

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
Specialist Counsel for Kadri Veseli
Specialist Counsel for Jakup Krasniqi

Date: 16 June 2023

Language: English

Classification: Public

**Thaçi, Veseli and Krasniqi Defence Request for an Extension of Time for
Requests for Certification to Appeal F01596 and F01603**

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I. INTRODUCTION

1. In the last seven days, the Trial Panel in the *Thaçi et al.* proceedings has issued four important decisions¹ determining key issues of the admissibility of evidence, which will have a significant impact on the proceedings. This includes the following (collectively, “the Decisions”):

- (i) Second Decision on Specialist Prosecutor’s Bar Table Motion,² addressing the admissibility of approximately 130 items linked to three SPO witnesses; and
- (ii) Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155,³ addressing the admissibility of the statements and materials related to 16 witnesses.

2. An appeal does not lie as of right for either of the Decisions.⁴ In accordance with Rule 77(1) of the Rules,⁵ when a Party seeks to appeal a decision for which an appeal does not lie as of right, that Party shall request certification from the Panel that rendered the impugned decision within seven (7) days thereof. Consequently, the Defence for Mr Hashim Thaçi, Mr Kadri Veseli and Mr Jakup Krasniqi (collectively, “Defence”) would be required to file any requests for certification to appeal the Bar Table Decision by **Monday, 19 June**, and the Rule 155 Decision by **Wednesday, 21 June**.

¹ In addition to the two addressed in this filing, see: KSC-BC-2020-06/F01593, Trial Panel II, Decision on Urgent Prosecution Updates and Related Requests Concerning Witnesses in the Next Evidentiary Block, 9 June 2023; KSC-BC-2020-06/F01595, Trial Panel II, Decision on Second Prosecution Motion Pursuant to Rule 154, 9 June 2023.

² KSC-BC-2020-06/F01596/CONF/RED, Trial Panel II, Confidential Redacted Version of Second Decision on Specialist Prosecutor’s Bar Table Motion, 9 June 2023 (“Bar Table Decision”).

³ KSC-BC-2020-06/F01603, Trial Panel II, Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 155, 14 June 2023 (“Rule 155 Decision”).

⁴ See criteria in Article 45(2) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“KSC Law”).

⁵ KSC-BD-03/Rev3/2020, Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, 2 June 2020 (“Rules”).

3. Rule 9(5)(a) of the Rules allows for the variation of any time limit prescribed by the Rules, upon a showing of good cause or *proprio motu*. In accordance with Rule 9(5)(a), the Defence therefore requests an extension of the time limit to file requests for certification to appeal the Bar Table Decision and the Rule 155 Decision, such that both requests may be filed by **Monday, 3 July**. The Defence submits that good cause exists in the present case for a variation of the time limit to respond to the Decisions, for the reasons set out below.

II. SUBMISSIONS

4. The timeframe of seven days set in Rule 77(1) to seek certification of decisions, applies equally to decisions on simple procedural questions, and lengthy and complex rulings such as the Decisions. It is submitted that Rule 9(5)(a) of the Rules provides scope for variations in cases like the present, where the issues involved warrant deeper review before certification can meaningfully be sought.

5. Good cause exists for the requested extension. First, the requested extension would allow the Defence to conduct a detailed review and analysis of the Decisions, seek effective instructions, and consult internally about whether certain challenges should indeed be pursued on appeal. This process of analysing the Decisions to determine whether legitimate and credible avenues of appeal exist, and framing errors in a manner that meets the criteria for certification, is often just as complex as drafting the appeal itself. The variation sought would accordingly assist the Defence to prepare a meaningful request for certification to appeal, which may ultimately contribute to a more streamlined appeal process.

6. The Defence have not had sufficient time to complete each of these steps yet, due to a myriad of competing obligations and deadlines. In particular, the Bar Table

Decision was received on the last working day before the commencement of the June court block of evidentiary hearings, and the Rule 155 Decision was received during the June court block.⁶ However, during these periods, the Defence is 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 the client. This includes preparing for cross-examination of the four witnesses that are appearing before the court during the June court block, a process which was significantly complicated by the fact that the Defence only received notification of the SPO's intention to call three of the four witnesses appearing in this block on 2 June 2023.⁷ Such late notice necessitates more resources being devoted to last minute preparations, including for additional review, analysis and investigations, than would otherwise have been required.

7. In addition to in-court preparation and appearances, the Defence is also juggling various other out-of-court matters, including multiple court-ordered deadlines, investigative work and ongoing review of evidentiary and witness-related materials in order to prepare for future court blocks. The proposed timeframe for the submission of requests for certification to appeal the Decisions fails to take into account the cumulative impact of these competing obligations on the Defence, and the need to prioritise in-court activities.

8. Second, the issues adjudicated in the Decisions have a significant impact on the proceedings, not least because the outcome of both Decisions is admission of the adjudicated material into the record of the proceedings. Once admitted, this material can be relied upon for the determination of the charges against the accused. Clearly,

⁶ The June block of evidentiary hearings commenced on Monday, 12 June 2023 and will conclude on Wednesday, 21 June 2023.

⁷ KSC-BC-2020-06/F01575, URGENT Prosecution updates and related requests concerning witnesses in the next evidentiary block, 2 June 2023.

such key Decisions covering complex legal and factual issues warrant careful review and analysis.

9. More specifically, the Bar Table Decision is 58 pages long, adjudicating the admissibility of approximately 130 items. The Bar Table Decision is only the second of this type in these proceedings, and determines admissibility of certain categories of material for the first time, including materials that go to the heart of this case.⁸ As such, the Defence will need to review the reasoning provided by the Trial Panel for each item.

10. Similarly, the Rule 155 Decision is 62 pages long, adjudicating the admissibility of multiple statements and associated materials for 16 SPO witnesses. Notably, this is the first decision on the admissibility of evidence pursuant to Rule 155, and determined a range of foundational legal issues that will be applied in all future Rule 155 decisions.⁹ In addition, there are a number of factual issues specific to the evidence of these witnesses that must be (re-)reviewed in the context of the Decision, before any grounds for an appeal can be determined. Again, this includes issues going to the heart of the case, including relating to allegations of acts and conduct of the accused.¹⁰

11. 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, 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 review and analysis of the Decisions, including re-review of the relevant materials in the context of these Decisions. As outlined above, the novelty, complexity and

⁸ For example, 'Category 4: Decrees and Communiqués Published in RFK and Kosovapress': see Bar Table Decision, paras. 41-50.

⁹ To date, the SPO have indicated that they intend to tender the evidence of 42 witnesses through Rule 155: KSC-BC-2020-06/F01594/A02, Annex 2 – Amended List of Witnesses, 9 June 2023.

¹⁰ See, for example, the evidence of W04733: Rule 155 Decision, paras. 103-104.

importance of the Decisions, combined with the competing priorities of the Defence, means it is not feasible for the Defence to complete its review of the Decisions, and determination of the appropriate appeal grounds to the necessary standard in the proposed time period.

12. Finally, the variation being sought by the Defence is reasonable and limited, and no prejudice would be caused to the SPO by a delay in submitting the requests. Most notably, a final decision on admission of this material is not immediately required in order for the SPO to continue the presentation of its case. In any event, given the good cause for the limited variation that is sought, the Defence submits that the additional time will negate any prejudice which could arise from the delayed adjudication of these central issues.

III. CONCLUSION & RELIEF SOUGHT

13. In light of these considerations, the Defence therefore respectfully requests the Trial Panel to:

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

ORDER that any requests for certification to appeal the Bar Table Decision and the Rule 155 Decision be filed by **Monday, 3 July 2023**.

[Word count: 1,467 words]

Respectfully submitted on Friday, 16 June 2023,



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