

**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 Guénaël 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

**Date:** 1 December 2025

**Language:** English

**Classification:** Public

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**Joint Defence Request for Leave to Appeal the Order of 21 November 2025**

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## I. INTRODUCTION

1. In accordance with Article 45 of the Law<sup>1</sup> and Rule 77 of the Rules,<sup>2</sup> the Defence for Messrs Thaçi, Veseli, Selimi and Krasniqi (“Defence”) hereby file this request for leave to appeal the sentencing procedure contained in the Trial Panel’s Order of 21 November 2025 (“Impugned Order”).<sup>3</sup>
2. In the Impugned Order, the Trial Panel refused to apply the bifurcated sentencing procedure available in Rules 162 and 164. The Trial Panel instead opted for the procedure set out in Rule 159(6), thus requiring the Accused to address matters of sentencing before pronouncements are made as to their guilt, if any. It is submitted that the reasoning underpinning the Impugned Order is limited and, in any event, fundamentally flawed. Accordingly, leave to appeal is sought in respect of the following issues:
  - a. **First Issue:** Whether the Trial Panel failed to provide adequate reasons for rejecting the Defence’s request for the application of a bifurcated sentencing procedure as contained in Rules 162 and 164 of the Rules.
  - b. **Second Issue:** Whether the Trial Panel’s application of the sentencing procedure in Rule 159(6) of the Rules violated the Accused’s fair trial rights.

## II. PROCEDURAL BACKGROUND

3. On 6 November 2025, the Trial Panel issued an Order for Submissions on Reparation Proceedings.<sup>4</sup>

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<sup>1</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, 3 August 2015 (“Law”).

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

<sup>3</sup> F03597, *Order Pursuant to Rules 134(b), (d) and 159(6) and Related Matters*, 21 November 2025, public.

<sup>4</sup> F03565, *Order for Submissions on Reparation Proceedings*, 6 November 2025, confidential.

4. On 17 November 2025, the SPO,<sup>5</sup> Defence<sup>6</sup> and Victims' Counsel<sup>7</sup> responded to the order for submissions on Reparation Proceedings. In doing so, the Defence made submissions in respect of sentencing procedure.<sup>8</sup>
5. On 19 November 2025, a Status Conference was convened during which the Parties made submissions on matters of scheduling, including on the issue of the applicable sentencing procedure.<sup>9</sup>
6. On 21 November 2025, the Trial Panel issued the Impugned Order.

### III. APPLICABLE LAW

7. Pursuant to Article 45(2) and Rule 77(2), a right to appeal only arises if the standard of certification set forth herein has been met.
8. Rule 77(2) States 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.

9. The Defence recalls the legal test set for certification of appeal under Rule 77(2) has been developed in prior decisions issued by this Court, which are incorporated herein by reference.<sup>10</sup>

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<sup>5</sup> F03582, *Prosecution submissions on reparation proceedings*, 17 November 2025, confidential.

<sup>6</sup> F03584, *Joint Defence Response to Order for submissions on Reparation Proceedings*, 17 November 2025, confidential.

<sup>7</sup> F03583, *Victims' Counsel's Submissions in Response to the Order for Submissions on Reparation Proceedings (F03565)*, 17 November 2025, confidential.

<sup>8</sup> F03584, paras 12-17.

<sup>9</sup> See, Transcript, 19 November 2025, T.28353-28355.

<sup>10</sup> See, e.g., F00172, *Decision on the Thaçi Defence Application for Leave to Appeal*, 11 January 2021, paras 6-7, 9-17; F01237, *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, *Decision on SPO Requests for Leave to Appeal F00413 and Suspensive*, 8 November 2021, paras 13-21; KSC-BC-2020-07/F00372, *Decision on Haradinaj Defence's Application for Certification of F00328*, 15 October 2021, paras 15-17.

## IV. SUBMISSIONS

## A. THE IDENTIFIED ISSUES ARE APPEALABLE

**1) First Issue: Whether the Trial Panel failed to provide adequate reasons for rejecting the Defence's request for the application of a bifurcated sentencing procedure as contained in Rules 162 and 164 of the Rules.**

10. At paragraph 38 of the Impugned Order, the Trial Panel stated the following when rejected the Defence's request for a bifurcated sentencing procedure:

The Panel does not consider that the Defence has demonstrated that the circumstances of the present case would warrant diverting from the presumption set out in Rule 159(6). As has been the practice of this court, the Panel intends to impose any sentence, if any conviction is entered, together with the pronouncement of the Trial Judgment and does not currently intend to apply the procedure set out in Rules 162 and 164 of the Rules. The Panel accordingly rejects the Defence's invitation to consider sentencing at a later stage and orders the Parties to make any submissions they wish to make in relation to sentencing in their final trial briefs.<sup>11</sup>

11. While the Trial Panel was not obliged to address all arguments raised by the Parties, it was required to provide a reasoned decision that set forth the basis for refusing the Parties' request in "sufficient clarity."<sup>12</sup> According to the Appeals Panel, however, a Panel will breach this obligation where it issues a decision that does not, at a minimum, provide reasoning in support of the findings on the substantive considerations relevant for the decision.<sup>13</sup> It is therefore unlawful for a Panel to provide a decision that is devoid of reasoning.<sup>14</sup> To simply state that the request is rejected is insufficient; the Panel must set out *why* the request was rejected.
12. In rendering the Impugned Order, the Panel made no effort to engage with the merits of the Defence's request for a bifurcated sentencing, despite being

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<sup>11</sup> F03597, para. 38.

<sup>12</sup> KSC-CA-2022-01/F00114, *Appeal Judgment*, 2 February 2023, public, para. 33.

<sup>13</sup> IA009/F00030, *Decision on Appeals Against "Decision on Motions Challenging the Jurisdiction of the Specialist Chambers"*, 23 December 2021, public, para. 154.

<sup>14</sup> IA001/F00005, *Decision on Kadri Veseli's Appeal Against Decision on Interim Release*, 30 April 2021, public, para. 72.

obliged to do so by Rule 159(6). According to Rule 159(6), a Panel may determine the appropriate sentence with the pronouncement of the Trial Judgment “unless, having heard the Parties, the Panel decides to proceed in accordance with Rule 162 and Rule 164.” It is clear that Rule 159(6) provides for the possibility of a bifurcated sentencing procedure. In deciding to reject bifurcation, it was incumbent upon the Panel to spell out precisely why such a procedure was inapposite in the present case.

13. However, it is clear from the Impugned Order that the Panel made no effort whatsoever to engage with the merits of the Defence’s request. The Panel only stated that it was unconvinced by the Defence’s arguments, that it would follow the integrated sentencing procedure adopted in other cases at the Court, which are incomparable to the present case, and that it did “not currently intend to apply the procedure set out in Rules 162 and 164 of the Rules.”<sup>15</sup> The Panel did not provide any citation, discussion or explanation as why the Defence’s arguments failed, nor did it explain – even summarily – how the circumstances in other cases tried before the Court were in any way comparable to the present case such that an integrated sentencing procedure would be justified.
14. The absence of basic reasoning for rejecting bifurcated sentencing undermines the integrity of the Impugned Order. This is not an issue over which there is mere disagreement. On any plain reading of the Impugned Order, it is apparent that the Panel offered no reasons to justify its decision. Accordingly, the **First Issue** clearly arises from the Impugned Order and is thus amenable to appeal.

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<sup>15</sup> F03597, paras 37, 38.

**2) Second Issue: Whether the Trial Panel’s application of the sentencing procedure in Rule 159(6) of the Rules violated the Accused’s fair trial rights.**

15. At paragraphs 37 and 38 of the Impugned Order, the Panel asserted a presumption in favour of an integrated sentencing procedure, relying on Rule 159(6) of the Rules and the practice adopted in previous cases. The Defence seeks to challenge the Panel’s failure to account for the unique circumstances of the present case when determining the unsuitability of bifurcated sentencing, which clearly warranted dislodging the presumption.
16. During the Status Conference of 19 November 2025, the SPO provided an apt summary of the size and complexity of the present case:

The indictment spans one-and-a-half years; the charges concern ten counts of war crimes and crimes against humanity at locations across Kosovo and parts of Albania, with over 400 alleged incidents of detention and over a hundred alleged victims of murder or killing; the evidence of over 250 witnesses has been heard or otherwise admitted; over 5.000 items of evidence have been admitted into evidence; and decisions on over 300 tendered items remain outstanding.<sup>16</sup>

17. In addition, the necessity of bifurcation in complex cases involving alternative and distinct modes of liability is well-settled in international criminal practice. The Trial Chamber in *Lubanga* indicated that it would hold a separate sentencing hearing in the event of a conviction. Unlike in the present case, the *Lubanga* Trial Chamber provided the defence an opportunity to respond to all the submissions and evidence which had been relied upon for the purposes of sentence following Mr Lubanga's conviction by inviting written submissions on:

“(i) the procedure to be adopted for sentencing and the principles to be applied by the Chamber; and (ii) the relevant evidence presented during trial, the aggravating and mitigating factors, and the sentence to be imposed on Mr Lubanga.”

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<sup>16</sup> Transcript, 19 November 2025, T.28334.9-16.

In doing so, the Trial Chamber ensured that Mr Lubanga had adequate notice of the matters that may be taken into consideration by the Chamber during the sentencing stage of the proceedings.<sup>17</sup>

18. The Accused in present case are charged with three distinct modes of liability, several of which overlap in their application to the same offences. These distinct modes of liability will, as a matter of course, attract different sentences should any convictions be returned. The ICC confirmed in *Bemba* – a complex case involving command responsibility – that a distinct sentencing phase is required to “allow the parties to benefit from the judgment on the merits and make focused and meaningful submissions on sentencing for the purposes of Article 78 of the Statute, including submissions on mitigating or aggravating circumstances as set out under Rule 145(2) of the Rules.”<sup>18</sup>
19. Accordingly, by refusing to bifurcate the sentencing procedure, the Impugned Order forces the Accused to engage in prejudicial speculation, arguing mitigation for distinct forms of liability before the Panel has even determined which, if any, applies. This directly contravenes the Accused’s right to make meaningful submissions and prepare a defence based on actual findings rather than hypothetical scenarios.
20. The same issues of scope and complexity cannot be said to have existed in other cases before the Court. As noted above, the present case has involved 250 witnesses, 155 participating victims, several crimes sites, hundreds of alleged incidents and an immense evidentiary record.<sup>19</sup> This case is simply incomparable to other cases that have come before the court, all of which were

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<sup>17</sup> ICC, *Prosecutor v. Lubanga*, [Decision on Sentence pursuant to Article 76 of the Statute](#) , 10 July 2012, para. 30.

<sup>18</sup> ICC, *Prosecutor v. Bemba*, [Decision on the timetable and on the sentencing procedure](#), 26 May 2014, para. 13.

<sup>19</sup> Transcript, 19 November 2025, T.28334.9-16, T.28341.19.

considerably shorter in terms of trial days; included a small number of witnesses;<sup>20</sup> eight participating victims at most; far fewer admitted exhibits;<sup>21</sup> fewer counts;<sup>22</sup> narrow indictment periods;<sup>23</sup> and singular crime sites.<sup>24</sup> It was wrong for the Panel to draw any parallels between the present case and other cases that have come before the Court.

21. Further, despite being incomparably simpler, the Defence in *Gucati & Haradinaj*, for example, were in fact permitted to adduce additional evidence and make separate submissions affecting sentencing after having failed to make such submissions in their final trial briefs.<sup>25</sup> Such a procedure was permitted on the basis of Article 40(2) of the Law, which allows the Panel to adopt measures to ensure the fairness of the proceedings.
22. There are compelling reasons why the Panel ought to have adopted a bifurcated sentencing procedure in the present case. Indeed, such a procedure is the only fair and reasonable course in the circumstances and is required to safeguard the Accused's fair trial rights – namely, the right to have adequate time and facilities to prepare their defence.<sup>26</sup> In a complex case such as the present, denying the Accused the opportunity to fully and properly address the issue of sentence in relation to any actual findings, if any, is highly

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<sup>20</sup> See, Mustafa [Case Information Sheet](#): 30 witnesses total; Shala [Case Information Sheet](#): 31 witnesses total; Guçati & Haradinaj [Case Information Sheet](#): 32 witnesses total.

<sup>21</sup> See, Mustafa [Case Information Sheet](#); Shala [Case Information Sheet](#); Guçati & Haradinaj [Case Information Sheet](#).

<sup>22</sup> Regarding Mustafa: KSC-BC-2020-05/F00019/RED, *Public Redacted Version of 'ANNEX 1 to Submission of further redacted version of confirmed indictment'*, 19 June 2020, public, para 35. Regarding Shala: KSC-BC-2020-04/F00107/A01, *Public Redacted Version of 'ANNEX 1 to Submission of Corrected Indictment'*, KSC-BC-2020-04/F00098/A01, dated 1 November 2021, 16 November 2021, public, para. 31. Regarding Guçati & Haradinaj: KSC-BC-2020-07/F00251/A01/RED, *Lesser Redacted Indictment*, 4 October 2021, public, para. 48.

<sup>23</sup> Regarding Mustafa: KSC-BC-2020-05/F00019/RED, para 35. Regarding Shala: KSC-BC-2020-04/F00107/A01, para. 31. Regarding Guçati & Haradinaj: KSC-BC-2020-07/F00251/A01/RED, para. 48.

<sup>24</sup> Regarding Mustafa: KSC-BC-2020-05/F00019/RED, para. 7; KSC-BC-2020-04/F00107/A01, para. 8.

<sup>25</sup> See, KSC-BC-2020-07/F00578, *Decision on Sentencing Evidence*, 16 March 2022, public, paras 2-10, 23.

<sup>26</sup> Law, Article 21(4).

prejudicial. Moreover, this is done without any articulable reason or justification, and is a blatant, wholly unnecessary and unjustifiable breach of the Accused's fair trial rights.

23. This is not merely an issue of disagreement. The very real and serious prospect of prejudice to the Accused's rights arises directly from the Impugned Order and should be subject to appellate review.
- B. THE IDENTIFIED ISSUES SIGNIFICANTLY AFFECT THE FAIR AND EXPEDITIOUS CONDUCT OF THE PROCEEDINGS, AND OUTCOME OF TRIAL
24. The identified Issues have a significant and direct link to, and impact upon, the Accused's ability to make informed representations on matters of sentencing.
25. In relation to the **First Issue**, the Defence submits that the Accused have been prevented from having a fair and reasonable opportunity to understand the basis for the Panel's rejection of a bifurcated sentencing procedure. The Accused have a right to a reasoned decision,<sup>27</sup> and to know why they are required to make submissions on sentencing when there have not been any convictions entered. This is plainly an issue of fairness significantly affecting the proceedings.
26. With respect to the **Second Issue**, it is submitted that an integrated sentencing procedure significantly affects the Accused's fair trial rights in the circumstances. As noted above, the Accused are required to set out their defence in respect of a large and complex case in which several modes of liability have been charged. Furthermore, the Accused are required to do this within 90,000 words.<sup>28</sup> The Accused will require those words to address the case against them. The Impugned Order however forces the Defence to divert the word count and preparation time – already strained by the enormity of the

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<sup>27</sup> See, e.g., IA001/F00005, para. 72.

<sup>28</sup> F03597, para. 24.

case – toward sentencing submissions that may ultimately have no relevance depending on the Panel’s findings. This runs directly counter to the right to adequate time and facilities and risks placing the Accused at a clear material disadvantage. To combine submissions on sentencing with submissions on the proof of the charges would similarly prejudice the Accused’s ability to mount a proper defence. The Accused must be afforded an opportunity to answer the allegations brought by the SPO and address sentencing at a later stage, with a view to possibly calling further evidence in accordance with Rule 162(5), should any convictions be entered.

C. IMMEDIATE APPELLATE RESOLUTION OF THE ISSUES WILL MATERIALLY ADVANCE THE PROCEEDINGS

27. The Defence submits that both issues are appropriate for appellate review, the immediate resolution of which would materially advance the proceedings. Considering the Panel’s intention to close the evidentiary proceedings on Thursday, 4 December 2025,<sup>29</sup> as well as the impending judicial recess, it is imperative that the Appeals Panel render a decision on the Issues immediately, such that the sentencing procedure is confirmed well in advance of the filing of final trial briefs and impact statements on Monday, 19 January 2026.<sup>30</sup>

V. CLASSIFICATION

28. This leave to appeal is filed publicly pursuant to Rule 82(4) of the Rules.

VI. CONCLUSION

29. In light of the foregoing, the Defence requests that leave to appeal the identified **Issues** is granted.

**Word Count: 2,740**

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<sup>29</sup> Transcript, 19 November 2025, T.28330.5-7.

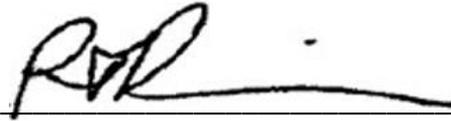
<sup>30</sup> F02397, para. 39(f).

Respectfully submitted on Monday, 1 December 2025, at The Hague



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Luka Mišetić  
Lead Counsel for Hashim Thaçi



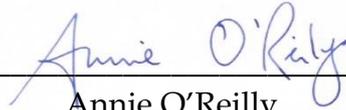
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