



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

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Public redacted version of 'Prosecution response to Defence request regarding
final trial briefs'

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Luka Mišetić

Counsel for Kadri Veseli

Rodney Dixon

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

I. INTRODUCTION

1. The Request¹ should be denied, and – consistent with the Rules,² the Order on the Conduct of Proceedings,³ and relevant practice before this and other courts⁴ – the Parties' and participants' final trial briefs should be filed simultaneously. The proper opportunity for the Defence to respond to the Prosecution final trial brief is through closing statements, in line with the statutory framework.⁵ In seeking to argue otherwise, the Defence materially misrepresents prevailing practice, misapprehends the purpose of final briefs, and tries to manufacture an argument of exceptionality from ordinary course trial developments.⁶

II. SUBMISSIONS

A. THE DEFENCE MISINTERPRETS THE APPLICABLE FRAMEWORK AND MISREPRESENTS PREVAILING PRACTICE

2. Contrary to Defence submissions,⁷ the Rule 134(b)-(c) framework clearly envisages the simultaneous filing of final trial briefs, as well as victim impact statements.⁸ As outlined below, this is entirely consistent with the purpose of such

¹ Joint Defence Submissions on Consecutive Final Briefs, KSC-BC-2020-06/F02911, 7 February 2025, Confidential ('Request').

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules.

³ Annex 1 to Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, 25 January 2023 ('Order on the Conduct of Proceedings'), para.135.

⁴ See Section II(B) below.

⁵ Rule 135.

⁶ The requesting Party or participant must demonstrate that amendments to the Order on the Conduct of Proceedings are necessary to facilitate fair and expeditious proceedings. The Defence fails to do so. See Decision on Joint Defence Request for Amendment of the Order on the Conduct of Proceedings, KSC-BC-2020-06/F02389, 18 June 2024, para.15.

⁷ Request, KSC-BC-2020-06/F02911, para.7.

⁸ Public redacted version of 'Decision on the Defence motion for a crime site visit, closing of the evidentiary proceedings and giving directions on final briefs, request for reparations and closing statements, KSC-BC-2020-04/F00795/RED, 9 February 2024 ('Scheduling Decision'), para.30.

briefs. Moreover, the Defence's generic (and already rejected)⁹ submissions regarding adversarial proceedings¹⁰ are inapposite; as the Defence itself acknowledges, it will have the opportunity to respond to the Prosecution final trial brief in closing arguments, and, specifically, will have the opportunity to speak last.¹¹ Nothing necessitates reading the Rule 135 sequencing into Rule 134, and doing so would be inappropriate given the clear contrary intentions of the drafters.¹²

3. In every case to date before the Kosovo Specialist Chambers ('KSC'), closing briefs have – consistent with Rule 134 – been filed simultaneously.¹³ As outlined further below, nothing warrants a different approach in this case. In seeking to distinguish the *Shala* case, the Defence addresses factors that were considered by Trial Panel I purely in the context of considering a request for an extension of time to submit a final trial brief¹⁴ – while notably ignoring that same Panel's clear findings regarding Rule 134, and the sequencing and purpose of final briefs.¹⁵ While the factors outlined – such as the size and scope of the case – may be relevant to the deadline set for submitting final trial briefs in this case, they are irrelevant to their sequencing.

4. Further, in claiming that 'recent' international proceedings, specifically at the ICC, have 'moved away from simultaneous briefs',¹⁶ and that 'the ICC has consistently opted for consecutive briefs',¹⁷ the Defence materially and misleadingly misrepresents

⁹ Order on the Conduct of Proceedings, KSC-BC-2020-06/F01226/A01, para.135.

¹⁰ Request, KSC-BC-2020-06/F02911, paras 13-14.

¹¹ Rule 135(4).

¹² The Defence's reliance on an ICC decision on this point (Request, KSC-BC-2020-06/F02911, para.15, fn.17) is misplaced, noting that – unlike at the KSC – the ICC framework is silent on the time limits for closing briefs, with no equivalent provision to Rule 134.

¹³ Decision on the closing of the evidentiary proceedings and related matters, KSC-BC-2020-05/F00439, 20 June 2022, para.25(c); Decision on the Closing of the Evidentiary Proceedings and on Submissions Pursuant to Rules 134(b), and (d) and 159(6) of the Rules, KSC-BC-2020-07/F00553, 3 February 2022, para.26(b); Scheduling Decision, KSC-BC-2020-04/F00795/RED, para.30.

¹⁴ Request, KSC-BC-2020-06/F02911, paras 39-40.

¹⁵ Scheduling Decision, KSC-BC-2020-04/F00795/RED, para.30.

¹⁶ Request, KSC-BC-2020-06/F02911, para.15.

¹⁷ Request, KSC-BC-2020-06/F02911, para.15.

the situation. In support of its misleading claim, the Defence cites just four decisions, two of which are more than a decade old.¹⁸ They also, notably, fail to mention that in each of the ICC cases they cite the briefing schedule did not merely consist of a prosecution brief followed by a defence brief, but also incorporated a further prosecution response brief and further defence reply brief, thereby resulting in four sequential rounds of briefing in addition to closing statements.¹⁹

5. In any event, the predominant, recent practice at the ICC has, in fact – like other tribunals before it – clearly endorsed the filing of simultaneous briefs.²⁰

B. THE DEFENCE MISAPPREHENDS THE PURPOSE OF FINAL BRIEFS

6. As explained by the ICTR Appeals Chamber: '[t]he purpose of a closing brief [...] is not to respond to the other party's closing brief, but to express [a party's] own position regarding the charges set out in the indictment and the evidence led in the case'.²¹ This reasoning, which underlies the practice at both the ICTY and ICTR for the

¹⁸ Request, KSC-BC-2020-06/F02911, para.15.

¹⁹ See ICC, *Prosecutor v Ntaganda*, ICC-01/05-02/06-2170, Order providing directions related to the closing briefs and statements, 28 December 2017, para.15; *Prosecutor v. Bemba*, ICC-01/05-01/08-2731, Decision on the timeline for the completion of the defence's presentation of evidence and issues related to the closing of the case, 16 July 2013, para.36; *Prosecutor v. Lubanga*, ICC-01/04-01/06-2722, Order on the timetable for closing submissions, 12 April 2011, para.3(d) and (e); *Prosecutor v. Al Hassan*, ICC-01/12-01/18-2308, Sixth decision on matters related to the conduct of proceedings, end of Defence case, potential rebuttal/ rejoinder evidence, and closure of evidence, 29 August 2022, para.11(iii) (providing for the two response briefs, after the initial prosecution and defence closing briefs, to be filed simultaneously).

²⁰ ICC, *Prosecutor v. Yekatom*, ICC-01/14-01/18-2342, Further Directions on the Conduct of Proceedings (End of Defence Presentation of Evidence and Closure of Evidence), 2 February 2024 ('Yekatom Conduct of Proceedings'), paras 9-10; *Prosecutor v. Al-Rahman*, ICC-02/05-01/20-1191, Order regarding final briefs and closing statements, 25 September 2025, para.9; *Prosecutor v. Gicheru*, ICC-01/09-01/20-329, Declaration on the Closure of the Submission of Evidence and order on Closing Briefs and Closing Statements, 12 May 2022, para.7; *Prosecutor v Ongwen*, ICC-02/04-01/15-1645, Modification of Deadline Regarding Closing Briefs and Setting of Dates for Closing Statements, 23 October 2019, para.4; *Prosecutor v. Bemba et al*, ICC-01/05-01/13-1552, Decision on Prosecution's Motion for Reconsideration of the Closing Submissions Directions, 15 January 2016 ('Bemba Decision'), para.10.

²¹ ICTR, *Prosecutor v. Semanza*, ICTR-97-20-A, Appeal Judgment, 20 May 2005 ('Semanza Appeal Judgment'), para.36.

parties to generally file closing briefs at the same time,²² has also been followed at the ICC.²³ As one ICC Trial Chamber expressed it, final trial briefs ‘are not meant to be a discussion between the participants, but rather an additional tool for the benefit of the Chamber’.²⁴ Similarly, Trial Panel I at this court emphasised that such briefs are not intended to constitute ‘an additional round of litigation’, but rather give an overview of the Parties’ positions and arguments.²⁵

7. As such, the Defence’s central submission, which focuses on ‘responding’ to the Prosecution brief or to Prosecution submissions regarding the evidence,²⁶ are misguided.

8. All admitted evidence will be before the Panel, and may be considered by it.²⁷ It is the normal course of a trial that evidence will be elicited on behalf of victims, by judicial questioning, and by (sometimes multiple) Defence teams.²⁸ That does not render this case unusual. While the Parties’ briefs are certainly intended as a tool to assist the Panel, and highlight the most relevant evidence, the Panel is not bound by such submissions, or by any particular aspect of relevance identified by a Party. It is therefore incumbent upon the Defence – irrespective of what submissions the Specialist Prosecutor’s Office (‘SPO’) may or may not make in its final brief – to indicate its own position on any evidence it considers potentially relevant. It does not need to have seen the SPO’s brief in order to do so.

²² Semanza Appeal Judgment, para.36. The Defence’s selective citation to five ICTR cases (Request, KSC-BC-2020-06/F02911, para.9, fn.10) again misrepresents predominant practice.

²³ *For example*, Bemba Decision, para.10.

²⁴ Yekatom Conduct of Proceedings, para.10.

²⁵ Scheduling Decision, KSC-BC-2020-04/F00795/RED, para.30.

²⁶ Request, KSC-BC-2020-06/F02911, paras 2 (claiming the need to ‘answer in its final brief the SPO’s final statement of case’), 16-18, 21-24, 27-28, 30-31, 38.

²⁷ Rule 139.

²⁸ *Contra* Request, KSC-BC-2020-06/F02911, paras 37-38.

C. THE DEFENCE IS INFORMED OF THE SPO'S CASE

9. The Defence is more than adequately informed of the SPO's case. The Confirmed Indictment,²⁹ Pre-Trial Brief,³⁰ Rule 86 Outline³¹ and Rule 109(c) Chart³² have been available to the Defence since the pre-trial stages, and the Defence has received all of the evidence throughout trial.³³ The suggestion that a small number of purported typographical errors in the referencing of the Pre-Trial Brief prevent the Defence from knowing the SPO's case is nonsense.³⁴ A pre-trial brief is not, and is not intended to be, an exhaustive elaboration of the evidence, rather it provides a *summary* of intended evidence³⁵ – which, together with the other tools available to the Defence, and its own obligations of diligence – constitutes a sufficient guide. Further, to take the only example of alleged inaccuracy which is actually elaborated in the Request: (i) the Defence notes that evidence regarding the establishment of the military police in the Llap zone is not contained in Part 3 of W04746's interview – it is, instead, addressed

²⁹ Amended Indictment, KSC-BC-2020-06/F00999/A01, 30 September 2022, Confidential.

³⁰ Lesser Redacted Version of 'Confidential Redacted Version of Corrected Version of Prosecution Pre-Trial Brief', KSC-BC-2020-06/F01594/A03, 9 June 2023 ('Pre-Trial Brief').

³¹ Prosecution submission of lesser redacted versions of Indictment and Rule 86(3)(b)outline, KSC-BC-2020-06/F00647/A02, 17 January 2022, Confidential.

³² Prosecution submission of Rule 109(c) chart, KSC-BC-2020-06/F00663/A02, 28 January 2022, Confidential; Prosecution submission of supplemental Rule 109(c) chart, KSC-BC-2020-06/F01000/A02, 30 September 2022, Confidential.

³³ At para.33 of the Request, the Defence again misrepresents the findings of Trial Panel I. In fact, when rejecting a Defence request for sequential briefs, the Panel found that the requested opportunity for the Defence to, in its brief, take into account or respond to the Prosecution and Victims' final briefs does not 'touch[] upon the Accused's right to be informed of the case against him. The Defence has had the Confirmed Indictment and the SPO's Pre-Trial Brief since the pre-trial stage of the proceedings, has had an opportunity to challenge the form of the Confirmed Indictment, which it did, and have received all the evidence presented by the SPO throughout its case [...]. The Defence is fully aware at this point of the SPO's case'. See Scheduling Decision, KSC-BC-2020-04/F00795/RED, para.31 (citations omitted).

³⁴ Request, KSC-BC-2020-06/F02911, para.34. Footnote 46 of the Request cites to six paragraphs of a 714-paragraph brief as 'non-exhaustive' instances of the Accused's right to be fully informed of the charges against them being 'infringed'. Indeed, this footnote in the Request, purporting to identify typographical errors in the SPO's pre-trial brief, itself contains two typographical errors (see Request, KSC-BC-2020-06/F02911, fn.46 incorrectly referring to fn.186 in para.186 (instead of fn.759) and to para.184 including fn.752 (when in fact fn.752 appears in para.185).

³⁵ Rule 95(4)(a).

at Part 9 of that same interview;³⁶ and (ii) in both transcripts that are cited, an additional, independent piece of evidence indicating the establishment of the military police is discussed.

10. The Defence's submissions regarding evidence added to the Exhibit List after the filing of the Pre-Trial Brief are equally specious. First, contrary to Defence submissions,³⁷ the Defence is provided formal notice of the relevance of such items, both through the applications for addition of the items to the exhibit list, and the Rule 109(c) categorisations which accompany each disclosure. Moreover, in relation to [REDACTED],³⁸ [REDACTED],³⁹ [REDACTED] contain detailed summaries of the relevance and probative value of each item, including those added to the Exhibit List after the commencement of the trial.⁴⁰ Such explanations are also provided in respect of all other items tendered through the bar table – and here the Defence merely repeats submissions made in the context of litigating admissibility.⁴¹

11. Neither the charges, which are reflected in the Confirmed Indictment, nor the SPO's case have changed.⁴² There is no 'moving target'.⁴³ What the Defence raises – and attempts to manufacture into 'obscurity'⁴⁴ – are ordinary course credibility assessments of individual witnesses.

12. The Defence's invocation of Rule 143(2) admissions as a source of uncertainty regarding the SPO's case is counter-intuitive. The very fact that the SPO confronts a witness with a prior inconsistent statement, and then seeks its admission, is indicative of its view that the witness has diverged from their former account on a particular

³⁶ P00693.7_ET, pp.6-7.

³⁷ Request, KSC-BC-2020-06/F02911, para.35.

³⁸ Request, KSC-BC-2020-06/F02911, para.35.

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ Request, KSC-BC-2020-06/F02911, paras 29-31.

⁴² *Contra* Request, KSC-BC-2020-06/F02911, paras 14, 16.

⁴³ *Contra* Request, KSC-BC-2020-06/F02911, para.16.

⁴⁴ Request, KSC-BC-2020-06/F02911, paras 17-28.

matter in a manner which departs from the truth and/or warrants further explanation. The SPO has confronted witnesses in this manner on a topic-by-topic basis, and in a detailed manner, in the course of eliciting their evidence.⁴⁵ As such, while the Defence is correct that there may be competing accounts in the record, there is little ambiguity regarding the SPO's position on the evidence.⁴⁶

13. In relation to W01453 – who appears to constitute the primary basis for the Defence's claims on this matter⁴⁷ – as previously noted, the inconsistencies within the prior statements related primarily to three distinct and limited matters.⁴⁸ Moreover, with respect to the witness's recalcitrance during testimony, the SPO has already clearly indicated that it considered such divergences in evidence to be 'without credible explanation'.⁴⁹

14. In claiming to be unable to discern why a witness is confronted,⁵⁰ the Defence submissions are simply disingenuous. Indeed, with respect to W04752, they are also inaccurate.⁵¹

15. Where the SPO confronts a witness, this provides greater, not lesser, clarity to the Defence. The example cited in the Request,⁵² of a witness having been confronted

⁴⁵ See, similarly, Decision on Prosecution Request for the Admission of W01453's Prior Statements Pursuant to Rule 143(2)(c), KSC-BC-2020-06/F02790, 16 December 2024, paras 8-9 (noting the SPO's detailed questioning on the matters at issue). Of the witnesses called in this case, Rule 143(2) was only used for a small percentage, namely, nine witnesses, and in several cases, in relation only to discrete portions of their evidence.

⁴⁶ *Contra* Request, KSC-BC-2020-06/F02911, para.19.

⁴⁷ Request, KSC-BC-2020-06/F02911, paras 17, 19-20 (all primarily citing to litigation relating to W01453).

⁴⁸ Prosecution request for the admission of W01453's prior statements pursuant to Rule 143(2)(c), KSC-BC-2020-06/F02708, 11 November 2024 ('W01453's Rule 143(2)(c) Request'), para.8.

⁴⁹ W01453's Rule 143(2)(c) Request, KSC-BC-2020-06/F02708, para.3.

⁵⁰ Request, KSC-BC-2020-06/F02911, para.26.

⁵¹ On both occasions cited – far from refusing to specify – the SPO specifically indicated its contemporaneous assessment that the inconsistency in question could relate to a question of memory (*contra* Request, KSC-BC-2020-06/F02911, para.26; see Transcript, 1 July 2024, pp.17344, 17398). Indeed, in respect of the second occasion cited, the issue appears to have arisen as a result of an issue with the simultaneous interpretation.

⁵² Request, KSC-BC-2020-06/F02911, para.25.

with regard to the truthfulness of his evidence regarding the mistreatment of detainees, could not have been clearer – particularly in light of the other evidence on record regarding this individual’s knowledge of and involvement in mistreatment. Similarly, the contemporaneous explanation provided in respect of W04401⁵³ itself constitutes the very information the Defence is claiming to need.

16. Finally, the Defence’s submissions regarding the SPO’s alleged failure to provide particularity on certain other allegations merely exemplify the manufactured nature of these claims. The Veseli Defence simply asserting there to be a lack of clarity between an autopsy report, and subsequent expert testimony, does not make it so, nor does it make it incumbent upon the SPO to provide any explanation.⁵⁴ The SPO is not required to exhaustively explain all aspects of potential relevance – either at the moment of tender, or otherwise.⁵⁵

17. In summary, the SPO is fully cognisant of the importance of its closing brief in assisting the Panel by highlighting the most relevant evidence, and presenting its view on *inter alia* evidentiary matters and questions of credibility. However, the questions at issue are the ordinary ones arising in any large trial. The charges have not changed, and the SPO’s case has not changed. There is no basis for overriding the Rules and converting final briefing into multiple elaborate rounds of additional litigation, rather than allowing the briefs to fulfil the purpose for which they were intended.

III. CLASSIFICATION

18. This filing is confidential pursuant to Rule 82(4).

⁵³ Request, KSC-BC-2020-06/F02911, para.27.

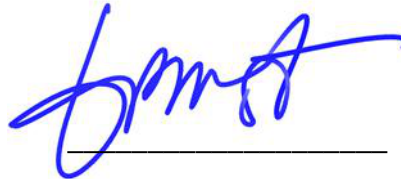
⁵⁴ *Contra* Request, KSC-BC-2020-06/F02911, para.23.

⁵⁵ *Contra* Request, KSC-BC-2020-06/F02911, para.24.

IV. RELIEF REQUESTED

19. For the foregoing reasons, the Panel should reject the Request and order the filing of simultaneous final trial briefs.

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Kimberly P. West

Specialist Prosecutor

Friday, 14 February 2025

At The Hague, the Netherlands.