

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
Judge Christoph Barthe
Judge Guénaél Mettreaux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hashim Thaçi
Specialist Counsel for Kadri Veseli
Specialist Counsel for Rexhep Selimi
Specialist Counsel for Jakup Krasniqi

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Public Redacted Version of 'Joint Defence Request for Relief Pursuant to Article 21(4) of the Law and Rule 143 of the Rules'

Specialist Prosecutor's Office

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I. INTRODUCTION

1. The Defence for Mr Thaci, Mr Veseli, Mr Selimi, and Mr Krasniqi (“The Defence”) file this request for relief pursuant to Article 31 of the Kosovo Constitution, Articles 1(2), 3(2)(e), 21(2), 21(4) of the Law,¹ and Rules 116 and 143 of the Rules,² in order to ensure the fairness of the trial and preserve the rights of the Accused, in particular the rights to have adequate time and facilities to prepare its case and to confront witnesses. The Defence hereby asks the Trial Panel to exercise control over the order of questioning of SPO witnesses and the SPO presentation of its case, so as to make the questioning and presentation effective for the ascertainment of the truth, in accordance with Rule 143(4)(a) of the Rules.

2. As trial is due to commence in less than three weeks’ time, the Defence submits that even if the order of the SPO’s witnesses is amended, it will need an adjournment, in order to readjust its preparations and ensure it is in a position to cross-examine the SPO’s initial witnesses. Under the circumstances, in particular the disclosure of 56,000 pages of de-redacted evidence on 30 January 2023, the Defence submits that an adjournment of no less than four weeks following opening statements will be required.

II. PROCEDURAL BACKGROUND

3. At the Status Conference on 16 December 2022, the Trial Panel decided that the trial should start on 1st March 2023 and ordered the SPO to provide, by 1 February 2023, the list of the first 12 witnesses it intends to call to testify.³

¹ Law N° 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”).

² KSC-BD-03/Rev3/2020, Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, 2 June 2020 (“Rules”).

³ Oral Order 3, 16 December 2022, pp. 1773-1774.

4. On 27 January 2023, the Defence was notified of an unredacted Indictment, including new allegations against the four Accused.⁴

5. On 30 January 2023, the SPO disclosed Disclosure Packages 656, 657, 658 and 659 pursuant to Rule 102(1)(a), Rule 102(1)(b), Rule 103 and Rule 102(3), containing, respectively, 636, 1358, 203 and 361 items, which correspond to lesser redacted, redacted or unredacted versions of material previously disclosed or previously withheld under those Rules. Through these four disclosure batches, the SPO disclosed the identity of **74 witnesses** who benefited previously from the belated disclosure of their identity. There remain **24 witnesses** whose material is still redacted at this point in time. On the same day, the SPO notified an additional Disclosure Package, 660, pursuant to Rule 102(3), containing one item. Thus, on 30 January 2023 only, the Defence was disclosed **2,559 items**, corresponding to a total of **56,072 pages**.⁵

6. Since then, the Defence has been disclosed eleven additional Disclosure Packages by the SPO, 661 (19 items related to [REDACTED]), 665 (5 Rule 102(3) items), 666 (10 Rule 102(1)(a) items), 667 (109 Rule 102(1)(b) items), 668 (120 items corresponding to [REDACTED]), 669 (6 Rule 102(1)(b) items), 670 (2 Rule 102(1)(b) items), 671 (10 Rule 103 items), 672 (3 Rule 102(1)(a) items), 673 (6 Rule 102(1)(b) items), and 674 (81 Rule 102(1)(b) items).

7. On 1 February 2023, the SPO filed the Prosecution submission of list of first 12 witnesses and associated information,⁶ including five witnesses whose identity was disclosed on 30 January 2023 only,⁷ covering a wide geographical, territorial and

⁴ KSC-BC-2020-06/F00999/A01, Confidential (“Indictment”). See, in particular, paras. 41, 42, 43, 49, 66, 115, 120, 139, 149.

⁵ Disclosure 656 (636 items, 16,702 pages), Disclosure 657 (1,358 items, 22,962 pages), Disclosure 658 (203 items, 5,368 pages), Disclosure 659 (361 items, 11,035 pages) and Disclosure 660 (1 item, 5 pages).

⁶ KSC-BC-2020-06/F01243/A01, Confidential.

⁷ [REDACTED].

substantial scope of the Indictment, and related to a significant number of other SPO witnesses.

8. In the meantime, the Defence is subject to the following litigation schedule, while concurrently preparing the cross-examination of these first 12 witnesses:

- 10 February: Response to 'Prosecution request to amend the exhibit list and related matters' (F01238)
- 13 February: Notification regarding cross-examination and objections to materials for first 12 SPO witnesses (Oral Order 9, 18 January 2023)
- 15 February: Amended or supplemental notice of alibi that complies with the requirements of Rules 95(5) and 104(1)(a) (F01231) – SPO Preparation conference
- 20 February: Notice of any defence not outlined in Rule 95(5) or the Defence PTB, with (i) a general description of that defence; (ii) an indication of the legal basis relied upon to advance such a defence; and (iii) the relief sought. (TP order on the conduct of the proceeding, F01226/A01, para. 45); *and* Response to Rule 154 motion for first 12 witnesses (Oral Order 3, 18 January 2023)
- 22 February: Response to any bar table motions filed by the SPO (Oral Order 4, 16 December 2022); *and* Submissions on legal grounds to challenge applications for admission of victims participating in proceedings (Oral Order 4, 18 January 2023)
- 1 March: Motions for adjudicated facts (Oral Order 5, 18 January 2023)
- 22 March: Response to Rule 155 motion (Oral Order 6, 18 January 2023)
- 27 March : Response to Rule 154 motion for second 12 witnesses (Oral Order 3, 18 January 2023)
- 31 March: Notification of the names and current contact information of witnesses, and any other evidence on which the respective Accused intends to rely to establish the alibi (F01231)

III. APPLICABLE LAW

9. The right to a fair trial is an essential component of any democratic society, enshrined in Article 31 of the Kosovo Constitution, Articles 1(2), 3(2)(e) and 21(2) of the Law and Article 6(1) of the European Convention of Human Rights (“ECHR”). In particular, pursuant to Article 21(4)(a), (c) and (f) of the Law, and ECHR 6 (3)(a), (b), and (d), the accused is entitled to be informed promptly and in detail of the nature and cause of the charge against him or her; to have adequate time and facilities for the preparation of his or her defence; and to examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.⁸

10. Pursuant to Articles 19(3), 21, 40 and Rule 116(1) of the Rules, the Panel shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules, with full respect for the rights of the accused. The Panel, having heard the parties, may adopt such procedures and modalities as are necessary to facilitate the fair and expeditious conduct of proceedings. It may give directions for the conduct of fair and impartial proceedings.⁹

11. Pursuant to Rule 143(4)(a) of the Rules, “[u]pon an objection raised by a Party or proprio motu, the Presiding Judge may exercise control over the mode and the order of questioning witnesses and presenting evidence so as to: (a) make the questioning and presentation effective for the ascertainment of the truth [...]” While the calling party has a discretion as to the order presentation of its witnesses, there are circumstances in

⁸ *Gregacevic v. Croatia*, Application No. 58331/09, 10 July 2012, paras. 49-52; *Huseyn and Others v Azerbaijan*, Application Nos. [35485/05](#), [45553/05](#), [35680/05](#) and [36085/05](#), Judgment, 26 July 2011, paras 174-178; *Mattoccia v. Italy*, Application No. 23969/94, (First Section), 25 July 2000 paras. 58-72; *X. v. Belgium*, no. [7628/76](#), Commission decision of 9 May 1977, Decisions and Reports (DR) 9, p. 172.

⁹ KSC-BC-2020-06/F01250, Decision on Taçi Defence Motion Regarding the Preservation of Evidence, Public, para. 12.

which intervention by the Chamber is warranted.¹⁰ At the ICTY, it has been held to be incumbent on the bench to oversee the order of presentation of Prosecution witnesses where necessary to avoid confusion, and to ensure some logic to their order of presentation.¹¹

12. On 2 February 2023, the Trial Panel issued the Decision on Thaçi Defence Motion Regarding the Preservation of Evidence, in which it stressed that *“it is in principle for the calling party to decide the order in which to call its witnesses. However, the Panel could step in to modify the proposed order of calling of witnesses where, for instance, fairness of proceedings demand or to ensure that evidence is presented in an intelligible manner.”*¹²

13. On same day, the Trial Panel issued its Decision on Thaçi Defence Request for a Finding of Disclosure Failure.¹³ It found that the SPO has failed to fully comply with its disclosure obligations under Rule 103 of the Rules, to the prejudice of the Defence.¹⁴ It stressed that *“[i]t comes, however, at a critical juncture in the case when final preparations for trial are taking place. It also takes place late in the preparation of the case and long after the point of “immediacy” foreseen by Rule 103. The failure is therefore not a minor one.”*¹⁵ As appropriate measures pursuant to Rule 110 of the Rules and consistent with the importance of strict and timely compliance with disclosure obligations in the overall context of a fair and expeditious trial, the Trial Panel ruled that *“any Defence’s requests to postpone the testimony of SPO witnesses whose associated evidentiary material was or will be disclosed in an untimely manner will be given due*

¹⁰ ICC, *Prosecutor v. Al Hassan*, Decision on Prosecution’s Witness Order and Variation of Time Limit for Filing Applications for In-Court Protective Measures, 22 July 2020, para. 12. In this case, The Trial Chamber invited the parties to engage in *inter partes* consultations with a view to achieving agreement regarding the order of the Prosecution’s first 10 witnesses.

¹¹ ICTY, *Prosecutor v. Seselj*, IT-03-67, Transcript, 17 August 2007, p.1391.

¹² *Ibid.*, para. 39.

¹³ KSC-BC-2020-06/F01245, Public.

¹⁴ *Ibid.*, paras 28, 33.

¹⁵ *Ibid.*, para. 28.

consideration by the Panel where the belated disclosure of relevant material demonstrably impacted the Defence's ability to prepare effectively."¹⁶

IV. SUBMISSIONS

14. After reviewing the first 12 witnesses proposed by the SPO, the Defence can decipher very little coherence among them.¹⁷ The list includes all types of witnesses – international figure, KLA members [REDACTED], crime scene witnesses - testifying about various incidents in geographically disparate areas of Kosovo and Albania over a long time frame, *i.e.*, from at least March 1998 up to September 1999. The Defence notes that it is still operating with a highly redacted version of the SPO's Pre-Trial Brief, which continues to severely impair its overall view of the SPO case.

15. Additionally, the SPO has declined to provide concise witness statements for even the first 12 witnesses *in lieu* of the full SPO transcripts that the Defence could use to prepare cross-examination. As a result, the Defence has been forced, since 30 January, to trawl thousands of pages of transcripts to understand where particular allegations come from. The challenge of this task is compounded by the lack of coherence between the witnesses; the organisational and administrative impact of receiving the de-redacted materials for 74 witnesses on 30 January 2023; and the vast amounts of evidence that the SPO seeks to tender at the outset of its case. This has placed the Defence in an untenable position vis-à-vis its preparations for the start of trial.

16. The Defence has sought to sound the alarm from at least June 2021 regarding the cumulative effect of the redactions in this case expiring 30 days before the start of trial.¹⁸ It is now less than three weeks to the start of trial and the Defence finds itself

¹⁶ *Ibid.*, para. 33.

¹⁷ KSC-BC-2020-06/F01243/A01, Confidential.

¹⁸ F00351, Veseli Defence Response to SPO Request KSC-BC-2020-06/F00339/CONF/RED

in a wholly untenable situation as a consequence of as a consequence of the SPO's decisions about the management of its own case.

17. The Defence wishes to highlight the following specifics, with respect to the work that is required to prepare just the first four witnesses proposed by the SPO. The witness statements and exhibits from the first four witnesses alone which were disclosed in a de-redacted form to the Defence on 30 January 2023 amounts to almost **3,000 pages**. These 3,000 pages represent only the tip of the iceberg.

18. Each SPO witness exists within a constellation of evidence that includes other witnesses and documents relating to similar events. The Defence must obtain an understanding of the constellation as a whole in order to properly assess the a witness's significance and prepare (or decline) to cross-examine them. It is of critical importance, for instance, that the Defence understands not only what any one witness from Drenoc says, but also how that evidence fits into the accounts of all the other witnesses that give evidence about Drenoc around the same time period.

19. 30 January 2023 was the first time that the Defence had access to the majority of evidence surrounding many of the allegations on the indictment. An examination of just the four witnesses, and the distinct areas and/or allegations to which their evidence relates, allows a more informed assessment of the Defence's task over the next 20 days. The Defence submits that it is self-evidently not possible on the current SPO proposal for the Defence professionally to start a trial with these witnesses on 1 March 2023.

20. The SPO's first witness, [REDACTED], deals with a new direct allegation against three accused, [REDACTED], revealed to the Defence for the first time on 27 January 2023 and with the relevant evidence being provided to the Defence on 30

("Seventh Request for Protective Measures"), 15 June 2021, paras. 8-9.

January. So far, the Defence has identified 51 distinct individuals who gave interviews with the SPO or have other prior statements and who are asked about this incident or who provide accounts related to this incident. Each of these 51 witnesses must be reviewed as a priority.

21. [REDACTED]'s allegation concerns events that relate to an alleged detention site in [REDACTED]. On 30 January, the Defence received the de-redacted evidence of 15 witnesses whose anticipated testimony directly relates to the [REDACTED] allegations and must be reviewed and prepared in order to properly determine whether and how to cross-examine [REDACTED].¹⁹ This includes:

- [REDACTED] - who are themselves not even listed among the first forty witnesses;
- Five individuals who have given evidence of [REDACTED] allegedly detained at the same time and in the same place as [REDACTED];
- Four witness who have given evidence concerning the alleged detention of individuals detained in the same location and around the same time [REDACTED]; and
- Three [REDACTED] that provide evidence directly relevant to the allegations in [REDACTED].

22. These 15 witnesses represents approximately **4,000** pages of effectively new evidence which were received by the Defence on 30 January 2023. In addition to these 15 witnesses, there are other [REDACTED] witnesses (a) whose evidence was already de-redacted, which the Defence must now revisit in light of these disclosures, and (b)

¹⁹ Five of these witnesses overlap with the first category of witnesses which discuss the new indictment count.

whose evidence the Defence does not yet have in de-redacted form, which creates a further obstacle to adequate preparation.²⁰

23. Additionally, on 30 January 2023, the Defence received significant quantities of documents from [REDACTED], which must be integrated into its preparation. This includes prior testimony from SPO witnesses which has not been linked to these witnesses in Legal Workflow. This amounts to approximately **700 pages**.

24. The SPO's second witness, [REDACTED], discusses an alleged detention in [REDACTED], (which also involves [REDACTED] a delayed disclosure witness, and [REDACTED]); [REDACTED]. The witness's own materials, which were subject to extensive redactions up to 30 January 2023, **amounts to 900 pages**. Additionally, newly received evidence relating to the [REDACTED] events amounts to a further **158 pages**.

25. With respect to the alleged detention in [REDACTED], this represents an entirely separate and distinct location and time period from either the prior witness the SPO proposes or the next witness. The Defence is still in the process of identifying overlapping witnesses connected to [REDACTED], so as to understand this completely distinct section of this indictment.

26. The SPO's third witness is [REDACTED]. The Veseli Defence has repeatedly stressed that it will likely need time to investigate the allegations contained in this statement. The Defence previously agreed with the SPO to postpone any request to delay his testimony until after receiving his de-redacted materials.²¹ The Defence has now reviewed the de-redacted material relating to [REDACTED] and it is essential that his evidence be postponed so that the Defence has the opportunity to properly

²⁰ See F01261, Prosecution Request to Vary Protective Measures, 7 February 2023, para. 3.

²¹ See attached email correspondence between SPO and Veseli Defence dated 19 December 2023.

investigate the wide-ranging and highly incriminating allegations made by this witness. The Defence has now made this request to the SPO, simultaneously with the filing of this Request.

27. In addition to allegations concerning [REDACTED], [REDACTED] also requires the Defence to prepare cross-examination for allegations surrounding [REDACTED]. This requires familiarity with 5 newly disclosed [REDACTED] witnesses [REDACTED]²², three newly disclosed [REDACTED] witnesses ([REDACTED]), seven [REDACTED] witnesses who were already disclosed to the Defence but now need to be revisited ([REDACTED]) and 10 newly disclosed [REDACTED] witnesses ([REDACTED]). The newly disclosed material alone relating to these locations amounts to approximately **3,000** pages.

28. The SPO's fourth witness, [REDACTED], is anticipated to give evidence on yet another entirely separate location ([REDACTED]) which relates to an entirely different constellation of victims and witnesses. The newly disclosed material, pertaining to delayed disclosure witnesses [REDACTED], amounts to approximately **400** pages. However, the Defence must also revisit the evidence of: [REDACTED]; as well as KLA organisational witnesses [REDACTED].

29. This brings the estimated total number of newly de-redacted pages that the Defence must study and assimilate, as a priority, in order to be ready for just the first four SPO witnesses, to **11,200** pages.

30. The Defence stresses that this is simply the reading necessary to understand the related Rule 102(1)(b) evidence for the first four witnesses. It does not include other basic preparation tasks such as cross-referencing the newly de-redacted names and

²² While not a delayed disclosure witness, a significant amount of material pertaining to this witness was nonetheless disclosed on 30 January 2023.

information against the Rule 103 material, performing any investigation or taking instructions on this material from the defendants.

31. The Defence recalls that as early as the status conference of 16 December 2022, the Trial Panel asked the SPO to clarify how it *“intend[s] to present its case in general terms? In other words, will witnesses be called by categories, such as crime base or alleged command structure, or in any particular order, or will the SPO follow a chronological order or some other method?”*.²³ The SPO response was evasive and unsatisfactory. The SPO was asked again to clarify how it intended to structure its case during the Trial preparation conference of 18 January 2023, be it by crime site, or in a chronological order, and the SPO’s response was similarly unconvincing.²⁴ This led the Presiding Judge to observe that *“[o]ne of the beauties of the adversarial system is that for a prosecution to be successful, they have to present something that is coherent, that is understandable to these four people. And if it isn’t, it won’t be successful.”*²⁵ Instead of heeding these warnings, the SPO has opted instead for trial by ambush.

32. The Defence submits that the lack of structure of the SPO case in any coherent order is detrimental to the Defence. Indeed, the sporadic approach of the SPO requires the Defence to be able to cross-examine witnesses on almost the entire case file from the start of the trial, while it has just been disclosed 46 000 pages of documents. At this stage, the Trial Panel’s intervention is warranted to control the ordering of SPO witnesses, in accordance with Rule 143(4)(a) of the Rules, in order to make the SPO *“presentation effective for the ascertainment of the truth”*, and that the SPO case be *“presented in an intelligible manner”*.²⁶

²³ KSC-BC-2020-06, Transcript of Status Conference, 16 December 2022, p. 1728 l. 24 – p. 1729 l. 2.

²⁴ KSC-BC-2020-06, Transcript of Trial Preparation Conference, 18 January 2023, pp. 1818-1827.

²⁵ Ibid., p. 1827, l. 4-9.

²⁶ KSC-BC-2020-06/F01250, Decision on Taçi Defence Motion Regarding the Preservation of Evidence, Public, para. 39.

33. The Defence points out that reading for the purposes of witness preparation is painstaking, as it requires frequent re-reading, note-taking, cross-referencing, and examining associated exhibits. Based on experience, the Defence estimates that it can properly read and analyse **150 pages** of SPO transcripts per person, per day to the exclusion of all other work. Given the current litigation schedule, however, no member of the team has the luxury of focusing exclusively on witness preparation. As well as preparing for the SPO's first 12 witnesses, the Defence must (*inter alia*):

- a. submit challenges to the admission of **200** documents that the SPO proposes to tender through the first 12 witnesses by 13 February;
- b. respond to **97** Rule 154 statements that they intend to tender through the first 12 witnesses by 20 February;
- c. respond to a bar table motion of over **1,000** exhibits by 22 February; and
- d. prepare adjudicated facts by 1 March 2023.

This must all be done while preparing for opening statements, conducting any investigation triggered by the new information, and reviewing the new allegations with the Accused. There is simply not enough time.

34. Of the SPO's first five witnesses, **four** of them are witnesses whose identity was disclosed on 30 January 2023, [REDACTED]. In addition, among the first twelve witnesses, the identity of a fifth witness was disclosed on 30 January 2023, [REDACTED]. The Defence strongly objects to the appearance of these **five** witnesses at the very outset of trial and asks that their testimony be postponed to the end of the list submitted on 1 February 2023, in order to allow the Defence to have sufficient time to investigate them and prepare their cross-examination, in accordance with Article 21(4)(c) and (f) of the KSC Law.

35. While the sheer volume of information described above gives rise to serious professional concerns by the Defence, the type of information is highly incriminating

relative to other witnesses and makes preparation all the more rigorous and time-consuming. In particular, the SPO wants to call [REDACTED] as its first witness. [REDACTED] would testify about [REDACTED]. She allegedly [REDACTED].²⁷ This allegation was unknown to the Defence until 27 January 2023, while it is one of the rare allegations which concerns the direct involvement of the Accused in the alleged crimes. A 30 days' notice to prepare for such an allegation is insufficient and unfair to the defence; to call this witness first is highly prejudicial. The SPO has disclosed more than 150 documents related to this witness and intends to tender 73 items in the course of its examination-in-chief. The Defence notes that both the witness and a local court²⁸ conducted investigations [REDACTED]. The Defence needs to be allocated sufficient time to investigate this allegation and access the corresponding case file and letters exchanged, the SPO disclosure being potentially incomplete.

36. In this regard, the Defence stresses that it was disclosed only on 30 January 2023 four transcripts of interview of the four accused about [REDACTED], as both incriminating and exculpatory,²⁹ as well as [REDACTED].³⁰ Yet, Rule 102 of the Rules explicitly requires that the SPO discloses to the Defence, as soon as possible, but at least within thirty days of the initial appearance of the Accused, all statements obtained from the Accused. While these statements may have been withheld from the Defence in accordance with a prior decision from the Pre-Trial Judge on protective measures, their non-disclosure until a few weeks before the start of the trial is prejudicial to the Defence, especially when the Defence may need to discuss their content with the first witness called by the SPO.

²⁷ Indictment, paras 66, 149.

²⁸ [REDACTED].

²⁹ See [REDACTED]. These items were disclosed in disclosure packages 657 and 658, pursuant to Rule 102(1)(b) and Rule 103, respectively.

³⁰ [REDACTED] (disclosure package 657, Rule 102(1)(b)).

37. The four [REDACTED] transcripts of interview of the accused have also been classified as exculpatory by the SPO. Their late disclosure at this specific stage of the proceedings, while the start of the trial is imminent, further justifies the postponement of the testimony of [REDACTED], even if the SPO has been authorised to withhold such material. The Defence needs time to explore their exculpatory content through additional investigations.

38. It should be stressed that two Defence teams, the Defence for Mr Thaçi and the Defence for Mr Selimi, specifically asked the SPO, *inter partes*, to be disclosed certain documents related [REDACTED] but such requests were dismissed by the SPO, on, surprisingly, different grounds. More precisely, on 21 March 2022, the Thaci Defence made a request for material containing [REDACTED] pursuant to Rules 102(3) and 103. After confirming receipt of the request in May 2022, it was not until September 2022 that the SPO responded to the Defence stated that the request was **not sufficiently specific**, and refused to provide any further materials unless they were specifically listed in the Rule 102(3) notice. The [REDACTED] interviews of the four accused were not listed in the Rule 102(3) Notice while they were already in the SPO's custody. Given what is now known about the importance placed by the SPO on the allegations regarding [REDACTED] in the context of its overall case against the Accused, its claim that the Defence's request was insufficiently specific is risible. Similarly, a few weeks ago, the Defence for Mr Selimi asked the SPO to disclose the [REDACTED] interview of Mr Selimi, but the SPO replied that it was covered by protective measures.

39. The potential prejudice to the Accused created by the SPO's failure to order their witnesses by specific crime base incidents is evident in the allegations related to [REDACTED]. The SPO intends to start its case with [REDACTED]. Significant portions of her testimony are uncorroborated by other witnesses or documents, according to the evidence disclosed by the SPO thus far. In normal circumstances,

cross-examination would include questions about the lack of corroboration. However, the Defence is unaware whether the SPO intends to call other corroborating witnesses (with accompanying documentary evidence) later in the case but whose identities are being withheld until 30 days before their testimony. This is extremely prejudicial to the Defence's preparation for cross-examination of [REDACTED], which could be avoided if the SPO's witnesses were ordered by crime base incidents so that all witnesses related to a specific event would be disclosed to the Defence prior to the first witness of that event testifying.

40. The Defence further submits that at this stage, it does not have a sufficient knowledge of the SPO case regarding the new allegations set for in the Indictment to be able to meaningfully prepare for trial. Indeed, the Pre-Trial Brief and the Witness List remain extensively redacted. The Defence will be notified a less redacted version of these documents on 15 February 2023 only, *i.e.* fifteen days before the start of the trial. In particular, the Defence notes, regarding [REDACTED]³¹ and [REDACTED].³² In these circumstances, the Defence needs to be able to consult the less redacted version of the SPO pre-trial brief to be able to understand the SPO's position with regard to the qualification [REDACTED]i. This further justifies the postponement of [REDACTED]'s testimony.

41. As to the SPO's third witness, [REDACTED], the Defence observes that his evidence is highly incriminating for the Accused and that it sets down a marker early as regards its anticipated need for additional time to analyse and investigate this witnesses evidence. Despite this, he appears third on the SPO's witness list, scheduled to testify in the first block of testimonies. [REDACTED] is anticipated to give evidence of his knowledge of crimes allegedly committed in [REDACTED]. He alleges that the

³¹ SPOE00213677-SPOE00213680-ET RED2, [REDACTED].

³² 083626-083626-ET RED, [REDACTED].

staff at [REDACTED].³³ He further alleges the [REDACTED].³⁴ Yet the Defence was unaware of the identity of this witness until a week ago. The Defence needs sufficient time to investigate this witness' credibility and to confront his testimony to each newly disclosed witness testifying about [REDACTED].

42. The Defence further stresses that it has obviously not yet been able to investigate any of the three other newly disclosed witnesses, [REDACTED], unknown to the Defence, but requires time to do so.

43. The Defence maintains that there is, at this stage, no pressing reason justifying the appearance of these five newly disclosed witnesses at the start of the trial, none of them providing a full picture of the conflict or of the role of the Accused at the time, which would have been a more logical way to start the trial and to enlighten the Trial Panel and the parties as to the SPO case. On the contrary, for instance, the SPO intends to call [REDACTED]. It would have been more logical to group this [REDACTED] witnesses, who testify only about a single incident and are all relatives, together.

44. It is clear from the above that not only has the SPO failed to adopt a coherent structure of its case, to the prejudice of the Defence, but it also failed to act in good faith in the preparation for the opening of its case. The Selimi Defence has previously highlighted the SPO's lack of candour, setting out:

“the Defence's efforts to correspond with the SPO in good faith on the scheduling of the first 12 SPO witnesses [...] has not managed to prevent these issues arising. [...] [A]t no point did the SPO confirm that it was considering scheduling witnesses

³³ 083088-TR-ET Part 2 Revised, [REDACTED].

³⁴ *Ibid.*, pp. 28, 30.

unknown to the Defence that related to completely new allegations against Mr. Selimi, such as [REDACTED].”³⁵

45. In a similarly misleading representation, the SPO has previously asserted “VESELI is not charged with committing crimes as a direct perpetrator.”³⁶ Yet, the Defence now learns that Mr Veseli is indeed alleged to have directly participated in [REDACTED], and was alleged to have directly participated in this incident at the time that the SPO made this claim.

46. In these circumstances, the Defence, which fully shares the concerns raised in the Selimi Submissions,³⁷ requests an additional two weeks to the Selimi request for a two-week break between the opening statements and the presentation of evidence, with the first SPO witness scheduled to testify on 3 April 2023.

47. The Defence nevertheless submits that this temporary adjournment would be insufficient to remedy the extensive prejudice caused to the Defence by the incoherent presentation of the SPO case through its first 12 witnesses and the delayed disclosure of the five former anonymous witnesses listed among the first 12.

48. In order to ensure the fairness of the trial and the respect of the Accused’s rights to have adequate time and facilities to prepare their case and to confront witnesses, the Defence hereby respectfully requests the Trial Panel to exercise control over the order of questioning of SPO witnesses and the SPO presentation of its case, so as to make the questioning and presentation effective for the ascertainment of the truth, by:

³⁵ F001258, Selimi Defence Submissions on Proposed Trial Schedule and SPO Submission of List of First 12 Witnesses, 6 February 2023 (“Selimi Submissions”), paras. 9-10.

³⁶ F00354, Prosecution Response to Veseli Defence Submissions on Detention Review with Confidential Annex 1, 17 June 2021, para. 11.

³⁷ Selimi Submissions, para. 20.

- a. Ordering that the appearance of the five witnesses whose identity was disclosed on 30 January 2023³⁸ be postponed to the end of the list of the first 12 witnesses submitted on 1 February 2023;
 - b. Enjoining the SPO to adopt a more structured presentation of its case, be it by categories, such as crime base or alleged command structure, or in chronological order.
49. The requested temporary adjournment of four weeks is thus needed to allow the SPO to restructure its case, give notice to the Defence of the new order of appearance of the first prosecution witnesses, and ensure that the Defence be allocated sufficient time to prepare their cross-examination.

V. CONCLUSION

50. For the above reasons, the Defence respectfully requests that the Trial Panel:

ORDER a four-week break between the opening statements and the presentation of evidence, with the first SPO witness scheduled to testify on 3 April 2023;

ORDER that the appearance of [REDACTED] be postponed to the end of the list of the first 12 witnesses submitted on 1 February 2023;

ENJOIN the SPO to adopt a more structured presentation of its case, be it by categories, such as crime base or alleged command structure, or in chronological order.

[Word count: 5,427 words]

³⁸ [REDACTED].

Respectfully submitted on 9 February 2023,



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