

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

**Before:** **Trial Panel II**  
Judge Charles L. Smith, III, Presiding  
Judge Christoph Barthe  
Judge Guénaël Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Hashim Thaçi  
Specialist Counsel for Rexhep Selimi  
Specialist Counsel for Jakup Krasniqi

**Date:** 10 March 2023

**Language:** English

**Classification:** Public

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**Thaçi, Selimi and Krasniqi Defence Request for an Extension of Time for Response to ‘Prosecution motion for admission of Accused’s statements’**

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## I. INTRODUCTION

1. On 8 March 2023, the Specialist Prosecutor's Office ("SPO") filed the 'Prosecution motion for admission of Accused's statements',<sup>1</sup> seeking the admission of 31 prior interviews, statements or testimony of the accused, and associated materials. In total, and notwithstanding the numbering system employed by the SPO, there are nearly 200 individual items included in the SPO Motion, amounting to over 3,700 pages of material.<sup>2</sup>

2. In accordance with Rule 76 of the Rules,<sup>3</sup> and the procedures for calculation of time in Rule 9, the Defence for Mr Hashim Thaçi, Mr Rexhep Selimi and Mr Jakup Krasniqi (collectively, "the Defence") have 10 days to file a response to the SPO Motion, meaning the deadline for any response is currently **Monday, 20 March**. In light of the importance, complexity and volume of material to be reviewed, to meet this deadline, the Defence would be compelled to work on this response to the exclusion of the numerous competing deadlines and trial preparation activities which must otherwise occur simultaneously. Such an approach is simply not feasible.

3. Pursuant to Rule 9(5)(a) of the Rules, the Defence therefore request an extension of the time limit to file a response to the SPO Motion. The Defence submit that good cause exists in the present case for a variation of the time limit to respond to the SPO Motion, for the reasons set out below. The Defence respectfully request an extension of the time limit by six weeks, such that any response be provided by **Monday, 1 May**.

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<sup>1</sup> KSC-BC-2020-06/F01351, Prosecution motion for admission of Accused's statements, 8 March 2023, Public ("SPO Motion").

<sup>2</sup> 1,270 pages of material relating to prior statements of Hashim Thaçi; 83 pages of material relating to prior statements of Kadri Veseli; 1,277 pages of material relating to prior statements of Rexhep Selimi; 1,155 pages of material relating to prior statements of Jakup Krasniqi.

<sup>3</sup> KSC-BD-03/Rev3/2020, Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, 2 June 2020 ("Rules").

## II. SUBMISSIONS

4. Good cause exists for the requested extension. First, the SPO Motion contains 31 prior interviews, statements or testimony of the accused, as well as the associated exhibits and notifications of rights.<sup>4</sup> These interviews come from multiple different sources with the Accused appearing in different capacities: SPO Interviews (interviews as suspects); SPRK Interviews (interviews as suspects); SPRK Statements (as witnesses); Kosovo Court Testimony – EULEX and SPRK trials (as witnesses); ICTY Statements (as witnesses); ICTY Testimony (as witnesses); and an UNMIK Statement (as a witness). They are often divided into multiple parts, and each may run to hundreds of pages, with the total amount of material being more than 200 items, and 3,700 pages. The Defence are clearly required to review the material relating directly to their clients, but all of the materials relating to all of the accused have to be carefully reviewed by each Defence team, in order to fulfil its duties and adequately respond to the SPO Motion.

5. Further, as evident from their very nature as prior statements of the Accused, combined with even a brief review of their content,<sup>5</sup> these materials go to the very heart of the case. As such, the Defence is required to undertake a careful and detailed review of each individual item. In addition, for a complete review, the Defence will necessarily have to look beyond the listed materials to identify potential issues, for example, by comparing to other interviews (either by the accused or witnesses).

6. This is also a novel issue for the parties to deal with, meaning greater time is required to prepare the response. Admission of the prior statements of the accused is not an area that is specifically regulated by either the Rules or the KSC Law,<sup>6</sup> as also

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<sup>4</sup> See SPO Motion, Annex 1.

<sup>5</sup> See, e.g., the summaries contained in the SPO Motion, Section II.

<sup>6</sup> Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("KSC Law").

acknowledged by the SPO.<sup>7</sup> Similarly, this issue has not been conclusively resolved yet in KSC proceedings, as admission of prior statements was uncontested in the *Mustafa* proceedings,<sup>8</sup> but is currently on appeal in the *Shala* proceedings.<sup>9</sup> In light of the novelty of this issue, the Defence will be required to complete the additional step of reviewing and analysing the practice in other international courts and tribunals to determine the appropriate criteria for, and past practice on, the admission of prior statements of the Accused.

7. Put simply, the reviews required by the Defence cannot be completed to the requisite standard within the proposed timeframe. As noted above, the Defence has 10 days between the time of receiving the SPO Motion and the deadline for any response. On a simple formulation, that requires the Defence to read and analyse a minimum of 370 pages per day – this far exceeds the maximum 150 pages per day that the Defence previously estimated it was feasible to review and analyse, and does not factor in drafting time.<sup>10</sup> This calculation also does not factor in that more time may be required for review of these materials than for other types of material, due to the importance of the content. Nor does it take into account the cumulative impact of various matters currently before the Defence, including numerous other court-ordered deadlines, trial preparation activities and review of an additional 56,000 pages of recently de-redacted evidence which all remain ongoing.<sup>11</sup> For example, the Defence

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<sup>7</sup> SPO Motion, para. 90.

<sup>8</sup> *Prosecutor v. Mustafa*, KSC-BC-2020-05/F00281/RED, Public Redacted Version of Decision on the admission of evidence collected prior to the establishment of the Specialist chambers and other material, 13 December 2021, Public, para. 16.

<sup>9</sup> Written submissions appear to have concluded, but the parties are waiting for the decision of the Appeals Chamber. For the appeal, see: *Prosecutor v. Shala*, KSC-BC-2020-04/IA006/F00004, Defence Appeal against the “Decision Concerning Prior Statements Given by Pjetër Shala”, 13 February 2023, Public.

<sup>10</sup> KSC-BC-2020-06/F01271, Joint Defence Request for Relief Pursuant to Article 21(4) of the Law and Rule 143 of the Rules, 9 February 2022, Confidential (“Joint Request for Relief”), para. 33.

<sup>11</sup> See Joint Request for Relief, paras. 2, 8.

will also be simultaneously required to undertake the following substantial pieces of work, all of which have similar deadlines:

- (i) Preparation for, and attendance at, the trial preparation conference scheduled for 20 March 2023;<sup>12</sup>
- (ii) Responding to the first bar table motion filed by the SPO, due on 21 March, which includes over 1,200 items and over 13,500 pages of material to be reviewed;<sup>13</sup> and
- (iii) Responding to the first Rule 155 motion filed by the SPO, due on 22 March, which relates to 16 witnesses and includes over 200 individual items and hundreds of pages of material to be reviewed.<sup>14</sup>

8. In addition, the parties are scheduled to commence trial with opening statements from 3 to 5 April, and the presentation of evidence from 11 April.<sup>15</sup> Consequently, the Defence is now required to devote the majority of its resources to trial preparation-related activities, in order to ensure it is adequately prepared to represent the best interests of their clients. This includes preparing cross-examination of the first 12 witnesses, a process which is complicated by the fact that the Defence only received the identities of five of the first 12 witnesses (including four of the first five) on 30 January. In these circumstances, the Defence must prioritise trial preparation activities, including review of newly unredacted materials and investigations.

9. The Defence therefore submit that an extension is necessary to ensure the rights of the accused to have adequate time and facilities for the preparation of their defence,

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<sup>12</sup> KSC-BC-2020-06, Transcript of SPO Preparation Conference, 15 February 2023, Public (“Transcript of SPO Preparation Conference”), Oral Order 7 – p. 2040 lines 6-8.

<sup>13</sup> KSC-BC-2020-06/F01268, Prosecution application for admission of material through the bar table, 7 February 2023.

<sup>14</sup> KSC-BC-2020-06/F01329, Prosecution first motion for admission of evidence pursuant to Rule 155 with confidential Annexes 1-17, 1 March 2023, Public.

<sup>15</sup> Transcript of SPO Preparation Conference, Oral Order 1, pp. 2038-2039.

in accordance with Article 21(2)(c) of the KSC Law. The right to adequate time and facilities presupposes that the Defence has adequate time to conduct all required analysis of the materials, and provide meaningful comments on the criteria for admission, for each item that is sought to be tendered. As outlined above, the volume, complexity and importance of the material, combined with the competing priorities of the Defence, means it is not feasible for the Defence to complete its review of the materials in the SPO Motion to the necessary standard in the proposed time period.

10. Finally, the Defence submit that no prejudice would be caused to the SPO by a delay in submitting the response. The admission of this material is not required at this juncture in order for the SPO to commence the presentation of its case.

### III. CONCLUSION & RELIEF SOUGHT

11. In light of these considerations, the Defence therefore respectfully request an extension of time to facilitate the filing of a considered, detailed and complete response to the SPO Motion, until **Monday, 1 May**.

[Word count: 1,502 words]

Respectfully submitted on Friday, 10 March 2023



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