

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 Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hashim Thaçi
Specialist Counsel for Kadri Veseli
Specialist Counsel for Rexhep Selimi
Specialist Counsel for Jakup Krasniqi

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**Joint Defence Reply to ‘Prosecution response to ‘Joint Defence Request for a
Variation of the Schedule’ and related matters’ (F03283)**

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I. INTRODUCTION

1. The position advanced by the SPO in the Response¹ misrepresents or ignores submissions in the Request,² and primarily focuses on issues irrelevant or extraneous to it. The Request evidenced sufficient good cause for the proposed variation of the time limits set in the Order,³ and should be granted pursuant to Rule 9(5)(a).⁴

II. SUBMISSIONS IN REPLY

2. Regarding the alleged failure to consult *inter partes*, the Order on the Conduct of Proceedings specifies the Parties are generally expected to conduct *inter partes* discussions “to find agreeable solutions to any issue that arises during trial”, and “to try to resolve issues arising **between them**”.⁵ In this instance, there was no issue arising between the Defence and the SPO: the Request seeks relief from an order of the Trial Panel that was issued *proprio motu*. It is not for the Parties to consult on variations to *proprio motu* orders, which are solely within the Panel’s control, nor has this been the SPO’s practice.

3. A consistent theme throughout the Response is a failure to identify any prejudice to the SPO if the time limits are varied as proposed. There is none. Instead, the Response repeatedly references the fairness and expeditiousness of the proceedings.⁶ While all Parties have an interest in expeditious proceedings, and an entitlement to adequate notice, the rights to be tried within a reasonable time and to

¹ KSC-BC-2020-06/F03283, *Prosecution response to ‘Joint Defence Request for a Variation of the Schedule’ and related matters*, 23 June 2025 (“Response”), public.

² KSC-BC-2020-06/F03258, *Joint Defence Request for a Variation of the Schedule*, 13 June 2025, public (“Request”).

³ KSC-BC-2020-06/F03232, *Revised Scheduling Order*, 5 June 2025, public (“Order”).

⁴ KSC-BD-03/Rev3/2020, *Rules of Procedure and Evidence Before the Kosovo Specialist Chambers*, 2 June 2020 (“Rules”).

⁵ KSC-BC-2020-06/F01226/A01, *Annex 1 - Order on the Conduct of Proceedings*, 25 January 2023, public (“Order on the Conduct of Proceedings”), paras. 7 & 43 (emphasis added).

⁶ See, e.g., Response, paras. 2, 5, 7, 9.

adequate time and facilities, are rights that attach specifically to the Accused.⁷ With this in mind, the Defence proposal sought to strike a fair balance between providing notice to the Parties to enable their preparation, while safeguarding the fundamental rights of the Accused. The Defence reiterate the proposal is reasonable and limited, and – as acknowledged by the SPO – would facilitate preparations by all parties without materially delaying proceedings.⁸

4. The Response also misrepresents the Request when asserting that Rule 107 clearances are the “only concrete, outstanding matters”.⁹ The Request identified five factors demonstrating good cause to vary the time limits, and Rule 107 clearances were only one of these factors.¹⁰ In any event, describing the issue as “only” Rule 107 clearances misstates the volume of work required to obtain the clearances, and the broader impact of clearances on preparations. As the SPO is undoubtedly aware, the clearances impact every stage of the process for affected witnesses (the initial permission to speak to a witness, approval of any proposed statement, clearance to testify, approval for use of documents with a witness) and have a flow-on effect to decisions about which materials and witnesses not subject to Rule 107 clearance may be relied upon. Further, some Defence teams have had difficulties obtaining cooperation from Rule 107 providers and have experienced significant delays in receiving responses or requested materials, leading to consequent delays in processing and preparation for the Defence case. For example, the Thaçi Defence requested disclosure of documents from one provider in 2022, but only received disclosure of approximately 900 of the requested items throughout May and June 2025. The SPO’s minimisation of these Rule 107 obstacles appears disingenuous, having themselves experienced significant delays that resulted in all required

⁷ Kosovo Constitution, articles 30(3), 31(2); Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”), articles 1(2), 3(2), 12, 19, 21(4).

⁸ Response, para. 5; Request, para. 11.

⁹ Response, para. 1.

¹⁰ Request, paras. 3, 5-11.

clearances not being obtained until shortly before the start of trial.¹¹

5. In addition, the SPO submissions as to the length of time between the close of the SPO case and the Defence Preparation Conference are unhelpful and misleading.¹² The Request specifically identified several competing demands that have prevented the teams from having adequate time and facilities to prepare for the Defence case throughout this period. Characterising these competing demands as “unsubstantiated or irrelevant” disregards the fact that the alternative workstreams during this period were primarily not of the Defence’s own making: it was the SPO’s decision to file repeated motions for admission of important evidence immediately before the close of the SPO case, the responses to which occupied the majority of Defence resources in the period when it would otherwise have been preparing a Defence case.¹³ Similarly, regardless of the perceived limitations in the scope of the Rule 130 Motion,¹⁴ the Defence still had to devote considerable resources to determining -and agreeing upon- the scope, as well its research and drafting. Given the importance of the issue challenged in the Rule 130 Motion, the outcome may also impact the nature and scope of any Defence case.

6. Further, references to the timeframes imposed in other international proceedings are inapposite and of minimal relevance.¹⁵ The circumstances of each proceeding must be considered individually, and it is unhelpful for the SPO to cherry-pick examples of single accused cases and suggest they are appropriate comparators. They are not. This is a complex multi-accused trial. A broader search reveals an equal number of cases (including multi-accused cases) where the period between the close

¹¹ See, e.g., KSC-BC-2020-06, Transcript of Status Conference, 4 November 2022, pp. 1635-1640.

¹² Response, para. 4.

¹³ Request, para. 8.

¹⁴ Response, para. 4, referring to KSC-BC-2020-06/F03256, *Joint Defence Motion Pursuant to Rule 130*, 12 June 2025, confidential.

¹⁵ Request, para. 4 & fns. 11, 22.

of the prosecution case and the start of the defence case was as long as the Defence proposal, or even longer.¹⁶

A. ADDITIONAL DEADLINES PROPOSED BY THE SPO

7. The Response requests the Panel to impose additional deadlines on the Defence, which were not the subject of the initial Order.¹⁷ These include deadlines for the Defence to fulfil disclosure obligations pursuant to Rule 104(5), to provide information identified in paragraph 74 of the Order on the Conduct of Proceedings, and to make requests related to witnesses the Defence intends to call to testify (“Additional Deadlines”). At the outset, the Panel has repeatedly confirmed that “a [r]esponse is not intended to serve as a vehicle to submit a fresh application”,¹⁸ and “responses are not the correct procedural vehicle in which to seek extraneous relief”.¹⁹ In line with these rulings, the SPO requests for Additional Deadlines should be summarily dismissed. The Defence should have a fair opportunity to make submissions on proposed deadlines that seek a significant variation of the requirements under the Rules, and which directly implicate fair trial rights, rather than being limited by the confines of a reply.

8. In any event, the Additional Deadlines proposed by the SPO are wholly inappropriate, and effectively usurp the Panel’s functions. In accordance with Articles 40(1) and (6) of the Law, the Panel is tasked with controlling the conduct of the trial

¹⁶ See, e.g.: ICTY, *Prosecutor v. Popović et al.*, [IT-05-88-T](#), Trial Chamber II, *Judgement (Volume II) – Annex II*, 10 June 2010, paras. 15, 19: the Prosecution case closed on 2 February 2008, while the first defence case started on 2 June 2008; ICC, *Prosecutor v. Ongwen*, [ICC-02/04-01/15-1762-Red](#), Trial Chamber IX, *Trial Judgment*, 4 February 2021, paras. 19, 22, showing the Prosecution case closed on 13 April 2018, while the defence case started on 18 September 2018.

¹⁷ Response, paras. 1, 7-10.

¹⁸ KSC-BC-2020-06/F02421, *Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W00996*, [...] Pursuant to Rule 153, 2 July 2024, confidential, para. 23.

¹⁹ KSC-BC-2020-06/F02765, *Decision on Prosecution Motion for the Admission of the Evidence of Witnesses W01234*, [...] Pursuant to Rule 153 and Related Defence Motion to Exclude Evidence, 11 December 2024, confidential, para. 48.

proceedings, including, for example, requiring parties to meet disclosure obligations. This is confirmed by Rule 104(5), which specifies the steps that must be taken by the Defence in relation to any defence case, “**within the time limit set by the Panel** and no later than fifteen (15) days prior to the opening of the Defence case”. It is therefore unreasonable for the SPO to seek to impose **any** deadline on the Defence, let alone such a significant variation of this mandated deadline, particularly without citing specific prejudice that would be suffered beyond generalised assertions that it is “necessary for preparations and to avoid delays in the schedule”.²⁰

9. The Defence reserves the right to provide submissions on the items in the Additional Deadlines at the appropriate time, including at any future status conference as necessary. For the current purposes however, the Defence clarify two points. First, the Response criticises the Defence for discussing disclosure obligations “only in passing”.²¹ However, disclosure obligations were not included in the timetable proposed in the Order, and were therefore beyond the scope of the Request. It would also be premature for the Defence to address the timeframe for disclosure obligations at this juncture, particularly given the issues identified in the Request must be resolved prior to fulfilling disclosure obligations.

10. Second, the Response attempts to impute deadlines for the Defence pursuant to paragraphs 73 and 74 of the Order on the Conduct of Proceedings.²² However, these paragraphs are specific to the SPO, and there is no indication that the obligations therein apply equally to the Defence, or any other participants.²³ To the contrary, the specificity of these paragraphs is distinguishable from provisions imposing

²⁰ Response, para. 9.

²¹ Response, para. 9.

²² Response, paras. 1(c), 8.

²³ Order on the Conduct of Proceedings, paras. 73-74, including statements like: “The SPO shall list the witnesses[...]”, “The SPO shall[...] notify the Trial Panel and the Parties[...]”, “the SPO shall provide to the Panel and the other Parties[...]”.

obligations on “the presenting Party”, “the calling Party” or “the Party calling witnesses”, which are clearly intended to apply to all Parties.²⁴ The Defence and the SPO have different obligations regarding the presentation of their case, and it should not be assumed that obligations targeted at the SPO apply equally to the Defence.²⁵

B. PROVISIONAL LISTS

11. The Defence should not be required to provide provisional witness and exhibit lists (“Provisional Lists”) by 21 July 2025, as proposed by the SPO.²⁶ The premise of the Request was that it was not possible for the Defence to provide either the witness lists or exhibit lists by the original deadline of 21 July 2025; obtaining Rule 107 clearances was only one part of the reasoning underlying this assessment. In founding the Request, the Defence attempted to propose a reasonable and limited variation which struck a balance between ensuring fairness to the Accused while not unduly impacting expeditiousness.²⁷ This balance would be almost wholly reversed by requiring the Defence to undertake the work necessary to provide (meaningful) Provisional Lists by 21 July 2025, particularly given there would be very limited benefits in terms of efficiency. To the contrary, the SPO may in fact waste time and resources investigating or preparing for witnesses or exhibits that are included in the Provisional Lists, but are not included in the final list due to changes caused by, for example, whether Rule 107 clearances are obtained.

12. Finally, as should be clear from the Request, the Defence anticipates calling a very limited number of witnesses, and the SPO is already on notice of the types of witnesses that could be called by at least one of the teams, and the issues that could

²⁴ See, e.g., Order on the Conduct of Proceedings, paras. 77-82.

²⁵ Cf. Response, fn. 20.

²⁶ Response, paras. 1, 7.

²⁷ Request, para. 10.

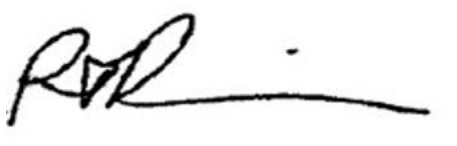
be addressed as part of the Defence case.²⁸ Submissions as to the “substantial” investigations and preparation which may be required must be considered in this context.

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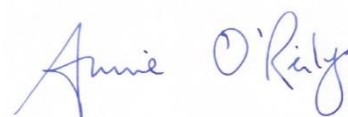
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²⁸ KSC-BC-2020-06/F01068, *Thaçi Defence Motion Justifying Request for Unique Investigative Opportunities with confidential Annexes 1-8*, 28 October 2022, confidential.



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