



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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

Before: Trial Panel II
Judge Charles L. Smith, III, Presiding Judge
Judge Christoph Barthe
Judge Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Acting Specialist Prosecutor

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Public Redacted Version of 'Prosecution request to amend the exhibit list and related matters with confidential Annexes 1-47', KSC-BC-2020-06/F01238, dated 30 January 2023

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I. INTRODUCTION

1. Pursuant to the Order,¹ Articles 21(6), 35, and 40 of the Law,² and Rules 102(1)(b), 112, and 118(2) of the Rules,³ the Specialist Prosecutor's Office ('SPO') requests: (i) leave to amend the Exhibit List⁴ to include the additional materials identified below ('Requested Amendments'); (ii) authorisation to disclose additional Rule 102(1)(b)(i) materials, which the SPO does not seek to add to its Exhibit List ('Requested Disclosures').⁵

2. In this complex multi-Accused case involving a considerable amount of evidence, amendments to the Exhibit List should be treated with flexibility.⁶ This request is being made: (i) one month prior to the scheduled start of the trial;⁷ and (ii) the same day the identities and lesser redacted materials of delayed disclosure witnesses were provided to the Defence.⁸ The Requested Amendments – which,

¹ Transcript (Trial Preparation Conference), 18 January 2023, p.1901 (ordering the SPO to file its motion to amend the exhibit list by 16.00 on 30 January 2023). *See also* Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Conduct of Proceedings Order'); 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 to 'Prosecution submission of amended exhibit list and related submissions with strictly confidential and *ex parte* Annex 1 and confidential Annexes 2-3', KSC-BC-2020-06/F01154/A01, 13 December 2022, Strictly Confidential and *Ex Parte* ('Exhibit List').

⁵ Annex 1 comprises an index of the materials included at Annexes 2-47. Where relevant, the annexed materials include the original document followed by the English translation. Where needed, appropriate standard redactions have already been applied.

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 Transcript (Trial Preparation Conference), 18 January 2023, pp.1903-1904. *See also* Rule 102(1)(b) (which provides that exhibits should be disclosed within the time limit set by the Panel and no later than 30 days before trial); *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on Prosecution's Request for Leave to Amend its List of Exhibits, KSC-BC-2020-07/ F00321, 23 September 2021 ('Case 07 Decision'), para.22 (where the Trial Panel considered, among other factors, that the relevant SPO application to amend the exhibit list was submitted one month prior to the commencement of the SPO case).

⁸ These 77 witnesses were granted delayed disclosure of their identities until thirty days before trial and/or testimony. *See* Prosecution submission pertaining to select delayed disclosure witnesses, KSC-BC-2020-06/F01208, 13 January 2023, Strictly Confidential and *Ex Parte*, para.2, fn.1.

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.⁹

II. SUBMISSIONS

A. THE PANEL SHOULD AUTHORISE THE REQUESTED DISCLOSURES

3. The Pre-Trial Judge previously considered that disclosure under Rule 102(1)(b) had been memorialised at the pre-trial stage through the Exhibit List.¹⁰ In turn, he found that the SPO could not disclose statements (or exhibits used during such statements) under Rule 102(1)(b), without requesting an amendment of the Exhibit List.¹¹ At this stage of the proceedings, however, the SPO is making final determinations about which Rule 102(1) items it intends to produce and is under an obligation to notify the Defence when it does not intend to tender an exhibit.¹²

4. The SPO does not intend to tender the items comprising the Requested Disclosures and therefore does not seek to add them to the Exhibit List.¹³ This does

⁹ Appeal Decision, KSC-BC-2020-06/IA019/F00006, para.21.

¹⁰ Decision on Specialist Prosecutor's Request for Protective Measures for Certain Information Requested by the Defence Pursuant to Rule 102(3), KSC-BC-2020-06/F01141, 6 December 2022, Strictly Confidential and *Ex Parte* ('6 December 2022 Decision'), para.27.

¹¹ 6 December 2022 Decision, KSC-BC-2020-06/F01141, para.27; Decision on the Specialist Prosecutor's Request for Protective Measures for Certain Rule 102(3) Information Requested by the Defence, KSC-BC-2020-06/F01163, 15 December 2022, Strictly Confidential and *Ex Parte*, paras 31, 77. *See also* Decision on the Specialist Prosecutor's Request for Protective Measures for Certain Information Requested by the Defence Pursuant to Rule 102(3), KSC-BC-2020-06/F01113, 18 November 2022, Strictly Confidential and *Ex Parte*, para.29; Decision on Prosecution Request for Protective Measures for Certain Information Requested by the Defence Pursuant to Rule 102(3), KSC-BC-2020-06/F01137, 2 December 2022, Strictly Confidential and *Ex Parte*, para.27; Decision on Prosecution Request for Protective Measures for Certain Information Requested by the Defence Pursuant to Rule 102(3), KSC-BC-2020-06/F01089, 4 November 2022, Strictly Confidential and *Ex Parte*, para.17.

¹² Conduct of Proceedings Order, KSC-BC-2020-06/F01226/A01, para.48.

¹³ This assessment should not affect the SPO's ability to use such materials, for example, to refresh a witness's recollection or, with leave of the Panel, confront an adverse witness. *See* Rule 143(1)-(2); Conduct of Proceedings Order, KSC-BC-2020-06/F01226/A01, paras 107, 120. Further, the SPO reserves the right to seek authorisation to tender such documents in future if justified due to a change in circumstances, for example, if a witness's mode of testimony changes to Rule 155.

not affect the SPO's obligations under Rules 102(1)(b)(i) and 112 to disclose statements of witnesses it intends to call, once such statements are obtained or identified. Accordingly, the SPO should be authorised¹⁴ – consistent with its obligations under the Rules – to disclose the Requested Disclosures, and any other Rule 102(1)(b)(i) materials after they have been obtained or identified, irrespective of whether they are added to the Exhibit List.

5. The Requested Disclosures consist of statements and associated exhibits: (i) identified during recent disclosure reviews and trial preparations, including items that the Pre-Trial Judge previously declined to authorise for Rule 102(1) disclosure or addition to the Exhibit List; and/or (ii) recently obtained or cleared for disclosure.¹⁵ This request is being made in parallel to the disclosure of the identities of witnesses granted delayed disclosure during the pre-trial stage, thereby permitting the Defence to assess the Requested Disclosures along with the witnesses' complete evidence. Further, the Requested Disclosures are limited in length and scope, are cumulative of and provide limited, if any, additional information to the relevant witnesses' disclosed evidence, will promote a better understanding of the evidence, and will allow the Defence to further test the reliability and credibility of the SPO's evidence and witnesses. Thus, there is no prejudice. Further explanations concerning timing and impact are provided in Annex 1, Sections I-II for each of the Requested Disclosures.

B. THERE IS GOOD CAUSE FOR THE REQUESTED AMENDMENTS

6. As opposed to the Requested Disclosures addressed above, the SPO does intend – if authorised – to tender the items comprising the Requested Amendments. However, at this stage, the SPO is not seeking to admit the Requested Amendments,

¹⁴ The Rules do not foresee judicial authorisation to fulfil this disclosure obligation. However, in light of the Pre-Trial Judge's previous decisions, the SPO requests authorisation.

¹⁵ See Annex 1.

but only to add them to the Exhibit List.¹⁶ As set out in more detail below in relation to each of the Requested Amendments, the SPO has provided timely notice and shown good cause.¹⁷

7. In the interest of judicial economy and to avoid piecemeal requests at the pre-trial stage, which could ultimately cause delay and disruption, the SPO consolidated the Requested Amendments into a combined request,¹⁸ which is now being made 30 days before trial.¹⁹ In this context, this request is being made promptly after obtaining and identifying the Requested Amendments.²⁰ Once obtained and identified, the SPO took necessary measures, including, as appropriate, translation and transcription, to review and, as relevant, prepare this request and the Requested Amendments.

8. The Requested Amendments all relate to known aspects of the SPO's case, including witnesses already on the Witness List,²¹ exhibits already on the Exhibit List, and detention sites and victims.²² As noted above, many of the Requested Amendments relate to delayed disclosure witnesses, whose identities are being disclosed the same day as this request.²³ Further, only a limited part of the Requested

¹⁶ A decision authorising the addition of an item to a Party's exhibit list is without prejudice to the Panel's subsequent decision on whether that item should be admitted into evidence. *See* Case 07 Decision, KSC-BC-2020-07/ F00321, para.16.

¹⁷ Rule 118(2).

¹⁸ The last request to amend the exhibit list was filed in July 2022 and ruled upon in December 2022. The Pre-Trial Judge has acknowledged reasons of judicial economy and considered this factor in assessing whether the SPO presented its applications in a timely manner. *See e.g.* Decision on Prosecution Request to Amend the Exhibit List and for Protective Measures, KSC-BC-2020-06/F01142, 6 December 2022, Strictly Confidential and *Ex Parte*, paras 35, 52, 171, 180. When requesting amendments in future, the SPO will take into account the stage of proceedings and make any necessary requests as soon as practicable. *See also* Conduct of Proceedings Order, KSC-BC-2020-06/F01226/A01, para.82 (providing that, if a document a Party wishes to use in direct examination of a witness is not on its exhibit list, it shall apply to the Panel to amend the list).

¹⁹ *See* fn.7 above.

²⁰ Conduct of Proceedings Order, KSC-BC-2020-06/F01226/A01, para.82.

²¹ Annex 3 to 'Prosecution submission of amended witness and exhibit lists', KSC-BC-2020-06/F01078/A03, 2 November 2022, Strictly Confidential and *Ex Parte* ('Witness List').

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

²³ *See* paras 2, 5 above.

Amendments relate to witnesses in the provisional list of the first 40 witnesses.²⁴ Overall, considering the stage of the proceedings, scope of the case and number of disclosed materials, and the limited nature and scope of the Requested Amendments,²⁵ there is minimal impact on Defence preparations.

1) Exhibits relating to the first 40 witnesses

(i) *Additional W02161 material*

9. [REDACTED] is a publicly available, six-page ICTY statement²⁶ of W02161, which was admitted into evidence in [REDACTED]. This statement was disclosed to the Defence under Rule 103 in October 2020.²⁷ Recently, when preparing for the witness's testimony and the related Rule 154 application, the SPO determined that this statement had not been disclosed under Rule 102(1) or included on the Exhibit List.

10. It contains much of the same information covered in W02161's other previously disclosed material, particularly the transcripts of her testimony in the [REDACTED].²⁸ However, the document also provides additional information concerning various documents and publications prepared and drafted by the witness or under her instructions and supervision.²⁹ The SPO intends to tender this statement under Rule 154, if this request is authorised.

11. As the Defence is already in possession of this publicly available statement, as well as of the bulk of materials relevant to W02161—including all her other prior statements and associated exhibits—this addition would not be prejudicial and,

²⁴ Prosecution submission of provisional list of first 40 witnesses to be called at trial, KSC-BC-2020-06-F01117, 18 November 2022. *See also* KSC-BC-2020-06/F01117/A01.

²⁵ *Compare* Conduct of Proceedings Order, KSC-BC-2020-06/F01226/A01, para.82 (where new material is of significant nature, an opposing Party may seek appropriate relief for preparations).

²⁶ The entire document, including the relevant attestations and declarations pursuant to ICTY Rule 92*bis*, is 10 pages.

²⁷ *See* Disclosure 8. *See also* Disclosure 160.

²⁸ [REDACTED].

²⁹ [REDACTED].

considering the purposes of Rule 154, could ultimately expedite proceedings. The requested amendment should therefore be authorised.

(ii) *Additional W04746 material*³⁰

12. If authorised, the SPO intends to use the below documents during W04746's examination, as they are relevant to his potential biases, motives, and a fulsome understanding and assessment of his evidence. Their importance was reassessed in the context of preparations for his testimony.

13. *Interview communications.* SPOE00129517-00129517, SPOE00129585-00129585 SPOE00129586-00129586, SPOE00129587-00129587, and SPOE00129791-00129791 consist of photographs showing communications between [REDACTED] during and in the context of W04746's SPO interview, including about the interview topics. The items were previously disclosed under Rule 102(3).³¹ Due to the limited nature and contents of the information, addition to the Exhibit List causes no undue prejudice to the Defence.

14. *Facebook post.* SPOE00330366-00330381 is a Facebook post by W04746 [REDACTED], concerning the KSC and KLA. The SPO also seeks to add versions of the same post, showing the editing history of SPOE00330366-00330381.³² Due to the timing of this request and the nature and scope of the requested amendments, there is no undue prejudice to the Defence.

15. [REDACTED] *employment documents.* SPOE00330397-SPOE00330398, SPOE00330438-SPOE00330438, SPOE00330429-SPOE00330429 and SPOE00330442-SPOE00330442 are documents provided to the SPO by [REDACTED]. They relate to W04746's appointment and role as an advisor to [REDACTED]

a. SPOE00330397-SPOE00330398 is [REDACTED]; and

³⁰ Annexes 25-27.

³¹ See Annex 1 (setting out the relevant disclosure history).

³² SPOE00330382-00330382; SPOE00330383-00330383; SPOE00330384-00330384; SPOE00330385-00330385; SPOE00330386-00330386; SPOE00330387-00330387; SPOE00330388-00330388; SPOE00330389-00330389.

b. SPOE00330438-SPOE00330438, SPOE00330429-SPOE00330429 and SPOE00330442-SPOE00330442 are salary statements [REDACTED] for W04746 during his time as [REDACTED].

16. Due to their limited nature and scope, the requested amendments would cause no undue prejudice.

(iii) *Additional [REDACTED] material*

17. 066595-01 is a publicly available video featuring a televised interview with [REDACTED].³³ The importance of the interview, which has been disclosed to the Defence under Rule 102(3) in September 2022,³⁴ was recently reassessed during preparations for the witness's testimony. The interview is relevant and important because [REDACTED] describes, *inter alia*, his activity in the LDK, his arrest by the KLA between [REDACTED], and relations between the KLA and LDK. Due to its limited nature and scope and the timing of this request, there is no undue prejudice to the Defence.

(iv) *Additional [REDACTED] material*³⁵

18. SITF00370755-00370794 is a report of a physical examination of [REDACTED], dated [REDACTED]. It consists of a clinical examination, as confirmed in an investigation hearing in the [REDACTED] case, an assessment of the cause of the injuries sustained,³⁶ and photographs of the injuries.³⁷ SITF00370052-00370069 is testimony in the same case of the expert who authored the report; during this testimony, the expert clarified certain aspects of SITF00370755-00370794. These items are relevant and important to corroborate [REDACTED]'s evidence concerning the injuries he suffered as a result of his treatment at Likoc/Likovac detention site. The relevance and importance of these documents were reassessed in the context of

³³ The transcript is at Annex 28.

³⁴ Disclosures 457, 460, 461, 462.

³⁵ Annex 29.

³⁶ SITF00370755-00370794, pp.1-12.

³⁷ SITF00370755-00370794, pp.33-40.

preparations for [REDACTED]'s testimony. Considering the timing of this request and the limited nature and scope of these items, the requested amendments should be authorised.

(v) *Additional [REDACTED] material*³⁸

19. The SPO requests authorisation to add photographs relating to the Klečkë/Klečka detention site that were shown to [REDACTED] during his SPO interview.³⁹ These photographs were previously disclosed to the Defence pursuant to Rule 102(3).⁴⁰ In November 2022, when conducting further reviews in preparation for this witness's testimony, the SPO determined that these photographs, which were not referenced by ERN during the interview, were used therein.⁴¹ Four other pictures of the Klečkë/Klečka detention site, which were also shown to the witness and are similar to those subject of this request, have already been disclosed under Rule 102(1).⁴²

20. The additional photographs are necessary for a complete understanding of [REDACTED] evidence and, at this time, are among the materials the SPO intends to use with the witness. Thus, and considering that this proposed amendment causes no undue prejudice to the Defence, it should be authorised.

(vi) *Additional [REDACTED] material*

21. [REDACTED]⁴³ is the record of an April 2002 interview, during which [REDACTED] provided corrections to two earlier UNMIK police statements.⁴⁴ While [REDACTED] was not identified as a prior statement until Rule 102(3) reviews in October 2022, the UNMIK statements it concerns were previously disclosed and

³⁸ Annex 30.

³⁹ SPOE00072805-00072805 to SPOE00072809-00072809; SPOE00072811-00072811 to SPOE00072815-00072815 and SPOE00072822-00072822 to SPOE00072826-00072826.

⁴⁰ See Annex 1 (setting out the disclosure history for these photographs).

⁴¹ See 064727-TR-ET Part 5, pp.2-5.

⁴² SPOE00072810-00072810, SPOE00072816-00072816, SPOE00072817-00072817 and SPOE00072818-00072818.

⁴³ [REDACTED]. See Annex 31.

⁴⁴ SITF00184859-00184870 RED; SITF00184871-00184883 RED.

included on the Exhibit List. The SPO intends to tender these UNMIK statements under Rule 154.⁴⁵ For the sake of accuracy and completeness, it is important that [REDACTED] be tendered along with the statements it corrects.

22. Due to the limited nature of the additional information—namely, the corrections made—adding this document to the Exhibit List would cause minimal, if any, prejudice to the Defence. The requested amendment should therefore be authorised.

(vii) Additional W04752 material⁴⁶

23. The SPO received [REDACTED] in response to an RFA in October 2022. [REDACTED] is [REDACTED] memorandum dated [REDACTED], which is supplemental to W04752's previous [REDACTED] statements. These statements have already been disclosed to the Defence under Rule 102(1) and are on the Exhibit List.⁴⁷

24. [REDACTED] is an important addition as it includes W04752's review of and evidence about certain contemporaneous KLA documents, upon which the SPO intends to rely. The document is only three pages and the Defense is already in possession of extensive material relevant to the witness, including all his other prior statements and associated exhibits. The requested amendment would therefore cause no undue prejudice for the Defence.

(viii) Additional W04408 material

25. [REDACTED] is a publicly available two-page Human Rights Watch press release on the detention of Serbian journalists ([REDACTED]) by the KLA in October 1998. It was [REDACTED], who will testify, among other things, on [REDACTED] during which the two journalists were discussed.

⁴⁵ KSC-BC-2020-06/F01117/A01, p.4.

⁴⁶ Annex 32.

⁴⁷ See SPOE00183317-00183342 RED; [REDACTED].

26. The document has been disclosed under Rule 102(3) to all the Defence teams.⁴⁸ In the context of preparations for the concerned witnesses, the importance of this exhibit was determined. The requested amendment is being done 30 days before trial and will not unduly impact Defence preparations. The requested amendment should therefore be authorised.

(ix) Additional W03724 material

27. 050550-050556 consists of two [REDACTED] reports and [REDACTED] correspondence, including a statement of W03724. This item was disclosed under Rule 102(3)⁴⁹ and its nature recently confirmed when comparing the relevant information against W03724's SPO interview. In this respect, the 'statement' in 050550-050556⁵⁰ does not specifically identify W03724 as the source.

28. 050550-050556 is relevant and of sufficient importance to justify its addition, as its parts concern provocative acts by the KLA during periods of ceasefire, detention of Serbian soldiers by KLA members, and other information pertaining to W03724's duties and observations while [REDACTED]. Considering the nature and scope of the materials, and the timing of this request, there is no undue prejudice to the Defence, which already has access to W03724's other disclosed evidence.

2) Exhibits relating to witnesses not in the first 40

(i) Additional W03885 material⁵¹

29. This associated exhibit, a sketch done by W03885 during his SPO interview, was inadvertently overlooked until recent reviews in preparation for W03885's testimony. W03885 was a KLA soldier who served in the [REDACTED] unit. In his SPO interview, he described the location of the headquarters of the [REDACTED] unit

⁴⁸ Disclosure 608.

⁴⁹ Disclosure 615.

⁵⁰ The statement is on pp.050554-050555.

⁵¹ Annex 33.

commander in [REDACTED] and also provided a sketch.⁵² The SPO intends to tender this interview, with associated exhibits such as this sketch, under Rule 154. Given the limited nature of the information—which illustrates what the witness stated in the disclosed interview—it will not unduly prejudice the Defence. The requested amendment should therefore be authorised.

(ii) *Additional [REDACTED] material*⁵³

30. SITF00297471-00297474 is an UNMIK police statement of [REDACTED], which was identified in the course of Rule 102(3) reviews.⁵⁴ The SPO previously indicated its intention to disclose this statement under Rule 102(1).⁵⁵ The Pre-Trial Judge did not authorise such disclosure, pending an application to amend the Exhibit List.⁵⁶

31. SITF00297471-00297474 has the same date as another UNMIK police statement of this witness, which has been disclosed.⁵⁷ SITF00297471-00297474 – which is less than a page long – complements the witness's other evidence, as it records a photo line-up procedure during which the witness identified three individuals. He interacted with two of these individuals at the KLA headquarters in [REDACTED] when seeking information about [REDACTED].⁵⁸

32. Accordingly, SITF00297471-00297474 is important and its addition to the Exhibit List will cause no undue prejudice to the Defence. The requested amendment should be authorised.

⁵² 070966-TR-ET Part 1 RED, pp.10-11.

⁵³ Annex 34.

⁵⁴ It was disclosed to the Defence on 13 December 2022. *See also* 6 December 2022 Decision, KSC-BC-2020-06/F01141, para.56.

⁵⁵ Prosecution request for protective measures for certain information requested by the Defence pursuant to Rule 102(3), KSC-BC-2020-06/F00986, 23 September 2022, Strictly confidential and *Ex Parte*, paras 12-13.

⁵⁶ 6 December 2022 Decision, KSC-BC-2020-06/F01141, para.55.

⁵⁷ SITF00297457-00297470 RED. The statements were taken at different times on the same day.

⁵⁸ SITF00297457-00297470 RED, pp.1-2.

(iii) *Additional [REDACTED] material*⁵⁹

33. [REDACTED], which was identified during recent Rule 102(3) reviews, is the [REDACTED] record of a photo line-up procedure with [REDACTED]. The related statement – which records the results of the line-up procedure – was previously disclosed.⁶⁰ The requested amendment is sought for the sake of completeness and accuracy, as the SPO intends to tender the witness's statements under Rule 153. Considering the limited nature and scope, there is no undue prejudice to the Defence.

(iv) *Additional [REDACTED] material*⁶¹

34. SITF00240114-SITF00240120 consists of the record of a photo lineup identification procedure with [REDACTED] dated 5 January 2002. It was only identified as a statement of these witnesses during recent disclosure reviews. The seven-page document contains the instructions to the witnesses for the identification procedure (on the first page), and six photographs—one on each of the remaining pages—with the following handwritten, signed statement on top of one photograph: 'The person who kidnapped my father'. The statement is relevant and important because it records the witnesses' identification of their father's kidnapper,⁶² complementing the witnesses' previously disclosed statements.⁶³

35. The proposed addition is of limited scope and the document was already disclosed—as part of a larger collection of documents—to all the Defence teams under Rule 102(3).⁶⁴ Therefore, it would not cause undue prejudice to the Defence.

⁵⁹ Annex 35.

⁶⁰ [REDACTED].

⁶¹ Annex 36.

⁶² SITF00240114-SITF00240120, p. SITF00240120.

⁶³ See e.g. SITF00240111-00240111 RED; SPOE00119512-SPOE00119533 RED; 092649-TR-ET Part 1 RED, pp.5-6, 14; SITF00240126-00240127 RED.

⁶⁴ SITF00240108-00240120 RED (Disclosures 457, 460, 461, 463).

(v) *Additional [REDACTED] materials*⁶⁵

36. The SPO seeks to add SITF00242371-0024374, a handwritten document containing the statement of [REDACTED], and the corresponding Albanian translation signed by the witness (SITF00242365-00242365), which is one page long. This handwritten statement was identified during recent Rule 102(3) disclosure reviews and versions of it were disclosed to all Defence teams in September 2022.⁶⁶ To assist the Parties and Panel, a typed version was thereafter prepared.⁶⁷

37. [REDACTED] provides important evidence concerning the arrest, detention, and mistreatment of her brother, a murder victim named in the Indictment. The content of this additional prior statement is broadly reflected in other prior statements of the witness, including an UNMIK police statement of 4 December 1999⁶⁸ and an UNMIK interview of 9 December 1999.⁶⁹ In turn, considering that [REDACTED] is not among the first 40 witnesses, and the amendment will not significantly impact Defence preparations and is important, it should be authorised.

(vi) *Additional W04410 material*⁷⁰

38. In October 2022, W04410 provided the SPO with three video files with the following titles/descriptions: (i) [REDACTED];⁷¹ (ii) [REDACTED];⁷² and (iii) [REDACTED].⁷³ The SPO thereafter transcribed and translated these records in anticipation of this request.

39. These videos show, *inter alia*, KLA structure and organisation in various KLA units in different regions, as well as the authority of KLA General Staff members, including Fatmir LIMAJ, Jakup KRASNIQI, and Rexhep SELIMI, all of whom appear

⁶⁵ Annex 37.

⁶⁶ See Annex 1 (setting out the disclosure history for SITF00242371-0024374 and related versions).

⁶⁷ Annex 37 (SITF00242371-SITF00242374-T).

⁶⁸ SITF00242366-00242370 RED.

⁶⁹ SITF00242361-00242362 RED.

⁷⁰ Annex 38.

⁷¹ 108459-01.

⁷² 108460-01.

⁷³ 108460-02.

throughout the footage. They are therefore of sufficient importance and, considering their limited scope and nature, there is no undue prejudice to the Defence.

(vii) Additional [REDACTED] material⁷⁴

40. 108826-TR-ET Part 1 is a 13-page transcript of a follow-up interview the SPO conducted with [REDACTED], on [REDACTED] 2022. 108818-108825 includes exhibits used during the interview.

41. During this follow-up interview, [REDACTED] discussed his detention in Kukës [REDACTED],⁷⁵ answered questions about the layout of the compound in Kukës,⁷⁶ and drew a sketch of the building where he was detained.⁷⁷ He was also shown photographs and the cadastral map of the compound.⁷⁸ Given that the statement, *inter alia*, provides additional information on the layout of the Kukës Metal Factory, complements the witness's previous evidence, provides context, and allows a better understanding of the crime site, it is relevant and of sufficient importance to justify its late addition. The proposed material is limited in nature and scope and provides additional details on facts and locations already known to the Defence. Therefore, the Defence will not suffer any undue prejudice as a result of this amendment.

(viii) Additional [REDACTED] material⁷⁹

42. 108850-TR-ET Part 1 is a 16-page transcript of a follow-up interview the SPO conducted with [REDACTED] on [REDACTED] 2022. 108839-108848 consists of the exhibits used during the interview.

⁷⁴ Annex 39.

⁷⁵ 108826-TR-ET Part 1, pp.3-4, 11.

⁷⁶ 108826-TR-ET Part 1, pp.4-9.

⁷⁷ 108826-TR-ET Part 1, pp.6-7.

⁷⁸ 108826-TR-ET Part 1, pp.4, 5, 9.

⁷⁹ Annex 40.

43. During the follow-up interview, W04380 described events during his detention at the Kukës Metal Factory⁸⁰ and answered questions about the layout of the site.⁸¹ He was also shown photographs and a floor plan of the compound.⁸² Given that the statement provides additional clarity on the layout of the Kukës Metal Factory, complements the witness's prior evidence, provides context, and allows a better understanding of the crime site, it is relevant and of sufficient importance to justify its addition to the Exhibit List. The proposed material is limited in nature and scope and provides additional details on facts and locations already known to the Defence. Therefore, the Defence will not suffer any undue prejudice as a result of this amendment.

(ix) Additional [REDACTED] material⁸³

44. 108858-TR-ET Part 1 is a 10-page transcript of a video-recorded follow-up interview the SPO conducted with [REDACTED], on [REDACTED] 2022. 108854-108857 consists of exhibits used during the interview.

45. During this follow-up interview, W04366 answered questions about the layout of the compound in Kukës⁸⁴ and drew a sketch of the interior of the building where he was detained.⁸⁵ He was also shown photographs of the compound.⁸⁶ Given that the statement provides additional clarity on the layout of the Kukës Metal Factory, complements previous information, provides context, and allows a better understanding of the crime site, it is relevant and of sufficient importance to justify its late addition. The proposed material is limited in nature and scope and provides additional details on facts and locations already known to the Defence. Therefore, the Defence will not suffer any undue prejudice as a result of the requested amendment.

⁸⁰ 108850-TR-ET Part 1, p.10.

⁸¹ 108850-TR-ET Part 1, pp.6-12.

⁸² 108850-TR-ET Part 1, pp.6, 8, 9.

⁸³ Annex 41.

⁸⁴ 108858-TR-ET Part 1, pp.4-8.

⁸⁵ 108858-TR-ET Part 1, pp.6-7.

⁸⁶ 108858-TR-ET Part 1, pp.4-5.

(x) *Additional W04765 material*⁸⁷

46. 108011-108040, SPOE00328676-00328733, and 058048-058112 are versions of exhibits used during a November 2022 interview of W04765.⁸⁸ The documents include Facebook posts, including the witness's statements about events during the Indictment period,⁸⁹ and KLA General Staff and Pashtrik Zone documents.⁹⁰ The requested amendments are therefore of sufficient importance and, considering their nature and prior disclosure under Rule 102(3),⁹¹ would cause no undue prejudice to the Defence.

(xi) *Additional [REDACTED] material*

47. SITF00240136-SITF00240154 consists of the record of a photo lineup identification procedure with [REDACTED], dated 13 January 2002. It was only identified as a statement during recent disclosure reviews.

48. The 19-page proposed document contains the instructions to the witness for the identification procedure (on the first page), and 18 photographs—one on each of the remaining pages—with signed handwritten statements on the pages containing three photographs.⁹² The statement is relevant and important because the witness recognises three persons, including the person 'who kidnapped [REDACTED], and the person [REDACTED] saw when [REDACTED].⁹³ The document complements [REDACTED]'s prior disclosed statements concerning the arrest of her husband in [REDACTED] 1999.⁹⁴

⁸⁷ Annex 42.

⁸⁸ As noted in Annex 1, the SPO does not intend to tender the interview itself, thus the related transcripts need not be added to the Exhibit List.

⁸⁹ 108011-108040, SPOE00328676-00328733.

⁹⁰ 058048-058112.

⁹¹ 058048-058112 was disclosed in Disclosure 608.

⁹² SITF00240136-SITF00240154, pp.SITF00240138, SITF00240148, SITF00240154.

⁹³ SITF00240136-SITF00240154, pp.SITF00240138, SITF00240154 (SITF00240138-SITF00240138-ET; SITF00240154-SITF00240154-ET).

⁹⁴ See e.g. 092646-TR-ET Part 1 RED, p.18.

49. The proposed addition is of very limited scope and the document was already disclosed to all the Defence teams under Rule 102(3).⁹⁵ Therefore, it would not cause any undue prejudice to the Defence.

(xii) Additional W04379 material⁹⁶

50. 065417-065417 is a photograph of the Kukës Metal Factory, a crime site in the Indictment. The photograph was already disclosed to the Defence under Rule 102(3).⁹⁷ During reviews relating to the witness's testimony, the SPO determined that this photograph, used during W04379's interview, was not on the Exhibit List or disclosed. The SPO intends to rely on his interview and associated exhibits, including 065417-065417. The requested amendment – namely, addition of one previously disclosed photograph – will cause no undue prejudice.

(xiii) Additional [REDACTED] material⁹⁸

51. 110533-110535 is a three-page SPO Official Note of a site visit with [REDACTED], which was conducted on 19 August 2021. As a result of a recent inquiry by the SELIMI Defence, the SPO determined that a record of this site visit – referred to in [REDACTED]'s interview⁹⁹ – had not been properly registered. 110533-110535 was promptly registered and prepared for disclosure. Considering the timing of this request, and the nature and scope of the information in the statement, there is no undue prejudice to the Defence.

⁹⁵ Disclosure 645.

⁹⁶ Annex 43.

⁹⁷ Disclosure 645.

⁹⁸ Annex 44.

⁹⁹ 102761-TR-ET Parts 1 to 3 (Disclosure 584).

3) Other exhibits

(i) *Video footage of the Accused and other KLA/PGoK officials*

52. The videos¹⁰⁰ and accompanying transcripts at Annex 45 record public statements and appearances of the Accused and other KLA/PGoK officials, including alleged JCE members, acting in their official positions and publicly representing the KLA/PGoK. Such appearances relate to Rambouillet negotiations,¹⁰¹ meetings between General Staff members,¹⁰² the one year anniversary of the Rahovec/Orahovac attack,¹⁰³ visits by THAÇI to refugee camps in Albania,¹⁰⁴ including in Kukës (the location of a crime site in the Indictment),¹⁰⁵ press conferences by the Accused,¹⁰⁶ including about demilitarisation,¹⁰⁷ public warnings about 'special warfare' by opponents,¹⁰⁸ instructions from the KLA General Staff to soldiers,¹⁰⁹ and checkpoints and control of KLA territory.¹¹⁰ Such evidence is relevant to, *inter alia*, the roles of the Accused and the organisation of the KLA/PGoK. The video footage complements other documentary and witness evidence on the foregoing matters and enables a fuller understanding and observation of, *inter alia*, the Accused and their interactions with the public, one another, and other JCE members.

53. These videos were recently re-reviewed and transcribed in the context of ongoing trial preparations. While they could have been added to the Exhibit List earlier, they are being proposed 30 days before the trial commencement and the

¹⁰⁰ 103211-01, 103211-02, 103211-04, 103211-05, 103211-07, 103211-08, 103211-09, 103211-10, 103211-11, 103211-12, 103211-14, 103211-15, 103211-16, 103211-17, 103211-18. Together, the videos contain approximately 45 minutes of footage.

¹⁰¹ 103211-17.

¹⁰² 103211-05.

¹⁰³ 103211-08.

¹⁰⁴ 103211-10, 103211-11.

¹⁰⁵ 103211-18 (also showing Xhavit HALITI and Jakup KRASNIQI).

¹⁰⁶ 103211-16; 103211-04; 103211-02.

¹⁰⁷ 103211-09; 103211-12; 103211-14.

¹⁰⁸ 103211-15.

¹⁰⁹ 103211-07.

¹¹⁰ 103211-01.

Defence will have meaningful opportunity to prepare. Accordingly, the requested amendment should be authorised.

(ii) *Kukës Metal Factory photographs and maps*

54. The documents at Annex 46 were obtained in December 2022 to assist the Panel and Parties in understanding the layout of the Kukës Metal Factory, a crime site in the Indictment: (i) 110191-110193 consists of an official note of activities taken by the SPO to obtain the measurements of the Kukës Metal Factory; (ii) SPOE00330362-00330362, SPOE00330363-00330363, SPOE00330364-00330364 and SPOE00330365-00330365 are aerial shots of the Kukës Metal Factory; and (iii) SPOE00330364-00330364 and SPOE00330365-00330365 include measurements of the relevant facilities and an accompanying legend. The requested amendments promote a better understanding of the site and related evidence, and, due to the timing and nature of this request, will cause no undue prejudice to the Defence.

(iii) *KLA military police notebook¹¹¹*

55. SITF00439039-00439040 is a two-page scan of a contemporaneous handwritten log book of KLA military police shifts in the 124th Brigade (Pashtrik Zone) for the time period 31 July 1999 to 1 August 1999. The significance of the document – which was previously disclosed under Rule 103¹¹² – was reassessed during recent disclosure reviews. SITF00439039-00439040 demonstrates that KLA military police continued to be active in July/August 1999 and exercised disciplinary authority, including the ability to arrest and release KLA soldiers. It is therefore of sufficient importance and considering its limited length and its disclosure 30 days before trial, will not unduly impact Defence preparations.

¹¹¹ Annex 47.

¹¹² Disclosure 219.

(iv) *IT-03-66 P9*¹¹³

56. IT-03-66 P9 is a certificate signed by the 314th Brigade commander on 5 November 1999, showing that Haradin BALAJ was a member of the KLA from 8 April 1998 until 19 September 1999. Haradin BALAJ is an alleged perpetrator of crimes at the Llapushnik/Lapušnik detention facility in spring/summer 1998. The proposed item was disclosed under Rule 102(3)¹¹⁴ and its significance has been reassessed during recent disclosure reviews. The document is therefore of sufficient important and at this stage, would cause no undue prejudice to the Defence.

(v) *KLA military police records*¹¹⁵

57. U003-3354-U003-3358 consists of five pages of contemporaneous KLA military police personnel records, which were seized from Fatmir LIMAJ's house. The document was previously disclosed under Rule 102(3)¹¹⁶ and it was only in the context of recent trial preparations that its importance was reassessed. U003-3354-U003-3358 demonstrates organisation within the KLA and efforts by alleged JCE members to enforce the authority of the General Staff. The document is therefore of sufficient importance and due to its limited nature and scope, no unfair prejudice is caused the Defence.

III. CLASSIFICATION

58. This filing and its annexes are confidential in accordance with Rules 80(3) and 82(4) and to give effect to existing protective measures. A public redacted version will be filed.

¹¹³ Annex 47.

¹¹⁴ Disclosure 596.

¹¹⁵ Annex 47.

¹¹⁶ Disclosure 595.

IV. RELIEF REQUESTED

59. For the foregoing reasons, the Trial Panel should authorise the Requested Disclosures and Requested Amendments in the terms set out above.

Word count: 5632



Alex Whiting

Acting Specialist Prosecutor

Friday, 3 March 2023

At The Hague, The Netherlands.