

In: KSC-BC-2023-12
Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuçi

Before: Pre-Trial Judge
Judge Marjorie Masselot

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Isni Kilaj

Date: 5 February 2025

Language: English

Classification: Public

**Joint Defence Request for Further Variation
of Time Limit to File Preliminary Motions**

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I. INTRODUCTION

1. This is a joint request made pursuant to Rules 9(5)(a) and 76 of the Rules of Procedure and Evidence (“Rules”) by the Defence for Messrs Hashim Thaçi, Bashkim Smakaj, Isni Kilaj and Hajredin Kuçi (collectively, “Defence”, “Accused”) for a further variation of the time limit to file preliminary motions under Rule 97. It is submitted that good cause exists to vary the time limit because the Defence should not have to file their preliminary motions until such time as there is a definitive version of both a confirmed indictment and a detailed outline of the Prosecution’s case against each Accused pursuant to Rule 86(3) of the Rules.

II. PROCEDURAL HISTORY

2. On 29 November 2024, the Pre-Trial Judge issued the “Decision on the Confirmation of the Indictment” confirming, in part, the charges against the Accused (“Confirmation Decision”).¹

3. On 2 December 2024, the Specialist Prosecutor’s Office (“SPO”, “Prosecution”) filed the confirmed indictment (“Confirmed Indictment”).²

4. On 9 December 2024, the SPO filed a strictly confidential and *ex parte* request for leave to appeal the Confirmation Decision on four grounds (“SPO Request”).³

5. On 7 January 2025, the SPO completed disclosure of its evidence under Rule 102(1)(a).⁴

¹ Decision on the Confirmation of the Indictment, KSC-BC-2023-12/F00036, 29 November 2024, confidential.

² Submission of Confirmed Indictment, KSC-BC-2023-12/F00040, 2 December 2024, strictly confidential, with the Confirmed Indictment in Annex 1, strictly confidential (public redacted version filed on 6 December 2024)

³ Prosecution Request for Leave to Appeal the “Decision on the Confirmation of the Indictment” (F00036), 9 December 2024, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte* (reclassified as confidential on 18 December 2024)

⁴ Disclosure Packages 6 and 8

6. On 15 January 2025, the Pre-Trial Judge confirmed that the time limit for filing preliminary motions under Rule 97(2) was 7 February 2025.⁵
7. On 22 January 2025, the Defence for Messrs Thaçi and Kilaj filed their responses to the SPO Request (“Defence Responses”).⁶
8. On 24 January 2025, the Pre-Trial Judge issued her decision on Mr Thaçi’s request for a variation of the Rule 97(2) deadline, granting the request in part and extending the deadline to 4 March 2025 (“Extension Decision”).⁷
9. On 27 January 2025, the Prosecution replied to the Defence Responses.⁸
10. On 30 January 2025, the Pre-Trial Judge granted the SPO Request for leave to appeal on all four grounds (“Leave to Appeal Decision”).⁹

III. SUBMISSIONS

11. Rule 97(1) of the Rules permits the Accused to file preliminary motions before the Pre-Trial Judge which: (a) challenge the jurisdiction of the Specialist Chambers; (b) allege defects in the form of the indictment; and (c) seek the severance of indictments pursuant to Rule 89(2).
12. Until a Panel of the Court of Appeals Chamber delivers a decision on the Prosecution’s appeal of the Confirmation Decision, the definitive contours of the indictment remain unknown.

⁵ KSC-BC-2023-12, CRSPD20, 15 January 2025, confidential

⁶ Thaçi Defence Response to “Prosecution Request for Leave to Appeal the ‘Decision on the Confirmation of the Indictment’ (F00036)”, KSC-BC-2023-12/F00131, 22 January 2025, confidential; Kilaj Response to “Prosecution Request for Leave to Appeal the ‘Decision on the Confirmation of the Indictment’ (F00036)”, KSC-BC-2023-12/F00132, 22 January 2025, confidential

⁷ Decision on Thaçi Defence Request for Variation of the Time Limit for Preliminary Motions, KSC-BC-2023-12/F00135, 24 January 2025; *see also* Thaçi Defence Request for Variation of the Time Limit for Preliminary Motions, KSC-BC-2023-12/F00122, 20 January 2025

⁸ Prosecution Consolidated Reply to Defence Responses to Leave to Appeal Request, KSC-BC-2023-12/F00139, 27 January 2025, confidential

⁹ Decision on Specialist Prosecutor’s Request for Leave to Appeal the “Decision on the Confirmation of the Indictment”, KSC-BC-2023-12/F00149, dated 30 January 2025 but filed on 31 January 2025

13. Pursuant to Rule 170(2), the Prosecution has until 12 February 2025 to file its appeal. The Defence may respond within ten days thereafter; the SPO may reply within five days of any responses. It is likely that the appeal will not be fully briefed, therefore, before 3 March 2025. It is unrealistic to suppose the Court of Appeals Panel will deliver its decision before the preliminary motions deadline of 4 March 2025.

14. If the Court of Appeals Panel ultimately rules against the Prosecution, nothing will change. If, however, it rules in favour of the Prosecution, a revised indictment will have to be submitted to the Pre-Trial Judge for confirmation and a new confirmation decision will have to be prepared. In addition, it would be expected that a new detailed outline of the Prosecution's case against each Accused would be filed under Rule 86(3).

15. It is submitted that the Defence should not be expected to prepare and file their preliminary motions until the question of the scope and form of the indictment is finally settled. Any preliminary motions filed by 4 March 2025 – as well as subsequent responses, replies, and the Pre-Trial Judge's decision disposing thereof, as set out in Rule 97(2) – may well be based on an outdated version of the indictment that will later be changed. The Defence would then have the right to file fresh, revised, preliminary motions based on a new confirmed indictment. It need hardly be said that this would represent an inefficient use of the Defence's, Prosecution's and Pre-Trial Judge's precious time and resources.

16. It is worth underscoring that this state of affairs is not of the Defence's own making. The Defence recalls that it vigorously opposed the SPO Request for leave to appeal.

17. In all the circumstances, the Defence submits that good cause exists for the requested variation of the time limit to file preliminary motions.

IV. CONCLUSION

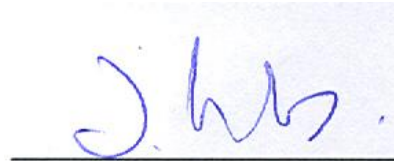
18. For the foregoing reasons, it is respectfully requested that the Pre-Trial Judge further vary the time limit to file preliminary motions until either:

- (i) 30 days from the date of a decision of the Court of Appeals Panel dismissing the SPO's appeal; or
- (ii) 30 days from the date of the filing of a new confirmed indictment and Rule 86(3) outline resulting from a decision of the Court of Appeals Panel allowing the SPO's appeal.

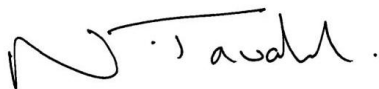
Respectfully submitted.



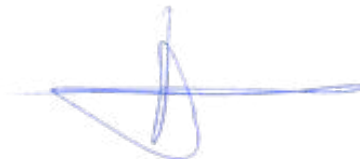
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