



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: 7 July 2023

Language: English

Classification: Public

**Decision on Joint Defence Request for a Variation of the Time Limit to Provide
Information About the Examination of SPO Witnesses**

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Counsel for Kadri Veseli
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Counsel for Rexhep Selimi
Geoffrey Roberts

Counsel for Jakup Krasniqi
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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 decision.

I. PROCEDURAL BACKGROUND

1. On 25 January 2023, the Panel issued its order on the conduct of proceedings (“Order on the Conduct of the Proceedings”).¹
2. On 19 June 2023, the Panel ordered the Specialist Prosecutor’s Office (“SPO”) to provide, by 30 June 2023, a list of the next 12 witnesses and a list of five reserve witnesses in projected order of appearance, in compliance with paragraph 74 of the Order on the Conduct of Proceedings. The Panel ordered the Defence and Victims’ Counsel to provide, in relation to these witnesses, the information required by paragraph 76 of the Order on the Conduct of Proceedings (“Information”) by Friday, 7 July 2023, at 4 pm (“Order”).²
3. On 30 June 2023, the SPO’s list of the next 12 witnesses (“Next 12 Witnesses List”) as well as a list of nine reserve witnesses (“Reserve Witnesses List”), (collectively “SPO Lists”) was distributed.³
4. On 4 July 2022, the Defence for Hashim Thaçi, Kadri Veseli, Rexhep Selimi, Jakup Krasniqi (collectively “Defence”) filed a joint request for a variation of the time limit to provide the Information (“Request”).⁴

¹ F01226/A01, Panel, *Annex 1 to Order on the Conduct of Proceedings*, 25 January 2023.

² Transcript of Hearing, 19 June 2023, p. 5068, lines 10-21.

³ F01630, Specialist Prosecutor, *Prosecution Submission of List of the Next 12 Witnesses, Reserve Witnesses, and Associated Information* (“SPO Submission”), 28 June 2023, with Annexes 1 (“Next 12 Witnesses List”) and 2 (“Reserve Witnesses List”), confidential, and Annex 3, strictly confidential and *ex parte*.

⁴ F01641, Specialist Counsel, *Joint Defence Request for a Variation of the Time Limit to Provide Information About the Examination of SPO Witnesses*, 4 July 2022.

5. On the same day, the Panel informed the Parties and participants that: (i) should they wish to respond to the Request, they shall do so by 5 July 2023, 4 pm; and (ii) no reply to the Request will be entertained.⁵

6. On 5 July 2023, the SPO responded to the Request (“Response”).⁶ The Victims’ Counsel filed no response.

II. SUBMISSIONS

7. The Defence submits that, for seven of the 21 witnesses on the SPO Lists, it intends to submit the Information by the deadline set in the Order.⁷ For the remaining 14 witnesses on the SPO Lists, the Defence seeks an extension of time, to 21 July 2023, to provide the relevant Information.⁸ The Defence argues that there is good cause to vary the deadline set in the Order because: (i) these witnesses will not start testifying before 14 August 2023;⁹ (ii) a three-week period to compile the relevant Information is reasonable and proportionate, particularly in light of the significant volume of material to consider in order to provide the Information; and (iii) the extension will assist the Defence in being able to give more meaningful and accurate submissions concerning cross-examination and admissibility.¹⁰

⁵ CRSPD251, 4 July 2023.

⁶ F01642, Specialist Prosecutor, *Prosecution Response to Joint Defence Extension Request (F01641)*, 5 July 2023.

⁷ Request, para. 3 *referring to*: (i) W04586, W02153, W00072, and W04644, being the four reserve witnesses for the July 2023 evidentiary block; and (ii) W03879, W03832, and W03827, being the first three witnesses on the Next 12 Witness List.

⁸ Request, paras 1, 4, 11.

⁹ Request, para. 4.

¹⁰ Request, paras 4, 6-10.

8. The SPO does not oppose the Request. The SPO notes in particular: (i) the Defence undertakings to file the Information by the Order's deadline in relation to four reserve witnesses and the first three witnesses projected to be called after the judicial recess; (ii) the number of witnesses concerned; and (iii) the Defence submissions that an extension will enable meaningful, exhaustive, and accurate responses, including concerning cross-examination time estimates.¹¹

III. APPLICABLE LAW

9. 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.

IV. DISCUSSION

10. At the outset, the Panel notes that the Defence undertakes to provide the Information in relation to the four reserve witnesses for the July 2023 evidentiary block – W04586, W02153, W00072 and W04644¹² – and the first three witnesses on the Next 12 Witness List – W03879, W03832 and W03827.¹³ With respect to these seven witnesses, the deadline set in the Order stands.

11. The Panel turns to the remaining witnesses on the SPO Lists, which are the subject of the Request – *i.e.* W04018, W04408, W03880, W04769, W04781, W03724, W04577 and W02161 (the last eight witnesses on the Next 12 Witnesses List)¹⁴ and W04566, W04368, W01504, W04255, W01493 and W04448 (the last six reserve witnesses on the Reserve Witnesses List).

¹¹ Response, para. 1.

¹² The Panel notes that the SPO's indication that W04644 was identified as a reserve witness for the July evidentiary block and if not called earlier as a reserve witness, will be called among the next group of 12 Witnesses. *See* SPO Submission, fn. 8.

¹³ Request, para. 3.

¹⁴ The Panel notes that these are the last eight witnesses, excluding W04644, for whom the Defence indicated its intent to provide the Information by the Order's deadline. *See* Request, para. 3.

12. As regards W04018, W04408, W03880 and W04769, the Panel observes that they are scheduled to be the next four witnesses¹⁵ to appear after the July 2023 evidentiary block witnesses. The Panel further observes that these witnesses were all in the provisional list of first 40 witnesses to be called at trial, which the Defence received in November 2022.¹⁶ Considering: (i) that these witnesses are scheduled to testify soon after the judicial recess; and (ii) that the Defence has been on notice for over six months that they were to be called amongst the first 40 witnesses at trial, the Panel is not satisfied that there is good cause to vary the time limit set in the Order in relation to these four witnesses. Accordingly, the Panel rejects the Request insofar as it pertains to these witnesses and maintains its Order that the Defence shall provide the Information in relation to W04018, W04408, W03880 and W04769 by Friday, 7 July 2023, at 4 pm.

13. As regards the remaining witnesses on the SPO Lists – *i.e.* W04781, W03724, W04577 and W02161 (the last four witnesses on the Next 12 Witnesses List) and W04566, W04368, W01504, W04255, W01493 and W04448 (the last six reserve witnesses on the Reserve Witnesses List) – the Panel notes that: (i) these witnesses are unlikely to start testifying before September 2023; (ii) the Defence submits that the extension will ensure that the Information it will provide be “the most accurate and exhaustive possible in the circumstances”.¹⁷ The Panel therefore considers that the requested extension will: (i) have no negative impact on the trial schedule; and (ii) enable more accurate Information, including concerning cross-examination time estimates. The Panel is therefore satisfied that there is good cause to extend the time limit set in the Order in respect of these witnesses by two-weeks. Accordingly, the Panel grants the Request insofar as it pertains to W04781, W03724, W04577, W02161, W04566, W04368, W01504, W04255, W01493 and

¹⁵ After the first three witnesses – W03879, W03832 and W03827 – for which the Defence intends to meet the 7 July 2023 deadline.

¹⁶ F01117/A02, Specialist Prosecutor, *Annex 2 to Prosecution Submission of Provisional List of First 40 Witnesses to be Called at Trial*, 18 November 2022, confidential.

¹⁷ Request, para. 10.

W04448 and orders that the Defence shall provide the Information in relation to these witnesses by Friday, 21 July 2023, at 4 pm.

14. While granting partly the Request, the Panel emphasises that it expects *realistic* cross-examination time estimates from the Defence. The Panel is particularly mindful that the estimates given in relation to the first 12 witnesses were considerably inflated, which created challenges in scheduling witnesses and, in turn, contributed to loss of valuable courtroom time.¹⁸ In addition, the Panel recalls that Defence teams shall endeavour to consult among themselves to discuss the scope and nature of cross-examination with a view to avoiding repetitive questioning.¹⁹ The Panel reiterates its observation that cross-examination has often gone into areas of secondary relevance in these proceedings.²⁰ The Panel invites the Defence to reflect carefully on the need to examine witnesses on such issues. The Panel cautions the Defence that, should it not heed the Panel's guidance on this matter, the Panel may intervene more frequently to interrupt questioning which appears of marginal relevance to the proceedings.

¹⁸ Transcript of Hearing, 19 June 2023, p. 4984, lines 20-25.

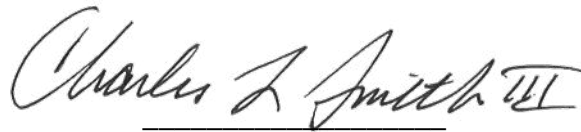
¹⁹ Transcript of Hearing, 16 December 2022, p. 1774, lines 13-16.

²⁰ See e.g. Transcript of Hearing, 19 June 2023, p. 4984, lines 4-7, 17-19.

V. DISPOSITION

15. In light of the above, the Panel hereby:

- a) **GRANTS** the Request, in part;
- b) **EXTENDS** the deadline for the Defence to provide the Information for W04781, W03724, W04577, W02161, W04566, W04368, W01504, W04255, W01493 and W04448 to **Friday, 21 July 2023, at 4 pm;**
- c) **REITERATES** its Order that the Defence shall provide the Information for W04586, W02153, W00072, W04644, W03879, W03832, W03827, W04018, W04408, W03880 and W04769 by **Friday, 7 July 2023, at 4 pm;**
and
- d) **REJECTS** the remainder of the Request.



Judge Charles L. Smith, III
Presiding Judge

Dated this Friday, 7 July 2023

At The Hague, the Netherlands.