



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: 11 November 2020

Language: English

Classification: Public

Order Setting the Date for a Status Conference and for Submissions

Specialist Prosecutor
Jack Smith

Counsel for Hashim Thaçi
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THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(13) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 96(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this order.

I. PROCEDURAL BACKGROUND

1. On 26 October 2020, the Pre-Trial Judge confirmed the indictment against Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi ("Mr Thaçi", "Mr Veseli", "Mr Selimi", and "Mr Krasniqi", respectively, and collectively referred to as "Accused").²
2. On 30 October 2020, the Specialist Prosecutor submitted the Confirmed Indictment,³ with redactions as authorised by the Pre-Trial Judge.⁴
3. On 4 and 5 November 2020, upon order of the Pre-Trial Judge,⁵ Mr Krasniqi, Mr Thaçi, Mr Veseli and Mr Selimi were arrested⁶ and transferred to the

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* ("Confirmation Decision"), 26 October 2020, strictly confidential and *ex parte*.

³ KSC-BC-2020-06, F00034/A01, Specialist Prosecutor, *Indictment*, 30 October 2020, strictly confidential and *ex parte*. A public redacted corrected Confirmed Indictment, correcting certain clerical errors, was submitted on 4 November 2020, F00045/A03, public.

⁴ Confirmation Decision, para. 521(c)-(d).

⁵ KSC-BC-2020-06, F00027, Pre-Trial Judge, *Decision on Request for Arrest Warrants and Transfer Orders*, 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.

⁶ KSC-BC-2020-06, F00044, Registrar, *Notification of Arrest of Jakup Krasniqi Pursuant to Rule 55(4)*, 4 November 2020, strictly confidential and *ex parte*; KSC-BC-2020-06, F00049, Registrar, *Notification of Arrest of Rexhep Selimi Pursuant to Rule 55(4)*, 5 November 2020, strictly confidential and *ex parte*; F00050, Registrar, *Notification of Arrest of Kadri Veseli Pursuant to Rule 55(4)*, 5 November 2020, strictly confidential and *ex parte*; F00051, Registrar, *Notification of Arrest of Hashim Thaçi Pursuant to Rule 55(4)*, 5 November 2020, strictly confidential and *ex parte*.

detention facilities of the Specialist Chamber (“SC”) in The Hague, the Netherlands.⁷

4. Between 9 and 11 November 2020, initial appearances were held for Mr Krasniqi,⁸ Mr Thaçi,⁹ Mr Veseli,¹⁰ and Mr Selimi.¹¹ During the initial appearances, the Accused all stated that they understand and speak Albanian.¹²

II. APPLICABLE LAW

A. STATUS CONFERENCE

5. Pursuant to Rule 96(1) of the Rules, the Pre-Trial Judge shall convene a status conference as soon as possible after the initial appearance of the Accused in order to, *inter alia*: (i) organise exchanges between the Parties and, where applicable, Victims’ Counsel so as to ensure expeditious preparation for trial; and (ii) take steps to ensure that all necessary preparations are being conducted by the Parties in a timely and diligent fashion.

⁷ KSC-BC-2020-06, F00048, Registrar, *Notification of Reception of Jakup Krasniqi in the Detention Facilities of the Specialist Chambers*, 4 November 2020, strictly confidential and *ex parte*, with Annex, strictly confidential and *ex parte*; KSC-BC-2020-06, F00053, Registrar, *Notification of Reception of Hashim Thaçi in the Detention Facilities of the Specialist Chambers and Appointment of Counsel*, 5 November 2020, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*; F00054, Registrar, *Notification of Reception of Kadri Veseli in the Detention Facilities of the Specialist Chambers and Appointment of Counsel*, 5 November 2020, strictly confidential and *ex parte*, with Annexes 1-2, strictly confidential and *ex parte*; F00055, Registrar, *Notification of Reception of Rexhep Selimi in the Detention Facilities of the Specialist Chambers*, 5 November 2020, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*.

⁸ KSC-BC-2020-06, F00052, Pre-Trial Judge, *Decision Setting the Date for the Initial Appearance and Related Matters*, 5 November 2020, public, para. 21(a). *See also* Draft Transcript, 9 November 2020.

⁹ KSC-BC-2020-06, F00057, Pre-Trial Judge, *Decision Setting the Date for the Initial Appearance and Related Matters*, 6 November 2020, public, para. 20(a). *See also* Draft Transcript, 9 November 2020.

¹⁰ KSC-BC-2020-06, F00060, Pre-Trial Judge, *Decision Setting the Date for the Initial Appearance and Related Matters*, 6 November 2020, public, para. 20(a). *See also* Draft Transcript, 10 November 2020.

¹¹ KSC-BC-2020-06, F00061, Pre-Trial Judge, *Decision Setting the Date for the Initial Appearance and Related Matters*, 6 November 2020, public, para. 20(a). *See also* Draft Transcript, 11 November 2020.

¹² KSC-BC-2020-06, Draft Transcript, 9 November 2020, p. 4, line 21 to p. 5, line 2, p. 29, lines 12-16; Draft Transcript, 10 November 2020, p. 59, lines 18-22; Draft Transcript, 11 November 2020, p. 79, lines 17-23.

B. DISCLOSURE

6. Pursuant to Article 21(6) of the Law, all material and relevant evidence or facts in possession of the SPO which are for or against the Accused shall be made available to the Accused before the beginning of and during the proceedings, subject only to restrictions which are strictly necessary and when any necessary counter-balance protections are applied. Pursuant to Rule 102(3) of the Rules, the SPO shall provide detailed notice to the Defence of any material and evidence in its possession.

7. Pursuant to Rule 102(1)(a) of the Rules, and subject to Rules 105, 106, 107, and 108 of the Rules, the SPO shall make available to the Defence and, where applicable, Victims' Counsel, as soon as possible and at least within 30 days of the initial appearance, the supporting material to the Confirmed Indictment as well as any statement obtained from the Accused.

8. Pursuant to Rule 102(1)(b) of the Rules, within a time limit set by the Pre-Trial Judge, and no later than 30 days prior to the opening of the Specialist Prosecutor's case, the SPO shall make available to the Defence the following material: (i) the statements of all witnesses whom the SPO intends to call to testify at trial, in a language the Accused understand and speak; (ii) all other witness statements, expert reports, depositions, or transcripts that the SPO intends to present at trial; and (iii) the exhibits that the SPO intends to present at trial.

9. Pursuant to Rule 102(2) and (4) of the Rules, any statement of additional SPO witnesses, which have not been disclosed within the 30-day time limit prior to the opening of the Specialist Prosecutor's case and whom the SPO intends to call to testify at trial, shall be made available to the Defence as soon as possible, in a language the Accused understand and speak, and shall be accompanied by reasons for the late disclosure. Such disclosure shall be finalised during the pre-trial stage.

10. Pursuant to Rule 102(3) of the Rules, the SPO shall disclose to the Defence, upon request and without delay, any statements, documents, and photographs and allow

inspection of other tangible objects in the custody or control of the SPO, which are deemed by the Defence to be material to its preparation, or were obtained from or belonged to the Accused.

11. Pursuant to Rule 103 of the Rules, and subject to Rules 107 and 108 of the Rules, the SPO shall immediately disclose to the Defence any information as soon as it is in its custody, control or actual knowledge, which may reasonably suggest the innocence or mitigate the guilt of the Accused or affect the credibility or reliability of the SPO's evidence.

12. Pursuant to Rule 107(1)-(2) of the Rules, the SPO shall apply confidentially and *ex parte* to the Panel to be relieved in whole or in part of its obligation under Rules 102 and 103 of the Rules to disclose initial material if the information, of which it has custody or control, has been provided on a confidential basis and solely for the purpose of generating new evidence and for which it has not received the information provider's consent to disclose.

C. REDACTIONS

13. Pursuant to Article 23(1) of the Law and Rule 80(1) of the Rules, a Panel may order appropriate measures for the protection, safety, physical and psychological well-being, dignity and privacy of witnesses, victims participating in the proceedings, as well as other persons at risk on account of testimony given by witnesses.

14. Pursuant to Rule 80(4)(a)(i)-(iii) and (d) of the Rules, such measures may include the redaction of names and other identifying information in order to prevent disclosure to the Accused and/or the public, where necessary, of the identity and/or whereabouts of a witness, a victim participating in the proceedings or of a person related to or associated with them.

15. Pursuant to Rule 108(1) of the Rules, the SPO may apply confidentially and *ex parte* to the Panel to withhold information in whole or in part where the disclosure of such information may, *inter alia*, prejudice ongoing or future investigations. Pursuant to Rule 108(6) of the Rules, the same applies *mutatis mutandis* to the Defence.

III. DISCUSSION

16. In light of the initial appearances of the Accused, the process of disclosure of evidence and material by the SPO to the Defence is expected to start promptly, in accordance with the above-mentioned legal framework and in a manner and time frame to be regulated by the Pre-Trial Judge. In order to facilitate this disclosure process for the benefit of the Parties, and in particular the Defence, the Pre-Trial Judge shall convene a status conference, as prescribed by Rule 96(1) of the Rules, in order to receive submissions regarding: (i) the items listed in the annex to this order; (ii) the redaction regime to be adopted in the present proceedings, as further specified in paragraph 18, below; and (iii) any other related relevant topics not covered by the annexed list of items, as deemed necessary by the Parties. Having considered the submissions of all Counsel of the Accused during the initial appearances, the Pre-Trial Judge decides to hold the status conference on 18 November 2020.

17. Furthermore, the Parties are invited to make submissions, in writing, on any of the items listed in the annex to this order or other related relevant topics they deem necessary, if they so wish. Where information cannot be shared with either Party for confidentiality and protection purposes, submissions may be made in writing *ex parte*. The information provided by the Parties will assist the Pre-Trial Judge when formulating the framework decision on disclosure of evidence and related matters, including time limits for disclosure.

18. The Pre-Trial Judge also considers it necessary to request observations from the Parties, in writing, regarding the regime of redacting information and evidence to be applied in this case along the lines set out in the “Framework Decision on Disclosure of Evidence and Related Matters” in KSC-BC-2020-05.¹³ These observations will inform the Pre-Trial Judge when adopting a redaction regime that will ensure efficiency of the disclosure process by striking a balance between the duty to protect the interests of victims and witnesses while upholding the rights of the Accused under Article 21 of the Law.

19. It is recalled that, while the Accused have the right to be present in person, pursuant to Rule 96(2) of the Rules, considering the technical nature of the topics to be discussed, the status conference: (i) may be attended by the Accused with Counsel participating via video-conference; (ii) may be attended by Counsel, with the Accused participating via video-conference; or (iii) may take place in the Accused’s absence, with Counsel present or participating via video-conference. These arrangements, however, necessitate the written consent of the Accused, after having received advice from their Counsel, in accordance with Rule 96(2) of the Rules.

20. Should Counsel wish to attend the status conference via video-conference, they shall make a request to this effect directly to the Registrar, in accordance with the Registrar’s Practice Direction on Video Links (KSC-BD-23/COR), sufficiently in advance for the Registrar to take the appropriate steps, including to inform the Pre-Trial Judge.¹⁴

¹³ KSC-2020-05, F00034, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 9 October 2020, public, paras 73-89.

¹⁴ See also KSC-BC-2020-06, F00062, Pre-Trial Judge, *Decision Authorising Video Link Participation*, 6 November 2020, public, para. 10; F00069, Pre-Trial Judge, *Decision Authorising Video Link Participation*, 9 November 2020, public, para. 9.

IV. DISPOSITION

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

- a. **DECIDES** to convene a status conference in the presence of the SPO and the Defence, in line with paragraph 16 above, on **Wednesday, 18 November 2020, at 11:00 hours**;
- b. **REQUESTS** the SPO to provide written submissions on: (i) the items listed in the agenda for the status conference annexed to the present order; (ii) the redaction regime to be applied in the present proceedings; and/or (iii) other related relevant topics deemed necessary, by **Friday, 13 November 2020**; and
- c. **REQUESTS** the Defence to provide written submissions on: (i) the items listed in the agenda annexed to the present order; (ii) the redaction regime; and/or (iii) any other related relevant topics deemed necessary, by **Tuesday, 17 November 2020**.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Wednesday, 11 November 2020

At The Hague, the Netherlands.