



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

Date: 28 June 2023

Language: English

Classification: Public

Prosecution submission of list of the next 12 witnesses, reserve witnesses and associated information

with confidential Annexes 1 and 2 and strictly confidential and *ex parte* Annex 3

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1. Pursuant to the Conduct of Proceedings Order,¹ the Oral Orders,² and the Decision³ (together, 'Orders'), the Specialist Prosecutor's Office ('SPO') submits Annexes 1 and 2⁴ regarding the next 12 witnesses⁵ and reserve witnesses,⁶ with their projected order of appearance.

2. The indicated appearance order for the reserve witnesses is provisional, and is dependent on several factors, including the witnesses' and courtroom availability, the time effectively used for the witnesses' examination, and the time needed to make logistical arrangements with the involved authorities. To achieve maximum scheduling flexibility, including to efficiently deal with the last-minute changes, the SPO, taking into account the factors identified below, has selected the proposed witnesses both from, and outside, the list of the initial 40 witnesses. All of these witnesses were previously notified as among the initial 40 witnesses or were notified by *inter partes* email.⁷ The identified reserves include five witnesses among the initial 40 witnesses,⁸ as well as five other suitable reserve witnesses. Further, two witnesses that the SPO had initially intended to call among the first 12 witnesses were moved in the witness order: W02161 and W04290. The SPO now intends to call W02161 among

¹ Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Conduct of Proceedings Order'), paras 73-74.

² Third Oral Order, Transcript, 16 December 2022, pp.1773-1775; Oral Order, Transcript, 19 June 2023, p.5068.

³ Decision on Prosecution Request for Compliance with Third Oral Order Regarding Proposed Duration of Cross-Examination and Related Matters, KSC-BC-2020-06/F01336, 1 March 2023, paras 20, 25(d).

⁴ Annex 3 reproduces strictly confidential and *ex parte* information from a previous filing, which is related to protective measures.

⁵ Annex 1: W03879, W03832, W03827, W04018, W04408, W03880, W04769, W04644, W04781, W03724, W04577, W02161.

⁶ Annex 2: W04586, W02153, W00072, W04566, W04368, W01504, W04255, W01493, W04448.

⁷ See Prosecution Motion for admission of evidence of Witnesses W03832, W03880, W04769, W03724, W00072, W01504, W02153, W04368, W04566, and W04586, KSC-BC-2020-06/F01625, 23 June 2023, Confidential ('Rule 154 Motion'), fn.19 and the sources cited therein; Email from SPO to Panel, Parties, and participants dated 31 March 2023 at 17.56.

⁸ W01493, W01504, W04255, W04448, and W04644. W04644 was identified as a reserve for the July evidentiary block and if not called earlier as a reserve, will be called among the next group of 12 witnesses. See also Rule 154 Motion, KSC-BC-2020-06/F01625, para.1 and fns 18-20 and the sources cited therein.

the next group of 12 witnesses, while W04290 will not be called at this stage of the SPO's case.

3. In reaching these discretionary scheduling decisions,⁹ the SPO has taken into account and balanced a number of (often competing) factors, including: (i) the Panel's direction to prioritise delayed disclosure witnesses with in-court protective measures, in order to limit continuing delayed disclosure after the start of the trial;¹⁰ (ii) publicity;¹¹ (iii) witness availability, testimony modes, examination estimates, and sitting schedules; (iv) the scope, nature, and subject matter of the witness's anticipated testimony; (v) the status of the presentation of evidence;¹² (vi) the need to preserve potential efficiency measures;¹³ (vii) the witness's personal circumstances; (viii) security concerns; and (xi) the need to provide adequate notice, to facilitate Defence preparation.

4. As required by the Orders, Annexes 1 and 2 set out the following as to the proposed witnesses: (i) name and pseudonym; (ii) all prior statements ; (iii) the mode of testimony, including whether live or Rule 154;¹⁴ (iv) the issues, facts and circumstances in relation to which the witness will be examined; (v) time estimate for direct examination; (vi) documents and exhibits which the SPO intends to use with each witness (identified by their complete ERN,¹⁵ the date, description and claimed relevance of each document, and the exhibit or MFI number of any of those already

⁹ See, *inter alia*, Rules 118, 121, 127; Conduct of Proceedings Order, KSC-BC-2020-06/F01226, Sections XII, XV(C); Transcript, 15 February 2023, pp.1911-1912.

¹⁰ Transcript, 16 December 2022, pp.1708-1709.

¹¹ See, *for example*, Transcript, 20 June 2023, p.5421. One third of the next 12 witnesses and three of the identified reserve witnesses are anticipated to testify without protective measures.

¹² This includes consideration of noticed adjudicated facts related to the subject matter of each witness's evidence.

¹³ For example, with respect to W04290, the SPO has decided not to call the witness at this stage and to keep that evidence under review as the case develops. While the SPO still intends to call this witness (whose direct examination time estimate is currently 9 hours), the SPO is mindful of the Panel's instructions to, *inter alia*, reduce examination time estimates.

¹⁴ For those Rule 154 witnesses identified that have not previously been subject of a Rule 154 decision, see Rule 154 Motion, KSC-BC-2020-06/F01625.

¹⁵ Transcript parts and separate records of the same hearing, testimony, or interview are grouped together, where applicable.

admitted or marked for identification); and (vii) information regarding protective measures ordered in relation to the witness (with reference to relevant orders).

5. The SPO has reduced the estimated examination time of eight witnesses,¹⁶ and, as indicated in the Rule 154 Motion, proposes to present W03832's evidence pursuant to Rule 154.¹⁷

6. The SPO reiterates that any potential reductions in cross-examination estimates must be communicated with the maximum notice possible in order for the necessary logistical arrangements to be made.

7. Annexes 1 and 2 are confidential and Annex 3 is strictly confidential and *ex parte* pursuant to Rule 82(4) and to give effect to existing protective measures.

Word count: 914



Alex Whiting

Acting Specialist Prosecutor

Wednesday, 28 June 2023

At The Hague, the Netherlands.

¹⁶ W04018, W03832, W03827, W04408, W04769, W04781, W00072, W01504.

¹⁷ The SPO initially intended to elicit this witness's evidence entirely live.