

In: KSC-BC-2020-06
Specialist 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: Dr Fidelma Donlon

Filing Participant: Counsel for Kadri Veseli

Date: 22 December 2023

Language: English

Classification: Public

Public Redacted Version of Veseli Defence Request for Adjustment of the Sitting Schedule for January and February 2024, With Confidential Annex

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I. INTRODUCTION

1. The Veseli Defence (“Defence”) hereby submits this request for adjustment of the sitting schedule for January and February 2024. This request is brought in order to safeguard Mr Veseli’s fair trial rights under Article 21 of the Law, specifically the right to have adequate time and facilities for the preparation of his defence.
2. Accordingly, the Defence requests that the January and February blocks be shortened by one week each, such that for those months, Case 06 would be in session from: 15 to 25 January; and 20 to 28 February 2024. The request is made in view of the sudden and unexpected loss of Co-Counsel, which has precipitated the need to engage a new Co-Counsel who joins the case three years into proceedings.
3. Mr Veseli’s defence is unavoidably impacted by recent events. The aim of the current request is to mitigate this impact by allowing for the redistribution of responsibilities within the Defence, and to allow new Co-Counsel much needed time to familiarise themselves with the evidence.
4. The request has been the subject of *inter partes* correspondence, wherein the SPO has indicated that it will take no position, save as set out below, and Victims Counsel has indicated that they support the Request.¹ The Defence teams for Messrs Thaci, Selimi, and Krasniqi are also supportive of the request.

II. PROCEDURAL BACKGROUND

5. On 10 November 2023, the Parties and participants received the current sitting schedule for January to August 2024.²

¹ See, Annex 1, pp. 1-2.

² Email from CMU to Parties and Participants entitled “RE-UPDATED: Jan-August 2024 Courtroom schedule,” sent at 09:31 on 10 November 2023. The Trial Panel subsequently informed the Parties and

6. On Tuesday 12 December 2023, counsel for Mr Veseli informed the Court of the sudden and untimely passing of Co-Counsel.³
7. On Wednesday 13 December 2023, the Prosecution, by email, informed the Trial Panel, Parties and participants of their intended witness schedule for January 2024.⁴
8. On Thursday 14 December 2023, the Prosecution, in F02007, notified its lists of witnesses for January to April 2024. The lists contain 19 scheduled witnesses, and 7 reserve witnesses; a total of 26 witnesses.⁵
9. On Thursday 21 December 2023, the Defence, having secured the agreement of the other three Defence teams, approached the SPO and Victims to ascertain their position on this proposal to adjust the sitting schedule for January and February 2024.
10. On the same day, the SPO indicated that, principally, it would take no position, whereas the Victims Counsel indicated that they would support such a request.⁶

III. APPLICABLE LAW

11. Article 21 of the Law enshrines the fundamental rights of the Accused before the KSC. Article 21(4)(c) specifies that the Accused shall have “adequate time and facilities for the preparation of his Defence and to communicate with Specialist Counsel of his or her own choosing.” Moreover, Article 21(4)(f)

Participants that Monday 19 February 2024 would not be a sitting day, it being the declared day of celebration for Kosovar Independence, which falls on Saturday, 17 February 2024 – *see*, Transcript, 4 December 2023, T.10365.1-5.

³ Transcript of 12 December 2023, T.11015-11017.

⁴ Email from SPO to Parties, Participants and CMU entitled “CONFIDENTIAL: List of witnesses for January,” sent at 14:55 on 13 December 2023.

⁵ *See generally*, F02007, *Prosecution submission of list of witnesses for 15 January to 4 April 2024 with confidential Annexes 1 and 2*, 14 December 2023, confidential.

⁶ Annex 1, p. 1.

protects the Accused's right to, *inter alia*, "examine or have examined witnesses against him."

12. Rule 116(1) states that the Trial Panel "shall, on an ongoing basis, take all measures and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the trial proceedings."
13. Other international criminal courts have consistently recognised that reasonable adjustments to the schedule are to be made when it is shown that Counsel's unavailability will have an unavoidable and deleterious impact on their ability to present their case.⁷
14. In these proceedings, the Trial Panel previously granted a request for an extension of time of just over one month to the opening of trial⁸, where Lead Counsel for the Selimi Defence was expected to be unavailable [REDACTED].⁹ On that occasion, the Defence was served a large volume of evidence weeks prior to the commencement of trial,¹⁰ and the Parties had engaged in *inter partes* discussions on the matter resulting in the Prosecution's non-opposition to the requested relief.¹¹

⁷ ICTY, *Prosecutor v. Krajisnik*, IT-00-39, [Scheduling Order](#), 12 January 2001, p. 2; ICTY, *Prosecutor v. Brđanin and Talić*, IT-99-36-PT, [Decision on 'Motion for Extension of Time to File the Request for Certification pursuant to Rule 73 with regard to the Trial Chamber's 22 March 2002 Decision regarding Rule 90\(H\)'](#), 10 April 2002, p. 2; ICTR, *Prosecutor v. Bizimungu et al*, ICTR-99-50-AR73.8, [Decision on Motion for Extension of Time to File an Appeal](#), 7 October 2009, p. 2; ICC, *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, [Transcript of 20 January 2016](#) ICC-01/04-02/06-T-55 Red-ENG WT 20-01-2016 1-11 SZ T, 20 January 2016, p. 10.

⁸ Whereas the Trial Panel originally ordered trial to commence on 1 March 2023 (Oral Order of 18 January 2023, T.1903.23-1904.5), this was subsequently extended, with opening statements commencing on 3 April and the first witness being heard on 11 April 2023 (Oral Order of 15 February 2023, T.2038.9-2039.1).

⁹ [REDACTED].

¹⁰ See generally, [REDACTED].

¹¹ Transcript, 15 February 2023, T.2006.11-2007.24.

IV. SUBMISSIONS

15. The requested relief is needed in order to ensure that Mr Veseli's fundamental trial rights are guaranteed. The Defence submits that the request for an adjournment of just two weeks is reasonable under the circumstances, and that it is submitted sufficiently in advance so as to avoid prejudice to the Prosecution. In this regard, the Defence observed that when it approached the Prosecution with respect to this request, it responded that it understood the Defence's request and it would take no position, "save that losses in sitting time must not be to the prejudice of the SPO opportunity to present its case or part of any prejudicial assessment regarding the progress of trial."¹² Victims' Counsel, and Counsel for the other Accused have unequivocally supported the request.¹³
16. Notwithstanding the shock and sadness brought about by the sudden death of Co-Counsel, the Defence acted quickly to identify and recruit a new team member so as to ensure minimal disruption to the trial proceedings. With the assistance of the Registry, for which the Defence is grateful, a new Co-Counsel has been provisionally assigned to the case as of 21 December 2023. The formal assignment of co-counsel should not be misunderstood. New co-counsel has a busy criminal practice in the United Kingdom, and their forthcoming cases must now be either completed, or returned and reassigned. Despite best efforts, new Co-Counsel for the Defence will not be available in a full-time capacity until 8 January 2024, *i.e.*, one week prior to the recommencement of trial.
17. The Defence is adamant that no undue delays should be caused to the progress of trial, as that the Accused has already spent more than three years in detention. Nonetheless, this event occurred three months into proceedings, and

¹² Annex 1, p. 2.

¹³ Annex 1, p. 1.

nine months into an extremely complex trial, where a number of key witnesses are scheduled to testify within the first months of 2024. These include [REDACTED].¹⁴ All of these witnesses are significant for Mr Veseli's defence. All will require extensive preparation, and many will also require further investigation. In addition to ensuring that new Co-Counsel has the time and resources to perform their functions, the Defence must also reallocate responsibilities among the pre-existing team members. It is observed that, in addition to preparing for cross-examination, the pace of written submissions that accompany oral proceedings is expected to continue unabated from January.

18. There is an unavoidable cost to the sudden loss of Co-Counsel. The Defence submits that an additional two weeks' is the very least that it can reasonably request in order to adequately protect Mr Veseli's right to a speedy trial on the one hand and, on the other, his right to have adequate time and facilities to prepare his defence and confront witnesses called against him.
19. Pursuant to the current court schedule, Case 06 is due to be in session from 15 January to 1 February 2024, followed by a one-week recess, after which hearings are scheduled to recommence on 12 February 2024. It requests that it be provided two additional weeks between the January and February blocks in order to prepare itself adequately for the coming months. Accordingly, were the Defence's request to be granted, the court would sit from 15 January to 25 January 2024; and from 20 February to 28 February 2024.
20. At this time, the Defence does not request any adjustments to the order of the SPO's witness list. It anticipates that, should the requested relief be granted, it will be in a position to cross-examine the witnesses in the order that they are currently scheduled. However, based on prior experience, it anticipates that

¹⁴ See generally, [REDACTED].

there may be further changes to the order of these witnesses. While the Defence will do its utmost to ensure its readiness for trial, regardless, it cannot exclude the possibility of a further requests for relief should such they be required by circumstance.

21. The Defence highlights that events that gave rise this request were entirely unforeseeable. Indeed, [REDACTED]. The Defence has attempted to address the situation as swiftly as possible in a manner which causes minimal disruption to the progress of this trial. It submits that the requested relief is timely, reasonable, and supported by good cause.

V. CONCLUSION

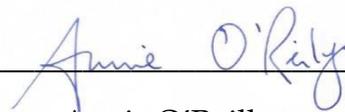
22. In light of the foregoing, the Defence respectfully requests that the Trial Panel grant the adjustment of the sitting schedule, as outlined in paragraph 19 above.

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