

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

Filing Participant: Specialist Counsel for Hashim Thaçi

Date: 28 April 2022

Language: English

Classification: Public

**Thaçi Defence Request for an Extension of Time for Request for Certification to
Appeal "Decision on the Confirmation of Amendments to the Indictment Against
Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi"**

Specialist Prosecutor

Jack Smith

Counsel for Victims

Simon Laws

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson

Counsel for Rexhep Selimi

David Young

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Venkateswari Alagenda

I. PROCEDURAL BACKGROUND AND INTRODUCTION

1. On 26 October 2020, the Pre-Trial Judge (“PTJ”) confirmed the indictment¹ against Mr Hashim Thaçi (“Accused”) and his co-accused.² In a decision dated 22 July 2021, the PTJ ordered the SPO to file a corrected version of the Indictment.³ On 3 September 2021, the SPO filed a corrected indictment as ordered and requested leave pursuant to Article 39(8) of the Law⁴ and Rule 90(1)(b) of the Rules⁵ to amend the Indictment to include three categories of allegations (collectively known as “Proposed Amendments”).⁶

2. On 23 December 2021, the PTJ issued the “Decision Concerning Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)” (First Decision on Request to Amend).⁷ In this Decision, the PTJ granted the SPO’s motion to amend the Indictment in relation to the Third Category of Proposed Amendments which he held were not new charges.⁸ Further, he found that the First and Second Categories of amendments were new charges and therefore must be assessed “against the requisite evidentiary threshold of ‘well-grounded suspicion’, as per Rule 86(4) of the Rules, in light of the evidence submitted, as per Rule 86(3) of the Rules.”⁹ He further requested that the Defence, should it so wish, file submissions in response to

¹ KSC-BC-2020-06/F000134, Lesser Redacted Version of Redacted Indictment, KSC-BC-2020-06/F00045/A02, 4 November 2020, 11 December 2020 (“Indictment”).

² KSC-BC-2020-06/F00026/CONF/RED, Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, 20 October 2020 (“Confirmation Decision”).

³ KSC-BC-2020-06/F00413, Decision on Defence Motions Alleging Defects in the Form of the Indictment, 22 July 2021.

⁴ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“the Law”).

⁵ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”).

⁶ KSC-BC-2020-06/F00455/CONF/RED, Confidential Redacted Version of ‘Submission of corrected Indictment and request to amend pursuant to Rule 90(1)(b)’, KSC-BC-2020-06/F00455, dated 3 September 2021 with confidential redacted Annexes 1-3, confidential Annex 4, and confidential redacted Annex 5, 8 September 2021 (“Submission of Corrected Indictment and Request to Amend”).

⁷ KSC-BC-2020-06/F00635/CONF, Decision Concerning Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b), 23 December 2021.

⁸ First Decision on Request to Amend, paras. 26, 28, 53a.

⁹ First Decision on Request to Amend, para. 28.

the Request, on whether the supporting material to the First and Second Categories of amendments supported a well-grounded suspicion pursuant to Rule 86(4).¹⁰

3. On 31 January 2022, the Defence for Hashim Thaçi filed its response submitting that a well-grounded suspicion had not been established in relation to the First and Second Categories of Amendments.¹¹

4. On 4 February 2022, the SPO replied to the Thaçi response.¹²

5. On 22 March 2022, the Court of Appeals denied the Defence appeal on the First Decision on Request to Amend.¹³

6. On 22 April 2022, the PTJ issued a decision confirming the First and Second Categories of Amendments to the Indictment (“Impugned Decision”). He further ordered the SPO to submit an amended indictment with the First and Second Categories of Amendments; and a revised Outline by 29 April 2022.¹⁴

7. The Accused is to be re-arraigned on the new indictment on 10 May 2022.¹⁵

8. In accordance with Rule 77(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“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. Rule 9(5)(a)

¹⁰ First Decision on Request to Amend, para. 53, *see also* paras. 47, 48.

¹¹ KSC-BC-2020-06, F00666, Thaci Defence Motion on Whether There is a Well Grounded Suspicion in Relation to the SPO’s Request to Amend the Indictment, 31 January 2022, confidential.

¹² KSC-BC-2020-06, F00680, Prosecution Reply Regarding Request to Amend Pursuant to Rule 90(1)(b), 4 February 2022, confidential.

¹³ KSC-BC-2020-06, IA018, F00007, Decision on Defence Appeals Against Decision Concerning Request to Amend the Indictment Pursuant to Rule 90(1)(b) of the Rules, 22 March 2022, public.

¹⁴ KSC-BC-2020-06, F00777, Confidential Redacted Version of Decision on the Confirmation of the Indictment against Hashim Thaci, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, 22 April 2022.

¹⁵ Impugned Decision, p. 70; *see also* Emails from Court Management Unit on 25 and 26 April 2022 confirming the 10 May 2022 date.

of the Rules allows for the variation of any time limit prescribed by the Rules, upon a showing of good cause or *proprio motu*.

9. The Defence submits that good cause exists in the present case for a limited variation of the time limit **until Monday, 23 May 2022**, for the reasons set out below.

II. SUBMISSIONS

10. There can be no doubt that the issues raised by the Defence and adjudicated in the Impugned Decision are complex. The Impugned Decision confirming the new charges is 71 pages and provides multiple additional potential bases for conviction of Mr Thaçi. The period of time taken by the Pre-Trial Judge to render the Impugned Decision was significant,¹⁶ reflecting the complexity of the legal and factual questions at issue.

11. Rule 77(1)'s timeframe of seven (7) days within which to seek certification of decisions applies equally to decisions on simple procedural questions, and lengthy and complex rulings such as the Impugned Decision. 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.

12. The Court of Appeals panel has also reiterated that it is in the interests of justice to ensure that parties before the Specialist Chambers can file meaningful appellate submissions on matters comparable to those raised in the Impugned Decision.¹⁷

¹⁶ The SPO's Reply was filed on 4 February 2022, meaning that the Impugned Decision was rendered 2 months and 21 days after the close of the written pleadings: see, *e.g.*, KSC-BC-2020-06, F00680, Prosecution Reply Regarding Request to Amend Pursuant to Rule 90(1)(b), 4 February 2022, confidential.

¹⁷ KSC-BC-2020-06/IA009/F00024, Decision on Selimi's Request for Variation of Word Limit, 14 October 2021, and the decisions referred to in footnote 11 therein.

13. The requested variation would allow the parties to seek effective instructions and consult internally about whether certain challenges should indeed be pursued on appeal. This process of analysing the Impugned Decision to determine whether legitimate and credible avenues of appeal exist, and framing errors in a manner that seek to meet 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.

14. Thirdly, the variation being requested is a reasonable and limited one. Given the good cause for the limited variation being sought, the Defence submits that the additional time will negate any prejudice which could arise from the delayed adjudication of these central questions.

III. RELIEF SOUGHT

15. Accordingly, the Defence respectfully requests the Pre-Trial Judge 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 request for certification to appeal the Impugned Decision be filed by **Monday 23 May 2022**.

Word count: 1192 words

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "G. W. Kehoe". The signature is written over a white rectangular redaction box.

Gregory W. Kehoe

Counsel for Hashim Thaçi

Thursday 28 April, 2022

At Tampa, United States