



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-04
Specialist Prosecutor v. Pjetër Shala

Before: **Trial Panel I**
Judge Mappie Veldt-Foglia, Presiding
Judge Roland Dekkers
Judge Gilbert Bitti
Judge Vladimir Mikula, Reserve

Registrar: Dr Fidelma Donlon

Filing Party: Specialist Prosecutor's Office

Date: 25 January 2024

Language: English

Classification: Public

**Prosecution response to 'Defence Request for an Extension of Time and Word
Limit for its Final Trial Brief'**

Specialist Prosecutor's Office

Kimberly P. West

Counsel for the Accused

Jean-Louis Gilissen

Counsel for Victims

Simon Laws

I. INTRODUCTION

1. Pursuant to Rules 9(5)(a), 76 and 134(b) of the Rules,¹ the Specialist Prosecutor's Office ('SPO') hereby responds to the Defence Request.²

2. For the reasons set out in detail below, the SPO objects to the request for an extension of time limit and for the consecutive filing of final trial briefs. The SPO does not object to an extension of the word limit.

II. SUBMISSIONS

3. The Defence request for an extension of the time limit set out in Rule 134(b)³ is premature at this stage. Pursuant to Rule 134(b), the Trial Panel ('Panel') will invite the SPO and the Defence to file final trial briefs within 30 days after closing of the evidentiary proceedings. With a site visit request as well as the Prosecution and Defence requests for admission of material used with witnesses during the ninth and tenth evidentiary block still pending before the Panel,⁴ the Panel has not yet closed the evidentiary phase of this case. Under these circumstances, it is premature to ask for an extension of a deadline that has not yet been set. The Defence can and should now be working on their final trial brief in the interim, and it is unclear how they could already know an extension of time is needed when it is not yet known what the

¹ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein are to the Rules, unless otherwise specified.

² Defence Request for an Extension of Time and Word Limit for its Final Trial Brief, KSC-BC-2020-04/F00780, 22 January 2024 ('Defence Request'), public.

³ Defence Request, KSC-BC-2020-04/F00780, paras 2-5.

⁴ Defence Supplementary Submissions to its Request for a Crime Site Visit, KSC-BC-2020-04/F00761, 10 January 2024, confidential; *See also* Revised Version of Motion for a Crime Site Visit, KSC-BC-2020-04/F00325, 25 October 2023, confidential; Defence Request for Admission of Items Used with W03887, DW4-03, and W04280 During Their In-Court Testimonies with Confidential Annex 1, KSC-BC-2020-04/F00737, 6 December 2023, confidential; Prosecution request for admission of material used during the cross-examination of W03887, W04441 and W04440 and DW4-03 with confidential Annex 1, KSC-BC-2020-04/F00742, 8 December 2023, confidential; Prosecution request for admission of material used during the cross-examination of W04405 with confidential Annex 1, KSC-BC-2020-04/F00768, 15 January 2024, public; Defence Consolidated Response to Prosecution and Victims' Counsel's Requests for Admission of Material Used During the Examination of W04405, KSC-BC-2020-04/F00779, 22 January 2024, confidential;

deadline date for filing of final trial briefs will be. Accordingly, the Defence request for extension of time limit should be denied.

4. The SPO also objects to the Defence's request to allow the consecutive filing of its final trial brief after that of the SPO.⁵ The Defence is fully informed about the case presented by the SPO against the Accused (which closed more than six months ago),⁶ allowing the Defence to prepare a comprehensive response in their final trial brief. Rule 134, which provides for the filing of briefs from all parties within thirty (30) days from the closing of evidence, clearly envisages a procedure where there is concurrent filing.⁷ Both Parties and Victims' Counsel will then have the opportunity to respond to the respective submissions of others during closing statements. Indeed, providing an opportunity to each party to respond to submissions in the final briefs is a primary purpose of having closing statements, together with addressing any clarifications sought by the Panel. Pursuant to Rule 135(4), the Defence will have the right to speak last.⁸ As such, the concurrent filing framework envisaged in the Rules – which is also an established practice before the Kosovo Specialist Chambers ('KSC')⁹ – fully and adequately protects the rights of the Accused.

5. The SPO supports the Defence request to extend the word limit to 45,000 words, which was the limit set for the final briefs in the comparable *Mustafa* case,¹⁰ provided the SPO is granted the same extension. While the SPO will endeavour to make concise

⁵ Defence Request, KSC-BC-2020-04/F00780, paras 6-7.

⁶ The SPO closed its case by notice pursuant to Rule 129 already on 6 July 2023, *See* Prosecution notice of the closing of its case pursuant to Rule 129, KSC-BC-2020-04/F00570, 6 July 2023, public.

⁷ The Defence's reliance on jurisprudence from the International Criminal Court ('ICC') is inapt noting that the rules of evidence and procedure at the ICC are silent on the filing of final briefs.

⁸ Defence Request, KSC-BC-2020-04/F00780, para.7.

⁹ In all cases so far tried before the KSC, parties and victims' counsel were ordered to file their final briefs on the same date. *See Specialist Prosecutor v. Salih Mustafa*, Decision on the closing of the evidentiary proceedings and related matters, KSC-BC-2020-05/F00439, 20 June 2022, para.25(c), and *Specialist Prosecutor v. Hysni Gucati and Nasim Haradinaj*, Decision on the Closing of the Evidentiary Proceedings and on Submissions Pursuant to Rules 134(b), (d) and 159(6) of the Rules, KSC-BC-2020-07/F00553, 3 February 2022, para.26(b).

¹⁰ *Specialist Prosecutor v. Salih Mustafa*, Decision on Prosecution request for extension of word limit, KSC-BC-2020-05/F00450, 8 July 2022, para.8.

and focused submissions, this extension would allow for comprehensive submissions on both the charges against the Accused and sentencing.

III. CONCLUSION

6. For the foregoing reasons, the SPO:
 - a. requests the Panel to dismiss as premature the Defence request for an extension of time limit to file their final trial brief;
 - b. objects to the Defence request to allow the consecutive filing of its final trial brief after the SPO's final trial brief; and
 - c. supports the request for an extension of the word limit, provided the SPO is granted the same extension.

Word count: 730



Kimberly P. West
Specialist Prosecutor

Thursday, 25 January 2024

At The Hague, the Netherlands.