

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: Counsel for Hashim Thaçi
Counsel for Kadri Veseli
Counsel for Rexhep Selimi
Counsel for Jakup Krasniqi

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Public Redacted Version of Joint Defence Reply to 'Prosecution Response to Defence Request for Extension of Time (F02289)'

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Hashim Thaçi

Luka Mišetić

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Victims

Simon Laws

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

I. INTRODUCTION

1. The Defence jointly files this brief reply to the SPO Response to the Defence Request for extension of time to respond to the SPO Request to amend the exhibit list.¹

II. SUBMISSIONS

2. The SPO Request is, in essence, an application to admit [REDACTED]. The legal arguments surrounding the admission of such evidence are obviously complex and novel as far as these proceedings are concerned. The Request raises serious issues of fairness and prejudice. It is unhelpful for the SPO to compare this specific Request to any of those which have gone before,² when it is strikingly obvious that the substance, importance and impact of this Request on this case is materially different to any the Panel have considered in the past.
3. Moreover, it is simply wrong for the SPO to knowingly and intentionally create a shortened, unworkable, and unfair timetable, and then seek to suggest, in its Response, that the Defence's request for adequate time to respond places in jeopardy the fair and expeditious conduct of these proceedings.³ These issues warrant a careful and concerned approach and the Defence is entitled to the time to do so.
4. The SPO Response mischaracterises the attendant circumstances in order to obscure the obviously untimely nature of its Request. Firstly, the submission that the majority of the Requested Amendments were disclosed between January and March 2024⁴ elides the glaring problem that 18 of the 22 items in

¹ F02296, *Prosecution response to Defence request for extension of time (F02289)*, 8 May 2024, confidential ("SPO Response").

² SPO Response, para. 4.

³ SPO Response, para. 2.

⁴ SPO Response, para. 3(a).

Annex 1 were in fact disclosed under Rule 103.⁵ As such, it would be absurd to suggest that the Defence was on notice of the SPO's intent to rely on this material in support of their Indictment *at any point*, let alone under the current circumstances [REDACTED].

5. Secondly, the fact that W03170, W03780, and W04752 were included in the SPO's list of the first 40 witnesses to be called at trial⁶ is beside the point, because the Request concerns [REDACTED]. That material was not known or available for the duration of the first 40 witness's evidence. The issues this Request raises are novel and again could not have been anticipated at the outset of trial. As such, the Defence has *not* previously prepared to deal with them; nor could it have been expected to in these circumstances.
6. It was the SPO that made an informed strategic decision to (a) disclose this material when it did; (b) make this request when it did; and (c) schedule the relevant witnesses to give evidence in the order it chose. Therefore any "undue risks not only of delay and to the court schedule,"⁷ are purely of the SPO's own making.
7. The SPO Response fails to articulate how granting a short extension to the Defence to respond to a complex legal argument could in any way impact "[REDACTED]"⁸ Further, despite the implicit suggestion within the SPO Response, there is no bar to these witnesses still being called as scheduled [REDACTED] if the Request has not been determined by that stage. As the SPO themselves mention in their Response, repeatedly, they were initially prepared to call these witnesses in 2023 and their attendance is not subject to a decision

⁵ See, F02279/A01, *ANNEX 1 to Prosecution request to amend the Exhibit List with confidential Annex 1*, 1 May 2024, confidential, items 1, 3-10, 13-15, 17-22.

⁶ SPO Response, para. 3(b).

⁷ SPO Response, para. 5.

⁸ SPO Response, para. 5.

in relation to its Request. The SPO, for example, chose to proceed with the evidence of W04746 despite having been [REDACTED]. There is no reason this extension request need prevent the SPO calling the relevant witnesses as scheduled.

8. The Defence strongly submits that this is not a decision that can be made in either a rushed or staggered form. Were *any* of the evidence which is the subject of this request to be permitted to be adduced in this trial, it will have far reaching consequences on the trial as a whole, for reasons that will be soon be reasoned in full by the Defence. The Defence, therefore, respectfully requests that the Panel decline any invitation of a staggered approach and ask that the Request be dealt with in one decision.
9. Finally, the Defence ought to be entitled to a presumption of good faith and due deference when it submits that it requires additional time to respond to an obviously significant and complex matter such as this. Whereas the SPO complains that “the Defence does not explain why any additional time, let alone the extension requested, is required,”⁹ the Defence submits that this is not required, and it cannot be expected to detail the specific nature of its trial preparation.

III. CONCLUSION

10. The Defence is entitled to adequate time to prepare its case. The SPO Request is one of particular significance which has the potential to materially impact this trial. The Defence cannot be deprived of their entitlement to time as a result of what is no more than a strategic choice on behalf of the SPO to conduct their case on this timeline. The Defence’s Request should be granted.

⁹ SPO Request, para. 3.

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Respectfully submitted on Thursday, 9 May 2024



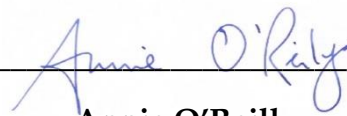
Luka Mišetić
Counsel for Hashim Thaçi



Ben Emmerson, CBE KC
Counsel for Kadri Veseli



Kerrie Ann Rowan
Co-Counsel for Kadri Veseli



Annie O'Reilly
Co-Counsel for Kadri Veseli



Geoffrey Roberts
Counsel for Rexhep Selimi



Eric Tully
Co-Counsel for Rexhep Selimi



Rudina Jasini

Co-Counsel for Rexhep Selimi



Venkateswari Alagenda

Counsel for Jakup Krasniqi



Aidan Ellis

Co-Counsel for Jakup Krasniqi



Victor Băieșu

Co-Counsel for Jakup Krasniqi