



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

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: Fidelma Donlon

Date: 26 March 2025

Language: English

Classification: Public

**Decision on Joint Defence Request for Certification to Appeal the Oral Order on
Reasons for Ruling on the Joint Defence Submissions on Consecutive Final Briefs**

Specialist Prosecutor

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TRIAL PANEL II ("Panel"), pursuant to Article 45(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 77 of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 25 January 2023, following a process of consultation with the Parties and participants, the Panel issued its Order on the Conduct of Proceedings.¹ In paragraph 135 of the Order on the conduct of proceedings, the Panel decided: "Final Trial Briefs shall be filed in accordance with Rule 134(b) at a date set by the Trial Panel. All Parties and participants' Final Trial Briefs will be filed on the same date." No objection was taken, nor was leave sought to appeal the Panel's Order on the conduct of proceedings, in regards to that provision.
2. On 22 January 2025, and again subsequently, the Defence raised the issue of the modalities of filing final trial briefs and asked the Panel that final trial briefs be filed successively rather than simultaneously.²
3. On 19 February 2025, the Panel ruled, with reasons to follow, that final trial briefs shall be filed simultaneously.³
4. On 24 February 2025, the Panel issued an oral order providing reasons for its ruling on simultaneous final trial briefs ("Impugned Decision").⁴

¹ F01226/A01, Panel, *Annex 1 to Order on the Conduct of Proceedings* ("Order on the conduct of proceedings"), 25 January 2023.

² See, in particular, Transcript of Hearing, 22 January 2025, pp. 24350-24352. See also, F02911, Specialist Counsel, *Joint Defence Submissions on Consecutive Final Briefs*, 7 February 2025.

³ Transcript of Hearing, 19 February 2025, p. 25436, line 22 to p. 25437, line 1, p. 25455 lines 17-18.

⁴ Transcript of Hearing, 24 February 2025, p. 25520, line 8 to p. 25522, line 18.

5. On 3 March 2025, the Defence teams for the four Accused (“Defence”) filed a joint request for certification to appeal the Impugned Decision (“Request”).⁵
6. On 13 March 2025, the Specialist Prosecutor’s Office (“SPO”) responded to the Request (“Response”).⁶
7. On 21 March 2025, the Defence replied to the Response (“Reply”).⁷

II. SUBMISSIONS

8. The Defence requests leave to appeal the Impugned Decision in relation to the following two issues (collectively, “Issues”):
 1. Whether the Panel erred in law in finding that Rule 134(b) and (c) clearly provides for the simultaneous filing of final trial briefs (“First Issue”); and
 2. Whether the Panel failed to provide a reasoned opinion for its finding that the Defence knows the SPO’s case (“Second Issue”).⁸
9. The Defence submits that the Issues satisfy the requirements for leave to appeal as: (i) the Issues are appealable; (ii) they significantly impact the fair and expeditious conduct of the proceedings or the outcome of trial; and (iii) their immediate resolution by the Court of Appeals Panel will materially advance the proceedings.⁹
10. The SPO responds that the Request should be dismissed because it fails to meet the requirements set out in the Law and Rules.¹⁰ In particular, the SPO avers that: (i) the Issues are not appealable; (ii) the Defence fails to demonstrate that

⁵ F02977, Specialist Counsel, *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.

⁶ F03014, Specialist Prosecutor, *Prosecution Response to the Joint Defence Request for Certification to Appeal the Oral Order Regarding Final Trial Briefs (F02977)*, 13 March 2025.

⁷ F03049, Specialist Counsel, *Joint Defence Reply to F03014*, 21 March 2025.

⁸ Request, paras 1, 19.

⁹ Request, para. 2. *See also* Request, paras 7-18.

¹⁰ Response, paras 1, 9-10.

appellate review of the Impugned Decision would have any impact on the conduct of the proceedings; and (iii) the Defence fails to demonstrate that the Panel has abused its discretion and that the Issues merit the exceptional remedy of an interlocutory appeal.¹¹

11. The Defence replies that the Response: (i) misapprehends the Issues; (ii) confuses the requirements for certification to appeal with the requirements for reversing a decision at the appeal stage; and (iii) is replete with instances of the SPO inserting its own interpretation of the law into the reasoning laid out in the Impugned Order.¹²

III. APPLICABLE LAW

12. Pursuant to Article 45(2) and Rule 77(2), a right to appeal only arises if the standard of certification set forth therein has been met. Rule 77(2) provides that:

The Panel shall grant certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, including, where appropriate remedies could not effectively be granted after the close of the case at trial, and for which an immediate resolution by the Court of Appeals Panel may materially advance the proceedings.

13. The Panel incorporates by reference the applicable law on the legal standard for certification to appeal set out in past decisions.¹³

¹¹ Response, paras 1-2. *See also* Response, paras 3-8.

¹² Reply, para. 1. *See also* Reply, paras 2-6.

¹³ *See* F01237, Panel, *Decision on Thaçi Defence Request for Leave to Appeal Decision on Disclosure of Dual Status Witnesses*, 30 January 2023, paras 7-8; KSC-BC-2020-07, F00423, Panel, *Decision on SPO Requests for Leave to Appeal F00413 and Suspensive Effect*, 8 November 2021, paras 13-21; F00372, Panel, *Decision on Haradinaj Defence's Application for Certification of F00328*, 15 October 2021, paras 15-17; F00484, Panel, *Decision on Defence Request for Leave to Appeal F00470*, 8 December 2021, paras 4-14. *See also* F00172, Pre-Trial Judge, *Decision on the Thaçi Defence Application for Leave to Appeal*, 11 January 2021, paras 6-7, 9-17.

IV. DISCUSSION

14. In the Impugned Decision, the Panel denied the Defence's request to allow the Parties to file successive final trial briefs and ordered that final trial briefs shall be filed simultaneously.¹⁴ In reaching such conclusion, the Panel considered that: (i) the primary purpose of final trial briefs is for each party to put forward its case in light of the evidence on the record of the proceedings; (ii) Rule 134(b) and (c) of the Rules clearly provides for the simultaneous filing of final trial briefs; (iii) the practice of other jurisdictions is of limited relevance as they have adopted both simultaneous and successive briefs depending on cases, and have applied a regime different than the one applicable to the Specialist Chambers ("SC"); (iv) the adversarial aspects of the proceedings do not demand or justify successive briefs; and (v) regarding the alleged obscurity of the SPO's case, the Defence knows the SPO's case and will be able to address all relevant aspects of that case, as it chooses to do, in its final trial briefs and final oral submissions.¹⁵

A. FIRST ISSUE

15. The Defence submits that the Panel erred in law in finding that Rules 134(b) and (c) clearly provide for the filing of simultaneous final trial briefs, considering that: (i) nothing in the Rules suggests that final trial briefs ought to be submitted simultaneously within the prescribed 30-day deadline; (ii) the Panel did not ascertain in what significant respect does Rule 134 differ from similarly-worded rules from other international criminal tribunals; and (iii) the Panel did not indicate, by means of a textual analysis, what construction in Rule 134 would evince a requirement to the effect that final briefs must be filed simultaneously.¹⁶

¹⁴ Transcript of Hearing, 24 February 2025, p. 25522, lines 7-9.

¹⁵ Transcript of Hearing, 24 February 2025, p. 25521, lines 8-10, 13-18, 22-23, p. 25522, lines 3-6.

¹⁶ Request, paras 7-8.

16. The SPO responds that the Defence fails to demonstrate that the First Issue is appealable, as it merely disagrees with the Impugned Decision.¹⁷ In particular, the SPO submits that: (i) the 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 SC; (ii) the Panel found that the Defence had not presented any good reason to deviate from the sequence envisaged under Rule 134; (iii) the Panel duly noted that other jurisdictions have adopted both simultaneous and successive briefs depending on the circumstances of the case, and considered such practice to be of limited relevance within the specific framework of the SC; and (iv) the Defence's suggestion that the Panel should have further justified its decision to apply the legal framework of the SC through comparative 'textual analysis' is baseless.¹⁸

17. The Defence replies that: (i) the SPO attempts to interpolate its unilateral interpretation of Rule 134 and its own hypotheses of how the Panel reached its conclusion into the Impugned Decision; and (ii) the Panel did not consider the similarities 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.¹⁹

18. The Panel notes that, in the Request, the Defence merely repeats arguments it already put forward in its submissions prior to the Impugned Decision. In particular, the Panel observes that the Defence previously submitted that the Rules do not specify the order in which final trial briefs must be filed.²⁰ As mentioned and for the reasons set out above,²¹ these submissions were considered, addressed,

¹⁷ See Response, para. 3.

¹⁸ Response, para. 4.

¹⁹ Reply, paras 4-5.

²⁰ F02911, Specialist Counsel, *Joint Defence Submissions on Consecutive Final Briefs*, 7 February 2025, confidential, paras 7-10 (a public redacted version was issued on 27 February 2025, F02911/RED).

²¹ See *above* para. 14.

and rejected by the Panel in the Impugned Decision.²² In particular, in addressing such submissions, the Panel found the practice of other jurisdictions to be of limited relevance and held that the SC's practice has involved and will continue to involve the simultaneous filing of final trial briefs, consistent with Rule 134.²³ In this regard, the Panel notes that it is not bound by the jurisprudence of other international criminal tribunals and must apply the SC's own legal framework. The Panel notes that the same legal framework had been applied in the Panel's Order on the Conduct of Proceedings, which states at paragraph 135 that all final briefs "will be filed on the same date", and which the Panel adopted after submissions from the Parties and without any objection from the Defence on this point. Finally, contrary to the Defence's submissions,²⁴ the Panel was not required to analyse in detail how Rule 134 may differ from the rules of other international criminal tribunals, especially after finding the wording of Rule 134 to be clear.

19. For these reasons, the Panel is of the view that the First Issue misrepresents the Panel's findings and constitutes a mere disagreement with them. The Panel therefore finds that the Defence has failed to establish that the First Issue constitutes a discrete topic arising from the Impugned Decision.

20. Accordingly, the remaining requirements of the certification test arising from Article 45(2) and Rule 77(2) need not be addressed in relation to the First Issue. The request for certification to appeal the First Issue is therefore rejected.

B. SECOND ISSUE

21. The Defence submits that the Panel failed to provide a reasoned opinion for its finding that the Defence knows the SPO's case, considering that: (i) the Panel ignored the arguments presented by the Defence in support of the position that

²² See Transcript of Hearing, 24 February 2025, p. 25521 lines 13-14.

²³ Transcript of Hearing, 24 February 2025, p. 25521 lines 15-21.

²⁴ Request, para. 8.

considerable facets of the SPO's case are unknown to the Defence at this stage; (ii) the Panel's finding does not set out the factual scenario upon which the Panel's determinations were premised in a way that would enable the Defence to challenge, and the Court of Appeals Panel to review, the factual conclusions underlying the relief ordered; and (iii) international jurisprudence has confirmed the importance of a reasoned decision as an essential constituent of a fair trial.²⁵

22. The SPO responds that the Defence fails to demonstrate that the Second Issue is appealable.²⁶ In particular, the SPO submits that: (i) the Panel did not ignore the Defence's arguments concerning its knowledge of the SPO's case, but expressly found them to be unconvincing; (ii) the Defence's contention that the Panel was required to explain its decision in any greater detail than it did significantly overstates the requirement for reasoned opinions; and (iii) the Impugned Decision adequately addresses the crux of the Defence's arguments and dismissed them.²⁷

23. The Defence replies that 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.²⁸

24. The Panel found that the primary purpose of final trial briefs is for each party to put forward its case in light of the evidence on the record of proceedings.²⁹ Further, the Panel held that each party as well as the participants will get a full and fair opportunity to put their own case forward in their final briefs and, if they choose to do so, to respond to the opposing side's arguments in their final oral submissions.³⁰ In making such findings, the Panel was satisfied that, contrary to

²⁵ Request, paras 10-11. *See also* Response, para. 12.

²⁶ Response, para. 5.

²⁷ Response, para. 5.

²⁸ Reply, para. 6.

²⁹ Transcript of Hearing, 24 February 2025, p. 25521, lines 8-10.

³⁰ Transcript of Hearing, 24 February 2025, p. 25521, line 23 to p. 25522, line 2.

the Defence's submissions, the Defence knows the SPO's case and will be able to address all relevant aspects thereof, if it chooses to do so, in the final trial briefs and final oral submissions.³¹ It is apparent that, in light of these findings, the Panel did not ignore Defence's arguments, but found them to be unconvincing and rejected them accordingly. While a panel must provide reasoning in support of its findings on the substantive considerations relevant for a decision, it is not required to articulate every step of its reasoning and to discuss each submission.³² The Panel is therefore of the view that the Defence has failed to show that the Panel was required to explain its decision in any greater detail than it did. In fact, the Defence merely disagrees with the Panel's findings.

25. Finally, turning to the Defence's argument that the expectation that the Defence will put forth a positive case based on the evidence on the record shifts the burden of proof from the SPO to the Defence, the Panel is of the view that the Defence mischaracterises the Impugned Decision. As mentioned and for the reasons set out above,³³ in their final trial briefs, the Parties and participants *may* put forward their cases, if any, or in any event make submissions on their positions and arguments in light of the evidence on the record of proceedings. Nothing in the Impugned Decision assumed or required that the Defence put forward a case to justify the Panel's ruling on simultaneous final trial briefs. The suggestion that the Impugned Decision displaced the burden of proof is without foundation and constitutes a distortion of that decision.

26. In light of the above, the Panel finds that the Defence has failed to establish that the Second Issue constitutes an issue emanating from the Impugned Decision.

³¹ Transcript of Hearing, 24 February 2025, p. 25522, lines 3-6.

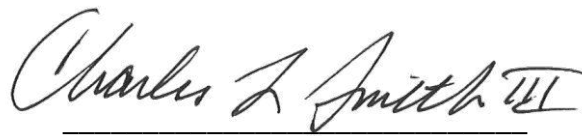
³² IA001/F00005, Court of Appeals Panel, *Decision on Kadri Veseli's Appeal Against Decision on Interim Release*, 30 April 2021, para. 72 (with further references).

³³ See above para. 24.

27. Accordingly, the remaining requirements of the certification test arising from Article 45(2) and Rule 77(2) need not be addressed in relation to the Second Issue. The request for certification to appeal the Second Issue is therefore rejected.

V. DISPOSITION

28. For the above-mentioned reasons, the Panel hereby **REJECTS** the Request.

A handwritten signature in black ink, reading "Charles L. Smith, III". The signature is written in a cursive style with a horizontal line underneath.

Judge Charles L. Smith, III
Presiding Judge

Dated this Wednesday, 26 March 2025
At The Hague, the Netherlands.