



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

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

Specialist Prosecutor's Office

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I. INTRODUCTION

1. The Request¹ should be dismissed as the Issues² fail to meet the criteria for certification³ under Article 45 of the Law⁴ and Rule 77 of the Rules.⁵ The matters raised do not constitute appealable issues and the Defence does not show that interlocutory appellate review of the discretionary Order⁶ would have any, let alone significant, impact on the conduct of the proceedings.

II. SUBMISSIONS

A. THE ISSUES ARE NOT APPEALABLE

(i) *First Issue*

2. The First Issue, asserting that the Panel failed to provide adequate reasons,⁷ is misleading and misrepresents the Order.

3. In the Order, the Panel considered Defence submissions – which generally referenced the size and scope of the case, and claimed a right to make sentencing submissions and to adduce further sentencing evidence after any conviction⁸ – but

¹ Joint Defence Request for Leave to Appeal the Order of 21 November 2025, KSC-BC-2020-06/F03605, 1 December 2025 ('Request').

² Request, KSC-BC-2020-06/F03605, para.2 (defining the 'Issues').

³ The applicable law has been set out in prior decisions. *See e.g.* Decision on the Thaçi Defence Application for Leave to Appeal, KSC-BC-2020-06/F00172, 11 January 2021, Confidential ('January 2021 Decision'), paras 9-17; *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on the Defence Applications for Leave to Appeal the Decision on the Defence Preliminary Motions, KSC-BC-2020-07/F00169, 1 April 2021, paras 10-18.

⁴ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

⁵ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' and 'Rules' herein refer to the Rules.

⁶ Order Pursuant to Rules 143(b), (d) and 159(6) and Related Matters, KSC-BC-2020-06/F03597, 21 November 2025 ('Order').

⁷ Request, KSC-BC-2020-06/F03605, paras 10-14.

⁸ Joint Defence Response to Order for submissions on Reparation Proceedings, KSC-BC-2020-06/F03584, 17 November 2025, Confidential ('November 2025 Response'), paras 12-17. *See also* Order, KSC-BC-2020-06/F03597, para.35.

found them to be unconvincing.⁹ In effect, Defence submissions challenged the legal framework set out in the Rules and the presumptions established therein: (i) that a sentence shall be pronounced at the same time as a judgment;¹⁰ and (ii) that evidence relevant to sentencing should be presented at trial.¹¹ Considering the nature of the submissions and that they expressed general disagreement with the legal framework, the Order adequately addressed them when stating that ‘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)’.¹² It thereby provided ‘reasoning in support of its findings on the substantive considerations relevant for a decision, [and was] not required to articulate every step of its reasoning and to discuss each submission.’¹³

4. Accordingly, the First Issue, based on misrepresentation, is not appealable.

(ii) *Second Issue*

5. The Second Issue broadly claims that the Panel’s application of the sentencing procedure in Rule 159(6) violated the Accused’s fair trial rights.¹⁴ The submissions distort the Order and applicable legal framework, which the Constitutional Court has confirmed is not inconsistent with the fundamental rights, including to a fair trial, set out in Chapter II of the Constitution.¹⁵

⁹ Order, KSC-BC-2020-06/F03597, para.38. *Contra* Request, KSC-BC-2020-06/F03605, paras 10-14.

¹⁰ Rule 159(6); Order, KSC-BC-2020-06/F03597, para.37.

¹¹ Rule 159(6); Order, KSC-BC-2020-06/F03597, para.37. Even in a separate sentencing procedure, Rule 162 provides that additional evidence should only be heard ‘if necessary’. *See* Rule 162(5); *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on SPO Request for Disclosure of Additional Sentencing Evidence, KSC-BC-2020-07/F00572, 10 March 2022, para.12.

¹² Order, KSC-BC-2020-06/F03597, para.38.

¹³ 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, KSC-BC-2020-06/F03058, 26 March 2025 (‘March 2025 Decision’), para.24.

¹⁴ Request, KSC-BC-2020-06/F03605, paras 15-23.

¹⁵ Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 [...], KSC-CC-PR-2017-01/F0004, 26 April 2017, para.206.

6. The Defence merely repeats arguments it already put forward in its submissions prior to the Order.¹⁶ Arguments that the Panel failed to account for the ‘unique circumstances of the present case when determining the unsuitability of bifurcated sentencing’¹⁷ are incorrect, given that the Defence submissions were considered and rejected by the Panel.¹⁸

7. Contrary to Defence assertions,¹⁹ international criminal practice shows that the sentencing procedure depends on the legal framework adopted by each court, with certain courts adopting a bifurcated procedure and others not.²⁰ As previously held by the Panel, ‘it is not bound by the jurisprudence of [...] international criminal tribunals and must apply the SC’s own legal framework.’²¹ At this court, a presumption exists that the Panel shall determine the appropriate sentence at the same time as the pronouncement of the trial judgment.²² Therefore, having failed to provide adequate submissions to convince the Panel that the presumed sentencing procedure

¹⁶ November 2025 Response, KSC-BC-2020-06/F03584, paras 12-17.

¹⁷ Request, KSC-BC-2020-06/F03605, para.15.

¹⁸ Order, KSC-BC-2020-06/F03597, paras 35, 38.

¹⁹ Request, KSC-BC-2020-06/F03605, para.17.

²⁰ In this respect, Defence submissions selectively refer to courts that have bifurcated procedures. However, such procedure was abolished by the ICTY in 1998 in order to streamline and expedite the trial process without jeopardising respect for the rights of the accused. *See* ICTY, Rules of Procedure and Evidence, IT/32/Rev.13, 10 July 1998, Rules 85-86; Press release, “ICTY Judges Successfully Conclude Review of Judicial Procedures”, 16 July 1998, <http://www.icty.org/en/press/icty-judges-successfully-conclude-review-judicial-procedures>, accessed 7 December 2025. Accordingly, no bifurcated procedure was applied in the multiple complex cases that were subsequently held at the ICTY. Further, while Article 76(2) of the Rome Statute provides for a separate sentencing hearing that may be initiated by the Trial Chamber or must be held following a request by one of the parties, in at least two cases (*Al-Mahdi* and *Yekatom and Ngaissona*), the sentencing hearing was held separately, but still before the judgment on the charges.

²¹ March 2025 Decision, KSC-BC-2020-06/F03058, para.18. The Specialist Chambers are referred to herein as the ‘SC’.

²² *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on the Closing of the Evidentiary Proceedings and on Submissions Pursuant to Rules 134(b), (d) and 159(6) of the Rules, KSC-BC-2020-07/F00553, 3 February 2022, paras 16-18; *Specialist Prosecutor v. Mustafa*, Decision on the closing of the evidentiary proceedings and related matters, KSC-BC-2020-05/F00439, 20 June 2022 (‘June 2022 Decision’), para.15.

should not apply in this case, the Defence's claim that the Order is unfair and unreasonable is misleading and unfounded.²³

8. The Defence merely disagrees with the Panel's Order and fails to establish that the Second Issue is appealable.

B. THE ISSUES WOULD HAVE NO IMPACT JUSTIFYING CERTIFICATION

9. The Request fails to demonstrate that the Issues significantly affect the fair and expeditious conduct of the proceedings, or that immediate resolution by the Court of Appeals would materially advance them.

10. Rather than pointing to any specific and concrete prejudice caused by the Issues, the Defence largely repeats the unfounded arguments addressed above.²⁴ The Request ignores that, as already confirmed by the Constitutional Court,²⁵ there is nothing patently unfair with the presumed sentencing procedure set out in Rule 159(6), which has also been applied by other SC Trial Panels and in complex cases at other courts.²⁶ This procedure does not 'force the Accused to engage in prejudicial speculation' based on 'hypothetical scenarios'.²⁷ As found by the *Mustafa* Panel, '[w]hether or not the Accused will ultimately be convicted for one or more crimes does not prevent the Defence, having been apprised fully of the charges, from making, at this stage, relevant submissions [...]'.²⁸ Further, in the diligent exercise of their responsibilities, Defence Counsel must have planned for and presented at trial all evidence they consider relevant to sentencing,²⁹ and taken into account the presumed procedure when requesting its word extension for the final brief.³⁰

²³ Request, KSC-BC-2020-06/F03605, para.22.

²⁴ November 2025 Response, KSC-BC-2020-06/F03584, paras 24-27.

²⁵ See para.5, fn.15 above.

²⁶ See para.7, fn.20 above.

²⁷ *Contra* Request, KSC-BC-2020-06/F03605, para.19.

²⁸ June 2022 Decision, KSC-BC-2020-05/F00439, para.15.

²⁹ Order, KSC-BC-2020-06/F03597, para.37.

³⁰ *Contra* Request, KSC-BC-2020-06/F03605, paras 25-26.

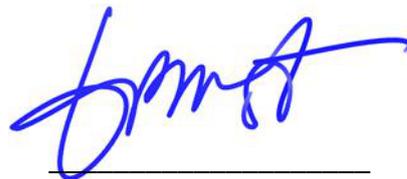
11. Consequently, the Panel's exercise of its discretion under Rule 159(6) does not impact, let alone significantly, the fairness of the proceedings.³¹ The Request therefore fails to establish that either of the Issues merit the exceptional remedy of interlocutory appeal.

12. Accordingly, none of the cumulative requirements for certification are met.³²

III. RELIEF REQUESTED

13. For the reasons given above, the Request fails to meet the leave to appeal standard and should be dismissed.

Word count: 1379



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Specialist Prosecutor

Friday, 12 December 2025

At The Hague, the Netherlands.

³¹ *Contra* Request, KSC-BC-2020-06/F03605, para.22.

³² January 2021 Decision, KSC-BC-2020-06/F00172, paras 10-16.