

In: KSC-BC-2020-06

**The 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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Joint Defence Reply to F03014

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1. The Response¹ misapprehends the issues put forward for certification in the Request,² confuses the requirements for certification to appeal with the requirements for reversing a decision at the appeal stage, and is replete with instances of the SPO inserting its own interpretation of the law into the reasoning laid out in the Impugned Order. The arguments contained in the Response should accordingly be discarded and the request for leave to appeal granted.
2. In particular, the Response argues that the Defence (i) failed to show how either of the Issues would invalidate the Impugned Order; and (ii) misconstrues Rule 134 and the Impugned Order. The present submissions reply to these two issues.
3. First, the SPO argues that the Defence “merely speculates that appellate review would ‘inevitably impact’ the briefing process, without showing how either of the alleged Issues would lead to this outcome or otherwise invalidate the discretionary Order.”³ An explanation as to how an error invalidates any given decision is a requirement for the moving party at appeal stage, and is not, as the SPO erroneously claims, an element of the certification test contained in Rule 77.⁴ The SPO further avers that the Defence failed to identify “specific prejudice resulting from the Issues”,⁵ while failing to adduce any support for its contention that the moving party is required to identify “specific prejudice” at the certification stage.

¹ KSC-BC-2020-06/F03014, Prosecution response to the joint Defence request for certification to appeal the Oral Order regarding final trial briefs (F02977), 13 March 2025 (“Response”).

² KSC-BC-2020-06/F02977, Joint Defence Request for Certification to Appeal the Oral Order on Reasons for Ruling on the Joint Defence Submissions on Consecutive Final Briefs, 3 March 2025 (“Request”).

³ Response, para. 7.

⁴ KSC-BC-2020-07/IA001-F00005, Decision on Hysni Gucati’s Appeal on Matters Related to Arrest and Detention, 9 December 2020, para. 12; KSC-BC-2020-06/IA024-F00019, Decision on Defence Appeals against “Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant”, 27 December 2022, para. 10.

⁵ Response, para. 6.

4. Second, the SPO argues that the Trial Panel's reasoning "correctly reflects that Rule 134 sets one, simultaneous time limit for all Parties' final submissions, and has been consistently interpreted to do so in all other cases at the KSC".⁶ The SPO further argues that the Trial Panel duly considered the practice of other courts in reaching that conclusion.⁷ The Trial Panel's ruling, however, exclusively underscores that "Rule 134(b) and (c) of the rules clearly provides for the simultaneous filing of final trial briefs."⁸ There is no further reasoning accompanying that determination. The SPO therefore attempts to interpolate its unilateral interpretation of Rule 134 and its own hypotheses of how the Trial Panel reached its conclusion into the Impugned Order.
5. Concerning the SPO's contention that the Trial Panel duly considered the practice of other courts, it is evident from the Impugned Order that the Trial Panel did not consider this jurisprudence as being relevant to the interpretation of Rule 134. Rather, the Trial Panel referred to this jurisprudence separately, after it already determined that Rule 134 clearly provides for the simultaneous filing of final trial briefs. The Trial Panel also concluded its discussion of the jurisprudence concerned with the statement that "the practice of the Kosovo Specialist Chambers has been and will continue to involve simultaneous filing of final trial briefs consistent with Rule 134".⁹ This finding suggests that the Trial Panel was of the view that, in contrast with the rules applicable before other tribunals, Rule 134 specifically requires simultaneous briefing. As such, it is apparent that the Trial Panel did not consider the similitude between Rule 134 and the rules applicable before other tribunals, or if it did, it did not identify the material difference between Rule 134 and these other rules which led it to believe

⁶ Response, para. 4.

⁷ Response, para. 4.

⁸ Impugned Order, p. 25521.

⁹ Impugned Order, p. 25521.

that Rule 134 would expressly require simultaneous briefs while the other rules made no such provision.

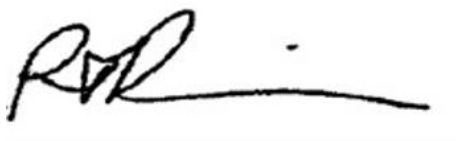
6. Finally, both the Trial Panel and the SPO averred that the Defence, being demonstrably informed of the evidence on the record, is expected to put forward its case and is well-positioned to do that.¹⁰ The Defence however carries no burden to put forward a positive case, as it is incumbent upon the SPO to prove its case beyond a reasonable doubt. The expectation that the Defence will put forth a positive case based on the evidence on the record misapprehends the role of the Defence in international criminal proceedings and amounts to shifting the burden of proof from the SPO to the Defence.

Word count: 786

Respectfully submitted on 21 March 2025,



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¹⁰ Response, para. 8; Impugned Order, p. 25522.



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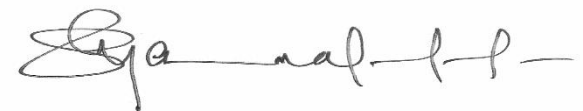
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