



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 27 October 2022

Language: English

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**Public Redacted Version of
Decision on Prosecution Rule 102(2) Submission and Related Requests**

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THE PRE-TRIAL JUDGE,¹ pursuant to Articles 21(6), 23(1), and 39(11) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 80, 81, 95(2)(h), 95(4)(b) and (c), 102(1) and (2), 107, and 108 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 30 October 2020, further to the Pre-Trial Judge’s decision confirming the indictment against Hashim Thaçi (“Mr Thaçi”), Kadri Veseli (“Mr Veseli”), Rexhep Selimi (“Mr Selimi”) and Jakup Krasniqi (“Mr Krasniqi”) (collectively “Accused” or the “Defence”),² the Specialist Prosecutor’s Office (“SPO”) submitted the indictment as confirmed (“Confirmed Indictment”), with redactions as authorised by the Pre-Trial Judge.³

2. On 23 November 2020, the Pre-Trial Judge issued the Framework Decision on Disclosure of Evidence and Related Matters (“Framework Decision on Disclosure”), which sets out the principles governing the disclosure of evidence

¹ KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

² KSC-BC-2020-06, F00026/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, confidential. A public redacted version was filed on 30 November 2020, F00026/RED.

³ KSC-BC-2020-06, F00034, Specialist Prosecutor, *Submission of Confirmed Indictment and Related Requests*, 30 October 2020, confidential, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential. A further corrected confirmed indictment, correcting certain clerical errors, was submitted on 4 November 2020, strictly confidential and *ex parte* (F00045/A01), with confidential redacted (F00045/A02) and public redacted (F00045/A03) versions. A lesser confidential redacted version was submitted on 11 December 2020 (F00134). A further corrected confirmed indictment was submitted on 3 September 2021, strictly confidential and *ex parte* (F00455/A01), with confidential redacted (F00455/CONF/RED/A01) and public redacted (F00455/RED/A01) versions. A confidential further lesser redacted version of the confirmed indictment was filed on 17 January 2022, F00647/A01. A confirmed amended indictment was filed on 29 April 2022, strictly confidential and *ex parte* (F00789/A01), with confidential redacted (F00789/A02) and public redacted (F00789/A05) versions. Following the decision authorising amendments to the charges, a further amended indictment was submitted on 30 September 2022, strictly confidential and *ex parte* (F00999/A01), with confidential redacted (F00999/A02) and public redacted (F00999/A03) versions.

between the Parties, establishes a calendar for disclosure and adopts the redaction regime applicable in the present case.⁴

3. On 17 December 2021, the SPO filed its pre-trial brief and related material, including a list of witnesses and a list of exhibits, which were subsequently revised (“Revised Witness List”) and amended (“Amended Exhibit List”).⁵

4. On 20 July 2022, the SPO filed its Rule 102(2) submission and related requests (“Request”).⁶

5. On 1 August 2022, the Registry filed its risk assessment pursuant to the Framework Decision on Disclosure (“Risk Assessment”).⁷

⁴ KSC-BC-2020-06, F00099, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 23 November 2020, public.

⁵ KSC-BC-2020-06, F00631, Specialist Prosecutor, *Submission of Pre-Trial Brief with Witness and Exhibit Lists*, 17 December 2021, confidential, with Annexes 1-3, strictly confidential and *ex parte*. A public redacted version with confidential redacted Annexes 1-3 was filed on 21 December 2021, F00631/RED. A corrected confidential redacted version of Annex 2 was filed on 23 May 2022, F00631/RED/A02/COR/CONF/RED. An amended exhibit list was filed on 18 March 2022, F00738/A01, strictly confidential and *ex parte*, and F00738/A02, confidential (for which a corrected version was submitted on 14 April 2022 in F00768/A01, confidential). Upon judicial authorisation, the SPO submitted an amended exhibit list, 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. Upon further judicial authorisation, the SPO further submitted an amended exhibit list, F00896, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List and Related Submissions*, 25 July 2022, confidential, with Annexes 1 and 4-5, strictly confidential and *ex parte*, and Annexes 2-3, confidential. Upon further judicial authorisation, the SPO further filed an amended exhibit list, F00967, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 13 September 2022, public, with Annex 1 (“Amended Exhibit List”), strictly confidential and *ex parte*, and Annex 2, confidential. A revised witness list was filed on 18 July 2022, F00885/A01, strictly confidential and *ex parte*, and F00885/A02, confidential. A further revised witness list was filed on 2 September 2022, F00948/A01, strictly confidential and *ex parte* (“Revised Witness List”), and F00948/A02, confidential. *See also* F00952, Specialist Prosecutor, *Prosecution Submissions for Fourteenth Status Conference*, 5 September 2022, public, footnote 8.

⁶ KSC-BC-2020-06, F00890, Specialist Prosecutor, *Prosecution Rule 102(2) Submission and Related Requests*, 20 July 2022, strictly confidential and *ex parte*, with Annexes 1-7 and 9, strictly confidential and *ex parte*, and Annex 8, confidential. A confidential redacted version was filed on 21 July 2022, F00890/CONF/RED.

⁷ KSC-BC-2020-06, F00907, Registry, *Submission of Risk Assessment Pursuant to Framework Decision and KSC-BC-2020-06/F00890*, 1 August 2022, strictly confidential and *ex parte*, with Annex 1 (“Risk Assessment”), strictly confidential and *ex parte*.

On 3 August 2022, the Defence for Mr Thaçi (“Thaçi Defence”), the Defence for Mr Krasniqi (“Krasniqi Defence”) and the Defence for Mr Veseli (“Veseli Defence”) responded to the Request (collectively “Responses”).⁸ The Defence for Mr Selimi did not respond.

II. SUBMISSIONS

6. The SPO requests (i) leave to add two witnesses ([REDACTED] and W04043) and their associated material to the Revised Witness List and Amended Exhibit List, respectively; (ii) authorisation of protective measures for [REDACTED], including withholding of his associated material; and (iii) relief from its disclosure obligations in relation to certain Rule 107 information redacted from one exhibit associated with the SPO interview of W04043.⁹

7. The Registry submits that, [REDACTED].¹⁰ The Registry also submits that [REDACTED].¹¹

8. The Thaçi Defence objects to the Request and submits that it represents yet another attempt on the part of the SPO to expand its case with additional witnesses and documents after the court-ordered deadlines, when the SPO had been in possession of the relevant information for years. It also submits that the SPO’s request for protective measures for [REDACTED] has not been justified, and is not warranted.¹²

⁸ KSC-BC-2020-06, F00909, Specialist Counsel, *Thaçi Defence Response to Prosecution Rule 102(2) Submission and Related Requests (F00890)* (“Thaçi Response”), 3 August 2022, confidential; F00911, Specialist Counsel, *Krasniqi Defence Consolidated Response to ‘Prosecution Rule 102(2) Submission and Related Requests’ and ‘Prosecution Request to Amend the Exhibit List and for Protective Measures’* (“Krasniqi Response”), 3 August 2022, confidential; F00912, Specialist Counsel, *Veseli Defence Response to SPO Rule 102(2) Submission and Related Requests (F00890)* (“Veseli Response”), 3 August 2022, confidential.

⁹ Request, para. 1.

¹⁰ Risk Assessment, [REDACTED].

¹¹ Risk Assessment, [REDACTED].

¹² Thaçi Response, paras 2, 44-46.

9. The Veseli Defence submits that the Request is untimely and that adding witnesses at this advanced stage would cause significant prejudice to the Accused while not advancing the SPO case. It also avers that the redactions sought by the SPO are overbroad and will cause prejudice to the Defence. The Veseli Defence therefore requests the Pre-Trial Judge to deny the Request.¹³

10. The Krasniqi Defence requests the Pre-Trial Judge to dismiss the SPO's request to amend the Revised Witness List and Amended Exhibit List, as no good explanation has been provided by the SPO for its delays.¹⁴

III. APPLICABLE LAW

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

12. Pursuant to Rule 95(4)(b) and (c) of the Rules, the Pre-Trial Judge shall order the Specialist Prosecutor to file, within a set time limit, the list of witnesses the Specialist Prosecutor intends to call and the list of proposed exhibits the Specialist Prosecutor intends to present.

13. Pursuant to Rule 102(1)(b) of the Rules, within a time limit set by the Pre-Trial Judge, and no later than 30 days prior to the opening of the Specialist Prosecutor's case, the SPO shall make available to the Defence the following material: (i) the statements of all witnesses whom the SPO intends to call to testify at trial, in a language the accused understand and speak; (ii) all other witness

¹³ Veseli Response, para. 2-5, 11-17.

¹⁴ Krasniqi Response, paras 2, 24-25, 30.

statements, expert reports, depositions, or transcripts that the SPO intends to present at trial; and (iii) the exhibits that the SPO intends to present at trial.

14. Pursuant to Rule 102(2), any statements of additional SPO witnesses, which have not been set in the time period prescribed by the panel, and whom the SPO intends to call or testify at trial, shall be made available to the Defence as soon as possible and shall be accompanied by reasons for the late disclosure.

15. Pursuant to Article 23(1) of the Law and Rules 80(1) and 108(1)(b) of the Rules, the Pre-Trial Judge may order, *proprio motu* or upon request, appropriate measures for the protection, safety, physical and psychological well-being, dignity and privacy of witnesses, victims participating in the proceedings, as well as other persons at risk on account of testimony given by witnesses. Pursuant to Rule 108(1)(b) of the Rules, such measures may include withholding information from the Defence, in whole or in part.

16. Pursuant to Rule 107(1) and (2) of the Rules, the information which has been provided to the Specialist Prosecutor on a confidential basis and solely for the purpose of generating new evidence shall not be disclosed without the consent of the provider. Where such information is subject to disclosure, the Specialist Prosecutor shall apply confidentially and *ex parte* to the Panel to be relieved in whole or in part of his or her obligation under Rule 102 and Rule 103 to disclose the initial material. The Specialist Prosecutor may also apply for counterbalancing measures pursuant to Rule 108(2) of the Rules.

17. Pursuant to Rule 108(3) and (4) of the Rules, when information which is subject to disclosure is withheld from the Defence, appropriate counter-balancing measures may be adopted, *proprio motu* or upon request by a Party, to ensure the accused's right to a fair trial.

IV. DISCUSSION

A. AMENDMENT OF THE REVISED WITNESS LIST AND AMENDED EXHIBIT LIST

18. The SPO submits that its request to add [REDACTED] and associated material to the Revised Witness List and Amended Exhibit List, respectively, should be granted because: (i) the evidence of [REDACTED] is unique and important;¹⁵ and (ii) the requested addition is timely and will cause no undue prejudice to the Defence.¹⁶ With respect to its request to add W04043 and associated material to the Revised Witness List and Amended Exhibit List, respectively, the SPO submits that it should be granted because: (i) the evidence of W04043 is of *prima facie* relevance;¹⁷ (ii) the addition is being requested now due to several scheduling and logistical issues;¹⁸ and (iii) the addition would not unduly impact Defence trial preparations.¹⁹

19. The Thaçi Defence argues that the SPO has failed to either provide timely notice²⁰ or demonstrate good cause²¹ for the late addition of [REDACTED] and W04043 and their associated material to the Revised Witness List and Amended Exhibit Lists, which is highly prejudicial to the Defence.²²

20. The Veseli Defence submits that: (i) the Request is not timely;²³ (ii) the SPO's lack of diligence in dealing with [REDACTED] and W04043's evidence is patent;²⁴ (iii) adding witnesses at this advanced stage would cause significant prejudice to the Accused;²⁵ and (iv) the substance of these witnesses does not advance the SPO case.²⁶

¹⁵ Request, paras 4-5.

¹⁶ Request, paras 6-9.

¹⁷ Request, para. 15.

¹⁸ Request, para. 16.

¹⁹ Request, para. 17.

²⁰ Thaçi Response, paras 20-31.

²¹ Thaçi Response, paras 32-37.

²² Thaçi Response, paras 38-43.

²³ Veseli Response, paras 2-5.

²⁴ Veseli Response, paras 6-10.

²⁵ Veseli Response, paras 11-13.

²⁶ Veseli Response, paras 15-16.

21. The Krasniqi Defence submits that the SPO proposed changes to its Revised Witness List and Amended Exhibit List have arisen due to oversights, delays and administrative errors on the part of the SPO, and no good explanation has been provided by the SPO for its delays.²⁷ According to the Krasniqi Defence, the burden which would be imposed on the Defence by these amendments at this stage of the proceedings provides a further compelling reason to reject the SPO's requests, as these amendments cause prejudice to the Defence and are wholly inconsistent with the need to streamline the case.²⁸

22. The Pre-Trial Judge recalls that, pursuant to Rules 95(4)(b) and 118(2) of the Rules, he may authorise the amendment of the Revised Witness List and Amended Exhibit List if the SPO has (i) provided timely notice and (ii) shown good cause for the requested amendments.²⁹

1. [REDACTED]'s Prior Statements and Associated Material

23. The Pre-Trial Judge considers that the starting point for assessing the timeliness of the SPO's disclosure is not the date in which certain information or documents on [REDACTED] became available, but rather the date on which the SPO interviewed [REDACTED], *i.e.* the week of [REDACTED] 2022, because it was at that point that the SPO could fully ascertain the relevance of [REDACTED]'s evidence to its case.³⁰

²⁷ Krasniqi Response, paras 2, 24-25.

²⁸ Krasniqi Response, paras 2, 26-29.

²⁹ KSC-BC-2020-06, F00957, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures*, 6 September 2022, strictly confidential and *ex parte*, para. 27. A confidential redacted version was filed on 7 September 2022; F00876, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures*, 8 July 2022, strictly confidential and *ex parte*, para. 25. A confidential redacted version was filed the same day; F00779, Pre-Trial Judge, *Decision on Specialist Prosecutor's Rule 102(2) and Related Requests* ("Decision on SPO Rule 102(2) and Related Requests"), 22 April 2022, confidential, para. 22; F00727, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures*, 8 March 2022, strictly confidential and *ex parte*, paras 23-24. A confidential redacted version was filed the same day, F00727/CONF/RED.

³⁰ See Decision on SPO Rule 102(2) and Related Requests, para. 24.

24. Contrary to the Defence submissions,³¹ the Pre-Trial Judge is of the view that the SPO has exercised due diligence in obtaining the evidence of [REDACTED] by: (i) requesting the assistance of [REDACTED], who took eleven months to respond due to issues related to the spread of the COVID-19 pandemic; (ii) contacting the witness to discuss security and logistical matters in less than two months, including [REDACTED]; (iii) liaising with [REDACTED] in less than a month to [REDACTED]; (iv) arranging for the translation and transcription of the additional statements and related records; and (v) conducting its interview with [REDACTED] after a careful review of the material received.³² The Pre-Trial Judge notes that the SPO sought to arrange such interview in early February 2022, but the interview could only be held at the end of [REDACTED] 2022 due to scheduling conflicts arising from the personal and professional commitments of [REDACTED] and [REDACTED].³³

25. Moreover, the Pre-Trial Judge notes that the English transcript of [REDACTED]'s SPO interview was finalised and processed in late June 2022.³⁴ Taking into account the length of the interview, the Pre-Trial Judge finds that the time needed to finalise and process the transcript is not unreasonable. The Pre-Trial Judge considers it appropriate that the SPO would seek to amend its Revised Witness List and Amended Exhibit List only once [REDACTED]'s interviews had been fully processed. The Pre-Trial Judge further considers that less than a month from the date of finalisation of the interview to the filing of the present Request is not unreasonable.

26. Accordingly, in the current circumstances of the case, the Pre-Trial Judge finds that the SPO has made the Request in a timely manner.

27. As concerns good cause, the SPO argues that the evidence is relevant, unique and important, as the witness [REDACTED] provides elements [REDACTED], the

³¹ Thaçi Response, paras 20-25, 29-31; Veseli Response, paras 2-8; Krasniqi Response, paras 2, 24-25.

³² Request, paras 6-7.

³³ Request, para. 8.

³⁴ Request, para. 8.

structure of the Kosovo Liberation Army (“KLA”) and its targeting policy, and can authenticate contemporaneous records.³⁵ The Pre-Trial Judge considers that the material concerned is *prima facie* relevant and of sufficient importance as it relates to evidence that has already been disclosed to the Defence.

28. As concerns the impact of the late addition on the Accused’s preparations for trial, the Pre-Trial Judge notes that: (i) three of the prior statements of [REDACTED] whose addition to the exhibit list is being sought by the SPO and twenty-seven of the associated exhibits were previously notified to and/or disclosed to the Defence under Rules 102(1)(b), 102(3) and 103;³⁶ (ii) forty-nine exhibits associated to [REDACTED] were previously disclosed and are already on the exhibit list;³⁷ and (iii) the remaining material relating to this Request will be disclosed to the Defence sufficiently in advance of the witness’s testimony to enable adequate Defence preparations.³⁸ The Pre-Trial Judge notes the Defence concerns that the addition of [REDACTED] and associated material to the Revised Witness List and Amended Exhibit List, respectively, runs contrary to the need to streamline the case and will require additional time to analyse the totality of the new material, and conduct additional investigations into the new witnesses.³⁹ However, given that the SPO has filed the Request while the pre-trial phase is still ongoing, the Defence continues its investigations, and a date for transferring the case to the Trial Panel has yet to be set, the Pre-Trial Judge considers that the Defence will be afforded meaningful time to process [REDACTED]’s evidence and prepare for trial.

29. In addition, the Pre-Trial Judge notes the Thaçi Defence argument that by adding the witness and associated material, the SPO expands the case to the detriment of the

³⁵ Request, para. 5.

³⁶ See e.g. Disclosure Packages [REDACTED].

³⁷ Annex 3 to the Request, [REDACTED].

³⁸ See below para. 58(d)-(f).

³⁹ Thaçi Response, paras 38-43; Veseli Response, paras 11-13; Krasniqi Response, paras 2, 26-29.

Defence.⁴⁰ The Pre-Trial Judge disagrees with the Thaçi Defence on this point. The Pre-Trial Judge remarks that the addition of witnesses and associated material does not expand the scope of the case, which is set in the indictment as confirmed and amended. The Pre-Trial Judge further notes that belated changes to the evidentiary basis of the case are possible under the legal framework, if they meet the legal requirements, and remain subject to judicial review. Considering that the material to-be-added is very limited, when compared to the material contained in the Amended Exhibit List, and the fact that the SPO recently withdrew seven witnesses from its Revised Witness List,⁴¹ the Pre-Trial Judge finds that the addition of [REDACTED] and associated material does not unduly expand the evidentiary basis of the case. Therefore, the Thaçi Defence's submission is rejected.

30. The Pre-Trial Judge further notes the Thaçi and Veseli Defence's submissions that [REDACTED] and associated material does not advance the SPO case in a manner that justifies their late addition to the Revised Witness List and Amended Exhibit List, respectively.⁴² The Pre-Trial Judge recalls that Rule 118(2) of the Rules provides that, upon timely notice and a showing of good cause, the amendment of the lists of witnesses and exhibits may be permitted. In particular, leave should not be granted with respect to items that are obviously irrelevant and would, therefore, ultimately be denied admission into evidence.⁴³ The Pre-Trial Judge finds that [REDACTED]'s prior statements and associated material are *prima facie* relevant and of sufficient importance as they relate to: (i) certain events involving, [REDACTED], joint criminal enterprise ("JCE") members who include some of the Accused;⁴⁴ (ii) the structure of the KLA and the relationship between the KLA, Armed Forces of the Republic of

⁴⁰ Thaçi Response, paras 2, 40.

⁴¹ KSC-BC-2020-06, F00948, Specialist Prosecutor, *Prosecution Submission of Revised Witness List*, 2 September 2022, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential, para. 6; F00952, Specialist Prosecutor, *Prosecution Submissions for Fourteenth Status Conference*, 5 September 2022, public, footnote 8.

⁴² Thaçi Response, paras 34, 37; Veseli Response, paras 15-16.

⁴³ See Decision on SPO Rule 102(2) and Related Requests, para. 29.

⁴⁴ See e.g. Annex 4 to the Request, pp. 357-364.

Kosovo (“FARK”), and government-in-exile;⁴⁵ and (iii) the targeting of opponents pursuant to the alleged common purpose.⁴⁶ In any event, the Pre-Trial Judge finds that whether the added witness and related material actually advances the SPO case can only be truly assessed at trial. Therefore, the Thaçi and Veseli Defence’s submissions are rejected.

31. In light of the foregoing, the Pre-Trial Judge finds that the SPO has demonstrated good cause for the late additions and authorises the SPO to add [REDACTED] and associated material to the Revised Witness List and Amended Exhibit List, respectively.

2. W04043’s Prior Statements and Associated Material

32. The Pre-Trial Judge recalls that the starting point for assessing the timeliness of the SPO’s disclosure is the date on which the SPO interviewed W04043, *i.e.* 21 April 2022, because it was at that point that the SPO could fully ascertain the relevance of W04043’s evidence to its case.⁴⁷

33. Contrary to the Defence submissions,⁴⁸ the Pre-Trial Judge considers that the SPO has exercised the required due diligence in arranging its interview with W04043 notwithstanding conflicting information in its possession on the witness’s identity and whereabouts. In particular, the SPO requested [REDACTED] in February 2021 right after determining the witness’s identity, but the interview with W04043 did not take place until April 2022 due to scheduling and logistical issues, including complications arising from the COVID-19 pandemic.⁴⁹

34. The Pre-Trial Judge further notes that W04043 was interviewed on 21 April 2022 and the transcripts of W04043’s SPO interview were finalised and processed in mid-

⁴⁵ See *e.g.* Annex 6 to the Request, pp. 381-389, 391-399.

⁴⁶ See *e.g.* Annex 6 to the Request, pp. 386-388, 391-394, 399-404.

⁴⁷ See Decision on SPO Rule 102(2) and Related Requests, para. 24.

⁴⁸ Thaçi Response, paras 20, 26-31; Veseli Response, paras 2-5, 9-10; Krasniqi Response, paras 2, 24-25.

⁴⁹ Request, para. 16.

June 2022.⁵⁰ Taking into account the length of the interview, the Pre-Trial Judge finds that the time needed to finalise and process the transcript is not unreasonable. In this context, given that the SPO has filed the Request while the pre-trial phase is still ongoing, and a date for transferring the case to the Trial Panel has yet to be set, the Pre-Trial Judge finds that the lapse of time between the witness's interview, the processing of the transcripts of the interview and the filing of the Request is not unreasonable.

35. The Pre-Trial Judge accordingly finds that the SPO has demonstrated that the Request was made in a timely manner.

36. As concerns good cause, the SPO argues that the evidence is *prima facie* relevant as the witness provides corroborative evidence on [REDACTED].⁵¹ The Pre-Trial Judge considers that the material concerned is *prima facie* relevant and of sufficient importance to the case.

37. As concerns the impact of the late addition on the Accused's preparations for trial, the Pre-Trial Judge observes that: (i) one of the prior statements of W04043 whose addition to the exhibit list is being sought by the SPO was previously disclosed to the Selimi Defence, Krasniqi Defence and Veseli Defence under Rule 102(3);⁵² (ii) one exhibit associated to W04043 was previously disclosed and is already on the exhibit list;⁵³ (iii) the associated material is relatively limited in number (four prior statements and three associated exhibits) and length (less than 200 pages); and (iv) the witness does not require protective measures, which expedites the processing of the evidence for the Defence. In light of the current stage of proceedings, the Pre-Trial Judge considers that the Defence will be afforded ample and meaningful time to process W04043's evidence and prepare for trial.

⁵⁰ Request, para 16.

⁵¹ Request, para. 15.

⁵² Disclosure Packages [REDACTED].

⁵³ Request, footnote 34.

38. As regards the Thaçi and Veseli Defence's submissions that the added evidence does not advance the SPO case,⁵⁴ the Pre-Trial Judge finds that W04043's prior statements and associated material are *prima facie* relevant and of sufficient importance as they relate to [REDACTED] at the relevant time period. The Thaçi and Veseli Defence's submissions are therefore rejected. For the same reasons as in relation to [REDACTED],⁵⁵ the Thaçi Defence's submission that the W04043-related evidence expands the case to the detriment of the Defence is rejected.

39. In light of the foregoing, the Pre-Trial Judge finds that the SPO has demonstrated good cause for the late additions and authorises the SPO to add W04043 and associated material to the Revised Witness List and Amended Exhibit List, respectively.

3. Conclusion

40. In light of the foregoing, the Pre-Trial Judge orders the SPO to file its amended witness list and exhibit list by no later than Wednesday, 2 November 2022.

B. SPO REQUEST FOR PROTECTIVE MEASURES

41. The SPO requests that [REDACTED] be granted the following protective measures: (i) delayed disclosure of his identity until 30 days before trial; (ii) assignment of a pseudonym; (iii) redactions of the witness's name and identifying information from the public records; (iv) non-disclosure to the public of any records identifying the witness; (v) testimony with face and voice distortion; and (vi) closed or private sessions for any in-court discussion or testimony identifying the witness.⁵⁶ Moreover, to give effect to those protective

⁵⁴ Thaçi Response, paras 35, 37; Veseli Response, paras 15-16.

⁵⁵ See para. 29.

⁵⁶ Request, para. 11.

measures, the SPO requests that [REDACTED]'s statements, testimony, and material [REDACTED]⁵⁷ as well as [REDACTED],⁵⁸ be withheld from Rule 102(1)(b) and 102(2) disclosure.⁵⁹ The SPO submits that the protective measures sought for [REDACTED] are necessary and proportionate,⁶⁰ and proposes to disclose a summary of [REDACTED]'s evidence as a counterbalancing measure.⁶¹

42. The Thaçi Defence submits that the SPO's request for protective measures for [REDACTED] has not been justified, and is not warranted. In particular, the Thaçi Defence argues that: (i) it is not clear from the unredacted information that there is an objectively justifiable risk to the witness; and (ii) any evidence which allegedly relates to the acts and conduct of the Accused should be disclosed at the earliest opportunity, to ensure a fair trial and adequate preparation for the Defence. The Thaçi Defence therefore strongly objects to the delayed disclosure of [REDACTED]'s identity and to the withholding of his prior statements.⁶²

43. The Veseli Defence reserves its position regarding the necessity to request protective measures and withhold information in relation to [REDACTED] as it submits that the redactions applied by the SPO to its Request are overbroad. As to the proportionality of the requested measures, the Veseli Defence submits that withholding all evidentiary material pertaining to this witness until disclosure of his identify 30 days before trial will cause prejudice to the Defence.⁶³

⁵⁷ Annexes 6-7 to the Request.

⁵⁸ Annexes 4-5 to the Request.

⁵⁹ Request, para. 12.

⁶⁰ Request, paras 10-11, 13.

⁶¹ Request, para. 14.

⁶² Thaçi Response, paras 44-46.

⁶³ Veseli Response, para. 14.

44. The Registry submits that, [REDACTED].⁶⁴ Moreover, the Registry submits that [REDACTED].⁶⁵

1. Existence of an Objectively Justifiable Risk

45. At the outset, the Pre-Trial Judge recalls the legal test for the non-disclosure of information to the opposing party.⁶⁶

46. The Pre-Trial Judge notes that [REDACTED] provided highly incriminating evidence relating to certain events involving, [REDACTED], JCE members who include some of the Accused.⁶⁷ Furthermore, on account of [REDACTED], the witness has been subjected to threats, intimidation, and interference by (former) KLA members and others acting on their behalf.⁶⁸ The SPO indicates that [REDACTED] has emphasised that he has serious concerns for his safety and that of his family if his name is disclosed to the Defence at this stage of the proceedings.⁶⁹ The Pre-Trial Judge also notes that the Registry submits that [REDACTED].⁷⁰ The individual circumstances of the above-mentioned witness must further be considered against the general climate of witness interference and intimidation prevailing in Kosovo.⁷¹

47. In light of the above, the Pre-Trial Judge finds that disclosure of the identity of [REDACTED] and of the information the withholding of which is being sought by the SPO poses an objectively justifiable risk to the witness.

⁶⁴ Risk Assessment, [REDACTED].

⁶⁵ Risk Assessment, [REDACTED].

⁶⁶ Framework Decision on Disclosure, para. 85.

⁶⁷ See e.g. Annex 4 to the Request, [REDACTED].

⁶⁸ See e.g. Annex 6 to the Request, [REDACTED].

⁶⁹ Request, para. 10.

⁷⁰ Risk Assessment, [REDACTED].

⁷¹ Request, para. 12; First Decision on Protective Measures, para. 91. See also KSC-BC-2020-07, F00611, Trial Panel II, *Trial Judgment*, 18 May 2022, confidential, with Annexes 1-3, public, paras 576-578. A public redacted version was issued on the same day, F00611/RED.

2. Necessity of the Requested Measures

48. The Pre-Trial Judge considers that [REDACTED] is likely to antagonise certain individuals or communities in Kosovo, which may include persons close to the Accused, their former subordinates, and alleged perpetrators and members of the JCE named in the Confirmed Indictment, who have the means to interfere with witnesses. Notably, [REDACTED] has been subjected to intimidation and threats by (former) KLA members and others acting on their behalf.⁷²

49. The Pre-Trial Judge also considers that [REDACTED],⁷³ [REDACTED].⁷⁴ The SPO asserts that, [REDACTED].⁷⁵ The Pre-Trial Judge therefore finds that the requested protective measures are necessary to preserve the effectiveness of the protective measures granted [REDACTED].

50. To the extent that [REDACTED], as evidenced by prior attempts of intimidation, the Pre-Trial Judge considers that this constitutes a factor in favour of further protective measures in order to prevent such acts of intimidation in the present proceedings.

51. In light of the above, the Pre-Trial Judge finds that the requested protective measures, including delayed disclosure of [REDACTED]'s identity until 30 days before trial, withholding of [REDACTED] until [REDACTED]'s identity is disclosed, and in-court protective measures, are necessary.

3. Proportionality of the Requested Measures

52. The Pre-Trial Judge notes that: (i) the Defence has already received three prior statements of [REDACTED] and seventy-six associated exhibits;⁷⁶ (ii) 30 days before

⁷² See e.g. Annex 6 to the Request, [REDACTED].

⁷³ [REDACTED].

⁷⁴ Annex 6 to the Request, [REDACTED]. [REDACTED].

⁷⁵ Request, para. 11.

⁷⁶ See Annex 3 to the Request.

trial, the SPO will disclose the identity of [REDACTED] and all his material in unredacted form; and (iii) the Defence will have access to the witness's complete evidence and testimony in the courtroom. The Pre-Trial Judge also finds that these counterbalancing measures, coupled with the proposed disclosure of a summary of [REDACTED]'s evidence, are appropriate under Rule 108(2) of the Rules and uphold the Accused's rights under the Law and the Rules. The Pre-Trial Judge therefore finds that the measures sought by the SPO in relation to [REDACTED] are proportionate under the circumstances. The Pre-Trial Judge is satisfied that there are no less restrictive measures that could overcome or reduce the risk for this witness.

4. Conclusion

53. The Pre-Trial Judge remarks that determinations made at this stage with respect to in-court protective measures are without prejudice to any future rulings by the relevant Trial Panel in this regard.

54. In light of all of the above, the Pre-Trial Judge grants the SPO's request for protective measures for [REDACTED] as requested in paragraphs 11-12 of the Request. The Pre-Trial Judge orders the SPO to disclose the summary of [REDACTED]'s evidence as set out in Annex 2 by Wednesday, 2 November 2022.

C. RULE 107 DOCUMENT

55. The SPO requests to be relieved of its disclosure obligations in respect of information affected by provider-applied redactions in SPOE00233960-00233960. The SPO submits that no counterbalancing measures are necessary as the relevant redacted information (namely, the identities of the witness and related victims) is available to the Defence through other means, including the portion of his SPO interview transcript where he was questioned about certain contents of this document. In any event, the SPO stated that it engaged in consultations with the Rule 107

information provider to obtain clearance of the relevant redacted portions of SPOE00233960-00233960.⁷⁷

56. The Taçi Defence encourages the SPO to do its best to obtain clearance of the relevant redacted portions from the Rule 107 information provider.⁷⁸

57. The Pre-Trial Judge notes that the information affected by provider-applied redactions to SPOE00233960-00233960 pertains to the identities of W04043 and related victims and are protected under Article 58 of the Law and Rule 107 of the Rules.⁷⁹ The Pre-Trial Judge also notes that the relevant information is already available to the Defence, including the portion of his SPO interview transcript where he was questioned about certain contents of this document.⁸⁰ For these reasons, the Pre-Trial Judge finds that, in the current circumstances, the redactions are necessary and proportionate and no counterbalancing measures are required. The Pre-Trial Judge accordingly authorises the redactions to SPOE00233960-00233960 as set out in page 3 of Annex 9 to the Request, and encourages the SPO to continue to engage in consultations with the Rule 107 information provider with a view to obtaining clearance of the relevant redacted portions of this item.

V. DISPOSITION

58. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a. **GRANTS** the Request;
- b. **AUTHORISES** the SPO to amend the Revised Witness List to include [REDACTED] and W04043 and amend the Amended Exhibit List to include their prior statements and associated material as set out in pages 2-8 and 11-21

⁷⁷ Request, para. 18.

⁷⁸ Taçi Response, para. 48.

⁷⁹ Request, para. 18.

⁸⁰ *See e.g.* Annex 8 to the Request, p. 25; SITF00010993-00011013 (Disclosure Packages [REDACTED]).

of Annex 3 to the Request, in Annex 8 to the Request, and in page 3 of Annex 9 to the Request;

- c. **ORDERS** the SPO to file its amended witness list and exhibit list by no later than **Wednesday, 2 November 2022**;
- d. **ORDERS** the following protective measures for [REDACTED]:
 - (i) delayed disclosure of [REDACTED]'s identity until 30 days before trial;
 - (ii) assignment of a pseudonym;
 - (iii) redactions of the witness's name and identifying information from the public records;
 - (iv) non-disclosure to the public of any records identifying the witness;
 - (v) testimony with face and voice distortion; and
 - (vi) closed or private sessions for any in-court discussion or testimony identifying the witness;
- e. **AUTHORISES** the SPO to withhold the information contained in Annexes 4-7 to the Request, until the identities of [REDACTED] is disclosed to the Defence.
- f. **ORDERS** the SPO to disclose the summary of [REDACTED]'s evidence as set out in Annex 2 to the Request by **Wednesday, 2 November 2022**;
- g. **AUTHORISES** the redactions made pursuant to Rule 107 of the Rules to SPOE00233960-00233960, as proposed in page 3 of Annex 9 to the Request; and

h. **ORDERS** the SPO to disclose Annex 8 to the Request and page 3 of Annex 9 to the Request by **Wednesday, 2 November 2022**.

[signed]

Judge Nicolas Guillou
Pre-Trial Judge

Dated this Thursday, 27 October 2022

At The Hague, the Netherlands.