



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 Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 2 October 2023

Language: English

Classification: Public

Prosecution submission of list of witnesses for 30 October to 13 December 2023

with confidential Annexes 1 and 2

Specialist Prosecutor's Office

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1. Pursuant to the Conduct of Proceedings Order,¹ the Specialist Prosecutor's Office ('SPO') submits Annexes 1 and 2 listing the next witnesses,² with their tentative order of appearance, and reserve witnesses³ for the evidentiary blocks between 30 October 2023 and 13 December 2023.⁴
2. A new list of scheduled and reserve witnesses is required due to the number of witnesses (both scheduled and reserve) called during the evidentiary blocks in August, September, and October 2023.⁵ On the basis of direct and cross-examination estimates, the SPO had calculated that the testimony of the witnesses noticed on 28 June 2023⁶ would continue through, at least, November 2023. However, the testimony of witnesses in court proceeded faster than expected, thus making it necessary to notify new witnesses for the remainder of the year.
3. The SPO proposes to call the reserve witnesses indicated in Annex 2 if, for example, scheduled witnesses indicated in Annex 1 are unavailable to testify, or if the cross-examinations of scheduled witnesses proceed faster than foreseen. Due to the nature of reserve witnesses, there must be a degree of flexibility. The reserve witnesses are therefore not necessarily listed in the order in which their testimony may occur. The identified reserve witnesses include witnesses who could be called upon to fill

¹ Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Conduct of Proceedings Order'), paras 73-74, 80-81. *See also* 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).

² Annex 1: W04753, W03170, W03825, W04043, W01493, W03780, W04147, W02161, W04765. This list and the list of reserves (*see* Annex 2 and fn.3 below) is subject to change, including if it becomes necessary to call one or more of the noticed reserves for the 9-19 October 2023 evidentiary block (namely, W00208, W04491, or W04753).

³ Annex 2: W00208, W04444, W04325, W04571, W04491, W04811, W04870. Annex 2 includes both reserve witnesses previously noticed (*see* KSC-BC-2020-06-F01811/A01) and additional reserve witnesses specifically identified for evidentiary blocks between 30 October and 13 December 2023.

⁴ A Rule 154 request relating to certain witnesses in Annexes 1-2 will be filed shortly. Further, a request to amend the exhibit list pertaining to a limited number of items (as indicated in Annexes 1-2) will be filed in due course.

⁵ *See also* Prosecution submission of list of reserve witnesses, KSC-BC-2020-06/F01811, 22 September 2023, para.2.

⁶ Prosecution submission of list of the next 12 witnesses, reserve witnesses and associated information, KSC-BC-2020-06/F01630, 28 June 2023.

gaps of one or two sitting days, as well as witnesses who could be called to cover multiple sitting days.⁷

4. In reaching these discretionary scheduling decisions,⁸ the SPO has taken into account and balanced a number of (often competing) factors, including: (i) publicity; (ii) witness availability, testimony modes, examination estimates, and sitting schedules; (iii) the scope, nature, and subject matter of the witness's anticipated testimony; (iv) the status of the presentation of evidence;⁹ (v) the witness's personal circumstances; (vi) security concerns; and (vii) the need to provide adequate notice, to facilitate Defence preparation.

5. As required by the Conduct of Proceedings Order, 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 fully live or Rule 154; (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,¹⁰ the date, description and claimed relevance of each document, and the exhibit or MFI number of any of those already admitted or marked for identification);¹¹ and (vii) information regarding protective measures ordered in relation to the witness (with reference to relevant orders).

⁷ Prosecution response to THAÇI and SELIMI Defence request to postpone reserve witnesses, KSC-BC-2020-06/F01820, 27 September 2023, Confidential, para.4, fn.12.

⁸ See, *inter alia*, Rules 118, 121, 127; Conduct of Proceedings Order, KSC-BC-2020-06/F01226, Sections XII, XV(C).

⁹ This includes consideration of any noticed adjudicated facts related to the subject matter of each witness's evidence.

¹⁰ Transcript parts and separate records of the same hearing, testimony, or interview are grouped together, where applicable.

¹¹ Where the SPO intends to seek to add the relevant document to the exhibit list, this is also clearly noted.

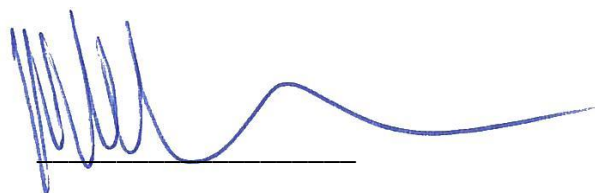
6. In the interest of fair and expeditious proceedings, the SPO has reduced the estimated examination time of four witnesses,¹² including W03170 and W04765, which the SPO now proposes to present pursuant to Rule 154.¹³

7. As the order of the identified witnesses, and the need to call reserve witnesses at all, depends on examination estimates, the SPO again emphasises that accurate cross-examination estimates are essential, *inter alia*, for the necessary logistical arrangements to be made and for the SPO to provide timely notice of the witnesses it intends to call.¹⁴

8. Finally, pursuant to the Conduct of Proceedings Order,¹⁵ the SPO will, one month prior to completion of the testimony of the witnesses noticed in this filing, provide the Panel, Parties, and participants a list of the witnesses it intends to call in the ensuing three month period.¹⁶ Until further order of the Panel, the SPO will continue this practice every three months.

9. Annexes 1 and 2 are confidential pursuant to Rule 82(4) and to give effect to existing protective measures.

Word count: 999



Ward Ferdinandusse

Acting Deputy Specialist Prosecutor

Monday, 2 October 2023

At The Hague, the Netherlands.

¹² W03170, W04765, W04571, W04811.

¹³ The SPO initially intended to elicit these witnesses' evidence entirely live.

¹⁴ Oral Order, Transcript, 19 July 2023, p.6089. For a recent example of the potential logistical implications of inaccurate cross-examination estimates, *see* Prosecution request for video-conference testimony for W04448 and related matters, KSC-BC-2020-06/F01826, 2 October 2023, Confidential, paras 9, 13.

¹⁵ Conduct of Proceedings Order, KSC-BC-2020-06/F01226, para.73.

¹⁶ Remaining witnesses noticed in KSC-BC-2020-06/F01117 who have not been called to date, will be noticed for future blocks or tendered through other means (*see, for example*, Email from SPO to Panel, Parties, and participants dated 4 September 2023 at 11.03), as relevant and appropriate.