



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: **KSC-BC-2020-06**
**The 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 Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 12 January 2023

Language: English

Classification: **Public**

Order Scheduling the Trial Preparation Conference

Acting Specialist Prosecutor
Alex Whiting

Counsel for Victims
Simon Laws

Counsel for Hashim Thaçi
Gregory Kehoe

Counsel for Kadri Veseli
Ben Emmerson

Counsel for Rexhep Selimi
David Young

Counsel for Jakup Krasniqi
Venkateswari Alagendra

TRIAL PANEL II, pursuant to Article 40 of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 116 and 117 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this order.

I. PROCEDURAL BACKGROUND

1. On 16 December 2022, Trial Panel II ("Trial Panel" or "Panel") informed the Parties and participants that, pursuant to Rule 117 of the Rules, the Trial Preparation Conference will be scheduled on Wednesday, 18 January 2023. The Panel also informed the Parties and participants that, pursuant to Rule 118 of the Rules, the Specialist Prosecutor's Preparation Conference will be scheduled in early February.¹

II. APPLICABLE LAW

2. Pursuant to Article 40(2) of the Law, the Trial Panel shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules, with full respect for the rights of the Accused and due regard for the protection of victims and witnesses. The Trial Panel may adopt such procedures and modalities as are necessary to facilitate the fair and expeditious conduct of proceedings. It may give directions for the conduct of fair and impartial proceedings in accordance with the Rules.

3. Pursuant to Rule 117 of the Rules, upon receipt of the case file pursuant to Rule 98 of the Rules, the Trial Panel shall hold a Trial Preparation Conference with the Parties. At the Trial Preparation Conference and after having heard the Parties, the Trial Panel shall set a time limit for any motions to be made prior to the

¹ KSC-BC-2020-06, Transcript of Hearing, 16 December 2022, public, p. 1700, lines 3-6.

opening of the case. The Trial Panel shall also set a date by which the Defence must indicate whether it elects to: (a) give an opening statement directly after the opening statements from the Specialist Prosecutor; (b) give an opening statement after the closing of the Specialist Prosecutor's case and before the opening of the Defence case; or (c) give no opening statement.

III. DISCUSSION

4. Pursuant to the aforementioned provisions and to ensure expeditious preparation for trial, the Trial Panel convenes the Trial Preparation Conference in the presence of the Parties and participants on Wednesday, 18 January 2023, at 09:30 hours.

5. With a view to enable the Parties and participants to prepare and to provide informed responses to questions from the Panel, the Panel hereby gives Parties and participants notice of the subject-matters or areas of interest in relation to which questions might be asked of them.

6. The Trial Panel shall seek oral submissions on the following procedural issues:

- i. Whether the SPO has completed its disclosure of the evidence it proposes to present at trial and confirmation that its list of proposed witnesses and exhibits are final;
- ii. Whether the SPO has completed its disclosure of all exculpatory evidence and whether any review of its holdings is still ongoing;
- iii. SPO's readiness to submit its applications pursuant to Rules 153-154 of the Rules for the first forty witnesses by 7 February 2023;
- iv. SPO's readiness to submit its application pursuant to Rule 155 of the Rules and its ability to make such application by 1 March 2023;

- v. Parties' intention to request judicial notice of adjudicated facts pursuant to Rule 157(2) of the Rules, and the time necessary for the Parties to prepare and submit such applications, if any;
- vi. Parties' intention to submit any other motion pursuant to Rule 117(2) of the Rules, and readiness to do so by 15 February 2023;
- vii. Whether the Registry anticipates that there will be further applications from persons applying for admission in the proceedings as participating victims;
- viii. Parties' readiness to commence trial on 1 March 2023;
- ix. Parties' submissions on possible date for the Specialist Prosecutor's Preparation Conference pursuant to Rule 118 of the Rules;
- x. SPO's readiness to read a summary of the indictment at the opening of the case pursuant to Rule 124 of the Rules;
- xi. SPO's intention to make an opening statement, and if so, the approximate duration thereof;
- xii. Counsel for Victims' intention to make an opening statement, and if so, the approximate duration thereof;
- xiii. Defence's intention to give an opening statement, and if so, when it elects to give such statement pursuant to Rule 117(3) of the Rules and, if at the beginning of the trial, the approximate duration thereof;
- xiv. Parties' views on proposed courtroom usage and sitting days for the case as outlined by the Panel at the Status Conference on 16 December 2022;
- xv. Estimated duration and proposed structure of the presentation of the SPO case;

- xvi. Counsel for Victims' wish to be present during the entire trial proceedings pursuant to Rule 114(2) of the Rules and/or specific phases of the process; and
 - xvii. Any residual issue arising from the Parties and participants' written observations on the Draft Order on the Conduct of Proceedings;
7. The Trial Panel shall seek oral submissions on the following substantive issues:
- i. Parties' views on the alleged existence, nature and timeframe of an armed conflict;
 - ii. Parties' views on the alleged existence of a widespread or systematic attack in light of the findings in the ICTY *Limaj* and *Haradinaj* cases;
 - iii. Parties' views on the allegation of command responsibility and whether one or more of the Accused exercised superior authority over any of the other defendants or only in relation to the perpetrators of the crimes;
 - iv. Parties' views on the necessity of evidence in relation to allegations of Serbian crimes being committed during the relevant time, given the statements made by the SPO at the last Status Conference that it does not deny such allegations;
 - v. Parties' views on whether detainees who were, at the time of detention, members of an armed force fall within the category described by the SPO as "civilian population of Opponents";
 - vi. Parties' views on the factors that the Panel should take into account in assessing whether the "civilian population of Opponents" was predominantly civilian in nature;

- vii. Clarifications from Counsel for Mr Veseli regarding the comments made during the Status Conference on 8 September 2022 in relation to the cross-examination time for SPO Rule 153 and Rule 154 witnesses; and
- viii. Clarifications from Counsel for Mr Thaçi regarding the alleged existence of the “Operation Horseshoe”.²

IV. DISPOSITION

8. In light of the foregoing, the Trial Panel hereby:
- a) **DECIDES** to convene the Trial Preparation Conference in the presence of the Parties and participants on **Wednesday, 18 January 2023, at 09:30 hours**; and
 - b) **ORDERS** the Parties and participants to prepare to give full and informed responses to questions regarding the above issues.



Judge Charles L. Smith, III
Presiding Judge

Dated this Thursday, 12 January 2023
At The Hague, the Netherlands.

² KSC-BC-2020-06, F01050, Specialist Counsel, *Pre-Trial Brief of Mr Hashim Thaçi*, 21 October 2022, confidential, paras 45, 61 (a public redacted version was filed on 8 November 2022, F01050/RED).