



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

Date: 23 June 2025

Language: English

Classification: Public

**Prosecution response to 'Joint Defence Request for a Variation of the Schedule'
and related matters**

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. Noting that Rule¹ 107 clearances are the only concrete, outstanding matters specifically identified in the Request,² the Defence should be required to file provisional witness and exhibit lists for all non-Rule 107 content by the original 21 July 2025 deadline.³ These provisional lists should include all information required in Rule 119(2)(a)(i)-(vii) and 119(2)(b) for witnesses or exhibits not dependent on pending Rule 107 clearances. Final and complete Rule 119(2) witness and exhibit lists could then be filed by 18 August 2025 with the Defence Preparation Conference taking place that week as requested. The Specialist Prosecutor's Office's ('SPO') further requests that the Panel order the Defence to:

- a. fulfil its disclosure obligations under Rule 104(5) in relation to any witnesses and exhibits not dependent on outstanding Rule 107 clearances by 21 July 2025;
- b. complete any remaining Rule 104(5) disclosure on a rolling basis and no later than 18 August 2025;
- c. provide the information set out in paragraph 74 of the Conduct of Proceedings Order⁴ by 18 August 2025, along with the final and complete witness and exhibit lists; and
- d. make any necessary requests relating to the witnesses the Defence intends to call to testify before the Panel, including any applications for in-court protective measures, for Rule 107 measures consistent with provider-

¹ 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.

² Joint Defence Request for a Variation of the Schedule, KSC-BC-2020-06/F03258, 13 June 2025, ('Request'), paras 6-7.

³ Revised Scheduling Order, KSC-BC-2020-06/F03232, 5 June 2025 ('Order').

⁴ Annex 1 to 'Order on the Conduct of Proceedings', KSC-BC-2020-06/F01226/A01, 25 January 2023, ('Conduct of Proceedings Order').

applied conditions, and pursuant to Rule 154, on a rolling basis and by 22 August 2025 at the latest.

2. Considering the timelines foreseen in the Rules⁵ and proposed in the Request,⁶ such orders are necessary to facilitate preparation by the Panel, Parties, and participants and, in turn, the fair and expeditious conduct of the proceedings.

II. SUBMISSIONS

3. As a preliminary matter, the SPO notes that the Defence failed to consult *inter partes* before filing the Request, which may have enabled agreement on some or all of the interconnected issues raised in the Request and this response.⁷

4. The schedule outlined in the Order – which the Defence seeks to vary – was dependent on the Panel ‘deny[ing] in whole or in part the Rule 130 Motion’ and a subsequent notification ‘pursuant to Rule 119(1) whether it intends to present a Defence case’.⁸ As the Defence’s recently-filed Rule 130 Motion challenges only a very discrete matter,⁹ it is known – and has been known to the Defence for some time – that the case will continue. The relevant part of the schedule outlined in the Order is now only dependent on the Defence communicating its intention to present a case under Rule 119(1)¹⁰ and filing the requisite witness and exhibit lists pursuant to Rule 119(2). Defence submissions concerning the time required from a Rule 130 decision to prepare

⁵ Rule 119(3)-(4).

⁶ See e.g. Request, KSC-BC-2020-06/F03258, para.7 ([T]he Defence anticipates being able to call its first witness in the week starting 15 September 2025; that is, within 30 days of a Defence Preparation Conference held in the week of 18 August 2025’).

⁷ Conduct of Proceedings Order, KSC-BC-2020-06/F01226/A01, paras 7, 43.

⁸ Order, KSC-BC-2020-06/F03232, para.10.

⁹ See, generally, Joint Defence Motion Pursuant to Rule 130, KSC-BC-2020-06/F03256, 12 June 2025, Confidential (‘Rule 130 Motion’).

¹⁰ Order, KSC-BC-2020-06/F03232, para.12(e) (setting a deadline of 16 July 2025 for such notice). In the Request, the THAÇI and KRASNIQI Defence teams indicated their intention to present a case. While the SELIMI and VESELI Defence teams have indicated that they do not currently intend to call any witnesses, they have reserved the right to do so and have not indicated whether they intend to file an exhibit list. See Request, KSC-BC-2020-06/F03258, para.5.

its case¹¹ should be considered in this context. Notably, the Order provides the Defence over three months between the closure of the SPO's case-in-chief and the Defence Preparation Conference. Relevant jurisprudence underscores that trial panels presiding over complex cases have ordered the commencement of the defence's case after similar or even shorter periods of time.¹² Further, certain submissions in the Request are unsubstantiated or irrelevant thereto.¹³

5. Nevertheless, considering the pre-recess schedule, the Rule 119 timelines, and that the Defence proposal would not materially delay the proceedings and would facilitate all Parties' and participants' preparations for the Defence case, the SPO does not oppose deferral of the Defence Preparation Conference and the further opportunity for the Defence to obtain Rule 107 clearances, so long as all relevant non-Rule 107 information is provided before the summer recess. Most immediately, provisional lists, rolling disclosure, and the provision of witness-related information – as outlined below – are necessary to enable the Panel, Parties, and participants to adequately prepare for and address the topics foreseen for the Defence Preparation Conference,¹⁴ the resolution of which necessarily impacts on the expeditious start and conduct of the Defence case.

¹¹ Request, KSC-BC-2020-06/F03258, para.11 (noting that it previously requested 'ten working weeks').

¹² See e.g. ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06, Decision on Defence request for leave to file a 'no case to answer' motion, 1 June 2017, paras 2-9 (noting the commencement of the defence's case roughly two months after the prosecution concluded its case-in-chief); compare also ICTY, *Prosecutor v. Mladić*, IT-09-92, Scheduling and Closing Order, 26 February 2014, pp.1-2 (ordering the defence to commence its case on 13 May 2014 following the closure of the prosecution's case on 24 February 2014), with ICTY, *Prosecutor v. Mladić*, IT-09-92, Decision on Urgent Defence Motion Seeking to Enlarge Time due to the Tribunal's Inability to Provide Necessary Technical Means, 2 May 2014, para.11 (granting the defence only one additional week to prepare its case).

¹³ This includes general submissions about the number of filings made since the closing of the SPO's case and the THAČI Defence team's involvement in parallel proceedings. See Request, KSC-BC-2020-06/F03258, para.8.

¹⁴ Rule 119(3) provides that, at this conference, the Panel may address the number of Defence witnesses, determine the time available for the Defence case, address direct examination estimates, and verify that disclosure obligations have been met.

A. PROVISIONAL LISTS FACILITATE FAIR AND EXPEDITIOUS PROCEEDINGS

6. In its Request, the Defence seeks an extension of, *inter alia*,¹⁵ its Rule 119(2) witness and exhibit lists' filing deadline to 18 August 2025 as it is 'not possible for the Defence to obtain the necessary Rule 107 clearances' by the Order's envisioned deadlines.¹⁶

7. The SPO requires at least provisional witness and exhibit lists by 21 July 2025, including the information required in Rule 119(2)(a)(i)-(vii) and 119(2)(b) for all proposed witnesses and exhibits that are not dependent on pending Rule 107 clearances. This order is necessary and appropriate to ensure the fairness and expeditiousness of the proceedings in this complex case,¹⁷ simultaneously providing: (i) the Defence additional time to resolve its Rule 107-related issues;¹⁸ and (ii) the Panel, all Parties, and participants time to prepare, including, as appropriate, undertaking investigations (which could be substantial depending on the nature and scope of the witnesses concerned), completing disclosure, and making any

¹⁵ The Defence also seeks a continuance of the Defence Preparation Conference to the week commencing 18 August 2025, which the SPO does not oppose. *See* Request, KSC-BC-2020-06/F03258, para.2.

¹⁶ Request, KSC-BC-2020-06/F03258, para.7. While the Defence also anticipates difficulties meeting with, interviewing, and taking statements from potential witness prior to September 2025, this appears to relate to testimony arrangements and is unconnected to the 18 August 2025 date proposed for filing of witness and exhibit lists. *See* Request, KSC-BC-2020-06/F03258, para.7 ('The Defence therefore confirms its prior statement anticipating significant difficulties in meeting with, interviewing, taking statements from, and otherwise arranging for potential witnesses to testify prior to September 2025').

¹⁷ Other tribunals have ordered the defence to furnish provisional witness and exhibit lists to facilitate efficient trial preparations. *See e.g.* ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06, Decision supplementing the Decision on the Conduct of Proceedings (ICC-01/04-02/06-619) and providing directions related to preparations for the presentation of evidence by the Defence, 30 January 2017 ('*Ntaganda* Supplemental Decision'), paras 10-11 (ordering the defence to provide a provisional witness list to 'enable the parties, participants, and Chamber to prepare meaningfully' for the defence's case); ICTY, *Prosecutor v. Galić*, IT-98-29-T, Scheduling Order, 12 September 2002 (requiring the defence to submit provisional witness lists in parallel to ongoing motion for acquittal litigation); ICTY, *Prosecutor v. Naletilić et al.*, IT-98-34-T, Scheduling Order, 5 February 2002 (requiring the defence to file provisional witness and exhibit lists within two months of the prosecution's case closure as 'the Defence has had ample time to assess the nature, scope, and strength of the evidence').

¹⁸ In the absence of information, the SPO is unable to take a position on whether the Defence has been diligent in seeking to resolve its Rule 107 issues. The SPO reserves the right to object to any further requested extensions.

appropriate requests for relief in light of the witnesses and exhibits included on the provisional lists.

8. The information required for Rule 119(2)(a) witness lists overlaps with and is complemented by the information outlined in paragraph 74 of the Conduct of Proceedings Order.¹⁹ The Defence should therefore be required to provide such additional information by the time it files its final witness and exhibit lists – that is, if the Request is granted, by 18 August 2025.²⁰ Considering that this would be about one month before the Defence anticipates its case can start,²¹ an 18 August 2025 deadline would be consistent with the deadline set for each three-month block of witnesses in paragraph 73 of the Conduct of Proceedings Order.

B. ROLLING DISCLOSURE AND WITNESS-RELATED FILINGS FACILITATE FAIR AND EXPEDITIOUS PROCEEDINGS

9. The Request mentions disclosure obligations only in passing. Timely Rule 104(5) disclosure is necessary for preparations and to avoid delays in the schedule. Accordingly, the Defence should be ordered to fulfil its obligations on a rolling basis, with disclosure related to all witnesses and exhibits not dependent on Rule 107 clearances by 21 July 2025, and all remaining Rule 104(5) disclosure by 18 August 2025.²²

¹⁹ In particular, the information required by paragraph 74(ii) and (iv) of the Conduct of Proceedings Order – which concerns statements of and exhibits proposed for use with witnesses – is additional to that required by Rule 119(2)(a).

²⁰ While paragraph 74 of the Conduct of Proceedings Order refers to the SPO, the information therein should also be provided by the Defence, as it relates to the presentation of evidence and is intended to facilitate the fairness and expeditiousness of the proceedings. Similarly, in *Gucati and Haradinaj*, the Defence was required to provide such information. See Annex to Order on the Conduct of Proceedings, KSC-BC-2020-07/F00314/A01, 17 September 2021, paras 60-62.

²¹ Request, KSC-BC-2020-06/F03258, paras 5, 7. The Defence anticipates that its case will be about three months.

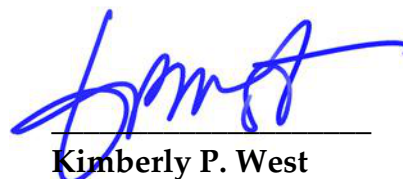
²² See, similarly, *Ntaganda* Supplemental Decision, para.13 (directing the defence to disclose ‘on a rolling basis . . . all material in its possession which falls under its disclosure obligations’ prior to the filing of its final witness and exhibit list). See also para.2 (the trial chamber underscored the defence’s obligation

10. Finally, preparation for and the scheduling and appearance of witnesses depends also on timely filing and resolution of related motions. The SPO therefore requests that, consistent with the practice in this case,²³ the Panel order the Defence to make any requests relating to the witnesses the Defence intends to call to testify before the Panel, including any applications for in-court protective measures, for Rule 107 measures consistent with provider-applied conditions, and pursuant to Rule 154, on a rolling basis and no later than 22 August 2025.

III. RELIEF SOUGHT

11. In light of the foregoing, the SPO would not oppose deferral of the Defence Preparation Conference and the additional time sought to resolve Rule 107 matters on condition that the Defence provides provisional witness/exhibit lists and other information specified per the terms set out in paragraph 1 above.

Word count: 2143



Kimberly P. West

Specialist Prosecutor

Monday, 23 June 2025

At The Hague, the Netherlands.

to mak[e] ongoing preparations for any defence case it may wish to present' during the prosecution's case presentation).

²³ Generally, Rule 154 applications for each block of witnesses have been filed approximately one month in advance. Prior to the start of the trial, the SPO was ordered to file Rule 154 applications for its anticipated first 12 witness by 7 February 2023 (*see* Transcript (Oral Order), 18 January 2023, p.1902), which was approximately one month before witness testimony was anticipated to commence in March 2023 (and ultimately ended up being approximately two months more before testimony actually commenced in April 2023). The Defence estimates that it will call 'approximately 15 witnesses' either *viva voce* or pursuant to Rule 154, further specifying 'up to 12 live witnesses' for the THAÇI Defence and approximately 5 live witnesses for the KRASNIQI Defence. *See* Request, KSC-BC-2020-06/F03258, para.5.