [REDACTED], as well as some of the KLA members present at the site. It is therefore of *prima facie* relevance. The video is of short duration, lasting a total of two minutes, with the portion relating to [REDACTED] spanning the last 46 seconds. This latter portion of the video contains some of the same footage seen in videos [REDACTED], which are already on the Exhibit List, but the [REDACTED] footage is of higher quality, providing better visibility of the victims and their injuries. It also contains different footage of the group of released detainees.

48. As in videos [REDACTED] shows two protected witnesses, [REDACTED], who were both granted delayed disclosure protection.⁸⁴ The Pre-Trial Judge previously authorised that [REDACTED] be withheld until the identities of [REDACTED] are disclosed to the Defence.⁸⁵ For the same reasons which formed the basis of that decision, the SPO requests authorisation to withhold [REDACTED].⁸⁶ Due to the nature of the material and the small number of victims depicted therein, there is no way to meaningfully redact the video and still give effect to the witnesses' protective measures. Accordingly, adding this video to the Exhibit List causes no prejudice to the

⁸² Annex 14, items 1, 3-4.

⁸³ As indicated above, this video is being released as part of a separate disclosure package on Legal Workflow.

⁸⁴ First Decision, KSC-BC-2020-06/F00133/COR, paras 132(h) (granting delayed disclosure for [REDACTED] until 30 days before trial), 132(l) (granting delayed disclosure for [REDACTED] until 30 days before testimony).

⁸⁵ See Tenth Decision on Specialist Prosecutor's Request for Protective Measures, KSC-BC-2020-06/F00467, 13 September 2021, Confidential Redacted, paras 21(e), 28.

⁸⁶ See also Tenth request for protective measures, KSC-BC-2020-06, 23 July 2021, Strictly Confidential and *Ex Parte*, paras 11-12.

Defence, which will receive this video along with the other two withheld videos sufficiently in advance for adequate preparation.

III. CLASSIFICATION

49. This filing is submitted as strictly confidential and *ex parte* in accordance with Rules 80(3) and 82(4). A confidential redacted version will be filed.

IV. RELIEF REQUESTED

50. For the foregoing reasons, the Pre-Trial Judge should:
- a. authorise the SPO to amend the Exhibit List to include the Additional Materials;
 - b. authorise non-standard redactions to the Additional Materials identified in paragraphs 12, 14, 28, 30, 33-34, 36, 38, and 46 above;
 - c. authorise the withholding of the Additional Materials identified in paragraphs 14-15, 27, 31, and 48 above; and
 - d. relieve the SPO of its disclosure obligations in relation to the Rule 107 information identified in paragraphs 16 and 43 above.

Word count: 5689



Alex Whiting

Acting Specialist Prosecutor

Friday, 16 January 2023

At The Hague, The Netherlands.

Explanatory Note

The following corrections have been made to the original filing:

- An ERN reference was corrected in paragraph 38.
- A typographical error in the Witness Code number was corrected in paragraph 42.