



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 Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 21 February 2023

Language: English

Classification: Public

**Decision on Defence Request for a Revised Bar Table Motion and a Suspension
and an Extension of Time**

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 Alagenda

TRIAL PANEL II (“Panel”), pursuant to Article 40(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rule 9(5)(a) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), hereby renders this order.

I. PROCEDURAL BACKGROUND

1. On 8 February 2023, the SPO filed an application for admission of material through the bar table (“Bar Table Motion”), which included eight annexes and voluminous materials that the SPO offers for admission.¹

2. On 14 February 2023, the Defences for Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi (“Accused” and “Defence”) jointly filed an urgent response to the Bar Table Motion (“Defence Preliminary Response”).²

3. On 17 February 2023, the SPO filed its reply to the Defence Preliminary Response (“Reply”).³

II. SUBMISSIONS

4. The SPO requests the admission through the bar table of items falling into six general categories.⁴

5. The Defence responds that, as the Bar Table Motion encompasses 1260 items totalling approximately 13,500 pages, it does not have sufficient time to respond to the Bar Table Motion, which impacts the Accused’s right to adequate time and facilities.⁵

¹ F01268, Specialist Prosecutor, *Prosecution application for admission of material through the bar table*, 8 February 2023, with Annexes 5 and 8, and Annexes 1-4, 6 and 7, confidential.

² F01289, Specialist Counsel, *Joint Urgent Preliminary Defence Response to SPO Application for Admission of Material through the Bar Table*, 14 February 2023.

³ F01301, Specialist Prosecutor, *Prosecution Reply to “Joint Urgent Preliminary Defence Response to SPO Application for Admission of Material through the Bar Table”*, 17 February 2023.

⁴ Bar Table Motion, para. 2

⁵ Defence Preliminary Response, paras 1-2.

The Defence further submits that the Bar Table Motion is deficient, and fails to comply with the directives of the Panel.⁶ Specifically, the Defence submits that the SPO has not: (i) specified how the proposed exhibits relate to the SPO's case;⁷ (ii) specified to which paragraphs in the indictment each proposed exhibit relates;⁸ (iii) specified which page numbers should be admitted in books and large documents;⁹ (iv) provided translations of documents, which it is obliged to do;¹⁰ (v) complied with Rule 138(2) by disclosing all relevant information under Rules 102(1)(b), 102(3) and 103;¹¹ and (vi) disclosed all evidence regarding the testimony of experts from other proceedings.¹² Accordingly, the Defence requests that the Panel order the SPO to refile the Bar Table Motion in order to comply with the aforementioned requests and suspend the response to the Bar Table Motion until six weeks after a revised Bar Table Motion has been filed by the SPO.¹³

6. The SPO responds that the Defence's request should be rejected as it has complied with the Panel's directives and the Defence has all necessary information to respond to the Bar Table Motion.¹⁴ The SPO does not oppose a reasonable extension of time for the Defence to respond to the Bar Table Motion.¹⁵

III. APPLICABLE LAW

7. Pursuant to Rule 9(5)(a) the Panel may *proprio motu* or upon showing of good cause extend any time limit prescribed by the Rules or set by the Panel.

⁶ Defence Preliminary Response, paras 15, 38(i).

⁷ Defence Preliminary Response, para. 17, 38(i)(a).

⁸ Defence Preliminary Response, paras 18-19, 38(i)(b).

⁹ Defence Preliminary Response, paras 20-21, 38(i)(c).

¹⁰ Defence Preliminary Response, paras 22, 38(i)(c).

¹¹ Defence Preliminary Response, paras 23-26, 38(i)(d).

¹² Defence Preliminary Response, paras 28-34, 38(i)(e).

¹³ Defence Preliminary Response, paras 6, 38(ii).

¹⁴ Reply, paras 1, 7, 13.

¹⁵ Reply, paras 1, 13.

IV. DISCUSSION

A. WHETHER THE SPO'S BAR TABLE MOTION IS CONSISTENT WITH THE PANEL'S ORDERS

8. The Panel will only address the Defence Preliminary Response. An assessment of the requirements for admission of the proposed exhibits shall be made when deciding the merit of the Bar Table Motion and in light of the Defence's response thereto.

9. The Panel rejects in full the Defence's submissions that the Bar Table Motion fails to meet the requirements set by the Panel. The Panel invited the SPO to file a bar table motion specifically "pertaining to: (a) proposed exhibits on its list of exhibits which it intends to use for any of the first 40 witnesses; and (b) evidentiary material that the SPO considers important to the clear and effective presentation of the case at this stage."¹⁶ The SPO was therefore both (i) authorised by the Rules and complied with the directions of the Panel and (ii) its Bar Table Motion fell within the scope of bar of those considered "important to the clear and effective presentation of the case at this stage."

10. For each proposed exhibit, the SPO makes reference to the paragraph(s) to which, it claims, the offered document relates. The SPO has also generally outlined the purported relevance of each proposed exhibit. The Defence's contention that the SPO has failed to provide greater specificity in relation to each item's claimed relevance and that this failure would justify the SPO being ordered to refile its Bar Table Motion does not find support in the Rules, or in the Panel's Order on the Conduct of Proceedings.

11. The onus of establishing the conditions of admissibility of the offered items is upon the SPO. Whether these requirements have been met will be decided by the Panel when evaluating the merit of the Bar Table Motion in respect of each of the offered items. Furthermore, there is no indication before this Panel that any of the

¹⁶ Transcript of Hearing, 16 December 2022, p. 1775 (fourth oral order).

proposed exhibits was obtained by means of a violation of the Law or the Rules or standards of international human rights law so that the relief sought by the Defence under Rule 138(2) would be justified in the circumstances. The Defence has also failed to identify which material, it says, comes within the scope of Article 37 of the Law and in relation to which the Bar Table Motion is said not to comply.

12. When responding to the Bar Table Motion, the Defence should outline any objection it has to the admission of particular items and clearly state its reasons and basis for such an objection.

13. The fact that some of the documents tendered by the SPO contain only a partial English translation of the Albanian original is understood by the Panel to indicate that the SPO is only seeking to tender in evidence the translated part(s) of the said document. The Rules do not require the SPO to provide a full translation a document if it does not seek admission of other untranslated sections. If, however, providing proper context to the SPO's submission requires additional translation of the text, the Panel may demand the same prior to further considering admission.

14. Accordingly, the Panel rejects the Defence request for the SPO to file a revised Bar Table Motion.

B. EXTENSION OF TIME

15. The Panel finds that the Defence has demonstrated good cause, as required under Rule 9(5)(a), for an extension of time to respond to the Bar Table Motion given the number of deadlines faced by the Parties and participants and the extensiveness, in terms of the number of documents concerned, of the Bar Table Motion. The Panel also notes that the SPO does not oppose a reasonable extension of the time. The Panel, therefore, grants an extension of time for the Defence and Victims' Counsel to respond to the Bar Table Motion until **Tuesday, 21 March 2023**. The present extension is made with the aim of increasing the likelihood of focused and streamlined responses to the

Bar Table Motion in order to ensure efficiency and expediency during trial and therefore does not prejudice any Party or participant. The deadline provided by Rule 76 for a Reply, if any, will apply. The Panel invites Defence teams to consider filing a joint response to the Bar Table Motion so as to reduce the amount of time and resources necessary for all involved to address this matter.

V. DISPOSITION

16. For the above-mentioned reasons, the Panel hereby:

- a. **DENIES** the Defence's request for the SPO to refile the Bar Table Motion with the requested modifications;
- b. **GRANTS** the Defence request for an extension of time to file a response to the Bar Table Motion; and
- c. **EXTENDS** the time for the Defence and Victims' Counsel to the respond to the Bar Table Motion to Tuesday, 21 March 2023.



Judge Charles L. Smith, III
Presiding Judge

Dated this Tuesday, 21 February 2023
At The Hague, the Netherlands.