



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: Specialist Prosecutor's Office

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Language: English

Classification: Public

Prosecution response to joint Defence request for leave to sur-reply (F02737)

Specialist Prosecutor's Office

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1. The Request¹ is unsubstantiated and should be dismissed. It does not specify or explain: (i) the allegedly new legal arguments² raised by the Specialist Prosecutor's Office ('SPO') in the Reply;³ (ii) how further submissions are required in the interests of justice; or (iii) even the discrete, new issues the Defence seeks to address in sur-reply.⁴ Instead, the Defence effectively seeks leave to make submissions on the entirety of the Reply (and all admissibility provisions concerned by the Motion⁵) and impermissibly file a further response addressing – a second time – issues already extensively argued in the Response.⁶ In the circumstances, the Request seeks to unjustifiably undermine the briefing schedule and sequence of submissions set out in the Rules,⁷ and risks unnecessary delay.

2. The Defence is required to provide full answers to issues raised in motions at the response stage and should not be permitted to file further submissions repeating and expanding on its previous arguments.⁸ Indeed, the Motion sought the admission of expert evidence under Rules 138, 149, and 154, thereby raising the admissibility

¹ Joint Defence Request for Leave to Sur-Reply to "Prosecution reply relating to request to admit expert witness evidence (F02633)", KSC-BC-2020-06/F02737, 20 November 2024 ('Request').

² Request, KSC-BC-2020-06/F02737, para.4.

³ Prosecution reply relating to request to admit expert witness evidence (F02633), KSC-BC-2020-06/F02732, 18 November 2024 ('Reply').

⁴ Leave for sur-reply should only be granted where a reply raises a new issue and where required by the interests of justice. *See e.g.* ICTY, *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Decision on Application by Prosecution for Leave to File Further Response, 6 June 2003 ('Kvočka Appeal Decision'), para.2.

⁵ Prosecution motion for admission of evidence of Witnesses W04826, W04874, and W04875 pursuant to Rules 138, 149, and 154 and related request, KSC-BC-2020-06/F02633, 11 October 2024, Confidential ('Motion').

⁶ Joint Defence Consolidated Response to F02620 and F02633, KSC-BC-2020-06/F02703, 8 November 2024, Confidential ('Response').

⁷ The Panel has previously found that – unless deviation is exceptionally justified – it is necessary to maintain the sequence envisaged in Rule 76 (motion, response, reply). *See e.g.* Public Redacted Version of Decision on Joint Defence Request for Reclassification of F01636 and on Prosecution Request for Further Redaction of F01647/RED, KSC-BC-2020-06/F01737/RED 23 August 2023, para.17; Decision Regarding Cross-Examination by Victims' Counsel, KSC-BC-2020-06/F01359, 9 March 2023, para.11. *See also* Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). Unless otherwise indicated, all references to 'Rule' or 'Rules' are to the Rules.

⁸ *See e.g.* Kvočka Appeal Decision, para.2; IRMCT, *Prosecutor v. Karadžić*, MICT-13-55-A, Decision on a motion for Redacted Versions of Rule 86(F) Filings, 24 January 2017, p.3.

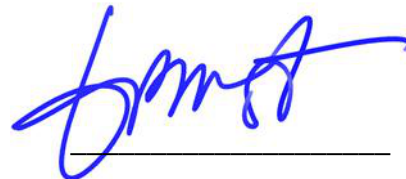
issues concerned by the Request. The Defence already had full and fair opportunity to address such issues in the Response.

3. The Reply properly addressed arguments arising from the Response and did not raise any new issues.⁹ In this respect, the SPO's submissions concerning the application of Rules 138, 149, and 154 and the definition of an expert report directly replied to the extensive arguments in the Response on these same issues.¹⁰ There is no new issue justifying sur-reply and the interests of justice do not require further submissions.

4. Finally, granting the Request would unnecessarily prolong litigation on the expert witnesses' evidence.¹¹ Timely resolution is necessary given that the SPO intends to call one of the experts as the first witness in January 2025, and the remaining two experts shortly thereafter in the same evidentiary block.¹²

5. For the foregoing reasons, the Request should be denied.

Word Count: 680



Kimberly P. West

Specialist Prosecutor

Thursday, 21 November 2024

At The Hague, the Netherlands.

⁹ Rule 76 (setting out the permissible scope of replies).

¹⁰ Response, KSC-BC-2020-06/F02703, paras 11-23, 56-65.

¹¹ In this respect, consistent with the sequence of submissions in the Rules (which provide a right of reply to the filing Party), the SPO may – if necessary – seek to reply to any further response to the Motion. Since no new issues were raised in the Reply, any further submissions would not be fairly characterised as a sur-reply, and even if they were, a right for a response to such sur-reply may be required in the interests of justice. *See, similarly, Kvočka Appeal Decision, para.5.*

¹² *See also* Motion, KSC-BC-2020-06/F02633, para.1.