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:	**Pre-Trial Judge**
	Judge Nicolas Guillou
Registrar:	Dr Fidelma Donlon
Filing Participant:	Specialist Prosecutor
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Language:	English
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Prosecution submissions further to the status conference of 18 November 2020

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1. The Specialist Prosecutor's Office ('SPO') hereby provides additional written submissions on the question of an appropriate trial date in this matter.

2. In the context of the 18 November 2020 status conference, counsel for the Accused (collectively, 'Defence') urged an extensive delay in the commencement of trial. Counsel for Mr Veseli claimed in his written submission that the earliest that trial could start is June 2022.[1] Less than 15 hours after taking this position, counsel announced at the status conference itself that since 'things have a habit of not proceeding quite as planned,' he was actually suggesting that trial should commence 18 months following the proposed 31 May 2021 date for the SPO's Rule 102(1)(b)[2] disclosure, or effectively January 2023.[3] Other counsel either proposed similar start dates far into the future or joined in urging the date(s) offered up by counsel for Mr Veseli.

3. The SPO has a deep and abiding interest in the Defence having adequate time and facilities to prepare. The SPO has every interest that these proceedings be conducted with transparency and fairness for all parties, such that the result of this trial will stand and will be perceived as fair by all who will objectively consider the issue. However, the significant delays urged by the Defence are neither justified nor consistent with the interest of expeditious proceedings or the rights of the witnesses and victims in this case, as recognized in the Law.[4]

4. Counsel grounded their request for significant delay in Article 6 of the European Convention on Human Rights, which provides for the right of an accused to have adequate time for the preparation of his defence (also set forth in Article 30 of

[1] Submissions on behalf of Kadri Veseli: Status Conference - Wednesday 18 November, KSC-BC-2020-06/F00087, 9 November 2020 ('Veseli Defence Submissions'), para. 6.
[2] 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, unless otherwise specified.
[3] Transcript of Status Conference, 18 November 2020, p.108.
[4] Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'), Article 1 (listing among purposes of the Law to ensure 'fair and efficient criminal proceedings'), Article 22-23 (setting forth the rights and protections of victims and witnesses). All references to 'Article' or 'Articles' herein refer to articles of the Law, unless otherwise specified.

the Kosovo Constitution and Article 21 of the Law). However, invocation of this provision is not simply a magic password. The Defence has failed to adequately substantiate the need for such a significant delay (whether it is until June 2022 or January 2023). Further, the arguments advanced by counsel were not improved by the often emotive and unnecessarily personal language used to convey them.

5. First, the demand for significant delay is transparently directed towards a primary strategic purpose beyond the legitimate need to prepare for trial. The Defence itself has plainly recognised how their demand for a protracted delay in the start of the trial can be used to buttress the foundation for their more immediate desire to obtain provisional release. Counsel for Mr Veseli tipped his hand already in his filing in advance of the status conference, explicitly connecting the two matters, and repeating the point again during the status conference.[5] From the start, therefore, significant scepticism is warranted when the Defence claim that they require up to two years to prepare for this trial. One suspects the position of the Defence would evolve, and it would suddenly find a way to prepare much more quickly, if the court were to decide to continue the detention of the Accused pending trial, as requested by the SPO.

6. Second, counsel for the Accused contend that they should have years to prepare for trial because of the time the SPO has had to investigate its cases. This claim is both simplistic and plainly wrong. In the time leading up to this case, the SPO has investigated not just these four Accused, but multiple cases, accused, incidents, and theories of liability. It also faces a different burden of proof than the Defence, and has a very different mission. The SPO has a duty to contribute to the establishment of the truth,[6] a far more onerous duty than the one of defence counsel, which is solely to vindicate the interests of their individual clients.

[5] Veseli Defence Submissions, KSC-BC-2020-06/F00087, paras 10, 15; Transcript of Status Conference, 18 November 2020, p.176.
[6] Rule 62.

7. Moreover, the SPO has conducted its investigations in an atmosphere that is frequently hostile to its work and has confronted resistance and active efforts to undermine its investigation. Surely even the Defence will concede that the Accused in this case will encounter a very different dynamic when they conduct their investigations in Kosovo. Accordingly, the length of the SPO's investigations provides virtually no guidance on how much time should be permitted to the Defence.

8. Third, counsel for the Defence draw on the examples of cases at the International Criminal Tribunal for the former Yugoslavia (ICTY) to contend that they should be permitted years to prepare their case. This comparison may be superficially appealing, but it is ultimately misplaced.

9. The ICTY cases were conducted by the first international tribunal to be established since the International Military Tribunal at Nuremberg, and the two KLA cases were among the first cases to be brought against former members of the KLA. Much has been learned since then about ensuring that proceedings are more efficient and expeditious, while always fair, and this Court has sought to learn the lessons from the tribunals that preceded it and not simply match their performance but do significantly better.

10. The detail and specificity of the indictment, the volume of evidence in support of the charges and the detailed outline demonstrating relevance particularly as to the conduct of the Accused, as envisioned by the statutory and regulatory framework of this court, combine to provide the Defence with much more, and at an earlier stage, than in the ICTY context. As the SPO explained at the status conference, the Defence will receive an enormous portion of the evidence supporting the SPO's case within thirty days of the Accused's initial appearance and will receive virtually all of the disclosure in this case within months.

11. For these reasons, there is no mystery for the Defence about the SPO's case and its investigations and preparations can commence immediately. From the detailed indictment and the early disclosure, the Defence will be put on notice as to the case they will have to meet at trial. Moreover, unlike the cases at the ICTY, this case

encompasses many crimes that have already been litigated in Kosovo and the ICTY in well-publicised prosecutions that are certainly known to the Accused and their counsel. Further, in the context of investigative interviews, all of the Accused in this case were put on notice months ago that they were suspects in the SPO's investigation and two of the Accused have known since June that the SPO had submitted an indictment against them for confirmation. There is evidence that at least one of the Accused has been actively tracking the ongoing investigative activities of the SPO.[7]

12. Accordingly, it is no surprise that several of the Accused have already been able to decide on their defence. Although counsel for Mr Veseli was the most vocal in pressing for extensive delays, he also had no difficulty explaining the key lines of his defence in his filing before the status conference, and then repeating them at the status conference itself, despite the Pre-Trial Judge's instructions to counsel not to restate positions already made clear in filings. Similarly, in his interviews with the SPO, Mr Thaçi disclaimed any liability for crimes committed by members of the KLA, asserting repeatedly that at no point in 1998 or 1999 did he, or any member of the General Staff, have any authority over the KLA. As noted at the status conference, these assertions further belie claims by the Defence that preparation and investigation cannot commence until sometime after completion of all disclosure.

13. Finally, in addition to ensuring that the Defence has adequate time to prepare, the Court has a duty to ensure expeditious proceedings and to protect the rights and interests of victims and witnesses. Although Defence counsel drew on the example of the ICTY cases to demand extensive delays in these proceedings, they notably made no mention of the problems of widespread witness intimidation that beset those cases. The prosecution opposes a protracted period of time between the completion of its disclosure and the commencement of trial in large measure because there is simply no question that witnesses will be at serious risk of pressure and intimidation during this

[7] *See* Confidential Redacted Version of 'Request for arrest warrants and related orders', KSC-BC-2020-06/F00005/CONF/RED, 14 November 2020, paras 10-17 and the sources cited therein. *See also* KSC-BC-2020-06/F00005/ /RED.

period. Delaying the trial for years will not only fail to deliver expeditious justice, it may make it impossible to deliver any justice at all.

14. The statutory and regulatory framework of this Court seeks to deliver fair and expeditious justice by imposing strict burdens on the prosecution regarding the evidence supporting the indictment, the form of the charges, and disclosure. As a result, they contemplate that the proceedings themselves will unfold expeditiously and efficiently. Specifically, Article 39(1) creates a dual obligation for the Pre-Trial Judge 'to ensure the case is prepared properly and expeditiously for trial.' Furthermore, Rule 102(1)(b) plainly envisages a relatively short time between the provision of the SPO's witness and exhibit lists and the commencement of trial. However, the Defence seeks to receive all the benefits of this carefully constructed regime without fulfilling any of its obligations. The Defence is content for the SPO to meet its burdens under the Law and Rules, including with respect to charging and disclosure, but then seeks to have the proceedings drift for an extended period, during which time witnesses will face increased risks of intimidation. The Defence must have a fair opportunity to prepare for trial but given what has been and will be provided to and what is already known by the Defence, this should take months, not years. For this reason, the SPO submits that trial in this matter should commence this summer or no later than September 2021.

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At The Hague, the Netherlands.