

**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:** 24 March 2023

**Language:** English

**Classification:** Public

---

**Public Redacted Version of**

**Krasniqi Defence Response to Prosecution Request to Amend the Exhibit List and Related Matters, KSC-BC-2020-06/F01278, dated 10 February 2023**

---

**Acting Specialist Prosecutor**

Alex Whiting

**Counsel for Victims**

Simon Laws KC

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Kadri Veseli**

Ben Emmerson KC

**Counsel for Rexhep Selimi**

David Young

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

## I. INTRODUCTION

1. The Defence for Jakup Krasniqi (“Defence”) hereby responds to the Specialist Prosecutor’s Office (“SPO”) request to amend the Exhibit List and related matters.<sup>1</sup>
  
2. The Defence requests the Trial Panel to dismiss the Request to amend the Exhibit List, which is at least the seventh such request made by the SPO in these proceedings. The SPO has not provided timely notice or good cause. Instead, the proposed changes to the Exhibit List have arisen due to oversights, delays and administrative errors on the part of the SPO. Moreover, the addition of new material to the Exhibit List at this stage of proceedings – less than 30 days before trial - is prejudicial to the Defence and should also be rejected for that reason.
  
3. The SPO’s related request to be authorised to disclose prior statements of certain witnesses to the Defence provides a further example of late disclosure and dilatory conduct by the SPO. Nonetheless, this aspect of the request is not opposed provided that the SPO will not use this material.
  
4. Pursuant to Rule 82(4) of the Rules,<sup>2</sup> this filing is classified as confidential as it responds to a document with the same classification.

---

<sup>1</sup> KSC-BC-2020-06, F01238, Specialist Prosecutor, *Prosecution Request to Amend the Exhibit List and Related Matters* (“Request”), 30 January 2023, confidential, with Annexes 1-47, confidential.

<sup>2</sup> Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”).

## II. PROCEDURAL HISTORY

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.<sup>3</sup>

6. On 17 December 2021, following the order issued by the Pre-Trial Judge at the Eighth Status Conference,<sup>4</sup> the SPO filed its Pre-Trial Brief, Witness and Exhibit Lists.<sup>5</sup> On 28 January 2022, the SPO filed its Rule 109(c) Chart.<sup>6</sup>

---

<sup>3</sup>KSC-BC-2020-06, F00099, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 23 November 2020, public.

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

<sup>5</sup> 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.

<sup>6</sup> 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.

7. Throughout the last year the SPO filed seven applications to amend its Exhibit List,<sup>7</sup> which were all granted by the Pre-Trial Judge,<sup>8</sup> followed by subsequent submission of amended versions of the Exhibit List.<sup>9</sup>

---

<sup>7</sup> KSC-BC-2020-06, F00670/CONF/RED, Specialist Prosecutor, *Confidential Redacted Version of 'Prosecution Notice of Rule 102(1)(b) Disclosure and Related Requests'* ("First Prosecution Request"), 31 January 2022, confidential; 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*; 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*; 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*; 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, 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, 21 July 2022, confidential; F00947/CONF/RED, Specialist Prosecutor, *Confidential Redacted Version of Prosecution Request to Add Two Witnesses and Associated Materials*, 2 September 2022, confidential, with Annexes 1-2, strictly confidential and *ex parte*.

<sup>8</sup> 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* ("First PTJ Decision"), 8 March 2022, confidential, para. 54; F00779, Pre-Trial Judge, *Decision on Specialist Prosecutor's Rule 102(2) and Related Requests*, 22 April 2022, confidential, para. 55; 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; F00957/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*, 6 September 2022, confidential, para. 107; F01057/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Decision on Prosecution Rule 102(2) Submission and Related Requests*, 27 October 2022, confidential, para. 304; F01142/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Decision on Prosecution Request to Amend the Exhibit List and for Protective Measures*, 6 December 2022, confidential, para. 58; F01058/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Decision on Prosecution Request to Add Two Witnesses and Associated Materials*, 27 October 2022, confidential, para. 47.

<sup>9</sup> 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; F00768, Specialist Prosecutor, *Prosecution Submission of Corrected Version of KSC-BC-2020-06/F00738/A02*, 14 April 2022, public, with Annex 1, confidential; 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; 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; F00888, Specialist Prosecutor, *Prosecution Supplement to Filing F00774*, 19 July 2022, confidential, with Annexes 1-5, strictly confidential and *ex parte*; F00967, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 13 September 2022, confidential, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F01078, Specialist Prosecutor, *Prosecution Submission of Amended Witness and Exhibit Lists*, 2 November 2022, confidential, with Annexes 1,3, strictly confidential and *ex parte*, and Annexes 2, 4, confidential; F01154, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List and Related Submissions*, 13 December 2022, confidential, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential.

8. During the Trial Preparation Conference, the SPO indicated that one request to amend the Exhibit List was being prepared.<sup>10</sup> The Trial Panel set the deadline for the SPO to file its motion to amend the Exhibit List on 30 January 2023 by 16:00.<sup>11</sup> On 30 January 2023, the SPO filed the Request, which was distributed to the Parties on 31 January 2023 and the subject of the present response.

### III. APPLICABLE LAW

9. Mr. Krasniqi's right 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.

10. In striking the balance between the Prosecution's duty to present the available evidence to prove its case and the right of the accused to have adequate time and facilities, the Court of Appeals Panel recalled that the adequate protection of the accused's rights remains the primary concern.<sup>12</sup> The amount of material that a Party seeks to add to the list of exhibits is relevant to the assessment of prejudice that late additions may cause to Defence preparations.<sup>13</sup>

---

<sup>10</sup> KSC-BC-2020-06, Transcript of Hearing, 18 January 2023, public, p. 1782.

<sup>11</sup> KSC-BC-2020-06, In Court – Oral Order, Order to SPO to File Its Motion to Amend the Exhibit List by 4pm on 30 January 2023, 18 January 2023, public.

<sup>12</sup> KSC-BC-2020-06, IA019/F00006, Court of Appeals Panel, *Decision on Thaçi's Appeal against "Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures"* ("Court of Appeals Decision"), 12 July 2022, public, para. 21.

<sup>13</sup> First PTJ Decision, para. 27.

11. Rule 118(2) provides that the Trial Panel “may permit, upon timely notice and a showing of good cause, the amendment of the lists of witnesses and exhibits filed pursuant to Rule 95(4)(b).” The Trial Panel thus has a discretion to permit the request amendment provided that the two conditions of good cause and timely notice are both satisfied.<sup>14</sup>

12. 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.<sup>15</sup> 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”,<sup>16</sup> 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.<sup>17</sup> A heavy workload has been deemed insufficient to indicate good cause.<sup>18</sup>

---

<sup>14</sup> KSC-BC-2020-07, F00408, Trial Panel, *Decision on the Prosecution’s Second Request for Additions to Its Witness and Exhibit Lists*, public, 1 November 2021, para. 18.

<sup>15</sup> 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.

<sup>16</sup> *Bemba Decision*, para. 10.

<sup>17</sup> 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.

<sup>18</sup> 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.

Further, 'exceptional circumstances' causing amendments to witness or exhibit lists must always be balanced against the burden caused to the other party.<sup>19</sup>

13. Timely notice, in turn, requires that any amendment does not adversely affect an accused's ability to prepare for trial.<sup>20</sup> Whilst the addition of exhibits has been treated with flexibility during the pre-trial stage,<sup>21</sup> leave to amend the exhibit list should not be granted lightly due to the proximity to trial. The Trial Panel must be satisfied that the requested amendments to the Exhibit List at this stage of the proceedings provide the Accused sufficient notice and do not adversely affect his ability to prepare for trial.<sup>22</sup>

14. In *Gucati and Haradinaj*, the Trial Panel included among the factors to consider when assessing whether a particular item may be added to the exhibit list the *prima facie* relevance and sufficient importance of the proposed evidence. While the Panel need not assess the authenticity, relevance and probative value of the particular item that a Party seeks to add to its exhibit list, it emphasised that a Party "should not be granted leave to add to its list of exhibits items that are obviously irrelevant and would, therefore, ultimately be denied admission into evidence."<sup>23</sup>

---

<sup>19</sup> 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.

<sup>20</sup> 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.

<sup>21</sup> Court of Appeals Decision, para. 21; ICTY, *Prosecutor v. Đorđević*, IT-05-87/1-T, *Decision on Prosecution's Motion to Amend the Rule 65ter Exhibit List with Annexes A and B*, 4 March 2009, paras 20, 22.

<sup>22</sup> ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, Trial Chamber, *Decision on Prosecution's Motion for Leave to Amend Its Exhibit List*, 19 October 2011, para. 9.

<sup>23</sup> KSC-BC-2020-07, F00321, Trial Panel II, *Decision on Prosecution's Request for Leave to Amend its List of Exhibits ("Gucati and Haradinaj Decision")*, 23 September 2021, public, para. 16.

#### IV. REQUESTED DISCLOSURES

15. The Request to be authorised to disclose additional Rule 102 material is yet another example of the SPO's dilatory approach to disclosure in this case. The deadline for the SPO to complete Rule 102(1)(b) disclosure was 31 March 2022.<sup>24</sup> As set out above, the SPO actually submitted that it had completed this disclosure on 31 January 2022, more than one year ago.<sup>25</sup> Yet 30 days before the start of trial, the SPO seeks authorisation to disclose documents including transcripts from the ICTY [REDACTED],<sup>26</sup> notes from a EULEX meeting with a witness [REDACTED],<sup>27</sup> and various notes from SPO meetings with witnesses [REDACTED].<sup>28</sup> Even where documents are dated after 31 January 2022, they have not been disclosed timeously to the Defence.<sup>29</sup> All items covered by the Request could and should have been disclosed much earlier.

16. The Request makes minimal attempt to justify its tardiness. For most of the affected documents, the SPO fails to identify when they came into its possession.<sup>30</sup> Moreover, to submit that documents were "[REDACTED]",<sup>31</sup> [REDACTED] "[REDACTED]"<sup>32</sup> [REDACTED] "[REDACTED]"<sup>33</sup> is wholly inadequate.

---

<sup>24</sup> KSC-BC-2020-06, F00667, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request for Extension of Time*, 31 January 2022, confidential. The initial deadline was 31 January 2022, see KSC-BC-2020-06, In Court – Oral Order, Oral Order Concerning the SPO's Deadline Related to Rule 102(1)(b) Material, 29 October 2021, public.

<sup>25</sup> First Prosecution Request.

<sup>26</sup> [REDACTED].

<sup>27</sup> [REDACTED].

<sup>28</sup> [REDACTED].

<sup>29</sup> [REDACTED].

<sup>30</sup> See *infra*, paras 25, 27, 30, 36, 38-39, 46, 49, 52.

<sup>31</sup> [REDACTED].

<sup>32</sup> [REDACTED].

<sup>33</sup> [REDACTED].



17. The SPO has previously been rebuked for its failures in relation to disclosure. The Pre-Trial Judge found on at least four occasions that the SPO “had not been fully diligent”<sup>34</sup> in discharging its disclosure obligations and noted that “the delay in disclosing the material concerned is in some instances significant”.<sup>35</sup> In addition, the Trial Panel has recently found twice that the SPO failed to fully comply with its disclosure obligations pursuant to Rule 103.<sup>36</sup> The instant Request is the latest example of the SPO’s disclosure failings.

18. Nonetheless, the Defence notes that the SPO does not intend to tender the relevant material.<sup>37</sup> The Defence does not oppose this aspect of the Request provided that the SPO may not use the relevant material. However, the Defence strongly opposes the SPO’s submission that “[t]his 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.”<sup>38</sup> The SPO’s assertion of a right to use material outside the Exhibit List contradicts the very purpose of the Exhibit List, which is to “give notice to the Defence of the documents the SPO intends to use during its case, which will allow timely and effective Defence preparation”.<sup>39</sup> If the requested

---

<sup>34</sup> KSC-BC-2020-06, F00936, Pre-Trial Judge, *Decision on Thaçi and Krasniqi Defence Motions Seeking Remedies for Non-Compliance with Disclosure Obligations* (“Remedies Decision”), 26 August 2022, confidential, para. 32; KSC-BC-2020-06, F01016/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Decision on the Fourth Prosecution Request for Protective Measures for Items Containing Rule 103 Information*, 7 October 2022, confidential, para. 29; F01140/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Decision on the Fifth Prosecution Request for Protective Measures for Items Containing Rule 103 Information*, 5 December 2022, confidential, para. 31; F01157/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Decision on the Sixth Prosecution Request for Protective Measures for Items Containing Rule 103 Information*, 14 December 2022, confidential, para. 38.

<sup>35</sup> Remedies Decision, para. 35.

<sup>36</sup> KSC-BC-2020-06, F01245, Trial Panel II, *Decision on Thaçi Defence Request for a Finding of Disclosure Failure*, 1 February 2023, public; F01252/CONF/RED, Trial Panel II, *Confidential Redacted Version of Decision on the Seventh Prosecution Request for Protective Measures for Items Containing Rule 103 Information*, 3 February 2023, confidential, paras 24, 26. See also KSC-BC-2020-06, F01225/CONF/RED, Trial Panel II, *Decision on Prosecution Request for Protective Measures and Related Matters*, 9 February 2023, confidential, paras 13-15, 19(a) finding that late disclosure of certain items was not timely and no good cause had been shown for late disclosure.

<sup>37</sup> Request, para. 4.

<sup>38</sup> *Idem*, fn. 13.

<sup>39</sup> *Gucati and Haradinaj* Decision, para. 15.

disclosures are permitted, it should be on the clear basis that the SPO may not use them in presenting its case.

## V. REQUESTED AMENDMENTS

19. The Defence submits that the Request fails to meet the threshold criteria established by Rule 118(2): there is no good cause for any of the amendment of the SPO's Exhibit List and timely notice has not been provided to the Defence.

20. Even if the Trial Panel concludes that these threshold conditions are satisfied, the amendments should be refused at this stage of proceedings. Compared to the SPO's previous requests to amend the Exhibit List,<sup>40</sup> there has been a significant change in circumstances in that this application was made only 30 days before the start of trial – evidently leaving the Defence with minimal preparation time. Contrary to the Request, the fact that the SPO was simultaneously disclosing material relating to delayed disclosure witnesses only deepens the prejudice. The Defence was already being forced to prepare thousands of pages of new material. The addition of more than 700 further pages to that volume of material makes it even less likely that the Defence will be ready for trial. The SPO has had several years to investigate, indict and disclose the material. All previous requests to amend the Exhibit List were permitted, and the SPO had ample opportunity to review the material in its possession and complete disclosure by March 2022.

21. The Defence submits that the addition of further material to the SPO Exhibit List, is extremely prejudicial to the Defence also in light of the cumulative nature of the SPO requests. The Pre-Trial Judge has previously found that “the late addition of items to the Exhibit List could be prejudicial to the Defence in certain circumstances”

---

<sup>40</sup> See *supra*, para. 7.

and ordered counter-balancing measures for certain items that “could have an impact on the Accused’s ability to prepare for trial”.<sup>41</sup> As demonstrated below, the addition of these items at this time would be prejudicial to the Defence.

22. The Defence notes that the SPO relies on preparations for witnesses’ testimony as the reason justifying the late addition of certain items to the Exhibit List.<sup>42</sup> The reassessment of documents in the context of preparations for testimony<sup>43</sup> does not constitute good cause justifying their late addition to the Exhibit List. Indeed, granting leave to add the requested items simply because the SPO has reassessed the items during trial preparations would open the door to unlimited future requests for amendments to the Exhibit List. Moreover, the Defence recalls that the question of to what extent the SPO reviewed the items in the Rule 102(3) Notice was raised for the first time in 2021<sup>44</sup> when the SPO clarified that the documents had been “humanly reviewed and assessed for their relevance” for the purpose of compilation of the Notice,<sup>45</sup> and subsequent reviews followed to identify exculpatory material.

[REDACTED]

23. The SPO seeks to add a six-page ICTY statement of W02161 from [REDACTED].<sup>46</sup> This document is publicly available and was disclosed to the Defence in October 2020, yet it was only during preparations for the witness’ testimony and Rule 154 application, that the SPO realised it was not disclosed under Rule 102(1) or included in the Exhibit List. Oversight cannot constitute good cause for the late addition of the document.

---

<sup>41</sup> Third PTJ Decision, para. 95.

<sup>42</sup> See Request, paras 12, 17-19, 26, 29, 53, 57.

<sup>43</sup> Request, para. 12.

<sup>44</sup> KSC-BC-2020-06, Transcript of Hearing, 14 September 2021, public, pp. 586-587.

<sup>45</sup> *Idem*, p. 589.

<sup>46</sup> Request, para. 9.

Annex 25

24. The SPO seeks to add screenshots of text messages and telephone call history of W04746.<sup>47</sup> All data from [REDACTED]. These items have been in the SPO's possession since at least July 2021, when it filed the Rule 102(3) Notice.<sup>48</sup> Therefore, the SPO had the opportunity to assess the relevance of these items at least twice: when compiling the Rule 102(3) Notice and when it processed the Defence's request. There is nothing to explain why the SPO could not have sought this amendment earlier. Reassessment of these items in the context of trial preparations does not show good cause justifying their late addition.<sup>49</sup>

Annex 26

25. The SPO seeks to add documents relating to W4746's appointment as an advisor [REDACTED] and salary in [REDACTED].<sup>50</sup> These documents had not previously been disclosed to the Defence in any form. Mr. Krasniqi must be treated as an individual; the fact that the documents are said to emanate from [REDACTED] does not mean that Mr. Krasniqi had any notice of them. No explanation is offered as to when SPO came into possession of them and 'reassessment' of their importance does not constitute good cause.<sup>51</sup>

---

<sup>47</sup> Request, para. 13.

<sup>48</sup> KSC-BC-2020-06, F00421, Specialist Prosecutor, *Prosecution Rule 102(3) Notice*, 30 July 2021, public with Annex 1, confidential, and Annex 2, confidential and *ex parte*.

<sup>49</sup> *See supra*, para. 22.

<sup>50</sup> Request, para. 15.

<sup>51</sup> *See supra*, para. 22.

Annex 27

26. The SPO seeks to add Facebook posts by W04746 [REDACTED] and replies to them.<sup>52</sup> Whilst these are plainly new documents and this aspect of the Request is therefore timely, reassessment of these items as ‘important’ is no good cause for the amendment.<sup>53</sup> The SPO has failed to demonstrate that these items are *prima facie* relevant and of sufficient importance to be added to the Exhibit List.<sup>54</sup>

Annex 28

27. The SPO seeks to add the transcript of a television interview with [REDACTED].<sup>55</sup> Timely notice has not been provided. The SPO does not indicate when it came into possession of the transcript of the interview. In addition, the interview was included in the Rule 102(3) Notice submitted in July 2021 and was disclosed to the Defence in September 2022.<sup>56</sup> Therefore, the SPO has had sufficient time to assess the importance of this item, and to produce and disclose the transcript of the interview to the Defence. Reassessment during preparations for the witness’s testimony does not amount to good cause justifying the late addition.<sup>57</sup>

Annex 29

28. The SPO seeks to add a report of a physical examination relating to [REDACTED] and the testimony of the doctor who produced the report.<sup>58</sup> These

---

<sup>52</sup> Request, para. 14.

<sup>53</sup> *See supra*, para. 22.

<sup>54</sup> *See supra*, para. 14.

<sup>55</sup> Request, para. 17.

<sup>56</sup> *Ibid.*

<sup>57</sup> *See supra*, para. 22.

<sup>58</sup> Request, para. 18.

documents were created [REDACTED]. They were plainly in the SPO's possession, since they were included on the Rule 102(3) Notice submitted in July 2021 and disclosed to the Defence in March and May 2022.<sup>59</sup> There is no good cause for their late inclusion on the Exhibit List. That the SPO has "reassessed" the relevance of the documents does not constitute good cause.<sup>60</sup>

### Annex 30

29. The SPO seeks to add 15 photographs of the alleged detention centre at Klečkë/Klečka.<sup>61</sup> The reason these photographs were not disclosed earlier appears to be that the SPO had not realised that they were used during the interview of [REDACTED] because the ERN was not cited.<sup>62</sup> The SPO's internal disorganisation and/or reassessment of material in the context of trial preparations are not 'good cause'.<sup>63</sup> Further, despite realising its mistake in November 2022, the SPO waited an additional two months before filing the Request.<sup>64</sup>

### Annex 31

30. The SPO seeks to add a record of an interview conducted in 2002 in which [REDACTED] corrected previous statements that he had made.<sup>65</sup> The SPO fails to account for how long this document was in its possession or how the SPO failed to identify it as a previous statement of [REDACTED]. Moreover, on the fact of the Request it was only identified in October 2022, yet the SPO chose to delay its application until 30 days before trial.

---

<sup>59</sup> Disclosure Packages 188, 239.

<sup>60</sup> Request, para. 18. *See supra*, para. 22.

<sup>61</sup> Request, para. 19.

<sup>62</sup> *Ibid.*

<sup>63</sup> *See supra*, para. 22.

<sup>64</sup> Request, para. 19.

<sup>65</sup> *Idem*, para. 21.

31. The Defence does not accept that the delayed disclosed is “limited”. The statement is 37 pages long. The fact that it consists of corrections to previous statements itself demonstrates the prejudice to the Defence, who has been preparing for trial on the basis of the uncorrected statements. The Defence will have to review this statement against [REDACTED] prior material to assess the reliability and credibility of the witness.

Annex 32

32. The SPO seeks to add a supplemental statement provided by W04752 to [REDACTED].<sup>66</sup> While the SPO submits that this item was received in response to an RFA in October 2022, it remains unclear when the RFA was submitted in the first place. The SPO should have had it earlier. As concerns timely notice, the SPO has provided limited explanations to justify a delay of over two months since it received the supplemental statement. The Defence submits that the SPO should have made the application to amend its Exhibit List immediately in October 2022.

[REDACTED]

33. The SPO seeks to add a publicly available Human Rights Watch press release related to the detention of [REDACTED].<sup>67</sup> The document is dated [REDACTED], it was included in the Supplemental Rule 102(3) Notice which was provided to the Defence in October 2022,<sup>68</sup> and disclosed to the Defence in December 2022. Determining the importance of the document during “preparations for the concerned

---

<sup>66</sup> Request, para. 23.

<sup>67</sup> *Idem*, para. 25.

<sup>68</sup> KSC-BC-2020-06, F01021, Specialist Prosecutor, *Prosecution Supplemental Rule 102(3) Notice*, 7 October 2022, public, with Annex 1, confidential.

witnesses”<sup>69</sup> does not constitute good cause justifying the late addition.<sup>70</sup> The SPO should have requested to amend the Exhibit List earlier.

050550-050556

34. The SPO seeks to add a collection of [REDACTED] including the statement of W03724.<sup>71</sup> The documents, which were publicly available, date back to [REDACTED], and were also part of the Supplemental Rule 102(3) Notice. The SPO should have requested an amendment to the Exhibit List earlier. Recent confirmation of the nature of this item as a result of a comparison with W03724’s material does not show good cause justifying the late addition.

Annex 33

35. The SPO seeks to add a sketch map drawn by W03885.<sup>72</sup> The Request submits that it was “inadvertently overlooked”.<sup>73</sup> Inadvertence does not constitute good cause for its late addition to the Exhibit List.

36. W03885 is not in the list of first 40 witnesses, yet the SPO submits that this item was identified during ‘recent’ reviews in preparation for W03885’s testimony.<sup>74</sup> However, it fails to specify when the sketch map came into its possession and/or when it realised its oversight. As stated above,<sup>75</sup> further reviews of evidence material for the purpose of trial preparation should not constitute good cause.

---

<sup>69</sup> Request, para. 26.

<sup>70</sup> *See supra*, para. 22.

<sup>71</sup> Request, para. 27.

<sup>72</sup> *Idem*, para. 29.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> *See supra*, para. 22.



Annex 34

37. The SPO seeks to add an additional previous statement of [REDACTED].<sup>76</sup> The SPO submits that this item was identified in the course of Rule 102(3) reviews and disclosed to the Defence in December 2022.<sup>77</sup> No good cause has been shown for not including this statement on the Exhibit List earlier.

Annexes 35-36

38. The SPO seeks to add two records of photo line-up.<sup>78</sup> The [REDACTED] record of a photo line-up procedure with [REDACTED] was attached to his [REDACTED], which was disclosed in August 2021.<sup>79</sup> The SPO's justification for the late addition of the photo line-up is limited to an identification during 'recent' Rule 102(3) reviews and once again fails to explain when this item came into its possession.

39. The SPO only identified the record of line-up identification procedure with [REDACTED], [REDACTED], and [REDACTED] as a statement of these witnesses during recent disclosure reviews.<sup>80</sup> This item is dated 5 January 2002 and even though it remains unclear for how long it has been in the SPO's possession, it was part of the Rule 102(3) Notice submitted in July 2021 and disclosed to the Defence in September 2022 as part of a larger document. Therefore, the SPO had enough time to review and correctly assess the importance of this document. Good cause has not been shown to justify the late addition of these items.

---

<sup>76</sup> Request, para. 30.

<sup>77</sup> *Ibid.*

<sup>78</sup> *Idem*, paras 33-35.

<sup>79</sup> *Idem*, para. 33.

<sup>80</sup> *Idem*, para. 34.

Annex 37

40. The SPO seeks to add a handwritten statement of [REDACTED].<sup>81</sup> The SPO submits that a handwritten statement was disclosed to the Defence as Rule 102(3) material in September 2022, but no explanation is provided for the delay in providing a typed version or making this application. Accordingly, the SPO should have made the application to amend its Exhibit List in September 2022. The identification of the handwritten statement during 'recent' Rule 102(3) review fails to show good cause justifying its late addition.

Annex 38

41. The SPO seeks to add three videos which it submits were provided in October 2022 by W04410.<sup>82</sup> No explanation is provided to account for the three month delay in making this application. The SPO submits that these videos show KLA structure and organisation, and the authority of the KLA General Staff members including Mr. Krasniqi.<sup>83</sup> The addition of these items is highly prejudicial to the Defence. Timely notice has not been provided, and even though W04410 is not among the first 40 witnesses, the Defence will need considerable time to review this video in the context of other evidence provided by W04410.<sup>84</sup> Accordingly, the Defence opposes the addition of the three videos to the Exhibit List.

---

<sup>81</sup> Request, para. 36.

<sup>82</sup> *Idem*, para. 38.

<sup>83</sup> *Idem*, para. 39.

<sup>84</sup> The Defence notes that W04410 has 227 associated items.

Annexes 39 - 41

42. The SPO seeks to add three transcripts of SPO interviews of witnesses carried out in [REDACTED] 2022.<sup>85</sup> The SPO does not explain why it needed to carry out additional witness interviews two years after the arrest of Mr. Krasniqi and the initiation of this case. The Defence opposes the addition of these items to the Exhibit List.

43. The SPO is seeking to add 61 pages of new material<sup>86</sup> relating to three different witnesses testifying about events that took place in Kukës. Contrary to the SPO submissions,<sup>87</sup> the three items are not limited in nature and scope, as these items cannot be reviewed in isolation.

Annex 42

44. The SPO seeks to add 249 pages of material related to W04765.<sup>88</sup> Producing an extra 249 pages of material only 30 days before trial, in addition to the voluminous materials subject to lifted redactions, is plainly prejudicial to the Defence.

45. The Defence notes that the length of the documents is one of the factors to consider when assessing the prejudice that the request may cause to the Accused. The Pre-Trial Judge has previously observed that the prejudicial impact on the Accused may increase if documents added to the Exhibit List are lengthy.<sup>89</sup> The Defence therefore opposes the addition of this item to the Exhibit List.

---

<sup>85</sup> Request, paras 40, 42, 44.

<sup>86</sup> 108826-TR-ET; 08850-TR-ET Part 1; 108858-TR-ET Part 1.

<sup>87</sup> *Contra* Request, paras 41, 43, 45.

<sup>88</sup> Request, para. 46.

<sup>89</sup> Third PTJ Decision, paras 32, 43.

SITF00240136-SITF00240154

46. The SPO seeks to add a record of a photo line-up identification procedure with [REDACTED] dated 13 January 2002.<sup>90</sup> Even though this document was included in the Amended Rule 102(3) Notice, it is unclear when it came into the SPO's possession. The SPO's justification that it was only identified during recent disclosure reviews falls short of showing good cause.

Annex 43

47. The SPO seeks to add one photograph.<sup>91</sup> There is no good cause for this application. The SPO appears simply to have failed to include a photograph used in a witness interview in its Exhibit List.

Annex 44

48. The SPO seeks to add a record of a site visit conducted in August 2021 with [REDACTED].<sup>92</sup> There is no good explanation for the failure to disclose this material to the Defence earlier. The SPO must have been aware that it had been on a site visit with the witness. The SPO's own failure to register documents properly is not a justification for saddling the Defence with more material at a late stage in proceedings.

---

<sup>90</sup> Request, para. 47.

<sup>91</sup> *Idem*, para. 50.

<sup>92</sup> *Idem*, para. 51.

Annex 45

49. The SPO seeks to add a collection of no less than 18 videos from 1998 and 1999, two of which are interviews with Mr. Krasniqi.<sup>93</sup> The Request pointedly avoids acknowledging how long these videos have been in the SPO's possession. Its concession that "they could have been added to the Exhibit List earlier" is itself a powerful reason for rejecting this late application. Moreover, the fact that the SPO has only just "re-reviewed" material in its possession does not show good cause.<sup>94</sup>

50. The SPO submits that the request to add these items 30 days before the start of trial allows the Defence meaningful time to prepare but appears to forget the volume of unredacted material that the SPO is disclosing, which requires reviewing. The Defence strongly opposes the addition of the requested items.

Annex 46

51. The SPO seeks to add a further collection of photographs and maps concerning the Kukës Metal Factory.<sup>95</sup> Whilst the SPO submits that these were obtained in December 2022, the SPO fails to explain why it only considered it necessary to obtain this material in December 2022. Good cause has not been shown.

Annex 47

52. The SPO seeks to add documents related to the Military Police and to Haradin Balaj.<sup>96</sup> The SPO has evidently been in possession of these documents for a

---

<sup>93</sup> 103211-02-TR-ET; 103211-16-TR-ET; Request, para. 52.

<sup>94</sup> Request, para. 53. *See supra*, para. 22.

<sup>95</sup> Request, para. 54.

<sup>96</sup> *Idem*, paras 55-57.

considerable period, albeit it fails to account for how long these documents have been in its possession. Late reassessment of this material for the purpose of trial preparation does not show good cause.<sup>97</sup>

## VI. CONCLUSION

53. For the foregoing reasons, the Defence submits that the Request should be rejected save that the requested disclosures could be permitted on the basis that the SPO may not use material that is not on the Exhibit List.<sup>98</sup>

---

<sup>97</sup> *See supra*, para. 22.

<sup>98</sup> *See supra*, paras 3, 18.

**Word count: 5,790**



---

**Venkateswari Alagenda**

Friday, 24 March 2023

Kuala Lumpur, Malaysia.



---

**Aidan Ellis**

Friday, 24 March 2023

London, United Kingdom.



---

**Victor Băieșu**

Friday, 24 March 2023

The Hague, the Netherlands.