



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA 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: 30 October 2020

Language: English

Classification: **Strictly Confidential and *Ex Parte***

Decision Authorising Temporary Redactions

Specialist Prosecutor

Jack Smith

THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(3) and (11) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 87(1), 105(1), and 108(1)(a)-(b) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders the following decision.

I. PROCEDURAL BACKGROUND

1. On 26 October 2020, the Pre-Trial Judge issued a decision confirming the indictment ("Confirmation Decision")² against Hashim Thaçi ("Mr Thaçi"), Kadri Veseli ("Mr Veseli"), Rexhep Selimi ("Mr Selimi"), and Jakup Krasniqi ("Mr Krasniqi") (collectively, the "Accused") and issued arrest warrants and corresponding transfer orders for the Accused.³ On the same day, the Pre-Trial Judge also authorized search and seizure with respect to the person of the Accused, the location of their arrest, and the Accused's, residences, offices, and vehicles.⁴

2. On 30 October 2020, the Specialist Prosecutor's Office ("SPO") submitted: (i) a further revised indictment ("Confirmed Indictment")⁵; and (ii) a redacted version of the Confirmed Indictment ("Redacted Indictment").⁶ He also requested that the Pre-Trial Judge authorise the application of certain temporary redactions to the arrest warrant, transfer order, and decision authorizing search and seizure pertaining to

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

² 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*, 26 October 2020, strictly confidential and *ex parte*.

³ KSC-BC-2020-06, F00027, Pre-Trial Judge, *Decision on Request for Arrest Warrants and Transfer Orders* ("Decision on Arrests and Transfers"), 26 October 2020, strictly confidential and *ex parte*, with Annexes 1-8, strictly confidential and *ex parte*. Corrected versions of Annexes 7 and 8 were filed on 28 October 2020 as F00027/A07/COR and F00027/A08/COR, respectively.

⁴ KSC-BC-2020-06, F00028, *Decision Authorising Search and Seizure*, 26 October 2020, strictly confidential and *ex parte*; F00029, *Decision Authorising Search and Seizure*, 26 October 2020, strictly confidential and *ex parte*; F00030, *Decision Authorising Search and Seizure*, 26 October 2020, strictly confidential and *ex parte*; F00031, *Decision Authorising Search and Seizure*, 26 October 2020, strictly confidential and *ex parte*. A corrected version of the decision authorising search and seizure with respect to Mr Krasniqi was filed on 28 October 2020 as F00031/COR.

⁵ KSC-BC-2020-06, F00034/A01, *Indictment*, 30 October 2020, strictly confidential and *ex parte*.

⁶ KSC-BC-2020-06, F00034/A02, *Indictment*, 30 October 2020, strictly confidential and *ex parte*.

Mr Krasniqi, as well as delayed service of the Redacted Indictment upon him or, alternatively, service of a version thereof containing further redactions.⁷

II. SUBMISSIONS

3. The SPO submits that, for operational, investigative, and security reasons, it anticipates that the arrest and/or search and seizure operations relating to Mr Krasniqi will take place at least one day before the other Accused.⁸ In these circumstances, the SPO avers that, should the Redacted Indictment, as well as the arrest warrant, transfer order, and decision authorizing search and seizure pertaining to Mr Krasniqi be served upon him in their current form, there is a concrete risk that the other Accused will become aware of the information contained therein, including their status as accused persons and details of the charges against them.⁹ This, in turn, will generate concrete risks that the Accused will flee, interfere with victims and witnesses, obstruct the proceedings, and commit further crimes.¹⁰

4. The SPO therefore requests that the Pre-Trial Judge authorise the SPO and/or the Registry, as applicable, to temporarily redact, until the confirmation of the arrest of all four Accused: (i) the identities of the other Accused in the arrest warrant, transfer order, and decision on search and seizure pertaining to Mr Krasniqi; and (ii) the 'Statement of Facts' section from the arrest warrant for Mr Krasniqi.¹¹ Moreover, the SPO requests that the Pre-Trial Judge: (i) authorise that the Redacted Indictment only be served on Mr Krasniqi following confirmation of the arrest of all Accused; or (ii) authorise the SPO to apply further redactions to the Confirmed Indictment ("Further Redacted Indictment")¹² and order that the Further Redacted Indictment

⁷ KSC-BC-2020-06, F00034, *Submission of Confirmed Indictment and Related Requests* ("Request"), 30 October 2020, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

⁸ Request, para. 2.

⁹ Request, para. 2.

¹⁰ Request, para. 2.

¹¹ Request, para. 3(a).

¹² KSC-BC-2020-06, F00034/A03, *Indictment*, 30 October 2020, strictly confidential and *ex parte*.

initially be served on Mr Krasniqi, until confirmation of the arrest of all four Accused.¹³ Lastly, the SPO requests the opportunity to apply further redactions to the Redacted Indictment before its disclosure to the public, upon transfer of all four Accused to the detention facilities of the Specialist Chambers, and, in any event, no later than their initial appearance(s).¹⁴

III. APPLICABLE LAW

5. In accordance with Article 39(11) of the Law, the Pre-Trial Judge may, where necessary, provide for the protection and privacy of victims and witnesses, the preservation of evidence, and the protection of persons and national security information.

6. Pursuant to Rule 87(1) of the Rules, upon confirmation of the indictment and without undue delay, service of the indictment shall be effected personally on the accused by the Registrar. The Registrar shall serve upon the accused a certified copy of the indictment, together with a translation thereof into a language the accused understands and speaks.

7. Pursuant to Rule 88(2) of the Rules, an indictment shall be made public, with redactions where necessary, no later than the accused's initial appearance.

8. Pursuant to Rule 105(1) of the Rules, in exceptional circumstances, the Parties may apply to the Panel for interim non-disclosure of the identity of a witness or a victim participating in the proceedings at risk until appropriate protective measures have been ordered.

9. Pursuant to Rule 108(1) of the Rules, where information in the custody, control or actual knowledge of the Specialist Prosecutor is subject to disclosure but such disclosure may, *inter alia*, prejudice ongoing or future investigations or cause grave

¹³ Request, para. 3(b)-(c).

¹⁴ Request, para. 5.

risk to the security of a witness, victim participating in the proceedings or members of his or her family, the Specialist Prosecutor may apply confidentially and *ex parte* to the Panel to withhold the information in whole or in part.

IV. DISCUSSION

A. REDACTIONS OF IDENTITIES OF CO-ACCUSED AND “CRIMES AND CONCISE STATEMENT OF FACTS”

10. In relation to the SPO’s request for temporary redactions to the arrest warrant, transfer order, and decision on search and seizure pertaining to Mr Krasniqi, the Pre-Trial Judge recalls his findings that: (i) there are articulable grounds to believe that there is a risk that each of the Accused may flee, obstruct the progress of proceedings by influencing witnesses, victims or accomplices, or commit further crimes;¹⁵ and (ii) the SPO demonstrated good cause justifying the temporary non-disclosure of the Confirmed Indictment and related documents.¹⁶ Considering further the SPO’s submission that the arrest and/or search and seizure operations relating to Mr Krasniqi will take place at least a day before the other Accused,¹⁷ the Pre-Trial Judge finds that serving the unredacted arrest warrant, transfer order, and decision on search and seizure pertaining to Mr Krasniqi on him immediately upon his arrest poses a concrete risk that the other Accused would become aware of the charges against them and the details thereof, which, in turn, entails a concrete risk that they will flee, obstruct the progress of proceedings by influencing witnesses, victims or accomplices, or commit further crimes. The Pre-Trial Judge further notes that the proposed redactions are limited in scope¹⁸ and that unredacted versions of each of the three documents will be provided to Mr Krasniqi upon confirmation of the arrest of

¹⁵ Decision on Arrests and Transfers, paras 31, 35, 39, 43.

¹⁶ Confirmation Decision, para. 517.

¹⁷ Request, para. 2.

¹⁸ Request, para. 3(a) and footnote 10.

the other three Accused.¹⁹ Accordingly, the Pre-Trial Judge finds that the proposed temporary redactions are both necessary and proportionate.

B. SERVICE OF CONFIRMED INDICTMENT

11. In relation to the SPO's request for delayed service of the Redacted Indictment upon Mr Krasniqi or, alternatively, for service of the Further Redacted Indictment until confirmation of the arrest of all four Accused, the Pre-Trial Judge recalls that, pursuant to Rule 87(1) of the Rules, service of the indictment on an accused person shall take place without undue delay. That being said, and mindful of the above findings as to the concrete risks arising from disclosing to Mr Krasniqi the identities of the other Accused pending their arrest, the Pre-Trial Judge considers it appropriate for Mr Krasniqi to receive immediately upon his arrest the Further Redacted Indictment, as proposed by the SPO. Following confirmation of the arrest of all four Accused, the Registrar shall immediately serve the Redacted Indictment on Mr Krasniqi.

C. PUBLIC REDACTED VERSION OF CONFIRMED INDICTMENT

12. In relation to the SPO's request for the opportunity to apply further redactions to the Redacted Indictment before its disclosure to the public, the Pre-Trial Judge recalls Rule 88(2) of the Rules and, in these circumstances, orders the SPO to file a further redacted version of the Confirmed Indictment for the purposes of its disclosure to the public no later than the initial appearance of any of the Accused.

¹⁹ Request, footnote 11.

V. DISPOSITION

13. For the above reasons, the Pre-Trial Judge hereby:

- a. **AUTHORISES** the SPO and/or the Registrar, as applicable, to temporarily redact, until the confirmation of the arrest of all four Accused: (i) the references to Mr Thaçi, Mr Veseli, and Mr Selimi in the arrest warrant, transfer order, and decision on search and seizure pertaining to Mr Krasniqi; and (ii) the “Crimes and Concise Statement of Facts” section in the arrest warrant for Mr Krasniqi;
- b. **AUTHORISES** the SPO to apply the redactions contained in the Further Redacted Indictment for the purposes of service on Mr Krasniqi;
- c. **ORDERS** the Registrar to serve the Further Redacted Indictment on Mr Krasniqi upon his arrest;
- d. **ORDERS** the Registrar to serve the Redacted Indictment on Mr Krasniqi upon confirmation of the arrest of all four Accused; and
- e. **ORDERS** the SPO to file a further redacted version of the Confirmed Indictment for the purposes of its disclosure to the public no later than the initial appearance of any of the Accused



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Friday, 30 October 2020

At The Hague, the Netherlands.