



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**In:** KSC-BC-2020-06

**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi,  
and Jakup Krasniqi**

**Before:** Trial Panel II

Judge Charles L. Smith III

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

**Registrar:** Fidelma Donlon

**Date:** 8 March 2023

**Language:** English

**Classification:** Public

---

**Public Redacted Version of  
Decision on Prosecution Request to Amend the Exhibit List and Related Matters**

---

**Acting Specialist Prosecutor**

Alex Whiting

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Victims**

Simon Laws

**Counsel for Kadri Veseli**

Ben Emmerson

**Counsel for Rexhep Selimi**

David Young

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

**TRIAL PANEL II** (“Panel”), pursuant to Articles 21(6) and 40 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 102(1)(b), 112 and 118(2) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 18 January 2023, the Panel ordered the Specialist Prosecutor’s Office (“SPO”) to file its motion to amend its exhibit list<sup>1</sup> by 30 January 2023, at 16.00 hours.<sup>2</sup>
2. On 30 January 2023, the SPO filed its request to amend the Exhibit List (“Request”).<sup>3</sup>
3. On 9 February 2023, the Defence for Mr Veseli (“Veseli Defence”) and the Defence for Mr Selimi (“Selimi Defence”) filed their responses to the Request (“Veseli Response” and “Selimi Response”, respectively).<sup>4</sup>
4. On 10 February 2023, the SPO filed a supplement to the Request (“Supplement”).<sup>5</sup>

---

<sup>1</sup> F01154, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List and Related Submissions*, 13 December 2022, confidential, with Annex 1 (“Exhibit List”), strictly confidential and *ex parte*, and Annexes 2-3, confidential.

<sup>2</sup> Transcript of Hearing, 18 January 2023, p. 1901.

<sup>3</sup> F01238, Specialist Prosecutor, *Prosecution Request to Amend the Exhibit List and Related Matters*, 30 January 2023, confidential, with Annexes 1-47, confidential.

<sup>4</sup> F01272, Specialist Counsel, *Veseli Defence Response to SPO Request to Amend the Exhibit List and Related Matters (F01238)*, 9 February 2023, confidential; F01274, Specialist Counsel, *Selimi Defence Response to SPO Motion to Amend Exhibit List*, 9 February 2023, confidential, with Annexes 1-2, confidential.

<sup>5</sup> F01275, Specialist Prosecutor, *Prosecution Supplement to Filing F01238*, 10 February 2023, confidential, with Annexes 1-4, confidential.

5. On the same day, the Defence for Mr Krasniqi (“Krasniqi Defence”) and the Defence for Mr Thaçi (“Thaçi Defence”) filed their responses to the Request (“Krasniqi Response” and “Thaçi Response”, respectively).<sup>6</sup>

6. The SPO did not reply to the Responses. The four Defence teams (collectively, “Defence”) did not respond to the Supplement.

## II. SUBMISSIONS

7. The SPO requests: (i) leave to amend the Exhibit List to include the additional material identified below (“Requested Amendments”);<sup>7</sup> (ii) authorisation to disclose additional Rule 102(1)(b)(i) material, which the SPO does not seek to add to its Exhibit List (“Requested Disclosures”).<sup>8</sup> The SPO argues that its Request should be treated with flexibility as: (i) the case is a multi-Accused case involving a considerable amount of evidence; (ii) the Request was made one month prior to the scheduled start of the trial; and (iii) on 30 January 2023, the identities and lesser redacted materials of delayed disclosure witnesses were provided to the Defence.<sup>9</sup> The SPO submits that the Requested Amendments are limited in scope, cause no undue prejudice to the Defence and strike an appropriate balance between the rights of the Accused and the duty of the Prosecution to present available evidence to prove its case.<sup>10</sup>

8. The Veseli Defence responds that the Request is untimely, fails to show good cause, and constitutes yet another attempt by the SPO to expand its casefile, despite the Trial Panel and Parties’ disquiet as to the growing size and scope of its

---

<sup>6</sup> F01278, Specialist Counsel, *Krasniqi Defence Response to Prosecution request to Amend the Exhibit List and Related Matters*, 10 February 2023, confidential; F01280, Specialist Counsel, *Thaçi Defence Response to Prosecution Request to Amend the Exhibit List and Related Matters (F01238)*, 10 February 2023, confidential.

<sup>7</sup> Request, para. 1. *See also* Annexes 25-47 to the Request.

<sup>8</sup> Request, para. 1. *See also* Annexes 2-24 to the Request.

<sup>9</sup> Request, para. 2.

<sup>10</sup> Request, para. 2.

case. The Defence therefore asks that the Panel reject the Request to ensure that the proceedings are both fair and expeditious.<sup>11</sup>

9. The Selimi Defence opposes the Request as, in its view: (i) the Requested Disclosures constitute disguised attempt to reconsider the Pre-Trial Judge's directive that such requests should be formulated as a request to amend the Exhibit List; (ii) the SPO has failed to demonstrate any cogent justification as concerns why these items were not included in earlier iterations of the Exhibit List and this leads to serious concerns that the SPO is not trial ready; and (iii) the sheer size of materials and witnesses impacted by the Request also militates against judicial approval.<sup>12</sup>

10. The Krasniqi Defence responds that: (i) the SPO has not provided timely notice or good cause; (ii) the proposed changes to the Exhibit List have arisen due to oversights, delays and administrative errors on the part of the SPO; and (iii) the addition of new material to the Exhibit List at this stage of proceedings – less than 30 days before trial – is prejudicial to the Defence and should therefore be rejected.<sup>13</sup>

11. The Thaçi Defence responds that the Request constitutes yet another attempt from the SPO to belatedly disclose and add material that has already been in its possession for years, and to circumvent deadlines that exist in order to safeguard the Accused's right to be tried within a reasonable time. The Thaçi Defence fully endorses the submissions made by the Veseli Defence and the Selimi Defence in response to the Request and asks the Trial Panel to dismiss the Request in its entirety.<sup>14</sup>

---

<sup>11</sup> Veseli Response, paras 3, 37.

<sup>12</sup> Selimi Response, paras 2-4, *referring to* Annex 1 to the Selimi Response. *See also* Selimi Response, para. 71.

<sup>13</sup> Krasniqi Response, paras 2, 53.

<sup>14</sup> Thaçi Response, paras 2, 28.

### III. DISCUSSION

#### A. REQUESTED DISCLOSURES

##### 1. Parties' submissions

12. The SPO argues that, although it does not intend to tender the items comprising the Requested Disclosures and therefore does not seek to add them to the Exhibit List, this does not affect the SPO's obligations under Rules 102(1)(b)(i) and 112 to disclose statements of witnesses it intends to call, once such statements are obtained or identified. The SPO therefore submits that it should be authorised to disclose the Requested Disclosures and any other Rule 102(1)(b)(i) materials after they have been obtained or identified, irrespective of whether they are added to the Exhibit List.<sup>15</sup>

13. The Defence opposes the SPO's stance that not adding the Requested Disclosures to the Exhibit List "should not affect [its] ability to use such materials, for example, to refresh a witness's recollection or, with leave of the Panel, confront an adverse witness" and considers it an underhanded attempt to: (i) circumvent the very purpose of the Exhibit List; (ii) reconsider the Pre-Trial Judge's prior ruling, which required the SPO to file an application to amend the Exhibit List each and every time the SPO seeks to disclose materials falling under Rule 102(1)(b), regardless of whether the SPO intends to tender the materials or not.<sup>16</sup>

14. The Veseli Defence adds that the re-categorisation of items in Annex 1 as inculpatory, at this late stage, severely undermines the Defence's preparations and

---

<sup>15</sup> Request, para. 4.

<sup>16</sup> Veseli Response, para. 31, *referring to* Request, footnote 13. Selimi Response, paras 5-14, *referring to* F01141, Pre-Trial Judge, *Decision on the Specialist Prosecutor's Request for Protective Measures for Certain Information Requested by the Defence Pursuant to Rule 102(3)* ("F01141"), 6 December 2022, strictly confidential and *ex parte*, para. 12 (a confidential redacted version was filed on 6 December 2022, F01141/CONF/RED); Request, para. 3, footnote 13. Krasniqi Response, para. 18. Thaçi Response, para. 19, *referring to* Request, footnote 13.

ought to have been notified to the Defence well in advance of 30 January 2023 – irrespective of whether they pertain to witnesses in the first 40 or not.<sup>17</sup> The Veseli Defence further argues that nine of the twenty-four Requested Disclosures relate to witnesses who will testify as part of the SPO's first twelve witnesses, thus depriving the Defence of adequate time to prepare its defence.<sup>18</sup> The Veseli Defence therefore submits that the Requested Disclosures ought to be rejected.<sup>19</sup>

15. The Selimi Defence adds that, since the Requested Disclosures include prior statements relating to fifteen Rule 154/155 witnesses, in order to formulate a position on such requests, it is critical that the Defence receives timely notice as concerns which prior statements will be formally introduced through these rules.<sup>20</sup> The Selimi Defence therefore requests that the Requested Disclosures be dismissed *in limine* due to the SPO's failure to apply to amend its Exhibit List to include these disclosures.<sup>21</sup>

16. The Krasniqi Defence adds that SPO's request to be authorised to disclose prior statements of certain witnesses to the Defence provides a further example of late disclosure and dilatory conduct by the SPO.<sup>22</sup> Nonetheless, the Krasniqi Defence submits that it does not oppose the Requested Disclosures, provided that the SPO will not use this material.<sup>23</sup>

17. The Thaçi Defence adds that: (i) the SPO's request to disclose additional Rule 102(1)(b) material is untimely, given that the deadline for disclosing inculpatory material was 31 January 2022; and (ii) the SPO fails to show good cause for the late disclosure of such material, which was, for the most part, in its

---

<sup>17</sup> Veseli Response, para. 28.

<sup>18</sup> Veseli Response, para. 30.

<sup>19</sup> Veseli Response, para. 33.

<sup>20</sup> Selimi Response, para. 15, *referring to* Annex 2 to the Selimi Response.

<sup>21</sup> Selimi Response, paras 17, 71.

<sup>22</sup> Krasniqi Response, paras 3, 15-17

<sup>23</sup> Krasniqi Response, paras 3, 18.

custody since several years.<sup>24</sup> The Thaçi Defence therefore argues that the SPO's request to disclose the items pursuant to Rule 102(1)(b) without concomitantly requesting their addition to the Exhibit List should be dismissed as ill-funded and, in any events, untimely.<sup>25</sup>

## 2. Assessment

18. The Panel notes that the Requested Disclosures consist of twenty-seven prior statements and five associated exhibits of twenty-four witnesses that the SPO intends to call to testify at trial ([REDACTED], W04746, W02652, W04748, W04421, [REDACTED], W03165, W03724, W04255, W04408, W04358, who will testify among the first forty witnesses; and W00208, W00900, W01978, [REDACTED], W01505, [REDACTED], W04858, W04868, W04765, W04739, W00716, W00207, W03724, who will not testify among the first forty witnesses).<sup>26</sup> The Panel notes that, as a general matter, the SPO is not required or expected to seek authorisation from the Panel to disclose material that it is required under the Rules to disclose. The Panel observes that Rule 102(1)(b)(i) requires the SPO to disclose to the Defence and Victims' Counsel, within the time limit set by the Panel and no later than thirty days prior to the opening of the SPO's case, the statements of all witnesses whom it intends to call to testify at trial. This requirement is not limited to statements which the SPO intends to tender or to rely upon at trial. The Panel therefore finds that the SPO is under an obligation to make the Requested Disclosures available to the Defence, regardless of whether it intends to add them to its Exhibit List or use them at trial.

19. The Panel is mindful that: (i) the Pre-Trial Judge set the time limit for the disclosure of inculpatory material to 31 January 2022 and later extended it to

---

<sup>24</sup> Thaçi Response, para. 18.

<sup>25</sup> Thaçi Response, para. 19.

<sup>26</sup> See Annex 1 to the Request, pp. 2-17; Annexes 2-24 to the Request.

31 March 2022;<sup>27</sup> and (ii) many of the Requested Disclosures have existed and were in the possession of the SPO for months or years.<sup>28</sup> The Panel also notes the Veseli Defence's argument that the re-categorisation as inculpatory of items previously disclosed pursuant to Rules 102(3) and 103, at this late stage, could undermine Defence preparations. However, the Panel observes that the Request was filed on 30 January 2023, *i.e.* thirty days before the tentative date for the commencement of trial,<sup>29</sup> which was later rescheduled to 3 April 2023 upon agreement of the Parties and participants.<sup>30</sup> The Panel is therefore satisfied that the time limit set out by Rule 102(1)(b)(i) allows for the Requested Disclosures and that the effectiveness of the Accused's rights will not be prejudiced by this late disclosure. The Panel further takes into consideration that the Requested Disclosures include items that: (i) were recently received by the SPO or cleared for disclosure by relevant authorities;<sup>31</sup> (ii) the Pre-Trial Judge previously declined to authorise for Rule 102(1) disclosure or addition to the Exhibit List;<sup>32</sup> and (iii) have already been made available to the Defence pursuant to Rule 102(3) or Rule 103.<sup>33</sup> Moreover, the

---

<sup>27</sup> Transcript of Hearing, 29 October 2021, pp. 753-754; F00667, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request for Extension of Time* ("Pre-Trial Judge's Decision of 31 January 2022"), 31 January 2022, confidential, para. 13 (a public redacted version was filed on the same day, F00667/RED).

<sup>28</sup> See *e.g.* Annexes 2-3, 8, 13, 17, 22 to the Request.

<sup>29</sup> Transcript of Hearing, 16 December 2022, pp. 1699-1700; Transcript of hearing, 18 January 2023, pp. 1903-1904.

<sup>30</sup> Transcript of Hearing, 15 February 2023, pp. 2038-2039.

<sup>31</sup> 108621-108622 RED (Annex 10 to the Request); U003-0926-U003-0991 (Annex 16 to the Request); 108625-108625 RED (Annex 18 to the Request); 106349-TR-ET Parts 1-2 (Annex 19 to the Request); 108643-TR-ET Parts 1-7 (Annex 20 to the Request); 110180-110180 RED (Annex 21 to the Request).

<sup>32</sup> SITF00372810-SITF00372850 RED (Annex 15 to the Request); see F01141, paras 122, 125. SITF00408985-SITF00408986 (Annex 23 to the Request); SPOE00291854-00291861 (Annex 24 to the Request); see F01142, Pre-Trial Judge, *Decision on Prosecution Request to Amend the Exhibit List and for Protective Measures* ("F01142"), 6 December 2022, strictly confidential and *ex parte*, paras 202-216 (a confidential redacted version was filed on 7 December 2022, F01142/CONF/RED); SITF00010417-SITF00010419 (Annex 9 to the Request); see F01163, Pre-Trial Judge, *Decision on the Specialist Prosecutor's Request for Protective Measures for Certain Rule 102(3) Information Requested by the Defence*, 15 December 2022, strictly confidential and *ex parte*, para. 77 (a confidential redacted version was filed on the same day, F01163/CONF/RED).

<sup>33</sup> U016-1019-U016-1023; SPOE00121287-SPOE00121288 (Annex 3 to the Request); [REDACTED]; SITF00051246-00051247 (Annex 13 to the Request); 107966-107966; SITF00374050-00374057 RED (Annex 14 to the Request); SITF00372810-00372850 RED (Annex 15 to the Request); 043125-043126.



SPO has submitted that it does not intend to tender the Requested Disclosures at trial, and will be ordered to disclose all remaining items as soon as possible. The Panel is therefore satisfied that no prejudice will be caused to the Defence by their disclosure.

20. This being said, should the SPO foresee that it will use any such material during witness testimonies, including, for example, to refresh a witness's recollection or, with leave of the Panel, to confront an adverse witness,<sup>34</sup> the obligation to seek the Panel's authorisation to amend the Exhibit List would be triggered. The SPO would be required to provide timely notice and show good cause for such late amendment and to explain, in particular, why in the exercise of its due diligence, the SPO did not seek leave to amend its exhibit list at an earlier point in time.

21. For the foregoing reasons, the material specified in pages 2-17 of Annex 1 to the Request shall be disclosed to the Defence pursuant to Rule 102(1)(b)(i) by no later than Wednesday, 15 March 2023.

## B. REQUESTED AMENDMENTS

### 1. Parties' submissions

22. The SPO submits that it has provided timely notice and shown good cause in relation to each of the Requested Amendments.<sup>35</sup> According to the SPO: (i) the Requested Amendments all relate to known aspects of the SPO's case, including witnesses already on the witness list, exhibits already on the Exhibit List, and detention sites and victims; (ii) many of the Requested Amendments relate to delayed disclosure witnesses, whose identities were disclosed on 30 January 2023;

---

*See Disclosure Packages 96, 141, 147, 172, 181, 457, 460, 461, 525, 544, 555, 573, 575, 577, 607, 659. See also Disclosure Package 137.*

<sup>34</sup> *See Request, footnote 13.*

<sup>35</sup> *Request, paras 6-7. See also Request, paras 9-57.*

(iii) only a limited part of the Requested Amendments relate to witnesses in the provisional list of the first 40 witnesses; and (iv) considering the stage of the proceedings, scope of the case and number of disclosed materials, and the limited nature and scope of the Requested Amendments, there is minimal impact on Defence preparations.<sup>36</sup> In the Supplement, the SPO submits English translations of limited portion of Annexes 22, 25, 35, and 40 to the Request.<sup>37</sup>

23. The Defence responds that the Requested Amendments should be rejected as: (i) they fail to satisfy the requirements for amending the Exhibit List, namely timely notice and good cause;<sup>38</sup> (ii) the addition of items pertaining to witnesses testifying early on in the proceedings is extremely prejudicial to its preparations;<sup>39</sup> and (iii) prior disclosure of some of the Requested Amendments – pursuant to Rules 102(3) and 103 – fails to alleviate the untimeliness of the Request, since any ‘reassessment’ that results in information suddenly becoming inculpatory – on the eve of trial – causes significant prejudice to the Defence’s preparations.<sup>40</sup>

24. The Veseli Defence adds that the SPO’s substantiation of the Requested Amendments’ relevance and/or importance stand in direct contradiction with the fact that many of the items were, until 30 January 2023, considered immaterial or otherwise detrimental to its case.<sup>41</sup> Lastly, the Veseli Defence, as a point of order, challenges the SPO’s premature canvassing of W04746 as an adverse witness, submits that the SPO must clarify its stance with respect to his evidence, and avers that the Panel ought to bear in mind that a witness may only be declared adverse

---

<sup>36</sup> Request, para. 8.

<sup>37</sup> Supplement, para. 1, *referring to* Annexes 1-2 to the Supplement.

<sup>38</sup> Veseli Response, paras 12, 14, 16, 24, 26; Selimi Response, paras 28-67; Krasniqi Response, paras 19, 23-52; Thaçi Response, paras 20-21.

<sup>39</sup> Veseli Response, para. 13; Selimi Response, paras 23-27; Krasniqi Response, para. 21; Thaçi Response, para. 21.

<sup>40</sup> Veseli Response, paras 15, 19, 23; Selimi Response, paras 18-20; Krasniqi Response, para. 22; Thaçi Response, paras 22-26.

<sup>41</sup> Veseli Response, para. 25.

following an application to that effect by the calling party, following (or during) the course of the witness's in-court testimony.<sup>42</sup>

25. The Selimi Defence adds that: (i) the SPO has not provided any explanation as to how delayed disclosure has impacted its ability to include these items on its Exhibit List;<sup>43</sup> and (ii) a Party cannot rely on its own transgressions to justify late additions.<sup>44</sup>

26. The Krasniqi Defence adds that: (i) the fact that the Request was made only 30 days before the start of trial leaves the Defence with minimal preparation time; and (ii) the fact that the SPO simultaneously disclosed material relating to delayed disclosure witnesses deepens the prejudice.<sup>45</sup>

27. The Thaçi Defence adds that the Request provides insufficient reasons as to why the Requested Amendments are relevant for the SPO's case.<sup>46</sup>

## 2. Assessment

28. At the outset, the Panel emphasises that the primary purpose of the exhibit list is to give notice to the Defence of the documents the SPO intends to use during its case. This, in turn, should allow timely and effective Defence preparation and ensure the efficient presentation of evidence during trial.<sup>47</sup> The Panel will thus assess whether, at the current stage of proceedings, the SPO has provided timely

---

<sup>42</sup> Veseli Response, paras 34-36. The Panel notes that the Veseli Defence did not request any relief in relation to this submission. The Panel will therefore address it when dealing with an application by the calling Party to declare the witness adverse, if any.

<sup>43</sup> Selimi Response, para. 21.

<sup>44</sup> Selimi Response, para. 22.

<sup>45</sup> Krasniqi Response, para. 20.

<sup>46</sup> Thaçi Response, para. 20.

<sup>47</sup> KSC-BC-2020-07, F00321, Trial Panel II, *Decision on Prosecution's Request for Leave to Amend its List of Exhibits* ("Gucati and Haradinaj Decision"), 23 September 2021, para. 15. See also ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-T, *Decision on Prosecution's Motion for Leave to Amend its Exhibit List* ("[Karadžić Decision](#)"), 19 October 2011, para. 10.

notice and shown good cause for Requested Amendments, and that no prejudice is caused to the Defence by the amendment of the SPO's Exhibit List.<sup>48</sup>

29. The Court of Appeals Panel has stated that a certain level of flexibility must be maintained with respect to amendments of witness and exhibit lists at the pre-trial stage, provided that adequate protection of the accused's rights is guaranteed.<sup>49</sup> The Panel further stresses that, in deciding whether to grant the addition of a particular item to a Party's Exhibit List, the Panel need not assess whether the proposed items are admissible.<sup>50</sup> The Panel need only satisfy itself that the proposed evidence is *prima facie* relevant and of sufficient importance to justify the late addition.<sup>51</sup> Accordingly, a decision authorising the addition of an item to a Party's Exhibit List is without prejudice to the Panel's subsequent decision on whether that item should be admitted into evidence.<sup>52</sup>

30. As regards timely notice, the Panel is mindful that the Pre-Trial Judge set a time limit for the submission of the SPO's Exhibit List and authorised numerous amendments thereof.<sup>53</sup> The Panel is also aware that many of the Requested

---

<sup>48</sup> See *Gucati and Haradinaj* Decision, para. 16; ICTY, *Prosecutor v. Hadžić*, IT-04-75-T, Decision on Fifth Defence Motion for Leave to Amend its Rule 65 *ter* Exhibit List ("[Hadžić Decision](#)"), 19 February 2015, para. 5; [Karadžić Decision](#), para. 9; *Prosecutor v. D. Milošević*, IT-98-29/1-T, [Decision on Prosecution's Third Motion for Leave to Amend Its Rule 65 \*ter\* Exhibit List](#), 23 April 2007, p. 3; STL, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, [Decision allowing the Prosecution to Add to Its Exhibit List a Statement by Mr Andrew Donaldson \(Witness PRH230\)](#), 28 April 2017, para. 18.

<sup>49</sup> KSC-BC-2020-06, IA019/F00006, Court of Appeals, *Decision on Taçi's Appeal against "Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures*, 12 July 2022, para. 21.

<sup>50</sup> See *Gucati and Haradinaj* Decision, para. 16; ICTY, [Karadžić Decision](#), para. 10; [Hadžić Decision](#), para. 5.

<sup>51</sup> See *Gucati and Haradinaj* Decision, para. 16; [Hadžić Decision](#), para. 5; [Karadžić Decision](#), paras 9.

<sup>52</sup> See *Gucati and Haradinaj* Decision, para. 16; ICTY, [Karadžić Decision](#), para. 10, para. 10; [Hadžić Decision](#), para. 5.

<sup>53</sup> Transcript of Hearing, 29 October 2021, pp. 752-753; Pre-Trial Judge's Decision of 31 January 2022, para. 13. See also 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*, para. 54 (a confidential redacted version was filed on the same day, F00727/CONF/RED); F00779, Pre-Trial Judge, *Decision on Specialist Prosecutor's Rule 102(2) and Related Requests*, 22 April 2022, confidential, para. 55; 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. 107 (a confidential redacted version was filed on the same day, F00876/CONF/RED); F00957, Pre-Trial Judge, *Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective*

Amendments have existed and were in the possession of the SPO for months or years.<sup>54</sup> The Panel notes the Defence's submissions that: (i) the SPO's late realisation, following a reassessment of its evidentiary holdings, that an item may be relevant to its case does not constitute good cause; and (ii) inadvertence cannot be the sole justification for late amendments of the Exhibit List. It is quite apparent to the Panel that the SPO could, and in fact should, have sought leave to amend its exhibit list in relation to many of the items concerned at an earlier point in time. These were known to the SPO and, if relevant to their case, should have been identified as such in the diligent exercise of its responsibilities. However, in assessing the issue of timeliness of such an application, the Panel notes that, pursuant to Rule 102(1)(b)(iii), the SPO shall make available to the Defence and Victims' Counsel, within the time limit set by the Panel and *no later than thirty days prior to the opening of the SPO case*, the exhibits that it intends to present at trial. The Panel considers that: (i) the Requested Amendments were consolidated into a combined request in the interest of judicial economy;<sup>55</sup> and (ii) pursuant to the Panel's order,<sup>56</sup> the Request was filed on 30 January 2023, *i.e.* thirty days before the tentative date for the commencement of trial,<sup>57</sup> which was later rescheduled to 3 April 2023 upon agreement of the Parties and participants.<sup>58</sup> While the Request was perhaps not made as early as it could and should have been, it was made within the scope of what the Rules and the Panel authorise. The Panel is therefore

---

*Measures*, 6 September 2022, strictly confidential and *ex parte*, para. 107 (a confidential redacted version was filed on 7 September 2022, F00957/CONF/RED); F01057, Pre-Trial Judge, *Decision on Prosecution Rule 102(2) Submission and Related Requests*, 27 October 2022, strictly confidential and *ex parte*, para. 58 (a confidential redacted version was filed on the same day, F01057/CONF/RED); F01058, Pre-Trial Judge, *Decision on Prosecution Request to Add Two Witnesses and Associated Materials*, 27 October 2022, strictly confidential and *ex parte*, para. 47 (a confidential redacted version was filed on the same day, F01058/CONF/RED); F01142, para. 304.

<sup>54</sup> See *e.g.* Annexes 25, 28-30, 36-37 to the Request.

<sup>55</sup> Request, para. 7.

<sup>56</sup> Transcript of Hearing, 18 January 2023, p. 1901.

<sup>57</sup> Transcript of Hearing, 16 December 2022, pp. 1699-1700; Transcript of Hearing, 18 January 2023, pp. 1903-1904.

<sup>58</sup> Transcript of Hearing, 15 February 2023, pp. 2038-2039.

satisfied that the SPO's review of its evidentiary holdings occurred within the time limit set by Rule 102(1)(b)(iii) for the amendment of the Exhibit List. Moreover, the Panel considers that the Requested Amendments include items that were recently created/received by the SPO or cleared for disclosure by the relevant authorities, or that the Pre-Trial Judge previously declined to authorise for Rule 102(1) disclosure until such time as an application to amend the Exhibit List is filed.<sup>59</sup> For these reasons, the Panel finds that the Requested Amendments are being sought in accordance with the time limit set out by the Rules.

31. As regards good cause for the addition of the Requested Amendments to the SPO's Exhibit List, the Panel notes that leave to amend the Exhibit List should not be granted with respect to items that are obviously irrelevant and would, therefore, ultimately be denied admission into evidence.<sup>60</sup> Such an evaluation does not call for an assessment of the admissibility of the proposed material, but of a *prima facie* evaluation only. The Panel may also take into account other factors which militate in favour of, or against, a requested addition, including whether

---

<sup>59</sup> SPOE00330366-00330381 (Annex 27 to the Request, pp. 2-33); SPOE00330382-00330382 (Annex 27 to the Request, pp. 34-35); SPOE00330383-00330383 (Annex 27 to the Request, pp. 36-37); SPOE00330384-00330384 (Annex 27 to the Request, pp. 38-39); SPOE00330385-00330385 (Annex 27 to the Request, pp. 40-41); SPOE00330386-00330386 (Annex 27 to the Request, pp. 42-43); SPOE00330387-00330387 (Annex 27 to the Request, pp. 44-45); SPOE00330388-00330388 (Annex 27 to the Request, pp. 46-47); SPOE00330389-00330389 (Annex 27 to the Request, pp. 48-49); [REDACTED] (Annex 32 to the Request); 108459-01 (Annex 38 to the Request, pp. 2-11); 108460-01 (Annex 38 to the Request, pp. 12-19); 108460-02 (Annex 38 to the Request, pp. 20-47); 108826-TR-ET Part 1 (Annex 39 to the Request, pp. 2-14); 108818-108825 (Annex 39 to the Request, pp. 15-22); 108850-TR-ET Part 1 (Annex 40 to the Request, pp. 2-17); 108839-108848 (Annex 40 to the Request, pp. 18-27); 108858-TR-ET Part 1 (Annex 41 to the Request, pp. 2-11); 108854-108857 (Annex 41 to the Request, pp. 12-15); 108011-108040 (Annex 42 to the Request, pp. 2-61); SPOE00328676-00328733 (Annex 42 to the Request, pp. 62-119); 110191-110193 (Annex 46 to the Request, pp. 2-4); SPOE00330362-00330362 (Annex 46 to the Request, p. 5); SPOE00330363-00330363 (Annex 46 to the Request, p. 6); SPOE00330364-00330364 (Annex 46 to the Request, p. 7); SPOE00330365-00330365 (Annex 46 to the Request, p. 8). SITF00297471-00297474 RED2 (Annex 34 to the Request); see F01141, para. 55.

<sup>60</sup> *Gucati and Haradinaj* Decision, para. 16. See also ICTY, *Karadžić Decision*, para. 9; *Hadžić Decision*, para. 5; *Prosecutor v. Stanišić and Simatović*, IT-03-69-T, Decision on Prosecution Motion for Leave to Amend its Rule 65 *ter* Exhibit List ("*Stanišić and Simatović Decision*"), 8 May 2008, para. 7; *Prosecutor v. Delić*, IT-04-83-T, [Decision on Urgent Prosecution Motion for Leave to Amend its Exhibit List](#), 17 October 2007, p. 4; *Prosecutor v. Bošković and Tarčulovski*, IT-04-82-T, [Decision on Tarčulovski Motion for Permission to Add Additional Exhibits to its 2D Defence Exhibit List](#), 12 March 2008, para. 3.

the proposed evidence is *prima facie* relevant and of probative value to the charges against an accused, the complexity of the case, on-going investigations, and translation of documents and other materials.<sup>61</sup> In addition, the Panel will carefully balance any amendment to the Prosecution's exhibit list with an adequate protection of the rights of the accused.<sup>62</sup> That is, the Panel must be satisfied that amendments to the exhibit list at that stage of the proceedings provide an accused sufficient notice and do not adversely affect his ability to prepare for trial.<sup>63</sup>

32. After carefully reviewing the Requested Amendments, the Panel finds that they are *prima facie* relevant and sufficiently important to justify the late addition insofar as they consist of: (i) twelve prior statements of fourteen witnesses whom the SPO intends to call to testify at trial (W02161, [REDACTED], W04752, and W03724, who will testify among the first forty witnesses; [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], who will not testify among the first forty witnesses);<sup>64</sup> (ii) thirty exhibits associated to the prior statements of twelve witnesses whom the SPO intends to call to testify at trial (W02652, [REDACTED], W04408, W03724, who will testify among the first forty witnesses; W03885, [REDACTED], W04410, [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], who will not testify among the first forty witnesses);<sup>65</sup> (iii) twenty exhibits related to two witnesses whom the SPO

<sup>61</sup> ICTY, [Karadžić Decision](#), para. 9 (and authorities cited therein).

<sup>62</sup> ICTY, *Stanišić and Simatović Decision*, para. 6; [Karadžić Decision](#), para. 9.

<sup>63</sup> ICTY, *Stanišić and Simatović Decision*, para. 6; [Karadžić Decision](#), para. 9.

<sup>64</sup> [REDACTED]; [REDACTED]; [REDACTED]; 050550-050556; SITF00297471-00297474 RED2; SITF00240114-SITF00240120; SITF00242371-00242374 RED/ SITF00242365-00242365 RED; 108826-TR-ET Part 1; 108850-TR-ET Part 1; 108858-TR-ET Part 1; SITF00240136-SITF00240154; 110533-110535 RED. See also Annexes 31-32, 34, 36-37, 39 (pp. 2-14), 40 (pp. 2-17), 41 (pp. 2-11), 44 to the Request.

<sup>65</sup> 066595-01; SPOE00072805-00072805; SPOE00072806-00072806; SPOE00072807-00072807; SPOE00072808-00072808; SPOE00072809-00072809; SPOE00072811-00072811; SPOE00072812-00072812; SPOE00072813-00072813; SPOE00072814-00072814; SPOE00072815-00072815; SPOE00072822-00072822; SPOE00072823-00072823; SPOE00072824-00072824; SPOE00072825-00072825; SPOE00072826-00072826; [REDACTED]; 050550-050556; 070964-070965; [REDACTED]; 108459-01; 108460-01; 108460-02; 108818-108825; 108839-108848; 108854-108857; 108011-108040; SPOE00328676-00328733; 058048-058112;

intends to call to testify at trial (W04746 and W04337, who will testify among the first forty witnesses);<sup>66</sup> (iv) sixteen videos of the Accused and other officials of the Kosovo Liberation Army (“KLA”) and of the Provisional Government of Kosovo (“PGoK”), including alleged JCE members, acting in their official positions and publicly representing the KLA/PGoK;<sup>67</sup> (v) five photographs and maps of the Kukës Metal Factory, a crime site in the indictment;<sup>68</sup> (vi) a contemporaneous KLA military police notebook;<sup>69</sup> (vii) a signed certificate alleging that Haradin Balaj, an alleged perpetrator of crimes at the Llapushnik/Lapušnik detention facility in spring/summer 1998, was a member of the KLA from 8 April 1998 until 19 September 1999;<sup>70</sup> and (viii) contemporaneous KLA military police personnel records.<sup>71</sup>

33. As regards the impact of the Requested Amendments on the Accused’s preparation for trial, the Panel notes that: (i) five prior statements have already been disclosed to the Defence under Rule 102(3) or Rule 103;<sup>72</sup> (ii) eleven exhibits associated to prior statements have already been disclosed to the Defence under Rule 102(3);<sup>73</sup> (iii) two exhibits have already been disclosed to the Defence under

---

065417-065417. *See also* Annexes 28, 30, 33, 35, 38, 39 (pp. 15-22), 40 (pp. 18-27), 41 (pp. 12-15), 42, 43 to the Request.

<sup>66</sup> SPOE00129585-00129585; SPOE00129586-00129586; SPOE00129587-00129587; SPOE00129791-00129791; SPOE00129517-00129517; SPOE00330397-SPOE00330398; SPOE00330429-SPOE00330429; SPOE00330438-SPOE00330438; SPOE00330442-SPOE00330442; SPOE00330366-00330381; SPOE00330382-00330382; SPOE00330383-00330383; SPOE00330384-00330384; SPOE00330385-00330385; SPOE00330386-00330386; SPOE00330387-00330387; SPOE00330388-00330388; SPOE00330389-00330389; SITF00370755-00370794 RED; SITF00370052-00370069 RED. *See also* Annexes 25-27, 29 to the Request.

<sup>67</sup> 103211-01; 103211-02; 103211-04; 103211-05; 103211-06; 103211-07; 103211-08; 103211-09; 103211-10; 103211-11; 103211-12; 103211-14; 103211-15; 103211-16; 103211-17; 103211-18. *See also* Annex 45 to the Request.

<sup>68</sup> 110191-110193; SPOE00330362-00330362; SPOE00330363-00330363; SPOE00330364-00330364; SPOE00330365-00330365. *See also* Annex 46 to the Request.

<sup>69</sup> SITF00439039-00439040. *See also* Annex 47, p. 2-5.

<sup>70</sup> IT-03-66 P9 (U003-2417-U003-2417). *See also* Annex 47, pp. 6-7.

<sup>71</sup> U003-3354-U003-3358. *See also* Annex 47, pp. 8-17.

<sup>72</sup> [REDACTED]; 050550-050556; SITF00297471-00297474 RED2 (Annex 34 to the Request); SITF00240114-SITF00240120 (Annex 36 to the Request); SITF00240136-SITF00240154. *See* Disclosure Packages 8, 160, 460, 461, 463, 615, 622-623, 625, 645, 646, 659.

<sup>73</sup> 066595-01 (Annex 28 to the Request); SPOE00072806-00072806 (Annex 30 to the Request, p. 3); SPOE00072808-00072808 (Annex 30 to the Request, p. 5); SPOE00072809-00072809 (Annex 30 to the



Rule 102(3) or Rule 103;<sup>74</sup> (iv) thirty-seven items do not pertain to witnesses who will testify amongst the first forty;<sup>75</sup> (v) the volume of the thirty-one remaining items pertaining to five of the first forty witnesses is limited;<sup>76</sup> (vi) out of these

---

Request, p. 6); SPOE00072812-00072812 (Annex 30 to the Request, p. 8); SPOE00072823-00072823 (Annex 30 to the Request, p. 13); SPOE00072824-00072824 (Annex 30 to the Request, p. 14); [REDACTED]; 050550-050556; 058048-058112 (Annex 42 to the Request, pp. 120-249); 065417-065417 (Annex 43 to the Request). *See* Disclosure Packages 198, 202, 312, 350, 384, 457-458, 460, 461, 462, 608, 615, 645.

<sup>74</sup> SITF00439039-00439040 (Annex 47 to the Request, pp. 2-5); U003-3354-U003-3358 (Annex 47 to the Request, pp. 8-17). *See* Disclosure Packages 219, 595.

<sup>75</sup> **W03885**: 070964-070965 (Annex 33 to the Request). [REDACTED]: [REDACTED] (Annex 35 to the Request); [REDACTED]: SITF00242371-00242374 RED/SITF00242365-00242365 RED (Annex 37 to the Request); **W04410**: 108459-01 (Annex 38 to the Request, pp. 2-11); 108460-01 (Annex 38 to the Request, pp. 12-19); 108460-02 (Annex 38 to the Request, pp. 20-47). [REDACTED]: 108826-TR-ET Part 1 (Annex 39 to the Request, pp. 2-14); 108818-108825 (Annex 39 to the Request, pp. 15-22). [REDACTED]: 108850-TR-ET Part 1 (Annex 40 to the Request, pp. 2-17); 108839-108848 (Annex 40 to the Request, pp. 18-27). [REDACTED]: 108858-TR-ET Part 1 (Annex 41 to the Request, pp. 2-11); 108854-108857 (Annex 41 to the Request, pp. 12-15). [REDACTED]: 108011-108040 (Annex 42 to the Request, pp. 2-61); SPOE00328676-00328733 (Annex 42 to the Request, pp. 62-119). [REDACTED]: 110533-110535 RED (Annex 44 to the Request). **Other exhibits**: 103211-01 (Annex 45 to the Request, pp. 2-5); 103211-02 (Annex 45 to the Request, pp. 6-9); 103211-04 (Annex 45 to the Request, pp. 10-11); 103211-05 (Annex 45 to the Request, pp. 12-13); 103211-06 (Annex 45 to the Request, pp. 14-15); 103211-07 (Annex 45 to the Request, pp. 16-17); 103211-08 (Annex 45 to the Request, pp. 18-19); 103211-09 (Annex 45 to the Request, pp. 20-21); 103211-10 (Annex 45 to the Request, pp. 22-25); 103211-11 (Annex 45 to the Request, pp. 26-31); 103211-12 (Annex 45 to the Request, pp. 32-33); 103211-14 (Annex 45 to the Request, pp. 34-35); 103211-15 (Annex 45 to the Request, pp. 36-37); 103211-16 (Annex 45 to the Request, pp. 38-41); 103211-17 (Annex 45 to the Request, pp. 42-43); 103211-18 (Annex 45 to the Request, pp. 44-47); 110191-110193 (Annex 46 to the Request, pp. 2-4); SPOE00330362-00330362 (Annex 46 to the Request, p. 5); SPOE00330363-00330363 (Annex 46 to the Request, p. 6); SPOE00330364-00330364 (Annex 46 to the Request, p. 7); SPOE00330365-00330365 (Annex 46 to the Request, p. 8); IT-03-66 P9 (U003-2417-U003-2417) (Annex 47 to the Request, pp. 6-7).

<sup>76</sup> **W04746**: SPOE00129585-00129585 (Annex 25 to the Request, p. 2); SPOE00129586-00129586 (Annex 25 to the Request, p. 3); SPOE00129587-00129587 (Annex 25 to the Request, p. 4); SPOE00129791-00129791 (Annex 25 to the Request, p. 5); SPOE00129517-00129517 (Annex 25 to the Request, p. 6); SPOE00330397-SPOE00330398 (Annex 26 to the Request, pp. 2-5); SPOE00330429-SPOE00330429 (Annex 26 to the Request, pp. 6-7); SPOE00330438- SPOE00330438 (Annex 26 to the Request, pp. 8-9); SPOE00330442-SPOE00330442 (Annex 26 to the Request, pp. 10-11); SPOE00330366-00330381 (Annex 27 to the Request, pp. 2-33); SPOE00330382-00330382 (Annex 27 to the Request, pp. 34-35); SPOE00330383-00330383 (Annex 27 to the Request, pp. 36-37); SPOE00330384-00330384 (Annex 27 to the Request, pp. 38-39); SPOE00330385-00330385 (Annex 27 to the Request, pp. 40-41); SPOE00330386-00330386 (Annex 27 to the Request, pp. 42-43); SPOE00330387-00330387 (Annex 27 to the Request, pp. 44-45); SPOE00330388-00330388 (Annex 27 to the Request, pp. 46-47); SPOE00330389-00330389 (Annex 27 to the Request, pp. 48-49). **W04337**: SITF00370755-00370794 RED (Annex 29 to the Request, pp. 2-41); SITF00370052-00370069 RED (Annex 29 to the Request, pp. 42-59). [REDACTED]: SPOE00072805-00072805 (Annex 30 to the Request, p. 2); SPOE00072807-00072807 (Annex 30 to the Request, p. 4); SPOE00072811-00072811 (Annex 30 to the Request, p. 7); SPOE00072813-00072813 (Annex 30 to the Request, p. 9); SPOE00072814-00072814 (Annex 30 to the Request, p. 10); SPOE00072815-00072815 (Annex 30 to the Request, p. 11); SPOE00072822-00072822 (Annex 30 to the

thirty-one items, eleven pertain to three witnesses who will not testify amongst the first twelve;<sup>77</sup> (vii) only twenty items (sixteen of which are one-page items) pertain to two witnesses who will testify amongst the first twelve;<sup>78</sup> and (viii) the SPO will be ordered to disclose all remaining items as soon as possible. The Panel notes and accepts the Defence's argument that Rule 102(3) or Rule 103 disclosure does not put the Defence on notice of the fact that the SPO intends to use such material as evidence in the proceedings. However, the Panel considers that said material was disclosed to the Defence, who had the opportunity to review it and to acquaint themselves with it. In that limited sense, the material in question was not unknown to them. The Panel further considers that, as mentioned above, the Defence has received notice of the addition of the Requested Amendments to the Exhibit List within the time limit set by Rule 102(1)(b)(iii) and will have adequate time to prepare for the material in question. Should any of the material be used early in the proceedings, the Defence can seek further relief from the Panel if the SPO's early usage of this material causes demonstrable difficulties to the Defence. The Panel is therefore satisfied that the Defence is given sufficient notice and adequate time for its preparation in respect of that material.

34. For these reasons, the Panel finds that the SPO has provided timely notice, shown good cause for the Requested Amendments, and demonstrated that no prejudice will be caused to the Defence by the addition of the Requested Amendments to the SPO's Exhibit List. The Panel therefore authorises the addition

---

Request, p. 12); SPOE00072825-00072825 (Annex 30 to the Request, p. 15); SPOE00072826-00072826 (Annex 30 to the Request, p. 16). [REDACTED]: [REDACTED] (Annex 31 to the Request). **W04752**: [REDACTED] (Annex 32 to the Request).

<sup>77</sup> [REDACTED]: SPOE00072805-00072805 (Annex 30 to the Request, p. 2); SPOE00072807-00072807 (Annex 30 to the Request, p. 4); SPOE00072811-00072811 (Annex 30 to the Request, p. 7); SPOE00072813-00072813 (Annex 30 to the Request, p. 9); SPOE00072814-00072814 (Annex 30 to the Request, p. 10); SPOE00072815-00072815 (Annex 30 to the Request, p. 11); SPOE00072822-00072822 (Annex 30 to the Request, p. 12); SPOE00072825-00072825 (Annex 30 to the Request, p. 15); SPOE00072826-00072826 (Annex 30 to the Request, p. 16). [REDACTED]: [REDACTED] (Annex 31 to the Request). **W04752**: [REDACTED] (Annex 32 to the Request).

<sup>78</sup> See **W04746**'s and **W04337**'s items listed in footnote 76.

of the Requested Amendments to the SPO's Exhibit List and orders the SPO to file its amended Exhibit List by no later than Wednesday, 15 March 2023. The Panel also orders the SPO to disclose under Rule 102(1)(b)(iii) the items set out in pages 18-34 of Annex 1 to the Request by no later than Wednesday, 15 March 2023.

#### IV. CLASSIFICATION

35. The Panel notes that the Responses and the Supplement have been filed confidentially. The Panel also notes that the SPO does not object to the reclassification of the Supplement as public, provided that its Annexes remain confidential to give effect to existing protective measures.<sup>79</sup> The Panel therefore: (i) instructs the Registry to reclassify the Supplement (excluding its Annexes) as public; and (ii) orders the Defence to submit public redacted versions of the Responses by no later than Friday, 24 March 2023.

#### V. DISPOSITION

36. For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS** the Request;
- b) **ORDERS** the SPO to disclose under Rule 102(1)(b)(i) the material specified in pages 2-17 of Annex 1 to the Request by no later than Wednesday, 15 March 2023;
- c) **AUTHORISES** the SPO to add to the Exhibit List the material specified in pages 18-34 of Annex 1 to the Request and **ORDERS** the SPO to: (i) file its amended Exhibit List by no later than Wednesday, 15 March 2023; and (ii) disclose under Rule 102(1)(b)(iii) the items set out in pages 18-34 of

---

<sup>79</sup> Supplement, para. 2.

Annex 1 to the Request by no later than Wednesday, 15 March 2023;

- d) **DIRECTS** the Registry to reclassify the Supplement (excluding its Annexes) as public; and
- e) **ORDERS** the Defence to submit public redacted versions of the Responses by no later than Friday, 24 March 2023.



**Judge Charles L. Smith, III**

**Presiding Judge**

Dated this Wednesday, 8 March 2023

At The Hague, the Netherlands.