

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 Guénaél Mettreaux
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

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Public Redacted Version of “Joint Defence Request for a Variation of the Time Limit to Provide Information about the examination of SPO Witnesses”

Specialist Prosecutor’s Office

Alex Whiting

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Victims

Simon Laws

Counsel for Rexhep Selimi

David Young

Counsel for Jakup Krasniqi

Venkateswari Alagendra

I. INTRODUCTION

1. The present request seeks an extension of the time allocated to the Defence to provide information about the first 12 witnesses that the Specialist Prosecutor's Office ("SPO") intends to call in these proceedings.

2. Currently, following receipt of the SPO's information and documents concerning the first 12 SPO witnesses, the Defence has two (2) days to indicate: (i) whether it intends to cross-examine the witness; (ii) whether it objects to the admission of the witness's statement pursuant to Rule 154, if offered by the SPO under the rule, and the general grounds on which objection is taken to its admission; and (iii) whether it objects to the admission of any or all of the documents which the SPO proposes to use with that witness and the general grounds on which objection is taken ("Defence Information").¹

3. The volume of material to be considered in respect of the SPO witnesses constitutes good cause for an enlargement of the two (2) day deadline. The Defence submits that a ten (10) day period to compile the Defence Information is reasonable and proportionate, for the reasons set out below.

II. APPLICABLE LAW

4. Pursuant to Rule 9(5)(a) of the Rules,² the Panel may, *proprio motu* or on showing of good cause by a participant in the proceedings, extend any time limit prescribed the Rules or set by the Panel.

¹ KSC-BC-2020-06, Transcript of Sixteenth Status Conference, 16 December 2022, Oral Order 3, pp. 1773-1774 ("Oral Order 3, 16 December 2022").

² KSC-BD-03/Rev3/2020, Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, 2 June 2020 ("Rules").

III. SUBMISSIONS

5. At the Status Conference on 16 December 2022, the Trial Panel rendered an oral order regarding the first 12 witnesses to be called by the SPO in these proceedings.

The order read as follows:³

The SPO is ordered to provide to the Panel, and to the other parties and participants, by **1 February 2023, at 4.00 p.m.**, the list of the first 12 witnesses it intends to call to testify or those witnesses which will be heard during the first three weeks of the case, whichever is the greater.

The SPO filing shall indicate the following in respect of each witness: The name and pseudonym of the witness; the order in which the witness will be called; all prior statements or transcripts of evidence of the witness; whether the SPO proposes that the witness should give evidence partly or wholly live; and whether the SPO intends to tender the witness's statement or transcript of evidence pursuant to Rule 154; five, the issues, facts, and circumstances in relation to which the witness will be examined; six, the estimated time for the direct examination; seven, documents and exhibits which the SPO proposes to use with each witness identified by their electric record number, ERN; and eight, protective measures ordered in relation to the witness with reference to relevant orders and any application for variation of such order.

6. The Trial Panel then issued the following corresponding order to the Defence teams:⁴

By **3 February 2023, at 4.00 p.m.**, each **Defence team**, as well as counsel for victims, are ordered to notify the Panel and other parties and participants in respect of each of the first 12 SPO witnesses: One, whether it intends to cross-examine the witness, and if so, the proposed duration of the cross-examination; two, whether it objects to the admission of the witness's statement pursuant to Rule 154, if offered by the SPO under the rule, and the general grounds on which objection is taken to its admission; three, whether it objects to the admission of any or all of the documents which the SPO proposes to use with that witness and the general grounds on which objection is taken.

7. Compiling the Defence Information will require the review and analysis of the prior statements and testimony of the 12 SPO witnesses, as well as the documents that the SPO intends to use during its examination of each. The numbers of documents linked to the SPO witnesses in question is significant, and much larger than those that could reasonably be reviewed by the Defence teams within two (2) days. For example,

³ Oral Order 3, 16 December 2022, pp. 1773-1774 (emphasis added).

⁴ Oral Order 3, 16 December 2022, p. 1774 (emphasis added).

the SPO has linked [REDACTED] documents to W04752 alone. Similarly, [REDACTED] documents are linked to W04746, and [REDACTED] documents have been linked by the SPO to W01453.

8. Importantly, the SPO has previously submitted that the documents it has linked to each SPO witness as part of its 'Witness Entity', are limited to the witness' prior statements and any exhibits to those statements, and do not include all documents that may be put to the witnesses during examination in chief.⁵ As such, the Defence will also be required to review an unknown number of documents not directly linked to the witnesses, but emanating from a wide range of sources, such as international or local organisations present in Kosovo during or after the conflict, governmental or judicial authorities from various countries, and international or local media.

9. In addition, the decision whether to cross-examine will require consideration not only of the documents the SPO intends to use with the 12 witnesses, but any other contradictory or exculpatory material upon which the witnesses could comment, and which could assist the parties and Trial Panel in testing the witnesses' evidence. Instructions from the clients will also need to be sought.

10. The review of these documents, formulating submissions on admissibility, and reaching decisions on cross-examination, will reasonably require more than two (2) days. On this basis, the Defence teams seek a limited extension of ten (10) days in total to compile and provide the Defence Information. An extension of the deadline will also assist in the Defence being able to give meaningful responses to the Trial Panel's questions, rather than being required to seek to reserve its position as regards cross-

⁵ See, e.g., KSC-BC-2020-06, Transcript of Tenth Status Conference, 4 February 2022, p. 869, lines 12-18, where the SPO relevantly stated: "*The SPO released all of the witness entities in December 2021 and those witness entities have prior statements and associated exhibits linked to them.*"

examination and admissibility, having not had sufficient time to make an informed decision on the basis of instructions.

11. Nor can any argument reasonably be made that the Defence teams should have already read the documents in question and should therefore need only 48 hours to provide the Defence Information. SPO disclosure in the present case runs to millions of pages of documents. While Defence teams sought to read all disclosed documents as they were provided, this does not circumvent the need to review them in light of the SPO's finalisation of its witness list, and alongside any new information disclosed or located in the intervening period, particularly given that the SPO continues to disclose additional Rule 102(3) or Rule 103 material on a weekly basis.

12. The extension of time sought is limited, reasonable, and will have no negative impact on the trial schedule or readiness of the parties for trial. By contrast, it will ensure that the information being provided by the Defence about its intentions for the SPO witnesses and exhibits is the most accurate and exhaustive possible in the circumstances.

IV. CONCLUSION & RELIEF SOUGHT

13. For the above reasons, the Defence respectfully requests that the Trial Panel:

FIND that good cause exists pursuant to Rule 9(5)(a) of the Rules for a variation of the time limit; and

ORDER that the Defence Information be provided by Monday, 13 February 2023.

[Word count: 1 270 words]

Respectfully submitted on 13 January 2023,



Gregory W. Kehoe

Counsel for Hashim Thaçi



GEOFFREY ROBERTS

Co-counsel for Rexhep Selimi



ERIC TULLY

Co-counsel for Rexhep Selimi



RUDINA JASINI

Co-counsel for Rexhep Selimi




Ben Emmerson, CBE KC

Counsel for Kadri Veseli



Andrew Strong

Co-Counsel for Kadri Veseli



Annie O'Reilly

Co-Counsel for Kadri Veseli



Venkateswari Alagenda

Lead Counsel for Jakup Krasniqi



Aidan Ellis

Co-Counsel for Jakup Krasniqi



Victor Băieșu

Co-Counsel for Jakup Krasniqi