

In: KSC-BC-2020-06
The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi
and Jakup Krasniqi

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Defence Counsel for Jakup Krasniqi

Date: 10 December 2021

Language: English

Classification: Public

Krasniqi Defence Request

for Reconsideration of Decision on Specialist Prosecutor's Request

for Variation of Word Limit

Specialist Prosecutor

Jack Smith

Counsel for Victims

Simon Laws QC

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson QC

Counsel for Rexhep Selimi

David Young

Counsels for Jakup Krasniqi

Venkateswari Alagendra, Aidan Ellis

I. INTRODUCTION

1. Pursuant to Rule 79(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), the Defence for Jakup Krasniqi (“Defence”) respectfully requests that the Pre-Trial Judge reconsider the Decision on Specialist Prosecutor’s Request for Variation of Word Limit.¹ It is necessary to reconsider the Decision in order to avoid injustice, since the Decision was rendered within three hours of the Specialist Prosecutor’s Office (“SPO”) Request,² prior to any Defence team having the opportunity to respond and without even enquiring whether any Defence team intended to respond. Further, the Defence respectfully submits that the Decision contains clear errors of reasoning in finding that the Request demonstrated good cause for the dramatic extension sought and was filed sufficiently in advance of the deadline.³

II. PROCEDURAL HISTORY

2. On 17 December 2020, the Prosecution submitted that it would be ready to file its Pre-Trial Brief in July 2021.⁴

3. On 19 May 2021, the Prosecution indicated that it anticipated being able to submit the Pre-Trial Brief by mid-October 2021.⁵

¹ KSC-BC-2020-06, F00600, Pre-Trial Judge, *Decision on Specialist Prosecutor’s Request for Variation of Word Limit* (“Decision”), 9 December 2021, public.

² KSC-BC-2020-06, F00598, Specialist Prosecutor, *Prosecution Request for Extension of Word Limit* (“Request”), 9 December 2021, public.

³ Decision, para. 6.

⁴ KSC-BC-2020-06, Transcript of Hearing, 17 December 2020, public, p. 199, lines 17-20.

⁵ KSC-BC-2020-06, Transcript of Hearing, 19 May 2021, public, p. 420, line 24 to p. 421, line 3.

4. On 12 October 2021, the SPO filed submissions requesting that, considering its available resources, the date for filing the Pre-Trial Brief should be set for 17 December 2021.⁶

5. On 29 October 2021, the Pre-Trial Judge ordered the Prosecution to file the Pre-Trial Brief by the date requested by the Prosecution – 17 December 2021.⁷

6. On 9 December 2021 at 12:22, the Prosecution submitted the Request which sought to extend the word limit for the Pre-Trial Brief from 50,000 words to 150,000 words. The Prosecution argued that there was good cause for this drastic extension due to the complexity of the case and its temporal and geographic scope.⁸

7. On 9 December 2021 at 15:16, the Pre-Trial Judge issued the Decision granting the extension.

8. On 9 December 2021 at 15:19, the Defence for Rexhep Selimi (“Selimi Defence”) filed the Selimi Defence Response to SPO Request for Extension of Word Limit,⁹ opposing the Request.

III. SUBMISSIONS

⁶ KSC-BC-2020-06, F00520, Specialist Prosecutor, *Prosecution Submissions Regarding the Date for Filing of a Pre-Trial Brief* (“Prosecution Submissions”), 12 October 2021, public, paras 1, 4-5.

⁷ KSC-BC-2020-06, In Court – Oral Order, Order on SPO’s Pre-Trial Brief and Related Material According to Rule 95(4)(a), 29 October 2021, public.

⁸ Request, para. 2.

⁹ KSC-BC-2020-06, F00601, Selimi Defence, *Selimi Defence Response to SPO Request for Extension of Word Limit* (“Selimi Defence Response”), 9 December 2021, public.

9. Rule 79(1) provides that “[i]n exceptional circumstances and where a clear error of reasoning has been demonstrated or where reconsideration is necessary to avoid injustice, a Panel may, upon request by a Party [...] reconsider its own decisions”.

10. The Defence submits that reconsideration of the Decision is necessary in order to avoid injustice because the Decision was rendered within only three hours of the Request being submitted and before the Defence had the opportunity to respond.¹⁰ Whilst Article 36(2) of the Registry’s Practice Direction on Files and Filings before the Kosovo Specialist Chambers (“Practice Direction”) permits applications for extension of a word limit to be disposed of without waiting for a response “where no prejudice is caused to the opposing Party”, the Request was not one which should have been granted without waiting for a response because there was prejudice to the Defence.

11. The prejudice is threefold. First, Mr. Krasniqi is remanded in custody and the duration of his pre-trial detention is partly dependent on the length of time that it will take to translate the Pre-Trial Brief. Plainly a 150,000-word document will take three times as long to translate as a 50,000-word document, so that the requested extension has the potential to prolong the period of pre-trial detention. Second, the imposition of a reasonable word limit assists all parties by ensuring that the written submission is disciplined, focused and concise. Allowing an extension of the requested magnitude removes that discipline and focus, to the prejudice of all parties working with the Pre-Trial Brief (including the Trial Chamber). Third, for the reasons set out below, the SPO’s Request was controversial and would have been opposed by the Defence so that the Defence is prejudiced in not having its objections considered.

¹⁰ As vividly demonstrated by the Selimi Defence filing its opposition only three minutes after the Decision was filed.

12. Furthermore, the Defence respectfully submits that there are clear errors of reasoning in the Decision on the following grounds (which are essentially consistent with those set out in the Selimi Defence Response).

13. First, the Prosecution has not established good cause for such a dramatic extension to the word limit. The word limit for this Pre-Trial Brief would ordinarily be 50,000 words.¹¹ The extension sought by the Prosecution is extraordinary and would triple the size of the Pre-Trial Brief. The Defence submits that such an exorbitant extension would require a proportionately compelling reason to justify it. No such compelling justification is found in the Request, which simply relies on generic factors such as the geographic and temporal scope of the case¹² without explaining why that translates into a need for such a profound extension.

14. Second, the Defence submits that other Prosecutions have consistently managed to submit more concise Pre-Trial Briefs in complex international cases. In *Mladić*, the Prosecution's Pre-Trial Brief was only 43,974 words, although that covered an indictment period spanning October 1991 – November 1995, and alleged an overarching joint criminal enterprise (“JCE”) throughout this period and three additional JCEs to inflict terror on the civilian population of Sarajevo from May 1992 – November 1995, to eliminate Bosnian Muslims in Srebrenica and to take UN personnel hostage.¹³ In the *Ayyash et al.* case, which involved four Accused, the Prosecution filed a Pre-Trial Brief of 19,711 words, though the period the Indictment covered spanned from at least October 2004 to 14 February 2005, when a suicide bomber perpetrated the attack on former Lebanese Prime Minister Rafik Hariri, which killed 22 people, including Mr. Hariri, and injured 226 others.¹⁴ In *Gbagbo and Blé*

¹¹ Practice Direction, Article 44.

¹² Request, para. 2.

¹³ ICTY, *Prosecutor v. Mladić*, IT-09-92-PT, Trial Chamber I, *Prosecution Pre-Trial Brief*, 24 February 2012.

¹⁴ STL, *Prosecutor v. Ayyash et al.*, STL-11-01/PT/TC, Trial Chamber, *Redacted Version of the Prosecution's Updated Pre-Trial Brief*, dated 23 August 2013, 31 October 2013.

Goudé, the Prosecution submitted a Pre-Trial Brief of around 45,000 words in a case involving multiple modes of liability under Article 25(3) of the Rome Statute in which the Accused were charged of crimes against humanity committed in the context of post-electoral violence in Côte d'Ivoire in 2010-2011.¹⁵

15. Third, the Request was not timely. In the course of denying a recent extension request by a Defence team, the Court of Appeals Chamber urged the Parties in this case to “anticipate word limit variation requests more than a few days before an applicable deadline”.¹⁶ The procedural history set out above shows that the Prosecution has been contemplating the filing of the Pre-Trial Brief since at least 17 December 2020. At the Seventh Status Conference, the Pre-Trial Judge put the Prosecution on notice that a deadline for the Pre-Trial Brief would be set shortly and the Prosecution ought, at the latest, to have considered the length of the Pre-Trial Brief at that stage. On 12 October 2021, the Prosecution requested that the date for filing the Pre-Trial Brief be set for 17 December 2021,¹⁷ without mentioning the word limit. On 29 October 2021, when the Pre-Trial Judge adopted the very deadline suggested by the Prosecution of 17 December 2021, the Prosecution would therefore have been well aware of the scope of the undertaking (and presumably would have been advanced in the drafting).¹⁸ Yet, the Prosecution did not mention the need for an extension at the Eighth Status Conference or indeed at any Status Conference at which the Pre-Trial Brief was discussed. Instead, the Prosecution waited almost six weeks before making the Request, submitting it, without prior notice to the Defence, only eight days before the deadline. The Request does not explain the delay in seeking the extension. In the

¹⁵ ICC, *Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/15-148-Anx1-Corr, Trial Chamber I, *Corrected Version of Prosecution’s Pre-Trial Brief*, 16 July 2015, ICC-02/11-01/15-148-Anx1, 28 July 2015.

¹⁶ KSC-BC-2020-06, IA014/F00003, Court of Appeals Chamber, *Decision on Veseli’s Request for Variation of Word Limit*, 2 December 2021, public, para. 3.

¹⁷ Prosecution Submissions, paras 1, 5.

¹⁸ KSC-BC-2020-06, F00549, Specialist Prosecutor, *Prosecution Submissions for Eighth Status Conference and Request for Extension of Deadline*, 27 October 2021, public, para. 10; Prosecution Submissions, para. 5.

circumstances, it was a clear error of reasoning to find that the Request was submitted sufficiently in advance of the deadline.¹⁹

16. The Defence therefore respectfully requests the Pre-Trial Judge to reconsider the Decision pursuant to Rule 79(1). The circumstances are exceptional: a party has been permitted to triple its word limit without the other party being heard on the issue. The Defence further requests the Pre-Trial Judge to reject the request for a 100,000-word extension. The Defence fully appreciates the complexity of this case and would not oppose a more reasonable request for an extension of 50,000 words.

Word count: 1,580



Venkateswari Alagenda

Friday, 10 December 2021

Kuala Lumpur, Malaysia.



Aidan Ellis

Friday, 10 December 2021

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¹⁹ Decision, para. 6.