



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

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 26 January 2023

Language: English

Classification: Public

**Agenda for Specialist Prosecutor's Preparation Conference
with Confidential Annex 1**

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TRIAL PANEL II (“Panel”), pursuant to Article 40(2) and (4) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 116(2), 116(4)(e) and 118 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby provides this agenda.

I. PROCEDURAL BACKGROUND

1. On 18 January 2023, the Panel held the Trial Preparation Conference, during which the Panel set a date for the Specialist Prosecutor’s Preparation Conference.¹
2. On 19 January 2023, the Panel rescheduled the Specialist Prosecutor’s Preparation Conference for Wednesday, 15 February 2023, at 9:30 hours.²

II. APPLICABLE LAW

3. In accordance with Rule 116(2) of the Rules, the Panel shall, within thirty (30) days of holding the Trial Preparation Conference, hold the Specialist Prosecutor’s Preparation Conference.
4. Pursuant to Rule 118 of the Rules, at the Specialist Prosecutor’s Preparation Conference, the Panel, after having heard the Parties, may, *inter alia*: (i) determine the number of witnesses the Specialist Prosecutor may call and instruct the Specialist Prosecutor to remove repetitive witnesses; (ii) invite the Specialist Prosecutor to reduce or narrow the number of charges; (iii) determine the time available to the Specialist Prosecutor for presenting evidence; (iv) request the Specialist Prosecutor to shorten the estimated length of the direct examination of any witness identified on its Rule 95(4)(b) list; and (v) verify that the disclosure obligations of the Parties have been met. The Panel may also permit, upon timely

¹ Transcript of Hearing, 18 January 2023, p. 1904, lines 4-5.

² F01215, Trial Panel II, *Order Rescheduling the Special Prosecutor’s Conference*, 19 January 2023.

notice and a showing of good cause, the amendment of the Specialist Prosecutor's lists of witnesses and exhibits. The Panel shall publicly set the date for the opening of the case, which shall itself be within thirty (30) days from the Specialist Prosecutor's Preparation Conference. The Presiding Judge shall take note of the points of agreement between the Parties on matters of fact and law, after having heard the Parties and having regard to the Pre-Trial Briefs. The Panel shall also set target dates for the closing of the SPO case and, if possible, for the closing of the case pursuant to Rule 129 and 136 of the Rules respectively.

III. DISCUSSION

5. Pursuant to the aforementioned provisions and to ensure expeditious preparation for trial, the Panel shall hold the Specialist Prosecutor's Preparation Conference in the presence of the Parties and participants on Wednesday, 15 February 2023, at 9:30 hours.

6. With a view to enabling 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 shall be asked of them.

7. The Trial Panel shall seek specific answers to the matters articulated in paragraphs 1-5 of Rule 118 of the Rules. Specifically:

- a) How many total witnesses does the Specialist Prosecutor intend to call?
- b) Does the Specialist Prosecutor intend to reduce or narrow the number of charges in the indictment?
- c) Does the Specialist Prosecutor anticipate presenting evidence with regard to every crime site listed in the indictment?

- d) How many crime sites will be referenced in the Specialist Prosecutor's case, and how many of those directly apply to the charges?
- e) How long does the Specialist Prosecutor believe he shall need to present the evidence in his case?
- f) Has the Specialist Prosecutor been successful in establishing a plan or method through which he will be able to shorten the estimated length of direct examination of witnesses?
- g) What factors does the Specialist Prosecutor believe the Panel should consider when exercising its discretion to determine the time available to the Specialist Prosecutor to present his evidence?
- h) Why does the Specialist Prosecutor believe that over 700 hours of direct examination testimony are warranted in the present matter, when this figure exceeds the time allocated to the prosecution in prior complex cases before various international criminal tribunals and special courts?
- i) What is the Specialist Prosecutor's target date for the closing of its case in light of the sitting schedule, the Panel's obligation to ensure the Defence is provided with a fair opportunity to cross-examine witnesses, and the courtroom time necessary to address ancillary issues?
- j) What is the current state of agreement between the Parties on matters of fact and law?
- k) Which witnesses on the Specialist Prosecutor's Rule 95(4) list, if any, has the SPO now decided that it will not seek to call?
- l) Approximately what part or percentage of its proposed exhibits as contained in its Rule 95(4)(c) list does the Prosecution plan to seek to tender from the bar table rather than through a witness?

8. The Trial Panel shall seek specific, not general, answers from the Specialist Prosecutor to the following additional procedural questions:

- a) How many crime-based witnesses will be called?
- b) How many “structure of KLA” witnesses will be called?
- c) How many witnesses will testify regarding the acts and conduct of the Accused?
- d) How many witnesses are to testify about contextual elements relevant to the charges (in particular, the alleged existence and nature of the armed conflict; the alleged existence of a widespread or systematic attack directed against a civilian population)? Of these, how many will testify entirely in person, and how many will do so in accordance with Rules 153 and 154 of the Rules?

9. The Trial Panel shall seek answers to the following questions on substantive matters from the Parties:

- a) The relationship between the modes of liability of Joint Criminal Enterprise (“JCE”), Aiding and Abetting and Superior Responsibility (cumulative, alternative or subsidiary applicability).
- b) Possible alternative modes of liability (JCE II, co-perpetration, indirect perpetration).
- c) The objective and subjective elements of JCE (Does JCE liability require a substantial or a significant contribution? Can JCE III be applied to specific intent crimes?).
- d) The elements of the following crimes:
 - i. Imprisonment, as a Crime Against Humanity (Is a minor deprivation of liberty (not) sufficient?);

- ii. Enforced Disappearance, as a Crime Against Humanity (Is the KLA a “political organisation” within the meaning of Article 13(1)(i) of the Law?);
 - iii. Arbitrary Detention, as a War Crime (Should there be a gravity threshold for the deprivation of liberty?);
 - iv. Torture, as a War Crime and as a Crime Against Humanity (Do both offences require that the perpetrator pursues a specific purpose?).
- e) The Trial Panel’s authority to revisit the Appeals Chamber’s findings regarding JCE, as reflected in its *Decision on Motions Challenging the Jurisdiction of the Specialist Chambers*.³
 - f) The legal threshold for the level of organization required for a group to be a party to an armed conflict.

10. The Trial Panel shall seek answers to the following questions on substantive matters from Mr Thaçi’s Defence Team:

- a) References to the alleged Serbian plan to ethnically cleanse Kosovo via the ‘Horseshoe operation.’
- b) References to crimes by Serb or Serbian forces in Kosovo.

11. In addition, the Trial Panel asks Parties and participants to review Annex 1, which provides a tentative sitting calendar for the first year of trial proceedings (1 March 2023 – 29 February 2024). The Trial Panel shall seek oral submissions and comments regarding the tentative sitting calendar from Parties and participants during the Specialist Prosecutor’s Preparation Conference. The Trial Panel anticipates issuing an oral order formally setting the trial calendar on the same

³ IA009-F00030, *Decision on Motions Challenging the Jurisdiction of the Specialist Chambers*, 23 December 2021.

date.

VI. DISPOSITION

12. In light of the foregoing, the Trial Panel hereby:

ORDERS the Parties and participants to provide full and informed responses to the questions posed above at the Specialist Prosecutor's Preparation Conference.



Judge Charles L. Smith, III
Presiding Judge

Dated this Thursday, 26 January 2023

At The Hague, the Netherlands.