



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**In:** KSC-BC-2020-06  
**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi,  
and Jakup Krasniqi**

**Before:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Date:** 22 July 2022

**Language:** English

**Classification:** Public

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**Decision on Motion Alleging Defects in the Form of the Amended Indictment**

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Articles 21(4)(a), 38(4) and 39(1) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 9(5)(a), 76, 77, 86(3) and 97(1)(b) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 30 October 2020, further to the Pre-Trial Judge's decision confirming the indictment against Hashim Thaçi ("Mr Thaçi"), Kadri Veseli ("Mr Veseli"), Rexhep Selimi ("Mr Selimi") and Jakup Krasniqi ("Mr Krasniqi") (collectively "Accused"),<sup>2</sup> the Specialist Prosecutor's Office ("SPO") submitted the indictment as confirmed, with redactions as authorised by the Pre-Trial Judge ("Confirmed Indictment").<sup>3</sup>

2. On 22 July 2021, the Pre-Trial Judge issued a "Decision on Defence Motions Alleging Defects in the Form of the Indictment" ("First Decision on Defects in the Form of the Indictment").<sup>4</sup>

3. On 23 December 2021, the Pre-Trial Judge issued the "Decision Concerning Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)" in which the Parties were ordered to file their responses and reply,

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<sup>1</sup> KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

<sup>2</sup> KSC-BC-2020-06, F00026, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi* ("Confirmation Decision"), 26 October 2020, strictly confidential and *ex parte*. A confidential redacted version was filed on the same day, F00026/CONF/RED. A public redacted version was filed on 30 November 2020, F00026/RED.

<sup>3</sup> KSC-BC-2020-06, F00034, Specialist Prosecutor, *Submission of Confirmed Indictment and Related Requests*, 30 October 2020, confidential, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential. A further corrected confirmed indictment, correcting certain clerical errors, was submitted on 4 November 2020, strictly confidential and *ex parte* (F00045/A01), with confidential redacted (F00045/A02) and public redacted (F00045/A03) versions. A lesser confidential redacted version was submitted on 11 December 2020 (F00134). A further corrected confirmed indictment was submitted on 3 September 2021, strictly confidential and *ex parte* (F00455/A01), with confidential redacted (F00455/CONF/RED) and public redacted (F00455/RED) versions. A confidential further lesser redacted version of the confirmed indictment was filed on 17 January 2022, F00647/A01.

<sup>4</sup> KSC-BC-2020-06, F00413, Pre-Trial Judge, *Decision on Defence Motions Alleging Defects in the Form of the Indictment*, 22 July 2021, confidential. A public redacted version was filed on the same day, F00413/RED.

as the case may be, on the question of whether the supporting material to the amendments deemed to constitute new charges support a finding of well-grounded suspicion pursuant to Rule 86(4) of the Rules.<sup>5</sup>

4. On 22 April 2022, the Pre-Trial Judge confirmed, upon request of the SPO,<sup>6</sup> amendments to the Confirmed Indictment relating to: (i) two related detention sites located at Budakovë/Budakovo and Semetishtë/Semetište, Suharekë/Suva Reka municipality, at or in connection with which Kosovo Liberation Army (“KLA”) members allegedly committed acts of persecution, imprisonment/arbitrary detention, other inhumane acts/cruel treatment, torture, murder, and enforced disappearance (“First Category”); and (ii) two incidents of persecution and murder allegedly committed in connection with the Gjilan/Gnjilane detention site and a modification of the timeframe for the Gjilan/Gnjilane detention site (“Second Category”), and ordered the SPO to file, *inter alia*, an amended indictment (“Confirmation of Amendments Decision”).<sup>7</sup>

5. On 29 April 2022, the SPO filed an amended indictment (“Confirmed Amended Indictment”) and related documents, including outlines for the new charges (“Rule 86(3)(b) Outline to the First Category Amendments” and “Rule 86(3)(b) Outline to the Second Category Amendments”).<sup>8</sup>

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<sup>5</sup> KSC-BC-2020-06, F00635, Pre-Trial Judge, *Decision Concerning Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)* (“Decision Concerning Request to Amend”), 23 December 2021, confidential, paras 48, 53(d), (e). A public redacted version was filed on 14 February 2022, F00635/RED.

<sup>6</sup> KSC-BC-2020-06, F00455, Specialist Prosecutor, *Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)* (“Request to Amend”), 3 September 2021, strictly confidential and *ex parte*, with Annexes 1-5, strictly confidential and *ex parte*. Confidential redacted and public redacted versions were filed on 8 September 2021, F00455/CONF/RED and F00455/RED, respectively.

<sup>7</sup> KSC-BC-2020-06, F00777, Pre-Trial Judge, *Decision on the Confirmation of Amendments to the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 22 April 2022, strictly confidential and *ex parte*, para. 185(a)-(c), (f)-(g). A confidential redacted version was filed on the same day, F00777/CONF/RED. A public redacted version was filed on 6 May 2022, F00777/RED. A lesser redacted confidential version was filed on 16 May 2022, F00777/CONF/RED2.

<sup>8</sup> KSC-BC-2020-06, F00789, Specialist Prosecutor, *Submission of Amended Indictment and Related Documents*, 29 April 2022, public, with Annex 1, strictly confidential and *ex parte*, Annexes 2-4, confidential and Annexes 5-7, public. This filing includes strictly confidential and *ex parte* (F00789/A01), confidential redacted (F00789/A02) and public redacted (F00789/A05) versions of the Confirmed

6. On 10 May 2022, separate further appearances concerning the new charges to the Confirmed Amended Indictment were held for Mr Thaçi, Mr Veseli, Mr Selimi, and Mr Krasniqi.<sup>9</sup> At the further appearance for Mr Thaçi, the Pre-Trial Judge indicated that the 21-day time limit for filing preliminary motions pursuant to Rules 90(4) and 97 of the Rules would run from the date of the further appearance.<sup>10</sup>

7. On 31 May 2022, the Defence for Mr Thaçi (“Thaçi Defence”) filed its motion alleging defects in the Confirmed Amended Indictment (“Motion”).<sup>11</sup>

8. On 10 June 2022, the SPO responded to the Motion (“Response”).<sup>12</sup> The Thaçi Defence did not reply.

9. On 30 June 2022, the Pre-Trial Judge varied the deadline for rendering the present decision to 22 July 2022.<sup>13</sup>

## II. SUBMISSIONS

10. The Thaçi Defence submits that the new charges confirmed by the Pre-Trial Judge are defective due to a lack of specificity and significant errors in pleading. The Thaçi Defence requests that the SPO be ordered to provide greater specificity concerning the conduct alleged on the part of Mr Thaçi or otherwise be ordered to reduce, narrow or remove the offending charges.<sup>14</sup> The Thaçi Defence submits that where material facts are known to the SPO and defects to the indictment surface

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Amended Indictment. This submission also includes lesser confidential redacted and public redacted outlines for the confirmed new charges; (F00789/A03 and F00789/A06 for the First Category) and (F00789/A04 and F00789/A07 for the Second Category).

<sup>9</sup> KSC-BC-2020-06, F00794, Pre-Trial Judge, *Decision Setting the Date for Further Appearances and Related Matters*, 2 May 2022, public, paras 9, 13(a). *See also* Transcript of Hearings, 10 May 2022, public.

<sup>10</sup> KSC-BC-2020-06, Transcript of Hearing, 10 May 2022, public, p. 1175, lines 5-8.

<sup>11</sup> KSC-BC-2020-06, F00824, Specialist Counsel, *Motion Alleging Defects in the Indictment Against Mr Hashim Thaçi*, 31 May 2022, public.

<sup>12</sup> KSC-BC-2020-06, F00835, Specialist Prosecutor, *Prosecution Response to Thaçi Defence Preliminary Motion on the Form of the Amended Indictment*, 10 June 2022, public.

<sup>13</sup> KSC-BC-2020-06, F00859, Pre-Trial Judge, *Decision Varying Time Limit*, 30 June 2022, public.

<sup>14</sup> Motion, paras 1, 27.

in the pre-trial phase, then the SPO cannot argue that it will correct all defects through material supporting or filed after the indictment.<sup>15</sup> It is further submitted that the new charges added to the Confirmed Amended Indictment:<sup>16</sup> (i) are largely silent as to the identities of the perpetrators, save generic references to “KLA members”;<sup>17</sup> (ii) are impermissibly vague as to the identity of the victims;<sup>18</sup> (iii) are vague as to the location of certain crimes;<sup>19</sup> and (iv) insufficiently detail Mr Thaçi’s link to the crimes as well as the role he is accused of playing.<sup>20</sup>

11. The SPO responds that the Motion has not established any defects in the form of the Confirmed Amended Indictment and should be dismissed.<sup>21</sup> The SPO argues that submissions concerning paragraph 93 of the Confirmed Amended Indictment have no legal basis and should be summarily dismissed, as the challenged allegations fall outside the scope of the amendment made to that paragraph.<sup>22</sup> The SPO further contends that the Motion: (i) puts forth submissions that have already been considered and rejected by the Pre-Trial Judge; (ii) improperly seeks evidentiary details which need not be pleaded in an indictment; and (iii) challenges certain allegations in isolation without regard to the Confirmed Amended Indictment as a whole.<sup>23</sup> The SPO submits that the perpetrators, victims and relevant locations are sufficiently identified and the Accused’s role in the newly charged crimes is adequately pleaded.<sup>24</sup> The SPO further argues that, as the Pre-Trial Judge has previously found that the charged modes of liability are

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<sup>15</sup> Motion, para. 14.

<sup>16</sup> Confirmed Amended Indictment, paras 68, 93, 105, 157 and 174.

<sup>17</sup> Motion, paras 17, 19-21.

<sup>18</sup> Motion, paras 17, 22.

<sup>19</sup> Motion, paras 17, 23.

<sup>20</sup> Motion, paras 17, 24-26.

<sup>21</sup> Response, paras 1, 9.

<sup>22</sup> Response, para. 2, footnote 6.

<sup>23</sup> Response, para. 3.

<sup>24</sup> Response, paras 4-8.

pleaded with sufficient clarity and specificity, additional detail regarding the Accused's alleged link or role need not be provided.<sup>25</sup>

### III. APPLICABLE LAW

#### A. PRELIMINARY MOTIONS

12. Pursuant to Article 39(1) of the Law, the Pre-Trial Judge rules on any preliminary motions, including challenges to the indictment.

13. Pursuant to Rule 97(1)(b) of the Rules, the Accused may file preliminary motions before the Pre-Trial Judge in accordance with Article 39(1) of the Law, which allege defects in the form of the indictment.

#### B. INDICTMENT

14. Pursuant to Article 21(4)(a) of the Law, the Accused shall be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.

15. Pursuant to Article 38(4) of the Law and Rule 86(3) of the Rules, an indictment must set forth the name and particulars of the suspect and a concise statement of the facts of the case and of the crime(s) with which the suspect is charged, in particular the alleged mode of liability in relation to the crimes charged.

#### C. LEAVE TO APPEAL

16. Pursuant to Rule 9(5)(a) of the Rules, the Panel may, *proprio motu* or upon a showing of good cause, extend or reduce any time limit prescribed by the Rules or set by the Panel.

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<sup>25</sup> Response, para. 8.

17. Pursuant to Rule 76 of the Rules, unless otherwise provided in the Rules, any response to a motion shall be filed within ten (10) days of the motion and any reply to a response shall be filed within five (5) days of the response.

18. Pursuant to Rule 77(1) of the Rules, 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.

#### IV. GENERAL STANDARDS: FORM OF CONFIRMED AMENDED INDICTMENT

19. The Pre-Trial Judge notes that he continues to be guided by the general standards enunciated in paragraphs 27 to 41 of the First Decision on Defects in the Form of the Indictment, as further specified by the Court of Appeals.<sup>26</sup> In particular, the Pre-Trial Judge recalls that an indictment is defective when it fails to plead the facts underpinning the charges or it does so in an insufficient or unclear manner, creating ambiguity as regards the pleaded charges, including the modes of liability, and thus impairing the Defence's ability to prepare.<sup>27</sup>

20. The Pre-Trial Judge accordingly notes that the aforementioned findings will inform and guide the ensuing assessment of the alleged concrete deficiencies of the Confirmed Amended Indictment.

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<sup>26</sup> KSC-BC-2020-04, IA004/F00008, Court of Appeals, *Decision on Pjetër Shala's Appeal against Decision on Motion Challenging the Form of the Indictment* ("Shala Court of Appeals Decision"), 22 February 2022, confidential. A public redacted version was filed on the same day, IA004/F00008/RED; KSC-BC-2020-07, IA004/F00007, Court of Appeals, *Decision on the Defence Appeals Against Decision on Preliminary Motions* ("Gucati and Haradinaj Court of Appeals Decision"), 23 June 2021, public.

<sup>27</sup> *Shala* Court of Appeals Decision, para. 15; *Gucati and Haradinaj* Court of Appeals Decision, para. 38; First Decision on Defects in the Form of the Indictment, para. 40. Similarly ICTY, *Prosecutor v. Galić*, IT-98-29-AR72, Appeals Chamber, [Decision on Application by Defence for Leave to Appeal](#), 30 November 2001, para. 11; *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Appeals Chamber, [Judgement](#), 28 February 2005, para. 31; SCSL, *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Trial Chamber I, [Judgement](#), 2 March 2009, para. 329.



## V. DISCUSSION

21. At the outset, the Pre-Trial Judge addresses the SPO's submissions that the Thaçi Defence arguments concerning paragraph 93 of the Confirmed Amended Indictment have no legal basis and should be summarily dismissed as the challenged allegations fall outside the scope of the amendments as only a limited change to the timeframe of the alleged crimes was made.<sup>28</sup>

22. The Pre-Trial Judge recalls his finding that the Second Category of amendments not only included an adjustment to the temporal scope of a previously pleaded detention site, but also added a victim whose detention was factually distinct from other victims and therefore amounted to new charges that required confirmation pursuant Rule 86(3) and (4) of the Rules.<sup>29</sup> A review of the supporting material was thereafter undertaken and the new charge, including the expanded temporal scope to July 1999, was ultimately confirmed.<sup>30</sup> The Pre-Trial Judge therefore finds that the Thaçi Defence's challenges to paragraph 93 of the Confirmed Amended Indictment fall within the scope of the present review and will therefore be considered insofar as they relate to events in July 1999.

### A. IDENTITY OF PERPETRATORS

23. The Thaçi Defence submits that the pleading of the joint criminal enterprise ("JCE") members who directly perpetrated the crimes underlying the new charges is impermissibly vague.<sup>31</sup> With respect to paragraphs 93, 105 and 157 of the Confirmed Amended Indictment, the Thaçi Defence submits that the direct perpetrators are simply referred to as "KLA members" without adequate temporal and geographical references.<sup>32</sup> As concerns paragraph 68 of the Confirmed

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<sup>28</sup> Response, para. 2.

<sup>29</sup> Decision Concerning Request to Amend, paras 25, 28.

<sup>30</sup> Confirmation of Amendment Decision, paras 127-133.

<sup>31</sup> Motion, para. 19.

<sup>32</sup> Motion, paras 19-21.



Amended Indictment, the Thaçi Defence contends that, while certain additional details have been provided, if the SPO has further details such as the name of the perpetrator, then such information should be provided.<sup>33</sup> With respect to paragraph 174 of the Confirmed Amended Indictment, the Thaçi Defence notes that no details as to the direct perpetrators have been provided.<sup>34</sup>

24. The SPO responds that additional details regarding the perpetrators need not be pleaded and constitute evidentiary matters for trial.<sup>35</sup> The SPO argues that the direct perpetrators are identified by category or group and are linked to bases, headquarters, events and time periods and in some instances brigades and operational zones.<sup>36</sup> As regards paragraph 174 of the Confirmed Amended Indictment, the SPO argues that when read together with other relevant parts of the Confirmed Amended Indictment, the direct perpetrators are sufficiently identified.<sup>37</sup>

25. The Pre-Trial Judge recalls that, where liability pursuant to a JCE is alleged, the indictment must specify, *inter alia*, the identities of its members, at a minimum by category or group, and provide their specific identities when known.<sup>38</sup> The degree of specificity that must be provided in an indictment depends on the nature and circumstances of the case and notably the proximity of the accused to the events or underlying offences and the scale of the alleged crimes.<sup>39</sup> When the proximity of an accused to the alleged criminal conduct is close, the pleading requirements are more rigorous.<sup>40</sup>

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<sup>33</sup> Motion, para. 21.

<sup>34</sup> Motion, para. 21.

<sup>35</sup> Response, para. 4.

<sup>36</sup> Response, para. 4.

<sup>37</sup> Response, para. 4.

<sup>38</sup> *Shala* Court of Appeals Decision, para. 16; *Gucati and Haradinaj* Court of Appeals Decision, para. 45. See also First Decision on Defects in the Form of the Indictment, para. 35.

<sup>39</sup> *Shala* Court of Appeals Decision, para. 17; *Gucati and Haradinaj* Court of Appeals Decision, para. 42.

<sup>40</sup> *Shala* Court of Appeals Decision, para. 17; *Gucati and Haradinaj* Court of Appeals Decision, para. 43.

26. In the Confirmed Amended Indictment, the alleged JCE involves at least eight named individuals, in addition to the Accused,<sup>41</sup> and crimes committed across 42 crime sites<sup>42</sup> during the period from March 1998 to September 1999.<sup>43</sup> The new charges to the Confirmed Amended Indictment do not allege the direct participation of the Accused in these alleged crimes.<sup>44</sup> In light of the nature and the scale of the crimes charged in the present case and the modes of liability pleaded, the Pre-Trial Judge considers that the specific identity of the physical perpetrators of the new charges need not be pleaded. However, as noted above, where the SPO is in a position to identify alleged perpetrators by name, it is should do so.<sup>45</sup>

27. The Pre-Trial Judge notes that the physical perpetrators<sup>46</sup> of the alleged new crimes are identified by group and affiliation (“KLA members” or “KLA soldier”).<sup>47</sup> In some instances these perpetrators are linked to operational zones and specific units<sup>48</sup> or specific KLA headquarters.<sup>49</sup> The Pre-Trial Judge further notes that paragraph 174 of the Confirmed Amended Indictment does not identify perpetrators by group affiliation or any other means, but when read with paragraph 135, the alleged perpetrators can be identified as “KLA members”, further described by linking them to a specific time period and location. Nevertheless, in order to avoid any ambiguity, the SPO shall add reference to “KLA members” in paragraph 174 of the Confirmed Amended Indictment.

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<sup>41</sup> Confirmed Amended Indictment, para. 35.

<sup>42</sup> Confirmed Amended Indictment, paras 58-177.

<sup>43</sup> Confirmed Amended Indictment, para. 16.

<sup>44</sup> See Confirmed Amended Indictment, paras 68, 93, 105, 135, 157.

<sup>45</sup> See *supra*, para. 25; *Shala* Court of Appeals Decision, para. 16; *Gucati and Haradinaj* Court of Appeals Decision, paras 45, 50.

<sup>46</sup> The Pre-Trial Judge uses the term “physical perpetrators” to refer to the individuals who allegedly directly committed the crimes that the Accused are charged with through the various modes of liability referred to in the Confirmed Indictment. See also First Decision on Defects in the Form of the Indictment, footnote 241; Confirmation Decision, para. 108.

<sup>47</sup> Confirmed Amended Indictment, paras 68, 93, 105, 135, 157.

<sup>48</sup> Confirmed Amended Indictment, paras 68, 157.

<sup>49</sup> Confirmed Amended Indictment, paras 93, 135.

28. Concerning the new charge of other inhumane acts and cruel treatment in relation to the First Category of amendments, the Pre-Trial Judge notes that this charge alleges that “multiple KLA members routinely subjected detainees to severe beatings and psychological abuse”, further described by linking them to a specific time period and location.<sup>50</sup> The supporting material in some instances names KLA members alleged to have carried out such abuse,<sup>51</sup> and the allegations against these perpetrators has been confirmed.<sup>52</sup> Thus, where the SPO is able to name the direct perpetrators, the Pre-Trial Judge finds that these names shall be added to the Confirmed Amended Indictment. The SPO shall accordingly amend paragraph 105 of the Confirmed Amended Indictment to include the names of the direct perpetrators explicitly mentioned in the Rule 86(3)(b) Outline to the First Category Amendments.

29. Concerning the new charge of murder in relation to the First Category of amendments, the Pre-Trial Judge notes that this charge indicates that an order for the transfer of the victims was issued and shortly thereafter the transfer was carried out by KLA members, further described by linking them to a specific time period, KLA brigade and location.<sup>53</sup> The supporting material to this new charge names the individual who ordered the victims’ transfer as well as the KLA member into whose custody the victims were transferred,<sup>54</sup> these allegations were ultimately confirmed.<sup>55</sup> Thus, where the SPO is able to name the KLA members involved, the Pre-Trial Judge finds that these names should be added to the Confirmed Amended Indictment. The SPO shall accordingly amend

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<sup>50</sup> Confirmed Amended Indictment, para. 105.

<sup>51</sup> Rule 86(3)(b) Outline to the First Category Amendments, pp. 13-15, 18-19. *See also* KSC-BC-2020-06, F00709, Specialist Prosecutor, *Prosecution Submission of Corrected Pre-Trial Brief and Related Request*, 24 February 2022, public, with Annexes 1 and 3, strictly confidential and *ex parte*, and Annex 2, confidential, para. 390.

<sup>52</sup> Confirmation of Amendment Decision, para. 69.

<sup>53</sup> Confirmed Amended Indictment, para. 157.

<sup>54</sup> Rule 86(3)(b) Outline to the First Category Amendments, p. 25.

<sup>55</sup> Confirmation of Amendment Decision, para. 89.

paragraph 157 of the Confirmed Amended Indictment to include the names of the KLA members explicitly mentioned on page 25 of the Rule 86(3)(b) Outline to the First Category Amendments and referred to in this paragraph of the Confirmed Amended Indictment.

30. As regards the new charges underlying the Second Category of amendments, the Pre-Trial Judge notes that, at paragraph 93 of the Confirmed Amended Indictment, it is alleged that KLA members detained at least three persons at KLA headquarters in the former boarding school and dormitory in Gjilan/Gnjilane.<sup>56</sup> The Pre-Trial Judge further notes that, at paragraph 174 of the Confirmed Amended Indictment, it is alleged that two victims were taken towards the dormitory in Gjilan/Gnjilane by KLA members<sup>57</sup> and never seen again. The specific identities of the direct perpetrators of these alleged crimes are not mentioned in the supporting material to the new charges<sup>58</sup> and consequently the Pre-Trial Judge has only confirmed that these individuals are KLA members, further described by linking them to a specific time period and location.<sup>59</sup> As there is no indication that the SPO is aware of the identities of the direct perpetrators, no additional details are warranted.

31. The Pre-Trial Judge accordingly orders the SPO to amend paragraphs 105, 157 and 174 of the Confirmed Amended Indictment in the manner indicated above<sup>60</sup> and to apply the necessary redactions commensurate with authorised protective measures by Friday, 30 September 2022.

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<sup>56</sup> The new charges only relate to events in July 1999.

<sup>57</sup> *See supra*, para. 27.

<sup>58</sup> Rule 86(3)(b) Outline to the Second Category Amendments, pp. 2, 5-13.

<sup>59</sup> Confirmation of Amendments Decision, paras 122, 147-149.

<sup>60</sup> *See supra*, paras 27-29.

## B. IDENTITY OF VICTIMS

32. The Thaçi Defence submits that the pleading of the identity of victims in paragraphs 68, 93 and 105 of the Confirmed Amended Indictment is impermissibly vague.<sup>61</sup> The Thaçi Defence argues that reference to “at least twelve” victims or “at least three persons” indicates that these are not crimes of such scale where it would be impracticable to provide a high degree of specificity as to the identity of the victims and therefore failure to plead their identities renders the Confirmed Amended Indictment defective.<sup>62</sup>

33. The SPO responds that additional details regarding the victims need not be pleaded and constitute evidentiary matters for trial.<sup>63</sup> The SPO argues that victims are sufficiently identified as the victims are specified by category and group in reference to the approximate minimum number, detention location, time period and other particulars relevant to the crimes, including in some instances the name, ethnicity or political affiliation of the victim.<sup>64</sup>

34. The Pre-Trial Judge recalls that whether the identity of the victims is a material fact depends upon the alleged proximity of the accused to those events and the type of responsibility alleged by the Prosecution.<sup>65</sup> In certain circumstances, the nature and scale of the alleged crimes makes the determination of the identity of the victims impossible. In such cases, the identification of the victims as a group or the indication of their approximate number may be sufficient.<sup>66</sup> However, even in cases where a high degree of specificity is impractical, if the SPO is in a position

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<sup>61</sup> Motion, para. 22.

<sup>62</sup> Motion, para. 22.

<sup>63</sup> Response, para. 5.

<sup>64</sup> Response, para. 5.

<sup>65</sup> *Shala* Court of Appeals Decision, para. 26; First Decision on Defects in the Form of the Indictment, para. 28.

<sup>66</sup> *Shala* Court of Appeals Decision, para. 26; First Decision on Defects in the Form of the Indictment, para. 34.

to name the victims, it should do so, since the identity of the victim is information that is valuable to the preparation of the defence case.<sup>67</sup>

35. As regards the identity of the victims alleged in the new charges, the Pre-Trial Judge notes that the Thaçi Defence challenges paragraphs 68, 93 and 105 of the Confirmed Amended Indictment.<sup>68</sup> The Pre-Trial Judge considers that all the relevant victims are identified by reference to particulars relevant to the alleged crimes such as number, detention location and time period.<sup>69</sup> In addition, some are identified by political affiliation.<sup>70</sup> The Pre-Trial Judge therefore considers that detailed information as to the victims of the new charges has been provided, particularly in light of: (i) the nature and scale of the charged crimes, particularly the fact that they are alleged to have been committed against hundreds of victims; and (ii) the fact that the Accused are not charged to have physically perpetrated any of the crimes underlying the new charges themselves.<sup>71</sup>

36. The Pre-Trial Judge notes, however, that the supporting material provided in relation to the new charges clearly indicates that the SPO is in a position to provide the identities of the victims. In relation to paragraphs 68 and 105 of the Confirmed Amended Indictment, the SPO alleges that “KLA members detained at least twelve persons without due process of law in Budakovë/Budakovo” and that these individuals were “subjected to severe beatings and psychological abuse”. These twelve persons are named by the SPO in its Rule 86(3)(b) Outline to the First Category Amendments.<sup>72</sup> Thus, where the SPO is able to name the relevant victims, the Pre-Trial Judge finds that these names should be added to the Confirmed Amended Indictment. The SPO shall accordingly amend

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<sup>67</sup> *Shala* Court of Appeals Decision, para. 26.

<sup>68</sup> Motion, para. 22.

<sup>69</sup> Confirmed Amended Indictment, paras 68, 93, 105.

<sup>70</sup> Confirmed Amended Indictment, para. 105.

<sup>71</sup> First Decision on Defects in the Form of the Indictment, paras 128, 152.

<sup>72</sup> Rule 86(3)(b) Outline to the First Category Amendments, pp. 2-10, 12-20. *See also* Confirmation of Amendments Decision, paras 56-62, 67-72.

paragraphs 68 and 105 of the Confirmed Amended Indictment to include the names of the victims explicitly mentioned in the Rule 86(3)(b) Outline to the First Category Amendments.

37. In relation to paragraph 93 of the Confirmed Amended Indictment, the SPO alleges that KLA members detained at least three people without due process of law. The Pre-Trial Judge recalls that new charges only concern events in July 1999.<sup>73</sup> The SPO's supporting material indicates one individual who was detained during this time period.<sup>74</sup> Thus, where the SPO is able to name a relevant victim, the Pre-Trial Judge finds that the individual's name should be added to the Confirmed Amended Indictment. The SPO shall accordingly amend paragraph 93 of the Confirmed Amended Indictment to include the name of the victim explicitly mentioned in the Rule 86(3)(b) Outline to the Second Category Amendments.<sup>75</sup>

38. The Pre-Trial Judge accordingly orders the SPO to amend paragraphs 68, 93 and 105 of the Confirmed Amended Indictment in the manner indicated above<sup>76</sup> and to apply the necessary redactions commensurate with authorised protective measures by Friday, 30 September 2022.

### C. IDENTIFICATION OF THE LOCATION OF CRIMES

39. The Thaçi Defence submits that the pleading of the location of the commission of the alleged crimes in paragraphs 68, 105, and 157 of the Confirmed Amended Indictment is impermissibly vague.<sup>77</sup> The Thaçi Defence argues that the material facts of the SPO's case must be set out in enough detail to inform an accused clearly

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<sup>73</sup> Rule 86(3)(b) Outline to the Second Category Amendments, p. 2; Confirmation of Amendments Decision, para. 120.

<sup>74</sup> Rule 86(3)(b) Outline to the Second Category Amendments, pp. 2-3; Confirmation of Amendments Decision, paras 120-124.

<sup>75</sup> For purposes of consistency within this paragraph, the SPO should also include the names of known victims in relation to events in late June 1999.

<sup>76</sup> *See supra*, paras 36-37.

<sup>77</sup> Motion, para. 23.



of the charges against him so that he may prepare his defence.<sup>78</sup> It further argues that simply identifying the relevant village is not as much information as possible and that more information such as the building where the crimes took place should be pleaded if in possession of the SPO.<sup>79</sup>

40. The SPO responds that additional details regarding the locations of the crimes need not be pleaded and constitute evidentiary matters for trial as the location of the crimes underlying the new charges are sufficiently identified by village, municipality and the connection or use by KLA members, including in some instances by relevant brigade or operational zone.<sup>80</sup>

41. As regards the location of the commission of the new charges, the Pre-Trial Judge notes that the Thaçi Defence challenges paragraphs 68, 105 and 157 of the Confirmed Amended Indictment.<sup>81</sup> In relation to the relevant paragraphs, the Pre-Trial Judge considers that the alleged crimes are identified by name of the relevant village or municipality.<sup>82</sup> Some locations are further identified by their association to the relevant KLA brigade and operational zone.<sup>83</sup> The Pre-Trial Judge therefore considers that sufficiently detailed information as to the location of the commission of the new charges has been provided given the nature and scale of the charged crimes and the fact that the Accused are not charged to have physically perpetrated any of the crimes themselves.

42. The Pre-Trial Judge notes, however, that the SPO has been able to provide further details regarding some of the locations of the alleged crimes in its supporting material to the new charges, in particular with respect to the crimes of imprisonment and arbitrary detention<sup>84</sup> as well as other inhumane acts and cruel

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<sup>78</sup> Motion, para. 23.

<sup>79</sup> Motion, para. 23.

<sup>80</sup> Response, para. 6.

<sup>81</sup> Motion, para. 23.

<sup>82</sup> Confirmed Amended Indictment, paras 68, 105, 157.

<sup>83</sup> Confirmed Amended Indictment, paras 68, 157.

<sup>84</sup> Confirmed Amended Indictment, para. 68; Rule 86(3)(b) Outline to the First Category Amendments, pp. 2-10. *See also* Confirmation of Amendments Decision, para. 56.

treatment.<sup>85</sup> With respect to the crime of murder, the supporting material contains no further details concerning the location in which the alleged crime occurred.<sup>86</sup> Thus, where the SPO is able to provide further details regarding the location of the alleged crimes, such as the specific site of a building and/or its owner, the Pre-Trial Judge finds that the location should be added to the Confirmed Amended Indictment. The SPO shall accordingly amend paragraphs 68 and 105 of the Confirmed Amended Indictment to include the locations detailed in the Rule 86(3)(b) Outline to the First Category Amendments.

43. The Pre-Trial Judge accordingly orders the SPO to amend paragraphs 68 and 105 of the Confirmed Amended Indictment in the manner indicated above<sup>87</sup> and to apply the necessary redactions commensurate with authorised protective measures by Friday, 30 September 2022.

#### D. PLEADING OF THE ACCUSED'S ROLE IN THE CHARGED CRIMES

44. The Thaçi Defence submits that paragraphs 68, 93, 105, 157, and 174 of the Confirmed Amended Indictment are defective as they do not plead the material facts of Mr Thaçi's involvement in the crimes charged.<sup>88</sup> The Thaçi Defence argues that the lack of specificity in pleading his role and/or link is compounded by the fact that the nature of his personal participation in, or contribution to the JCE, as an aider and abettor, and a superior itself is defectively pleaded, and Mr Thaçi therefore remains unable to understand what exactly he is said to have done to participate in the commission of the crimes underlying the new charges.<sup>89</sup>

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<sup>85</sup> Confirmed Amended Indictment, para. 105; Rule 86(3)(b) Outline to the First Category of Amendments, pp. 12-20. *See also* Confirmation of Amendments Decision, para. 69.

<sup>86</sup> Confirmed Amended Indictment, para. 157; Rule 86(3)(b) Outline to the First Category of Amendments, pp. 24-25. *See also* Confirmation of Amendments Decision, paras 88-90.

<sup>87</sup> *See supra*, para. 42.

<sup>88</sup> Motion, paras 24-25.

<sup>89</sup> Motion, para. 26.

45. The SPO responds that when the new charges are read together with the rest of the Confirmed Amended Indictment, it is evident that the Accused are responsible through their participation in a JCE, as aider and abettors and/or as superiors.<sup>90</sup> The SPO argues that, in light of the Pre-Trial Judge's previous finding that the charged modes of liability are pleaded with sufficient clarity and specificity, additional detail regarding the Accused's alleged link or role need not be provided in the new charges.<sup>91</sup>

46. As regards Mr Thaçi's involvement in the crimes charged, the Pre-Trial Judge notes that the Thaçi Defence challenges paragraphs 68, 93, 105, 157, and 174 of the Confirmed Amended Indictment.<sup>92</sup> The Pre-Trial Judge recalls that the Accused are alleged to bear responsibility for the new charges: (i) through their participation in a JCE and/or as aiders and abettors;<sup>93</sup> and/or (ii) as superiors for crimes committed by their subordinates.<sup>94</sup> The Pre-Trial Judge further recalls that none of the aforementioned modes of liability contain an element requiring the Accused to have played a direct role in the commission of the charged crimes.<sup>95</sup> Rather, Mr Thaçi's link to the charged crimes is to be established by means of his: (i) contribution to the common purpose which amounts to or involves the commission of a crime provided for in the Law (JCE);<sup>96</sup> (ii) assistance, encouragement or moral support to the commission of a crime where this support has a substantial effect on the perpetration of the crime (aiding and abetting);<sup>97</sup> and/or (iii) failure to take necessary and reasonable measures to prevent the crimes of *de jure* or *de facto* subordinates or to punish the perpetrators of crimes

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<sup>90</sup> Response, para. 7.

<sup>91</sup> Response, para. 8.

<sup>92</sup> Motion, para. 24.

<sup>93</sup> Confirmed Amended Indictment, paras 32-54, 178-179.

<sup>94</sup> Confirmed Amended Indictment, paras 55-57, 178-179.

<sup>95</sup> First Decision on Defects in the Form of the Indictment, para. 174.

<sup>96</sup> Confirmation Decision, paras 106-110.

<sup>97</sup> Confirmation Decision, para. 116.

committed by such subordinates (superior responsibility).<sup>98</sup> Furthermore, the Pre-Trial Judge recalls that charged modes of liability have been found to be pleaded with sufficient clarity and specificity.<sup>99</sup> The Pre-Trial Judge accordingly finds that additional details as regards the Accused's alleged link to the charged crimes and the role allegedly played by them therein need not be pleaded further with respect to the new charges in the Confirmed Amended Indictment.

#### E. CONCLUSION

47. In light of the foregoing, the Pre-Trial Judge finds that, considering: (i) the structure of the Confirmed Amended Indictment; (ii) the specific and detailed information provided; (iii) the nature and circumstances of the case and the scale of the charged crimes; and (iv) the fact that the Accused are not charged to have physically perpetrated any of the alleged crimes underlying the new charges themselves, the Confirmed Amended Indictment sets out with sufficient clarity and specificity the facts underpinning the new charges, including the modes of liability charged. However, in light of the fact that the SPO is in a position to provide further specificity, the Pre-Trial Judge finds that new charges in the Confirmed Amended Indictment shall be amended in the manner indicated in paragraphs 27-29, 36-37 and 42, above. The Thaçi Defence's remaining challenges to the form of the Confirmed Amended Indictment are accordingly rejected.

#### F. EXTENSION OF TIME LIMIT TO REQUEST CERTIFICATION TO APPEAL

48. The Pre-Trial Judge notes that, in accordance with Rule 77(1) of the Rules, 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

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<sup>98</sup> Confirmation Decision, paras 118-121; First Decision on Defects in the Form of the Indictment, para. 174.

<sup>99</sup> First Decision on Defects in the Form of the Indictment, paras 57-126.

seven (7) days thereof. In light of the upcoming summer judicial recess,<sup>100</sup> the Pre-Trial Judge considers it appropriate to vary, pursuant to Rule 9(5)(a) of the Rules, the time limit for requesting certification to appeal the present decision. Accordingly, any such request(s) shall be filed by Friday, 19 August 2022. Any related responses and replies shall follow the time limits set out in Rule 76 of the Rules.

## VI. DISPOSITION

49. For the foregoing reasons, the Pre-Trial Judge hereby:

- a. **GRANTS** the Request, in part;
- b. **ORDERS** the SPO to add the names of the relevant direct perpetrators to paragraphs 105, 157 and 174 of the Confirmed Amended Indictment as indicated in paragraphs 27-29, above;
- c. **ORDERS** the SPO to add the names of the relevant victims to paragraphs 68, 93 and 105 of the Confirmed Amended Indictment as indicated in paragraphs 36-37, above;
- d. **ORDERS** the SPO to add the relevant locations to paragraphs 68 and 105 of the Confirmed Amended Indictment as indicated in paragraph 4240, above;
- e. **ORDERS** the SPO to file a strictly confidential, confidential and public redacted version, as the case may be, of a further amended Confirmed Amended Indictment by **Friday, 30 September 2022**; and
- f. **VARIES** the time limit for any request(s) for certification to appeal the present decision and **ORDERS** that any such request(s) be filed by **Friday, 19 August 2022**.

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<sup>100</sup> The summer judicial recess runs from Monday, 25 July 2022, to Friday, 12 August 2022, *see* KSCPR-2021, President, *Judicial Recess Periods for 2022*, 11 November 2021, public.



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**Judge Nicolas Guillou**

**Pre-Trial Judge**

Dated this Friday, 22 July 2022  
At The Hague, the Netherlands.