

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 Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Defence Counsel for Jakup Krasniqi

Date: 16 January 2023

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Public Redacted Version of

Krasniqi Defence Consolidated Response to ‘Prosecution Rule 102(2) Submission and Related Requests’ and ‘Prosecution Request to Amend the Exhibit List and for Protective Measures’, KSC-BC-2020-06/F00911, dated 3 August 2022

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I. INTRODUCTION

1. The Defence for Jakup Krasniqi (“Defence”) hereby responds to the Specialist Prosecutor’s Office (“SPO”) requests to amend the Exhibit and Witness Lists.¹

2. The Defence requests the Pre-Trial Judge to dismiss the SPO’s request to amend the Exhibit and Witness Lists. The proposed changes to these lists have arisen due to oversights, delays and administrative errors on the part of the SPO. A further amendment at this stage of the proceedings would yield to an ongoing pattern by the SPO of requesting extensions to deadlines and varying the information provided to the Defence in preparation for trial. It also places the Defence in the increasingly untenable position of having to adapt its case strategy and evidence analysis on the basis of a ‘moving target’.²

3. Pursuant to Rule 82(4) of the Rules,³ this filing is classified as confidential as it responds to a document with the same classification. A public redacted version will be filed in due course.

¹ KSC-BC-2020-06, F00890/CONF/RED, Specialist Prosecutor, *Confidential Redacted Version of ‘Prosecution Rule 102(2) Submission and Related Requests’*, KSC-BC-2020-06-F00890, dated 20 July 2022 (“Request to Amend the Exhibit List”), 21 July 2022, confidential; F00891/CONF/RED, Specialist Prosecutor, *Confidential Redacted Version of ‘Prosecution Request to Amend the Exhibit List and for Protective Measures’*, KSC-BC-2020-06-F00891, dated 20 July 2022 (“Prosecution Rule 102(2) Submission”), 21 July 2022, confidential. The confidential redacted versions of these filings became available to the Defence on 22 July 2022.

² See KSC-BC-2020-06, F00783, Veseli Defence, *Veseli Defence Response to Prosecution Request* KSC-BC-2020-06/F00767, 25 April 2022, confidential, para. 3.

³ Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”).

II. PROCEDURAL HISTORY

4. On 26 October 2020, the Pre-Trial Judge confirmed the revised indictment against Mr. Krasniqi and his co-Accused.⁴

5. On 23 November 2020, the Pre-Trial Judge issued the Framework Decision on Disclosure of Evidence and Related Matters, which outlined the principles underpinning disclosure, established a calendar for disclosures in this case, and adopted a redaction regime.⁵

6. On 17 December 2021, following the order issued by the Pre-Trial Judge at the Eighth Status Conference,⁶ the SPO filed its Pre-Trial Brief, Witness and Exhibit Lists.⁷ On 28 January 2022, the SPO filed its Rule 109(c) Chart.⁸

7. On 31 January 2022, the SPO requested authorisation to amend its Exhibit List by adding further materials under Rule 102(1)(b).⁹ On 8 March 2022, this request was granted by the Pre-Trial Judge.¹⁰ On 18 March 2022, the SPO submitted the Amended

⁴ KSC-BC-2020-06, F00026/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 19 November 2020, confidential.

⁵ KSC-BC-2020-06, F00099, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 23 November 2020, public.

⁶ KSC-BC-2020-06, In Court -- Oral Order, Order on SPO's Pre-Trial Brief and Related Material According to Rule 95(4)(a) ("Order on Pre-Trial Brief and Related Material"), 29 October 2021, public.

⁷ KSC-BC-2020-06, F00631/RED, Specialist Prosecutor, *Public Redacted Version of 'Submission of Pre-Trial Brief, with Witness and Exhibit Lists'*, KSC-BC-2020-06-F00631, dated 17 December 2021, 21 December 2021, public, with Annexes 1-3, confidential redacted. See KSC-BC-2020-06, F00631/RED/A03/CONF/RED, Specialist Prosecutor, *Annex 3 to Public Redacted Version of 'Submission of Pre-Trial Brief, with Witness and Exhibit Lists'*, KSC-BC-2020-06/F00631, dated 17 December 2021", 21 December 2022, confidential.

⁸ KSC-BC-2020-06, F00663, Specialist Prosecutor, *Prosecution Submission of Rule 109(c) Chart*, 28 January 2022, public, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential redacted.

⁹ KSC-BC-2020-06, F00670/CONF/RED, Specialist Prosecutor, *Confidential Redacted Version of 'Prosecution Notice of Rule 102(1)(b) Disclosure and Related Requests'*, 31 January 2022, confidential.

¹⁰ KSC-BC-2020-06, F00727/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures*, 8 March 2022, confidential, para. 54.

Exhibit List.¹¹ On 14 April 2022, the SPO submitted a corrected version of its Amended Exhibit List.¹²

8. On 24 February 2022, the SPO filed a second application to amend its Exhibit List.¹³ This application was granted on 22 April 2022.¹⁴ On 29 April 2022, the SPO submitted another Amended Exhibit List.¹⁵

9. On 13 April 2022, the SPO filed a third application to amend its Exhibit List.¹⁶ On 8 July 2022 the application was granted.¹⁷ On 25 July 2022, the SPO filed an amended Exhibit List.¹⁸

10. On 20 April 2022, the SPO filed a fourth application to amend its Exhibit List, on the basis of materials generated in case KSC-BC-2020-05.¹⁹ On 19 July 2022, the SPO filed a supplement to this request.²⁰

¹¹ KSC-BC-2020-06, F00738, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 18 March 2022, public, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential.

¹² KSC-BC-2020-06, F00768, Specialist Prosecutor, *Prosecution Submission of Corrected Version of KSC-BC-2020-06/F00738/A02*, 14 April 2022, public, with Annex 1, confidential.

¹³ KSC-BC-2020-06, F00708, Specialist Prosecutor, *Prosecution Rule 102(2) Submission and Related Requests*, 24 February 2022, confidential, with Annexes 1-2, confidential, and Annex 3, strictly confidential and *ex parte*.

¹⁴ KSC-BC-2020-06, F00779, Pre-Trial Judge, *Decision on Specialist Prosecutor's Rule 102(2) and Related Requests*, 22 April 2022, confidential, para. 55.

¹⁵ KSC-BC-2020-06, F00788, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 29 April 2022, confidential, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential.

¹⁶ KSC-BC-2020-06, F00767, Specialist Prosecutor, *Prosecution Request to Amend the Exhibit List and for Protective Measures*, 13 April 2022, confidential, with Annexes 1, 4-9, confidential, and Annexes 2-3, strictly confidential and *ex parte*.

¹⁷ KSC-BC-2020-06, F00876/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures* ("Third PTJ Decision"), 8 July 2022, confidential, para. 107.

¹⁸ KSC-BC-2020-06, F00896, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List and Related Submissions*, 25 July 2022, confidential, with Annexes 1, 4-5, strictly confidential and *ex parte*, and Annexes 2-3, confidential.

¹⁹ KSC-BC-2020-06, F00774/CONF/RED, Specialist Prosecutor, *Confidential Redacted Version of 'Prosecution Request to Amend the Exhibit List and for Protective Measures (KSC-BC-2020-05)'*, 20 April 2022, confidential, with Annex 1, confidential, and Annexes 2-16, strictly confidential and *ex parte*.

²⁰ KSC-BC-2020-06, F00888, Specialist Prosecutor, *Prosecution Supplement to Filing F00774*, 19 July 2022, confidential, with Annexes 1-5, strictly confidential and *ex parte*.

11. On 21 July 2022, the SPO filed a fifth application to amend its Exhibit List,²¹ and a separate request to add two witnesses to its Witness List under Rule 102(2).²² These became available to the Defence on 22 July 2022 and are the subjects of the present consolidated response.

III. APPLICABLE LAW

12. The right of an accused to a fair trial is enshrined in Article 31 of the Constitution of the Republic of Kosovo (“Constitution”), Articles 1(2) and 21(2) of Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”), and Article 6(1) of the European Convention on Human Rights (“ECHR”). As part of his or her fair trial rights, an accused is entitled to have adequate time and facilities for the preparation of his or her defence, pursuant to Article 30(3) of the Constitution, Article 21(4)(c) of the Law, and Article 6(3)(b) of the ECHR; and to be tried within a reasonable time pursuant to Article 31(2) of the Constitution, Article 21(4)(d) of the Law, and Article 6(1) of the ECHR.

13. Article 21(6) of the Law further establishes that **all material and relevant evidence or facts in possession of the SPO which are for or against the accused** shall be made available to him or her before the beginning of and during the proceedings, subject only to restrictions which are strictly necessary and when any necessary counter-balance protections are applied.²³

14. Rule 102(1)(b) states that within a time limit set by the Pre-Trial Judge, and no later than 30 days prior to the opening of the SPO’s case, it shall make available to the

²¹ Request to Amend the Exhibit List.

²² Prosecution Rule 102(2) Submission.

²³ Emphasis added.

Defence the following material: (i) the statements of all witnesses whom the SPO intends to call to testify at trial, in a language the accused understands and speaks; (ii) all other witness statements, expert reports, depositions, or transcripts that the SPO intends to present at trial; and (iii) the exhibits that the SPO intends to present at trial.

15. Rule 102(2) of the Rules further establishes that any statements of additional SPO witnesses, which have not been disclosed within the time limit pursuant to Rule 102(1)(b) and whom the SPO intends to call to testify at trial, **shall be made available to the Defence as soon as possible and shall be accompanied by reasons for the late disclosure.**²⁴

16. In a previous Decision, the Pre-Trial Judge held that, subject to *timely notice* and *good cause*, amendments to witness and exhibit lists may be permitted.²⁵ Good cause has been equated in other international criminal tribunals with “exceptional circumstances” outside of the control of the submitting party, which have rendered it impossible to include the witness or exhibit in a timely manner.²⁶ The jurisprudence of the International Criminal Court (“ICC”) has further clarified that “[i]nadvertence is not a reason outside of the Prosecution’s control, but lies plainly within it”,²⁷ finding that the Prosecution’s appreciation of the importance of certain documents upon a later review of its evidence collection did not constitute good cause for the addition of those documents to its list of evidence once the deadline had passed.²⁸ A heavy

²⁴ Emphasis added.

²⁵ Third PTJ Decision, para. 25.

²⁶ ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-1733, Trial Chamber VI, *Decision on Prosecution Application under Rule 68(2)(B) and Regulation 35 for Admission of Prior Recorded Testimony of Witness P-0551*, 19 January 2017, para. 7; *Prosecutor v. Bemba et al.*, ICC-01/05-01/13-1191, Trial Chamber VII, *Decision on Prosecution Request to Add 12 Items to its List of Evidence (“Bemba Decision”)*, 27 August 2015, para. 9.

²⁷ *Bemba Decision*, para. 10.

²⁸ ICC, *Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/15-1120, Trial Chamber I, *Decision on the Prosecutor’s Request for an Extension of Time Pursuant to Regulation 35 of the Regulations of the Court and Application to Submit Six Documents under Paragraph 43 of the Directions on the Conduct of the Proceedings, dated 21 December 2017*, 2 February 2018, paras 10-12.

workload has been deemed insufficient to indicate good cause.²⁹ Further, ‘exceptional circumstances’ causing amendments to witness or exhibit lists must always be balanced against the burden caused to the other party.³⁰ Timely notice, in turn, requires that any amendment does not adversely affect an accused’s ability to prepare for trial.³¹

IV. SUBMISSIONS

17. The Defence submits that there is no good cause for the amendment of the SPO’s Exhibit and Witness Lists. This amendment constitutes the fifth such application by the SPO, following a series of ongoing requests over the last seven months. As amendments continue to be permitted over the objections of the Defence,³² there is little reason to believe that this will be the final amendment request. The evaluation of these amendments should thus be *contextualised in the ongoing pattern of SPO amendments*. If this is permitted to continue, the Defence will be condemned to face a never-ending cycle of amendments and the rights of the Accused to a fair trial will inevitably be compromised.

²⁹ STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/PTJ, Pre-Trial Judge, *Decision on Prosecutor Request of 21 December 2012 to Amend the Witness and Exhibit Lists and for Authorisation for Further Disclosure*, 27 February 2013, paras 38-39. See also ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Trial Chamber, *Decision on Accused’s Seventy-Seventh and Seventy-Eighth Disclosure Violation Motions*, 11 March 2013, para. 23, in which technical errors by the Prosecution were deemed insufficient to justify late disclosures.

³⁰ ICC, *Prosecutor v. Abd-Al-Rahman*, ICC-02/05-01/20-379, Pre-Trial Chamber II, *Decision on Two Requests to Vary the Time Limit for Disclosing Incriminating Evidence*, 6 May 2021, para. 27.

³¹ ICTY, *Prosecutor v. Haradinaj et al.*, IT-04-84-T, Trial Chamber I, *Decision on the Prosecution’s Request to Add Two Witnesses to Its Witness List and to Substitute one Witness for Another*, 1 November 2007, para. 4.

³² See KSC-BC-2020-06, F00688, *Thaçi Defence, Thaçi Defence Response to Prosecution Notice of Rule 102(1)(b) Disclosure and Related Requests*, 11 February 2022, confidential; F00689, *Veseli Defence, Veseli Defence Response to Prosecution Notice of Rule 102(1)(b) Disclosure and Related Requests (KSC-BC-2020-06/F00670)*, 11 February 2022, confidential; F00725, *Thaçi Defence, Thaçi Defence Response to Prosecution Rule 102(2) Submission and Related Request*, 7 March 2022, confidential; F00726, *Veseli Defence, Veseli Defence Response to Prosecution Rule 102(2) Submission and Related Requests (KSC-BC-2020-06/F00708)*, 7 March 2022, confidential; F00781, *Thaçi Defence, Thaçi Defence Response to Prosecution Request to Amend the Exhibit List and for Protective Measures*, 25 April 2022, confidential; F00783, *Veseli Defence, Veseli Defence Response to Prosecution Request KSC-BC-2020-06/F00767*, 25 April 2022, confidential; F00792, *Thaçi Defence, Thaçi Defence Response to Prosecution Request to Amend the Exhibit List and for Protective Measures (KSC-BC-2020-05)*, 2 May 2022, confidential.

18. The clearest illustration of the SPO's failure to show good cause for its applications is that a number of the proposed amendments to the Exhibit List are simply the product of the SPO's own oversights in analysing their pool of evidence, in clarifying the information needed from their witnesses before completion of interviews (or at least before the deadline for submitting the Exhibit List and Witness List), and in overseeing the materials in its possession. The SPO actually expressly accepts that it simply "overlooked" no less than five of the documents or categories of documents which it now seeks to add to its List of Exhibits.³³ Overlooking material which was in the SPO's possession all along is not a good cause to permit amendments of the List of Exhibits more than seven months after the expiry of the deadline for its submission.³⁴ Even where the Request to Amend the Exhibit List has been less candid about the SPO's errors, on many occasions the only possible explanation for the delay in making the instant application is the SPO's lack of diligence.³⁵ A clear example is that the SPO has been in possession of Mr. Selimi's and Mr. Thaçi's acknowledgements that they had been notified of certain rights since the dates of their respective interviews in 2019 and 2020.³⁶ There can be no good cause for the SPO's failure to include this material on the List of Exhibits by 17 December 2021.³⁷

19. Moreover, on the occasions where documents were created after the deadline for submission of the List of Exhibits, the SPO has not made its application promptly. There is no good cause for delaying an application until 21 July 2022 in relation to

³³ Request to Amend the Exhibit List, paras 29, 34-35, 40, 44.

³⁴ Order on Pre-Trial Brief and Related Material.

³⁵ Request to Amend the Exhibit List, paras 24-25, 28, 31-32, 41-42.

³⁶ *Ibid.*, para. 25; KSC-BC-2020-06, F00891/A11, *Annex 11 to Prosecution Request to Amend the Exhibit List and for Protective Measures*, 20 July 2022, confidential. The Defence received notification of the Annex on 22 July 2022.

³⁷ Order on Pre-Trial Brief and Related Material.

documents created in March 2022 or April 2022³⁸ - delays of four and three months respectively.

20. Even where the SPO has attempted to explain the obvious and lengthy delays in its application, the material submitted does not demonstrate good cause. The Defence submits that the three examples below highlight the lack of good cause to make an amendment to the List of Exhibits for the fifth time, and illustrate why the SPO's Request should not be considered timely:

Annexes 3-4: Additional W01193 Materials

21. The SPO seeks to add interview transcripts and exhibits from a 2022 interview with W01193.³⁹ No good cause exists for the delay in conducting this interview and seeking to rely on these documents.⁴⁰ The SPO submits that its interview of W01193 in October 2020 was terminated [REDACTED], but wholly fails to explain its failure to resume the interview until April 2022 – 18 months later and around four months after the deadline for submission of the Exhibit List. A general reference to W01193 “[REDACTED]” does not substantiate good cause in the absence of any specific submission identifying [REDACTED] and how they prevented the interview being resumed.⁴¹ Equally unimpressive is the SPO's submission that it received relevant documents in 2021. Without submitting when in 2021 the SPO received the documents, or identifying the number and significance of the documents, the delay to April 2022 remains inadequately explained. The exhibits that the SPO seeks to add

³⁸ Request to Amend the Exhibit List, paras 37, 39.

³⁹ *Ibid.*, para. 9.

⁴⁰ *Contra* Request to Amend the Exhibit List, para. 10.

⁴¹ Request to Amend the Exhibit List, para. 9.

amount to around 571 pages of extra materials.⁴² Good cause has not been shown for adding this substantial volume of material to the List of Exhibits.

Annex 5: Additional [REDACTED] Interview Transcripts

22. The explanation for the delay in seeking to rely on additional interview transcripts regarding [REDACTED] is also inadequate.⁴³ The SPO initially interviewed [REDACTED] at some point in 2019 (the actual date of the interview has been redacted for reasons which are unclear, preventing the Defence from addressing it in these submissions).⁴⁴ It was not until three years later, in 2022, that the SPO conducted its follow-up interview. No explanation is offered for the failure to identify and carry out a follow-up interview within the time-limit for filing the List of Exhibits imposed by the Pre-Trial Judge. The SPO's "logistical and resource constraints"⁴⁵ do not constitute a good cause to permit amendment to the List of Exhibits.⁴⁶ The application should therefore be denied.

Annex 6: Additional [REDACTED] Materials

23. The SPO submits that having begun an interview with [REDACTED] in December 2020 and having abruptly been forced to stop the interview for [REDACTED], it was only able to clarify and complete the interview with the Witness in May 2022.⁴⁷ Although [REDACTED] is cited as the reason for the stopped interview in 2020, the SPO offers no explanation at all for its failure to resume the interview until

⁴² KSC-BC-2020-06, F00891/A03, Specialist Prosecutor, *Annex 3 to Prosecution Request to Amend the Exhibit List and for Protective Measures*, 20 July 2022, confidential; F00891/A04, Specialist Prosecutor, *Annex 4 to Prosecution Request to Amend the Exhibit List and for Protective Measures*, 20 July 2022, confidential. The Defence received notification of the Annexes on 22 July 2022.

⁴³ [REDACTED].

⁴⁴ [REDACTED].

⁴⁵ *Ibid.*

⁴⁶ See cases cited in para. 16 above.

⁴⁷ [REDACTED].

17 months later in May 2022, more than five months after the deadline for the List of Exhibits. The substantial delay in arranging the second interview with the Witness and the absence of any factual explanation for that delay means that no good cause has been shown to amend the List of Exhibits.

24. The Prosecution Rule 102(2) Submission is similarly vitiated by the SPO's delays. The Defence highlights that Rule 102(2) itself requires the SPO to explain the reasons for late disclosure of witnesses and to provide the materials to the Defence as soon as possible. The SPO has failed to provide a good explanation for its delays. In relation to [REDACTED], by 2-3 March 2021 the SPO had identified, located and met in person with this witness,⁴⁸ yet the SPO did not conduct its interview until the week of 28 March 2022, more than one year later (and after the deadline for submission of the List of Witnesses).⁴⁹ There is no good reason for this delay or for the further delay of four months between the interview and the Prosecution Rule 102(2) Submission. Similarly, the SPO requested assistance from [REDACTED] in interviewing [REDACTED] in February 2021, but failed to interview him until 21 April 2022, 14 months later.⁵⁰ The explanation offered of "scheduling and logistical issues"⁵¹ falls far short of an adequate explanation for a delay measuring 14 months.

25. The Defence submits that it is plain that there is no good cause for the SPO's mistakes, oversights and dilatory conduct of these proceedings. The SPO's applications to amend the List of Exhibits and List of Witnesses should be dismissed for this reason alone.

⁴⁸ [REDACTED].

⁴⁹ *Ibid.*, para. 8.

⁵⁰ [REDACTED].

⁵¹ *Ibid.*

26. In any event, the burden which would be imposed on the Defence by these amendments at this stage of the proceedings provides a further compelling reason to reject the SPO's requests. The Defence emphasises that the requested amendments cannot properly be described as modest or limited. Whilst the Defence has only been provided with eight of the 14 Annexes to the Request to Amend the Exhibit List, those eight Annexes alone total more than 1,100 pages of material. The total number of additional pages which the Defence will be required to review, analyse and digest within three months of the deadline for submitting its Pre-Trial Brief, if these requests are granted, is substantial and obviously burdensome.

27. The reality is that amendments to the List of Exhibits and List of Witnesses *do* prejudice the Defence. During the Tenth Status Conference, the Pre-Trial Judge noted that the Defence "cannot be expected to prepare a defence on a case that is constantly evolving."⁵² The effect of adding items to the List of Exhibits and List of Witnesses is that the Defence is repeatedly forced to re-examine issues and topics which it had previously analysed, drawing time and resources away from other pressing issues. In particular, as emphasised at the Thirteenth Status Conference, the Defence is organising investigations in order to be able to comply with the deadline for the Pre-Trial Brief.⁵³ The addition of new and substantial material to the List of Exhibits and Witnesses risks compromising this deadline. As a further example of the impact of these proposed amendments on trial preparation, at the Thirteenth Status Conference the Defence was invited to make submissions on a deadline for objecting to the admissibility of evidence on the SPO's List of Exhibits.⁵⁴ In addition to the submissions made at that Status Conference in opposition to such a deadline, the Defence can hardly finalise objections to admissibility when the items on the List of Exhibits

⁵² KSC-BC-2020-06, Transcript of Hearing ("Tenth Status Conference"), 4 February 2022, public, p. 928, lines 18-19.

⁵³ KSC-BC-2020-06, Transcript of Hearing ("Thirteenth Status Conference"), 13 July 2022, pp. 1378-1380, 1392-1393.

⁵⁴ *Ibid.*, pp. 1409-1410, 1415-1416.

continue to be amended. Continuing amendments to the List of Exhibits may also lead to changes to the SPO's Pre-Trial Brief, the Rule 109(c) Chart, and the Rule 86(3)(b) Outline. All of these would require additional time and analysis in the context of the new information provided to the Defence. The Defence recognises that the SPO has experienced a confluence of pre-trial deadlines, as is inevitable in the progression of the case, but emphasises that the deadlines it also faces are only compounded by any further amendments to the case materials.

28. The SPO's primary and often repeated argument appears to be that undue prejudice does not arise from the addition of fresh evidence because of the late disclosure requirement for items associated with protected witnesses.⁵⁵ The fact that protective measures are required for a number of witnesses to whom the evidence relates,⁵⁶ does not excuse or justify prosecutorial oversights in assembling the relevant materials for their List of Exhibits or Witnesses. Further, that witness materials will not be disclosed until 30 days before their testimony or before trial, does not alter the future burden that will be placed on the Defence during the trial period in assessing the additional information provided.⁵⁷ Self-evidently, the more documents, and the more witness materials, are disclosed to the Defence 30 days before testimony or 30 days before trial, the greater the burden that will be imposed on the Defence during those relatively short periods. Adding material to the already vast quantity of redacted material in this case does and will compromise the fairness of proceedings.

29. Moreover, the SPO's request to add further witnesses to its List is wholly inconsistent with the need to streamline this case. Streamlining is an ongoing and vital

⁵⁵ Prosecution Rule 102(2) Submission, para. 9; Request to Amend the Exhibit List, paras 11, 15, 24, 28, 31, 48.

⁵⁶ The SPO submits this justification for materials relating to 19 witnesses, *see* Request to Amend the Exhibit List, paras 11-12, 14-15, 24, 27-28, 30-31, 33-34, 36, 38, 45-46, 48.

⁵⁷ ICTY, *Prosecutor v. Milutinović et al.*, IT-05-87-T, Trial Chamber, *Second Decision on Prosecution Motion for Leave to Amend its Rule 65ter Witness List to Add Wesley Clark*, 16 February 2007, para. 17.

concern, raised by the Pre-Trial Judge during the Tenth,⁵⁸ Eleventh,⁵⁹ Twelfth,⁶⁰ and Thirteenth⁶¹ Status Conferences as a core topic for discussion, in an effort to maintain pre-trial and trial deadlines. The Defence notes that in the course of its oral submissions about streamlining at the Thirteenth Status Conference on 13 July 2022, the SPO made no mention whatsoever of adding witnesses to its list but submitted instead that its witness list “remains up to date and current in terms of the witnesses that we intend to rely upon”.⁶² Only one week after making that oral submission, the SPO filed its Prosecution Rule 102(2) Submission.⁶³ The number of witnesses on the SPO’s List is already manifestly inconsistent with Mr. Krasniqi’s right to be tried within a reasonable time.⁶⁴ The addition of witnesses to an already bloated list, suggests that the SPO is in fact not streamlining its case, but doing exactly the opposite. The Prosecution Rule 102(2) Submission should be rejected because it is incompatible with Mr. Krasniqi’s right to trial within a reasonable time.

V. CONCLUSION

30. For the foregoing reasons, the Defence asks the Pre-Trial Judge to dismiss the SPO’s request to amend its Evidence List and to add two witnesses (and their associated materials) to its Witness List.

⁵⁸ Tenth Status Conference, p. 950.

⁵⁹ KSC-BC-2020-06, Transcript of Hearing, 24 March 2022, public, p. 1066.

⁶⁰ KSC-BC-2020-06, Transcript of Hearing, 20 May 2022, public, p. 1221.

⁶¹ Thirteenth Status Conference, pp. 1327, 1388.

⁶² *Ibid.*, p. 1418, lines 20-21.

⁶³ See also KSC-BC-2020-06, F00885, Specialist Prosecutor, *Prosecution Submission of Corrected and Lesser Redacted Witness List*, 18 July 2022, public, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential, para. 2, in which the SPO notes that “the SPO’s witness list remains up-to-date and current in terms of the witnesses intended to be relied upon”.

⁶⁴ The Defence has previously highlighted this issue in KSC-BC-2020-06, F00810, Krasniqi Defence, *Krasniqi Defence Proposals for Streamlining the Case*, 20 May 2022, confidential.

Word count: 4,359



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