

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 Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hashim Thaçi

Date: 17 April 2023

Language: English

Classification: Public

Thaçi Defence Request for an Extension of Time for Response to ‘Prosecution motion for admission of Accused’s statements’

Specialist Prosecutor’s Office

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

I. INTRODUCTION

1. On 8 March 2023, the Specialist Prosecutor's Office ("SPO") filed the 'Prosecution motion for admission of Accused's statements',¹ 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.²

2. On 10 March 2023, the Defence teams for Mr Hashim Thaçi, Mr Rexhep Selimi and Mr Jakup Krasniqi applied for an extension of time of 6 weeks to respond to the SPO Motion in light of the importance, complexity and volume of material to be reviewed, at the same time as numerous competing deadlines and trial preparation activities which had to occur simultaneously.³ On 16 March 2023, the Trial Panel granted a four week extension finding that the Defence teams had demonstrated good cause given: (i) the number of deadlines faced by the Parties and participants in the lead up to the start of trial and (ii) the extensiveness, in terms of the number and volume of items concerned. It further held that the extension would not prejudice any party or participant.⁴

3. Despite the best efforts of Mr Hashim Thaçi's Defence team ("Defence"), four weeks has unfortunately not proved sufficient time (as the Trial Panel ruled it would)

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

² 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.

³ KSC-BC-2020-06/F01364, Thaçi, Selimi and Krasniqi Defence Request for an Extension of Time for Response to 'Prosecution motion for admission of Accused's statements', 10 March 2023 ("Defence First Request for Extension of Time").

⁴ KSC-BC-2020-06/F01378, Trial Panel II, Decision on Thaçi, Selimi and Krasniqi Defence Request for an Extension of Time for Response to 'Prosecution Motion for Admission of Accused's Statements', 16 March 2023 ("Decision on Defence Request"), paras. 6-7.

to finalise this very important response and it needs to seek the client's further instructions before it can file a response.

4. Pursuant to Rule 9(5)(a) of the Rules, the Defence therefore requests an extension of just over one week to Wednesday 26 April to file a response to the SPO Motion. The Defence submits 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.

II. SUBMISSIONS

5. The Defence has used its best efforts to meet the Court's deadline of 17 April 2023 to file this response. However, regrettably it has not had sufficient time to take the client's instructions on it to do so.

6. As detailed in its First Request For an Extension of Time, the Defence notes that the SPO Motion contains 31 prior interviews, statements or testimony of the accused, as well as the associated exhibits and notifications of rights.⁵ These 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 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 has had to review the 1,270 pages of material relating directly to Mr Thaçi, and all of the materials relating to the other accused which it appears that the SPO intends to admit against Mr Thaçi. Having now reviewed them in full in the context of the SPO Motion, it is clear that these materials go to the very

⁵ Defence First Request for Extension of Time, para. 4.

heart of the case, indeed their importance to the SPO can be seen by the fact that they used some of them in their Opening.

7. Due to their volume and significance it has been an extremely time consuming exercise to review and analyse them. While, as the Trial Panel previously observed, the material was previously available to the Defence it has had to be analysed in the context of the submissions made in the SPO Motion which was only filed four weeks ago.⁶ As foreshadowed in its First Request For an Extension of Time, the Defence has had to juggle this with numerous other court deadlines, trial preparation activities and the additional 56,000 pages of recently de-redacted evidence⁷ together with preparing for opening statements, and the witness evidence. Moreover, it has naturally had to seek the client's instructions on all of these matters. Unfortunately the four weeks granted by the Trial Panel has not been sufficient time to do all of this.

8. Since the Trial opened, the only time that the Defence has been able to properly seek instructions from the client for any significant period of time has been on Fridays at the detention facility. This is because the security protocols at the KSC together with issues at the prison limits the amount of time that counsel can consult with Mr Thaçi before or after court each day. To discharge its professional duty, having itself analyzed the 3700 pages of material the SPO seeks to admit pursuant to this Motion, the Defence must seek the client's further instructions on the proposed response before filing it. Unfortunately due to the all the other issues that the Defence has to seek his instructions on over the last four weeks detailed above, including disclosure, the openings, witness evidence etc this has not been possible and will not be possible to do until Friday 21 April at the detention facility. The Defence undertakes to then being able to finalize and file its Response on Wednesday 26 April.

⁶ Decision on Defence Request, para. 6.

⁷ Defence First Request for Extension of Time, para. 7.

9. Importantly, the Defence submits that neither the SPO nor any other party will be prejudiced by a delay of just over one week in submitting the response. The admission of this material is not required at this juncture in order for the SPO to continue presenting its witness evidence. However, not granting an extension at this stage on such a critical part of the SPO's evidence would arguably irreparably breach Mr Thaci's fair trial right under Article 21(c) of the Law to have adequate time to prepare his defence and to communicate with Specialist Counsel.

III. CONCLUSION & RELIEF SOUGHT

10. In light of these considerations, the Defence therefore respectfully requests an extension of time to facilitate the filing of a considered, detailed and complete response to the SPO Motion, until Wednesday 26 April.

Word count: 1,149 words

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'G. W. Kehoe', is written over a white rectangular redaction box.

Gregory W. Kehoe

Counsel for Hashim Thaçi

Monday 17 April 2023

At The Hague, The Netherlands