



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: Specialist Prosecutor's Office

Date: 14 December 2023

Language: English

Classification: Public

Prosecution submission of list of witnesses for 15 January to 4 April 2024

with confidential Annexes 1 and 2

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Victims

Simon Laws

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

1. Pursuant to the Conduct of Proceedings Order¹ and the 16 November 2023 Oral Order,² the Specialist Prosecutor's Office ('SPO') submits Annexes 1 and 2 listing the next witnesses,³ with their tentative order of appearance, and reserve witnesses⁴ for the evidentiary block between 15 January to 4 April 2024.⁵
2. 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 their cross-examinations proceed faster than foreseen. Due to the nature of reserve witnesses, there must be a degree of flexibility concerning when they are called. Therefore, the list in Annex 2 does not necessarily reflect the order in which their testimony may occur.
3. In reaching these discretionary scheduling decisions,⁶ 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;⁷ (v) the witness's personal circumstances; (vi) security concerns; and (vii) the need to provide adequate notice, to facilitate Defence preparation.

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 Oral Order, Transcript, 16 November 2023, p.10227 ('16 November 2023 Oral Order').

³ Annex 1: W01493, W04489, W01763, W02082, W04870, W04325, W04576, W04739, W04741, W02749, W02475, W04811, W04846, W01453, W03878, W04445, W02144. This list and the list of reserve witnesses (*see* Annex 2 and fn.4 below) is subject to change.

⁴ Annex 2: W00498, W01140, W04446, W04571, W04575, W04820, W04651, W01163, W04230. Annex 2 includes reserve witnesses previously noticed (*see* KSC-BC-2020-06/F01828; KSC-BC-2020-06/F01932) and additional reserve witnesses specifically identified for evidentiary blocks between January and early April 2024.

⁵ Rule 154 requests were filed in relation to certain witnesses in Annexes 1-2 including requests to amend the exhibit list (*see* KSC-BC-2020-06/F01980; KSC-BC-2020-06/F02005).

⁶ *See, inter alia*, Rules 118, 121, 127; Conduct of Proceedings Order, KSC-BC-2020-06/F01226, Sections XII, XV(C).

⁷ This includes consideration of any noticed adjudicated facts related to the subject matter of each witness's evidence.

4. 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,⁸ 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);⁹ and (vii) information regarding protective measures ordered in relation to the witness (with reference to relevant orders).

5. In the interest of fair and expeditious proceedings, the SPO has reduced the estimated examination time of six witnesses,¹⁰ including W04576 and W01453, which the SPO now proposes to call pursuant to Rule 154 instead of live.

6. 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.¹¹

7. Until further order, the SPO will, pursuant to the Conduct of Proceedings Order¹² and one month prior to the completion of testimony of witnesses noticed in

⁸ Transcript parts and separate records of the same hearing, testimony, or interview are grouped together, where applicable.

⁹ Where the SPO intends to seek to add the relevant document to the exhibit list, this is also clearly noted.

¹⁰ W02082; W04576; W04739; W04741; W01453; W03878.

¹¹ For recent examples of the potential logistical implications of inaccurate cross-examination estimates, see Transcript (Trial Proceedings), 30 October 2023, pp.9239-9240; Transcript (Trial Proceedings), 15 November 2023, pp.101222-101225. See also Oral Order, Transcript, 19 July 2023, p.6089; Prosecution response to THAÇI and SELIMI Defence request to postpone reserve witnesses, KSC-BC-2020-06/F01820, 27 September 2023, Confidential, paras 3-4.

¹² Conduct of Proceedings Order, KSC-BC-2020-06/F01226, para.73.

this filing, provide the Panel, Parties, and participants a list of the witnesses it intends to call in the ensuing three-month period.

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

Word count: 767



Kimberly P. West

Specialist Prosecutor

Thursday, 14 December 2023

At The Hague, the Netherlands.