



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Date: 17 June 2020

Language: English

Classification: Public

**Public Redacted Version of Decision on Specialist Prosecutor's Request to Present
Additional Supporting Material**

Specialist Prosecutor
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THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(2) and (3) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 85(5) and 86(3) and (4)(a) of Rules of Procedure and Evidence Before the Kosovo Specialist Chamber ("Rules"), hereby issues the following decision.

I. PROCEDURAL BACKGROUND

1. On 24 April 2020, the Specialist Prosecutor's Office ("SPO") submitted for confirmation a strictly confidential and *ex parte* indictment ("Indictment") together with evidentiary material supporting the material facts underpinning the charges and a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation.²

2. On 2 June 2020, the SPO requested permission to submit additional supporting material to the Indictment ("Request").³ This material includes the statements of two witnesses⁴ and nine other documents⁵ (collectively, "Additional Supporting Material"). The SPO submits that the Additional Supporting Material is relevant to the charges in the Indictment.⁶ The SPO further submits that some of the Additional Supporting Material has only recently been cleared for use by relevant States and international organisations.⁷ In addition, the SPO indicates that some of Additional Supporting Material will replace documents that had been inadvertently submitted and which will ultimately be removed from the released package of supporting

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

² KSC-BC-2020-06, F00002, Specialist Prosecutor, *Submission of Indictment for Confirmation*, 25 April 2020, strictly confidential and *ex parte*, with Annexes 1-3, strictly confidential and *ex parte*.

³ KSC-BC-2020-06, F00006, Specialist Prosecutor, *Request to Present Additional Supporting Materials* ("Request"), 2 June 2020, strictly confidential and *ex parte*, para. 1; with Annexes 1-2, strictly confidential and *ex parte*.

⁴ [REDACTED]; [REDACTED]; [REDACTED].

⁵ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

⁶ Request, para. 2.

⁷ Request, fn. 4.

material.⁸ The SPO has provided an updated Rule 86(3)(b) outline to include the Additional Supporting Material, correct typographical errors, and make other corrections in annex 2 of the Request (“Annex 2”).⁹

II. APPLICABLE LAW

3. Article 39(2) of the Law provides that the Pre-Trial Judge shall review the indictment and, pursuant to Rule 85(5) of the Rules, render a decision on that review no later than six months from the filing of the indictment and all supporting material.

4. Pursuant to Rule 86(3) of the Rules, the indictment shall be filed together with supporting material which shall include a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation.

5. Pursuant to Rule 86(4)(a) of the Rules, the Pre-Trial Judge may permit the Specialist Prosecutor to present additional material in support of any or all charges.

III. DISCUSSION

6. When deciding to permit the SPO to present additional material, the Pre-Trial Judge must notably ensure that the entire review of the indictment process is completed within the time frame set out in Rule 85(5) of the Rules.

7. The Pre-Trial Judge considers, first and foremost, that the Request is timely as it is at an early stage of the review proceedings and therefore will not jeopardise the six month timeframe set out in Rule 85(5) of the Rules for the rendering of a

⁸ Request, fns 4 and 7.

⁹ Request, para. 3, fn. 8. Annex 1 of the Request includes an updated Rule 86(3)(b) outline without reference to the Additional Supporting Material.

decision on the review the Indictment. In this regard, the Pre-Trial Judge also considers that the SPO only seeks the submission of a small number of documents of unremarkable length.

8. The Pre-Trial Judge further notes that the Additional Supporting Material presented is *prima facie* relevant to the charges pleaded in the Indictment and that the SPO has only recently received clearance by certain States and international organisation to use some of the documents it seeks to submit.

9. In light of the foregoing, the Pre-Trial Judge permits the SPO to submit the Additional Supporting Material.¹⁰

IV. DISPOSITION

10. The Pre-Trial Judge hereby:

- a. **GRANTS** the Request; and
- b. **RECOGNISES** Annex 2 as the operative Rule 86(3)(b) outline.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Wednesday, 17 June 2020

At The Hague, the Netherlands.

¹⁰ The Pre-Trial Judge notes that the document registered as [REDACTED] is referred to, for example, on pages 53, 510, 512, 513, 515, 516, 518, 519, 520, 522 and 524 of Annex 2, despite the SPO's submission that it seeks to replace said document by that registered as [REDACTED], see Request fn. 7. The Pre-Trial Judge considers that this is an oversight and will rely on the document registered as [REDACTED].