



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:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Acting Specialist Prosecutor

**Date:** 3 April 2023

**Language:** English

**Classification:** Public

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**Public redacted version of 'Prosecution request to amend the exhibit list and for protective measures (KSC-BC-2020-05) with confidential Annex 1 and strictly confidential and *ex parte* annexes 2-16', KSC-BC-2020/F00774, dated 20 April 2022**

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**Specialist Prosecutor's Office**

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## I. INTRODUCTION

1. Pursuant to the Framework Decision,<sup>1</sup> Articles 21(6), 23, 35(2)(f), and 39(1), (3) and (11) of the Law<sup>2</sup> and Rules 80, 81, 95(2), 102(1)(b), 108, and 112 of the Rules,<sup>3</sup> the Specialist Prosecutor's Office ('SPO') requests: (i) leave to amend the Exhibit List<sup>4</sup> to include additional Rule 102(1)(b) materials recently generated during the ongoing trial in KSC-BC-2020-05 ('Additional Materials');<sup>5</sup> and (ii) authorisation to apply non-standard redactions/withhold certain of the Additional Materials, and two further non-Rule 102(1)(b) items,<sup>6</sup> to give effect to existing protective measures.

## II. SUBMISSIONS

2. The SPO has provided timely notice and shown good cause for the requested amendments to the Exhibit List.<sup>7</sup>

3. The SPO provided notice foreshadowing this request.<sup>8</sup> The Additional Materials were recently generated during the course of the ongoing trial in the KSC-BC-2020-05

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<sup>1</sup> Framework Decision on Disclosure of Evidence and Related Matters, KSC-BC-2020-06/F00099, 23 November 2020 ('Framework Decision').

<sup>2</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'), Art.21(6).

<sup>3</sup> 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 are to the Rules, unless otherwise specified.

<sup>4</sup> Annex 1 to Prosecution submission of amended exhibit list, KSC-BC-2020-06/F00738/A01, Strictly Confidential and *Ex Parte* ('Exhibit List').

<sup>5</sup> Annex 1 contains a table listing the Additional Materials (items are listed in their English versions; if approved, the Albanian versions of transcripts, with corresponding redactions, will also be disclosed consistent with the requirements of Rule 102(1)). Annexes 2-14 contain copies of the Additional Materials (in English), with any proposed non-standard redactions marked. A small number of further materials arising from the KSC-BC-2020-05 proceedings which do not fall under either Rule 102(1)(b) or Rule 103 will be notified by way of an updated Rule 102(3) notice.

<sup>6</sup> Annexes 15-16 contain materials which do not fall within Rule 102(1)(b) but have been identified as falling subject to disclose obligations under Rule 103.

<sup>7</sup> Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures, KSC-BC-2020-06/F00727, 8 March 2022, Strictly Confidential and *Ex Parte* ('Decision'), paras 23-24 (requiring the SPO to provide timely notice and show good cause).

<sup>8</sup> Transcript of Hearing dated 4 February 2022, p.869; Prosecution submissions for eleventh status conference, KSC-BC-2020-06/F00742, 21 March 2022, para.3.

proceedings, up until the close of the SPO case on 4 February 2022,<sup>9</sup> falling after the deadline for disclosure of Rule 102(1)(b) material in this case.<sup>10</sup> Following that, the SPO promptly notified the court and parties<sup>11</sup> and took necessary measures, including, conducting redaction reviews and, as relevant, otherwise preparing the Additional Materials for disclosure in this case.

4. No prejudice arises and good cause for the additions exists. In particular, the timing and manner in which the Additional Materials have been generated during the course of an ongoing trial is relevant. Further, the nature of the materials in question - [REDACTED]<sup>12</sup> - means that there is limited new information, and the Defence already has notice of the nature of the evidence. To the extent that certain of the substance in [REDACTED] the Additional Materials is redacted to give effect to existing protective measures, no prejudice arises from adding the materials at this time, noting that such information and [REDACTED] would in any event only become available to the Defence upon the expiry of the protection granted. Additionally, considering the stage of proceedings, overall scope of the case, the number of witnesses and Rule 102(1)(b) materials previously disclosed, and the fact that the requested amendments would ensure a complete and more accurate Exhibit List,<sup>13</sup> the request should be granted.

5. The Additional Materials relate to [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED].<sup>14</sup> [REDACTED] – with the

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<sup>9</sup> Noting that proceedings remain ongoing in KSC-BC-2020-05, further review and disclosure will be conducted following conclusion of the Defence case, currently anticipated for May 2022.

<sup>10</sup> Collating these materials as done in this request following completion of the SPO case, [REDACTED], is in the interests of coherent review and judicial economy.

<sup>11</sup> Transcript of Hearing dated 4 February 2022, p.869.

<sup>12</sup> [REDACTED].

<sup>13</sup> *See, similarly*, Decision, KSC-BC-2020-06/F00727, para.24 (concerning memorialisation of Rule 102(1)(b) disclosure through the Exhibit List).

<sup>14</sup> Annex 1 lists each of the Additional Materials [REDACTED].

exception of [REDACTED] and [REDACTED] – are subject to protective measures including [REDACTED], and pursuant to Rule 81(1)(a) such protective measures continue to apply in this case.<sup>15</sup> The proposed non-standard redactions are necessary to give effect to those protective measures and are consistent with redactions previously authorised.<sup>16</sup> Further, certain non-standard redactions are also necessary to portions of [REDACTED] because they refer in an identifying manner to witnesses and victims who are subject to delayed disclosure protection. As such, the non-standard redactions marked should be authorised as necessary and proportionate [REDACTED].

6. The SPO also requests authorisation to withhold [REDACTED].<sup>17</sup> The exhibit in question is an extract of the video recording of [REDACTED]. As such it would be immediately identifying and cannot meaningfully be redacted in a manner which would enable disclosure at this time. Noting that the Defence has already received the transcripts of [REDACTED], no prejudice arises from withholding this item – which is necessary to give effect to existing protective measures, [REDACTED]

7. Finally, there are two items generated from the Case 05 proceedings which do not fall within Rule 102(1)(b), and which the SPO does not seek to be added to the Exhibit List.<sup>18</sup> However, they have been identified as containing potentially exculpatory information.<sup>19</sup> In respect of [REDACTED], certain non-standard redactions are necessary

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<sup>15</sup> See, *inter alia*, Corrected Version of First Decision on Specialist Prosecutor’s Request for Protective Measures, KSC-BC-2020-06/F00133/COR, 10 December 2020, Strictly Confidential and *Ex Parte*, paras 68-72, 132; Decision on Specialist Prosecutor’s Second Request for Protective Measures and Renewed Request for Protective Measures and Procedural Matters, KSC-BC-2020-06/F00190, 5 February 2021, Strictly Confidential and *Ex Parte*, paras 35-36, 144; Sixth Decision on Specialist Prosecutor’s Request for Protective Measures, KSC-BC-2020-06/F00373, 25 June 2021, Strictly Confidential and *Ex Parte*, para.18.

<sup>16</sup> See also Decision on the request of the Defence in KSC-BC-2020-06 to access confidential material in the Prosecution v Salih Mustafa case, KSC-BC-2020-05/RAC001/F00009, para.26 (noting the extensive nature of the redactions/ protective measures necessary for witness-related material in the case).

<sup>17</sup> 061016b Part 3.

<sup>18</sup> Annexes 15 and 16.

<sup>19</sup> In particular, [REDACTED].

to give effect to existing protective measures for a witness and victim. Item [REDACTED] is [REDACTED]. It contains, *inter alia*, a summary of [REDACTED], which if compared with already disclosed copies [REDACTED] would be identifying. Given that this is a [REDACTED], there is no meaningful way of redacting it. Therefore, withholding it, pending disclosure of [REDACTED]'s identity, is the only meaningful way of giving effect to existing protective measures.<sup>20</sup>

### III. CLASSIFICATION

8. This filing is strictly confidential and *ex parte* as it refers to protected witnesses and their evidence. A confidential redacted version will be filed.

### IV. RELIEF REQUESTED

9. For the foregoing reasons, the Pre-Trial Judge should authorise: (i) the SPO to amend the Exhibit List to include the Additional Materials; and (ii) the requested protective measures.

**Word count: 1166**



**Alex Whiting**

**Acting Specialist Prosecutor**

Monday, 3 April 2023

At The Hague, the Netherlands.

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<sup>20</sup> See similarly [REDACTED].