



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

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

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

Registrar: Dr Fidelma Donlon

Filing Participant: Acting Specialist Prosecutor

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Public Redacted Version of 'Prosecution request to amend the Exhibit List with confidential Annexes 1-12 and public Annexes 13-15'

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I. INTRODUCTION

1. Pursuant to Article 40 of the Law,¹ and Rule 118(2) of the Rules,² the Specialist Prosecutor's Office ('SPO') requests leave to amend the Exhibit List³ to include the 15 additional materials identified below (collectively, 'Requested Amendments').⁴ The SPO intends to tender the Requested Amendments or use them during the examination of relevant witnesses.⁵ This request – which, at this stage, solely concerns amendment of the Exhibit List and not admission⁶ – is limited in scope, allows timely and effective Defence preparations, and concerns relevant material, which is probative of the charges.⁷

¹ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ Annex 1 to Prosecution submission of amended exhibit list, KSC-BC-2020-06/F01669/A01, 12 July 2023, Strictly Confidential and *Ex Parte* ('Exhibit List').

⁴ The Requested Amendments include, in certain cases, other versions of the same document and translations/transcripts, as identified below and as annexed. The videos subject of this request were disclosed through Legal Workflow.

⁵ The SPO has previously sought and been authorised to make Exhibit List amendments in light of developments in the [REDACTED]. *See, for example*, Decision on Prosecution Request to Add Five Items Relating to Expert Witness to the Exhibit List, KSC-BC-2020-06/F01544, 23 May 2023 ('23 May 2023 Decision'). In light of the recent [REDACTED] the SPO is preparing a further, consolidated request for materials generated in [REDACTED], which will be made as soon as practicable, including after finalisation of the relevant, [REDACTED]. None of the [REDACTED] witnesses [REDACTED] are included among the next 12, anticipated first 40, or identified reserve witnesses. *See* Annexes 1 and 2 to Prosecution submission of list of the next 12 witnesses, reserve witnesses and associated information, KSC-BC-2020-06/F01630/A01 and KSC-BC-2020-06/F01630/A02, 28 June 2023, Confidential ('List of the Next 12 Witnesses' and 'List of Reserve Witnesses', respectively); Annex 2 to Prosecution submission of provisional list of first 40 witnesses to be called at trial, KSC-BC-2020-06-F01117/A02, 18 November 2022, Confidential.

⁶ *See* Decision on Prosecution Request to Amend the Exhibit List and Related Matters, KSC-BC-2020-06/F01352, 8 March 2023 ('8 March 2023 Decision'), para.31 (an evaluation of proposed amendments to the Exhibit List does not call for an assessment of admissibility, but a *prima facie* evaluation only); 23 May 2023 Decision, KSC-BC-2020-06/F01544, para.11; Decision on Prosecution Request to Add Intercepted Communications to the Exhibit List, KSC-BC-2020-06/F01656, 7 July 2023, para.11.

⁷ *See* 8 March 2023 Decision, KSC-BC-2020-06/F01352, paras 29, 31, 33; Decision on Thaçi's Appeal against "Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures", KSC-BC-2020-06/IA019/F00006, 12 July 2022 ('Appeal Decision'), para.21. *See also* 23 May 2023 Decision, KSC-BC-2020-06/F01544, para.11.

II. SUBMISSIONS

2. In this complex multi-Accused case, involving a considerable amount of evidence, amendments to the Exhibit List should be treated with flexibility, provided that – as is the case here – there is adequate protection of the Accused’s rights.⁸ Considering the early stages of the trial proceedings, the scope of the case, and the limited nature and scope of the Requested Amendments,⁹ there is minimal impact on Defence preparations. Therefore, the Requested Amendments strike an appropriate balance between the rights of the Accused and the duty of the SPO to present available evidence to prove its case.¹⁰

4. In the interest of judicial economy and to avoid piecemeal requests, the SPO has consolidated the Requested Amendments – none which relate to witnesses anticipated to be heard in the next evidentiary block – into a combined request.¹¹ The Requested Amendments include items that were recently obtained by the SPO and/or cleared for disclosure by the relevant authorities.¹² This request is being made promptly after obtaining them. This request also concerns items that could have been added to the Exhibit List sooner, but are being proposed in a timely manner after their importance has been determined.

⁸ See 8 March 2023 Decision, KSC-BC-2020-06/F01352, paras 29, 31; Appeal Decision, KSC-BC-2020-06/IA019/F00006, para.21.

⁹ Compare Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023, para.82 (where new material is of significant nature, an opposing Party may seek appropriate relief for preparations).

¹⁰ Appeal Decision, KSC-BC-2020-06/IA019/F00006, paras 21, 23, fn.48 (citing case law from international criminal tribunals, which consider, in favour of amendment, the fact that the trial is still in its early stages); 23 May 2023 Decision, KSC-BC-2020-06/F01544, para.11.

¹¹ See 8 March 2023 Decision, KSC-BC-2020-06/F01352, para.30. The Trial Panel, like the Pre-Trial Judge before, has acknowledged reasons of judicial economy and has considered this factor in assessing whether the SPO presented its applications in a timely manner. See also Decision on Prosecution Request to Amend the Exhibit List and for Protective Measures, KSC-BC-2020-06/F01142, 6 December 2022, Strictly Confidential and *Ex Parte*, paras 35, 52, 171, 180.

¹² See 8 March 2023 Decision, KSC-BC-2020-06/F01352, para.30; 23 May 2023 Decision, KSC-BC-2020-06/F01544, para.9.

5. The Defence will be afforded adequate time for its preparation¹³ and there is minimal, if any, prejudice. The Requested Amendments all relate to known aspects of the SPO's case, including witnesses already on the Witness List,¹⁴ exhibits already on the Exhibit List, and/or charged detention sites and victims.¹⁵ Further, only five of the Requested Amendments¹⁶ – which total 13 pages¹⁷ and have all been disclosed under Rules 102(3) and/or 103¹⁸ – relate to and will be used with witnesses who are anticipated to testify among the next twelve witnesses;¹⁹ none of these witnesses are anticipated to testify in the August 2023 evidentiary block. The other ten Requested Amendments – seven of which have previously been disclosed under Rule 102,²⁰ and one of which was used by the THAÇI Defence in its opening statement²¹ – do not relate to witnesses who are among the next 12, first 40, or identified reserve witnesses.

A. REQUESTED AMENDMENTS RELATING TO THE NEXT 12 WITNESSES

(i) *Additional W02161 material*²²

6. SITF40008582-40008582 is an [REDACTED] memo from W02161 to [REDACTED]. In the memo, W02161 lists several human rights concerns to be potentially raised at an upcoming meeting with [REDACTED]. The document is *prima*

¹³ Appeal Decision, KSC-BC-2020-06/IA019/F00006, para.22, fn.51 (citing case law from international tribunals which considered, in assessing prejudice, whether the component of the case relevant to the proposed addition had been reached at the time the addition was sought); 23 May 2023 Decision, KSC-BC-2020-06/F01544, para.14.

¹⁴ Annex 2 to Prosecution submission of updated witness list and confidential lesser redacted version of Pre-Trial Brief, KSC-BC-2020-06/F01594/A02, 9 June 2023, Confidential ('Witness List').

¹⁵ *See, similarly*, Appeal Decision, KSC-BC-2020-06/IA019/F00006, paras 21-22; 23 May 2023 Decision, KSC-BC-2020-06/F01544, para.13.

¹⁶ *See* Section II(A) below.

¹⁷ Not including translations.

¹⁸ *See* 8 March 2023 Decision, KSC-BC-2020-06/F01352, para.33 (where the Trial Panel considered that the Defence had the opportunity to review material proposed for addition to the exhibit list – as it had been disclosed under Rule 102(3) – and to acquaint themselves with it).

¹⁹ W02161, W03724, W04018, and W04769.

²⁰ *See* Sections II(B) below.

²¹ *See* Section III(C)(iv) below.

²² *See* Annex 1.

facie relevant and of sufficient importance to justify its addition to the Exhibit List, as it relates to the existence of KLA detention facilities and confrontation of senior KLA officials with related information.²³ The memo states that W02161 [REDACTED] the existence of KLA detention facilities in [REDACTED], and asks [REDACTED].

7. Given the volume of materials from [REDACTED] that mention W02161, this item was inadvertently omitted from the Exhibit List, despite the fact that it could have been added earlier. In any event, there is no prejudice arising from the addition of this document. It is limited in scope, as the memo is one page in length and relates to well-notified aspects of the evidence to be elicited from W02161. For example, in addition to W02161's witness summaries that foreshadow these issues,²⁴ the SPO has disclosed W02161's prior statements discussing notice to the KLA leadership of detention facilities.²⁵ The witness's [REDACTED] the existence of such facilities is also corroborated by documents already admitted through the bar table or provisionally admitted under Rule 154.²⁶ Further, SITF40008582-40008582 was disclosed to all Defence teams under Rule 102(3) on 17 November 2022,²⁷ the SPO's intention to rely on it, if authorised, was previously noticed,²⁸ and the witness is not anticipated to be called in the August 2023 evidentiary block.

²³ See Annex 1 to Submission of confirmed amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, Strictly Confidential and *Ex Parte* ('Amended Indictment'), paras 32-35, 37-38, 59-61, 96-98, 136.

²⁴ See, for example, Witness List, KSC-BC-2020-06/F01594/A02, p.134, paras 5, 7; Annex 1 to Prosecution submission of list of first 12 witnesses and associated information, KSC-BC-2020-06/F01243/A01, 1 February 2023, Confidential, p.12, paras 4-6.

²⁵ See, for example, 076826-076840, paras 19-23.

²⁶ See e.g. 013312-013334 RED, paras 13-18, provisionally admitted in Decision on Admission of Evidence of First Twelve SPO Witnesses Pursuant to Rule 154, KSC-BC-2020-06/F01380, Confidential, 16 March 2023 ('Rule 154 Decision'), fn. 125 (clarifying what comprised 'W02161's Rule 154 Statements'), paras 82, 97; SPOE00330390-00330391, provisionally admitted in Rule 154 Decision, KSC-BC-2020-06/F01380, fn.125, paras 95-96; Exhibit P00004 (SPOE00061029-00061032), pp. SPOE00061029-00061030, admitted in Decision on Specialist Prosecutor's Bar Table Motion, KSC-BC-2020-06/F01409, 31 March 2023, Confidential, paras 50, 64(b).

²⁷ Disclosure 596.

²⁸ List of the Next 12 Witnesses, KSC-BC-2020-06/F01630/A01, fn.16.

(ii) *Additional W03724 material*²⁹

8. SPOE00116852-00116852³⁰ and SPOE00116730-00116733³¹ are KVM reports from January 1999³² concerning, *inter alia*, missing and detained persons, and military operations during the reporting period. In particular, (i) SPOE00116852-00116852 relates to KLA structure and chain of command, as it concerns a meeting with a KLA commander who would only 'officially' talk if his superior was present; and (ii) SPOE00116730-00116733 includes information from a 'KLA personality' that Serbs would be kidnapped for prisoner exchange purposes if missing persons were not released by 1 March 1999,³³ and that a KVM patrol had been stopped by KLA, 'who claimed that they had not been warned by their higher formation about the patrol'.³⁴ The documents are therefore *prima facie* relevant and of sufficient importance. If authorised, the SPO intends to use these documents with KVM official W03724.

9. While these items could have been added to the Exhibit List earlier, there is minimal, if any, prejudice. They were previously disclosed under Rule 102(3) to three Defence teams, are only five pages in total, and the witness is not anticipated to be called in the August 2023 evidentiary block.

(iii) *Additional W04018 material*³⁵

10. SITF00429643-00429647 contains four pictures of the house used by the KLA as a detention centre in the village of Ivajë/Ivaja and of the compound where the house was located. Consistent with the caption on these photographs, they were used or

²⁹ See Annexes 2-3.

³⁰ Annex 2. SPOE00116852-00116852 was disclosed under Rule 102(3) in Disclosures 401, 405, and 421 to the KRASNIQI, SELIMI, and VESELI Defence teams.

³¹ Annex 3. SPOE00116730-00116733 was disclosed under Rule 102(3) in Disclosures 141, 147, and 245 to the KRASNIQI, SELIMI, and VESELI Defence teams.

³² While SPOE00116852-00116852 bears the date 3 December 2018, this is the date that was automatically generated when it was opened as a Word document on that date in order to be provided to the SPO (*see, generally*, 085942-085979, para.7). The timing of the report is clear from the report's context and contents which refer to January 1999.

³³ SPOE00116730-00116733, p.1.

³⁴ SPOE00116730-00116733, p.1 (para.2).

³⁵ See Annex 4.

obtained by UNMIK investigators during interactions with W04018 in 2003. Given that the requested amendment depicts one of the locations where W04018 was allegedly detained,³⁶ it is *prima facie* relevant and of sufficient importance to be added to the Exhibit List. If authorised, the SPO intends to use this document during W04018's examination.³⁷

11. While this item could have been added to the Exhibit List sooner, the SPO notified the Defence of its intention – if authorised – to use it with the witness.³⁸ Further, (i) the proposed item has been previously disclosed to all the Defence teams under Rule 102(3);³⁹ (ii) it consists of five pages, limited to photographs; and (iii) W04018 is not anticipated to testify in the next evidentiary block.⁴⁰ Accordingly, its addition to the Exhibit List causes no undue prejudice to the Defence.

(iv) *Additional W04769 material*⁴¹

12. SPOE00226630-SPOE00226631, which was among the items seized from Rexhep SELIMI's residence,⁴² is a list of names including KLA members in Kosovo and Albania. SPOE00226630-SPOE00226631 is *prima facie* relevant and of sufficient importance to justify its addition to the Exhibit List, as it potentially corroborates, and may be used to explore statements given by, W04769 regarding [REDACTED] KLA members' presence in Kosovo and Albania during the Indictment period. The list contains references to [REDACTED]. While the list is undated, the SPO intends to use it with W04769, who is in a position to provide appropriate context and information concerning the persons listed and their locations at relevant times.

³⁶ Amended Indictment, KSC-BC-2020-06/F00999/A01, paras 80, 117.

³⁷ The Trial Panels has already found that the photographs of other locations where W04018 was detained (SPOE00091385-00091408) were relevant, of probative value and appropriate for admission into evidence under Rules 138(1) and 154. *See* Decision on Second Prosecution Motion Pursuant to Rule 154, KSC-BC-2020-06/F01595, Confidential, 9 June 2023, paras 63, 65.

³⁸ List of the Next 12 Witnesses, KSC-BC-2020-06/F01630/A01, fn.5.

³⁹ *See* Disclosure 660.

⁴⁰ While he is anticipated to be among the next five witnesses, it is not anticipated that he will be called until the September 2023 evidentiary block.

⁴¹ *See* Annex 5.

⁴² SPOE00226321-00226828.

13. While this document could have been added to the Exhibit List sooner, the significance of this document and link to W04769 was reassessed during the preparation for the testimony of W04769. No undue prejudice would result from adding the requested amendment to the Exhibit List, as the item was previously disclosed to all Defence teams pursuant to Rule 103, and to some as 102(3), as part of SPOE00226321-00226828.⁴³ The item was also known to Rexhep SELIMI, having been seized from his residence. The two-page document is limited in nature and scope, and relates to noticed aspects of the witness's anticipated evidence. Finally, W04769 is not anticipated to testify in the August 2023 evidentiary block.

B. REQUESTED AMENDMENTS RELATING TO WITNESSES NOT AMONG THE NEXT 12, FIRST 40,
OR IDENTIFIED RESERVE WITNESSES

(i) *Additional W00207 material*⁴⁴

14. [REDACTED] is an [REDACTED] statement of deceased witness W00207 dated [REDACTED]. The item is *prima facie* relevant and of sufficient importance to justify its addition to the Exhibit List. In this respect, W00207 provides evidence concerning the abduction of [REDACTED], a named murder victim in the Indictment, by KLA soldiers,⁴⁵ and this [REDACTED] statement includes additional detail, beyond that available in [REDACTED] other statements on the Exhibit List.⁴⁶

15. This request is timely, as the unredacted statement was only recently received.⁴⁷ On 28 April 2023 – in response to an SPO request for assistance seeking clearance for,

⁴³ Disclosures 135, 139, 149, 165, 210, 249.

⁴⁴ Annex 6.

⁴⁵ Amended Indictment, KSC-BC-2020-06/F00999/A01, para.[REDACTED].

⁴⁶ See 007613-TR-ET Part 1 RED, 007613-TR-ET Part 2, 007613-TR-ET Part 3 RED, 007613-TR-ET Part 4 RED; SITF00408985-SITF00408986-ET. The Requested Amendment contains information on the fact that the KLA soldiers, after abducting W00207's [REDACTED] (*see* [REDACTED]).

⁴⁷ See, *similarly*, 8 March 2023 Decision, KSC-BC-2020-06/F01352, para.30; 23 May 2023 Decision, KSC-BC-2020-06/F01544, para.9.

among others, the redacted version of W00207's statement⁴⁸ – [REDACTED] provided to the SPO the unredacted version of this statement and authorised the SPO to use it in judicial proceedings before the Kosovo Specialist Chambers.

16. Further, there is no undue prejudice. The statement has been disclosed;⁴⁹ is only three pages long;⁵⁰ relates to a known aspect of the SPO's case, a witness on the Witness List, and a known murder victim; its content is broadly reflected in other prior statements of the witness, which have already been disclosed to the Defence; and the relevant Rule 155 application for this deceased witness⁵¹ has not yet been submitted.

(ii) *Additional W03873 material*

17. In the course of preparing for W03873's testimony, the SPO identified the following documents, which, if authorised, it intends to use with the witness. As set out in more detail below, there is no prejudice due to the limited nature and scope of these materials, previous disclosure and notice, and the fact that this witness is not among the next 12, first 40, or identified reserves.

(a) 069929-069967 – Facebook Screenshots⁵²

18. 069929-069967 is an SPO Official Note containing screenshots of numerous photographs and two documents from [REDACTED]'s Facebook page ('Facebook Screenshots').

19. The Facebook Screenshots are *prima facie* relevant and of sufficient importance to justify addition to the Exhibit List. They include: (i) contemporaneous photographs

⁴⁸ [REDACTED]. The SITF had received this statement only in redacted form and the SPO did not possess lesser or unredacted versions. See Prosecution Rule 107(2) request, KSC-BC-2020-06/F01482, 26 April 2023, Strictly Confidential and *Ex Parte*, para.7.

⁴⁹ In compliance with its disclosure obligations, the SPO promptly disclosed the unredacted version of W00207's statement under Rule 102(1)(b)(i) (see Disclosure 795) and, accordingly, has also withdrawn its prior Rule 107(2) request relating to [REDACTED]. See Prosecution notice relating to filing F01482, KSC-BC-2020-06/F01574, 2 June 2023, Confidential; Decision on the Fifth Specialist Prosecutor's Rule 107(2) Request, KSC-BC-2020-06/F01667, 12 July 2023, Strictly Confidential and *Ex Parte*, paras 5, 28(d).

⁵⁰ This does not include the cover, acknowledgement, and interpreter certification pages.

⁵¹ Witness List, KSC-BC-2020-06/F01594/A02, p.33.

⁵² Annex 7.

(069934 and 069950) depicting W03873 [REDACTED]; (ii) contemporaneous photographs (069946, 069962, and 069964) depicting W03873 with [REDACTED]; (iii) a [REDACTED] document from [REDACTED] (069952) [REDACTED]; and (iv) part of a handwritten document (069966) [REDACTED].⁵³

20. While the Facebook Screenshots could have been added earlier, they are being promptly proposed after their importance has been reassessed and sufficiently in advance of the witness's testimony to enable adequate Defence preparation. The SPO has already disclosed the Facebook Screenshots to all Accused under Rule 102(3).⁵⁴ Further, the Facebook Screenshots consist of 18 photographs, which are limited in scope and nature.

(b) 113623-02 – W03873 Interview⁵⁵

21. 113623-02 is the video of a [REDACTED] on [REDACTED], containing an interview with W03873 ('W03873 Interview'). The W03873 Interview on [REDACTED] is *prima facie* relevant and of sufficient importance to justify its addition to the Exhibit List. W03873 speaks about [REDACTED]. During the W03873 Interview, W03873 also provides comments on a photograph, displayed in the video,⁵⁶ showing, *inter alia*, W03873, [REDACTED]. [REDACTED].⁵⁷

22. The request to add the materials is timely, as the W03873 Interview was only [REDACTED], and following its identification, was processed, translated, and reviewed. Further, no prejudice arises, as the W03873 Interview consists of 17 pages and relates to noticed aspects of this witness's evidence.⁵⁸

⁵³ The remaining pages of the Requested Amendment include the profile page, as well as duplicates of the photographs and documents, including screenshots of the Facebook page views from which they were taken.

⁵⁴ Disclosures 374, 390, 404, 427.

⁵⁵ The video was disclosed through Legal WorkFlow and the transcript, with English translation, are at Annex 8.

⁵⁶ See 113623-02, [REDACTED].

⁵⁷ Annex 8: 113623-02-TR-ET, pp.4-5.

⁵⁸ Witness List, KSC-BC-2020-06/F01594/A02, pp.208-209.

(c) SPOE00144684-00144687 – [REDACTED] Report⁵⁹

23. SPOE00144684-00144687 is [REDACTED] report, dated [REDACTED], on the execution of [REDACTED] concerning, among others, [REDACTED] ('[REDACTED] Report'). The [REDACTED] Report includes one of the items seized from [REDACTED], namely, a list of persons, identifying them, *inter alia*, as 'paramilitary', 'ex-police', 'soldier', 'army spy', and as a person who had contact with a certain police chief.⁶⁰

24. The requested amendment is *prima facie* relevant and of sufficient importance to justify its addition to the Exhibit List. Following the [REDACTED] Report, during an interview on [REDACTED], W03873 commented: [REDACTED]⁶¹ At least one list was shown to the witness during [REDACTED] interview, which he acknowledged he had typed on his computer. He stated that [REDACTED].⁶²

25. Given the limited nature and scope of the [REDACTED] Report – which is only four pages long⁶³ – and that it has already been disclosed under Rule 102(3) to three Defence teams,⁶⁴ the Requested Amendment will not unduly prejudice the Defence.

(d) SITF00069370-SITF00069375 – [REDACTED] Report⁶⁵

26. SITF00069370-SITF00069375 is a [REDACTED] Report [REDACTED], signed by W03873 ('[REDACTED] Report').

27. The [REDACTED] Report is *prima facie* relevant and of sufficient importance to justify its addition to the Exhibit List. On the third page, the [REDACTED] Report discusses events during the Indictment period, referring to the [REDACTED].

⁵⁹ Annex 9.

⁶⁰ See Annex 9: SPOE00144684-00144687, p.SPOE00144686.

⁶¹ SPOE00070007-SPOE00070010 RED, p.SPOE00070007.

⁶² SPOE00070007-SPOE00070010 RED, p.SPOE00070009.

⁶³ One of these four pages is the Albanian original of another page. See Annex 9: SPOE00144684-00144687, pp.SPOE00144686-00144687.

⁶⁴ Disclosures 266, 267 and 385.

⁶⁵ Annex 10.

28. While it could have been added earlier, the importance of the [REDACTED] was only determined while preparing for the witness's testimony. In any event, there is no undue prejudice. The [REDACTED] is part of a collection of documents (SITF00069242-00069631 RED) previously disclosed pursuant to Rule 102(3) to all Accused.⁶⁶ Further, the [REDACTED] is only three pages in length and relates to noticed aspects of the SPO's case. As for the other items forming part of the Additional W03873 Material, the Defence will have adequate time to prepare as the witness is not in the next 12, first 40, or identified reserve witnesses.

(iii) *Additional W04691 material*⁶⁷

29. 067205-01 is a video taken in [REDACTED].

30. When conducting further reviews in preparation for its case, the SPO determined that this video, which has been disclosed to the Defence under Rule 102(3),⁶⁸ was also an associated exhibit to W04691's SPO Interview. W04691 was shown the video and was asked to identify the persons depicted.⁶⁹ After being shown the video, W04691 was given still images taken from the video and asked to circle and mark the names of those he identified.⁷⁰ In addition to being an associated exhibit to W04691's SPO interview, necessary to fully understand his statement, it relates to the presence of certain high-ranking KLA members in [REDACTED] during the Indictment period.⁷¹ The item is therefore *prima facie* relevant and of sufficient importance to justify its addition to the Exhibit List.

⁶⁶ Disclosures 503, 512, 522, and 536.

⁶⁷ This video was disclosed through Legal WorkFlow. As the SPO only intends to use/rely upon the images depicted, no transcript has been made.

⁶⁸ Disclosure 141: Rule 102(3), 2021-12-18, JK; Disclosure 244: Rule 102(3), 2022-05-13, RS; Disclosure 255: Rule 102(3), 2022-05-24, KV; Disclosure 382: Rule 102(3), 2022-08-02, HT.

⁶⁹ 082154-TR-ET Part 7 RED, pp.1-9.

⁷⁰ The exhibits marked by the witness are found in 082157-082193 (Disclosure 68: Rule 102(1)(b), 2021-08-18).

⁷¹ W04691 stated the video was filmed in the old municipality building, and identified [REDACTED] (see 082154-TR-ET Part 7 RED, pp.1-9).

31. No undue prejudice would result from adding 067205-01 to the Exhibit List, as it has been previously disclosed to all Defence teams pursuant to Rule 102(3) and its content is discussed in detail in W04691's SPO Interview, which has also been made available to all Defence teams.⁷² The Defence will have sufficient time to prepare, as W04691 is not among the next 12, first 40, or identified reserve witnesses.

(iv) *Additional W02540 and [REDACTED] material*⁷³

32. 072508-01 is a video-clip from a German news program, dated 18 June 1999, showing German KFOR soldiers disarming KLA soldiers, on the same date, at the former Prizren MUP building ('18 June 1999 Video').

33. A number of video-clips depicting the same event, containing mostly the same content as that displayed in the 18 June 1999 Video, are already on the Exhibit List.⁷⁴ The 18 June 1999 Video, however, is partially shot from a different camera angle,⁷⁵ and shows Xhemshit KRASNIQI among several KLA soldiers walking away from the former MUP building.⁷⁶ W02540 and [REDACTED], among others, were questioned in their SPO interviews about Xhemshit KRASNIQI's role and presence at the former MUP building, and they were shown photos which depicted KRASNIQI.⁷⁷ The SPO intends to use the 18 June 1999 Video with these witnesses, as well as potentially with others who provide evidence about this site and/or individual. The 18 June 1999 Video is therefore *prima facie* relevant and of sufficient importance to justify its addition to the Exhibit List.

⁷² Disclosure 68. The still images from the video, as marked by the witness, were also disclosed in this package.

⁷³ The video was disclosed through Legal WorkFlow. The transcript and translation are attached at Annex 11.

⁷⁴ See 072507-02 (time range 11:27-12:03); 072507-03 (time range 10:06-10:40); 050084-01 (time range 02:14-02:94).

⁷⁵ Compare 072508-01 (time stamp 06:09-06:24) with 072507-02 (time range 11:27-12:03); 072507-03 (time range 10:06-10:40); 050084-01 (time range 02:14-02:49).

⁷⁶ 072508-01 (time stamps 05:58 (displaying Xhemshit KRASNIQI's red jacket on the right hand side) and 06:09-06:15 (displaying Xhemshit KRASNIQI in his red jacket)).

⁷⁷ 069539-TR-ET Part 1 Revised RED2, p.32; 5005585-5005591, p.5005585; [REDACTED], p.32; [REDACTED].

34. While the 18 June 1999 Video could have been added sooner, the item was inadvertently omitted from the Exhibit List until closer review in preparation for the testimony of these witnesses. The Requested Amendment would not cause undue prejudice. The 18 June 1999 Video was disclosed under Rule 102(3).⁷⁸ Further, comparable video-clips of the same event have already been disclosed under Rule 102(1) and are on the Exhibit List.⁷⁹ Finally, the witnesses with whom the SPO intends to use the 18 June 1999 Video, such as W02540 and [REDACTED], are not among the next 12, first 40, or identified reserve witnesses.

C. OTHER REQUESTED AMENDMENTS

(i) KRASNIQI's Communiqué on THAÇI⁸⁰

35. SPOE00330184-00330188 consists of two iPhone notes from Jakup KRASNIQI's seized mobile phone ('iPhone Notes').⁸¹ SPOE00331224-00331233 is a Facebook post by Jakup KRASNIQI ('Facebook Post').⁸² The Facebook Post and iPhone Notes contain the same text titled 'Communiqué' concerning Hashim THAÇI (collectively, 'KRASNIQI's Communiqué on THAÇI').

36. The proposed materials are *prima facie* relevant and of sufficient importance to justify their addition to the Exhibit list. KRASNIQI's Communiqué on THAÇI includes the observations of a co-Accused concerning THAÇI's role as a key KLA leader, and reflects THAÇI's efforts to distance himself from this role.

37. While KRASNIQI's Communiqué on THAÇI could have been added earlier, the significance of the iPhone Notes was only recently reassessed. After determining

⁷⁸ Disclosures 141, 147, 150, and 382.

⁷⁹ 072507-02 (time range 11:27-12:03); 072507-03 (time range 10:06-10:40); 050084-01 (time range 02:14-02:94).

⁸⁰ Annexes 12-13.

⁸¹ Annex 12. This Annex is confidential as it includes information concerning SPO internal working methods.

⁸² Annex 13. This item contains screenshots of Jakup KRASNIQI's Facebook post in Albanian, its English translation, and comments on the post; the screenshot of the first part of the post, where its date is highlighted; and screenshots of the 'About' section of Jakup KRASNIQI's Facebook profile.

their significance, the SPO thereafter promptly searched for other, published versions of KRASNIQI's Communiqué on THAÇI, leading to the discovery of the Facebook Post, with the same content, in late June 2023. There is no undue prejudice from the Requested Amendment because KRASNIQI's Communiqué on THAÇI is very short, consisting of the two pages of content replicated in both the iPhone Notes and the Facebook Post. Further, the iPhone Notes have already been disclosed under Rule 102(3) to all the Defence teams.⁸³

(ii) *ALBRIGHT Statement*⁸⁴

38. 114010-114011 is a statement that the US Secretary of State Madeleine K. ALBRIGHT delivered at the Contact Group Ministerial on Kosovo on 9 March 1998 ('ALBRIGHT Statement'). An excerpt of this statement reads, *inter alia*, as follows:⁸⁵

The authorities in Serbia will try to blur the picture by claiming their actions are a legitimate response to a terrorist threat. *We do not deny that they face such a threat. We have no sympathy for a so called liberation movement that judges, tries and executes the ethnic Serbs and Albanians it does not like.*

39. The ALBRIGHT Statement, in particular in light of its source⁸⁶ and timing at the commencement of the Indictment period, is important for a fuller understanding of the KLA's representations to the international community that it was complying with international law.⁸⁷ Accordingly, the Requested Amendment is *prima facie* relevant and of sufficient importance to justify its addition to the Exhibit List.

⁸³ Disclosure 680.

⁸⁴ Annex 14.

⁸⁵ Annex 14: 114010-114011, p.114010 (emphasis added).

⁸⁶ The THAÇI Defence has repeatedly stated that, if ALBRIGHT was alive, it would have called her as witness to testify on the Accused's behalf. *See, for example*, Transcript, 4 April 2023, pp.2348-2349; Transcript, 8 September 2022, p.1553. During opening statements, it played part of an interview with ALBRIGHT and referred to cables by her. *See* Transcript, 4 April 2023, pp.2279-2280, 2285-2286. *See also* Pre-Trial Brief of Mr Hashim Thaçi, KSC-BC-2020-06/F01050, 21 October 2022, Confidential ('THAÇI's Pre-Trial Brief'), fn. 116.

⁸⁷ *See, for example*, THAÇI's Pre-Trial Brief, KSC-BC-2020-06/F01050, paras 141-142. *See also* Transcript, 4 April 2023, pp.2270-2271.

40. The SPO, in the process of assessing parts of the THAÇI Defence's opening statement concerning ALBRIGHT,⁸⁸ identified the ALBRIGHT Statement. There is no undue prejudice from the two-page Requested Amendment, which is publicly available and relevant to noticed aspects of the SPO's case.

(iii) *CIA Report*⁸⁹

41. SPOE00332260-00332263 is a CIA report, dated 3 January 2000, which was submitted to the US House of Representatives ('CIA Report').⁹⁰ The CIA Report, *inter alia*, discusses the KLA's history⁹¹ and states:⁹²

We do not have a definitive count of the number of noncombatant civilians killed by the UCK since its formation. The UCK primarily targeted Serb government personnel and facilities, as well as ethnic Albanians who were suspected of collaborating with Serb authorities. However, press reports suggest that some UCK members have been involved in intimidation attacks and retribution killings since Serb forces withdrew from the province in June 1999.

42. Accordingly, as it relates to the international community's awareness of crimes charged in this case, the CIA Report is *prima facie* relevant and important, including in light of the significance attributed to this document by the THAÇI Defence.

43. The THAÇI Defence, in its opening statement, cited a passage of the CIA Report.⁹³ The SPO, after review and consideration of these submissions and having identified the CIA Report, which is publicly available, determined its importance to the case, including for use with appropriate witnesses. Given that the three-and-a-half-page CIA Report is known to and has been relied upon by the Defence, the Requested Amendment will cause minimal, if any, prejudice.

⁸⁸ See fn.86 above.

⁸⁹ Annex 15.

⁹⁰ The report was submitted pursuant to the Intelligence Authorization Act for Fiscal Year 2000 (Public Law 106-120), which is reproduced on the first page of the CIA Report.

⁹¹ Annex 15: SPOE00332260-00332263, p.SPOE00332261.

⁹² Annex 15: SPOE00332260-00332263, p.SPOE00332263.

⁹³ See Transcript, 4 April 2023, p.2770. The CIA Report also previously featured in other Defence submissions. See Transcript, 24 March 2022, pp.1094-1095; Thaçi Defence Submissions on Third Detention Review, KSC-BC-2020-06/F00769, 19 April 2022, Confidential, para.15.

III. CLASSIFICATION

44. This filing and Annexes 1-12 are confidential in accordance with Rule 82(4) and to give effect to existing protective measures, including for witnesses whose identities have not been publicly released.⁹⁴ A public redacted version will be filed.

IV. RELIEF REQUESTED

45. For the foregoing reasons, the Panel should authorise the Requested Amendments.

Word Count: 5486

/signed/

Alex Whiting

Acting Specialist Prosecutor

Thursday, 20 July 2023

At The Hague, the Netherlands.

⁹⁴ See also in relation to Annex 12, fn.81 above.