



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: 30 July 2020

Language: English

Classification: Public

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

Specialist Prosecutor
Jack Smith

Counsel for Hashim Thaçi
David Hooper

Counsel for Kadri Veseli
Ben Emmerson

Counsel for Rexhep Selimi
David Young

Counsel for Jakup Krasniqi
Venkateswari Alagendra

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 17 June 2020, the Pre-Trial Judge permitted the SPO to present additional supporting material to the Indictment.³
3. On 24 July 2020, upon order of the Pre-Trial Judge,⁴ the SPO submitted a revised indictment ("Revised Indictment").⁵
4. On 29 July 2020, the SPO requested permission to submit additional supporting material to the Revised Indictment ("Request").⁶ This material includes the statement of a suspect subject to the Revised Indictment conducted between 13 and 16 July 2020,⁷ and other documents used during the suspect's interview that have not yet been

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, F00007, Pre-Trial Judge, *Decision on the Prosecutor's Request to Present Additional Supporting Material*, 17 June 2020, strictly confidential and *ex parte*.

⁴ KSC-BC-2020-06, F00010, Pre-Trial Judge, *Order to the Specialist Prosecutor Pursuant to Rule 86(4) of the Rules*, 2 July 2020, strictly confidential and *ex parte*.

⁵ KSC-BC-2020-06, F00011, Specialist Prosecutor, *Submission on Revised Indictment for Confirmation*, 24 July 2020, strictly confidential and *ex parte*, with Annex 1, strictly confidential and *ex parte*.

⁶ KSC-BC-2020-06, F00012, Specialist Prosecutor, *Second Request to Present Additional Supporting Materials*, 29 July 2020, strictly confidential and *ex parte*.

⁷ [REDACTED] (totalling 339 pages).

submitted⁸ (collectively, “Additional Supporting Material”). The SPO submits that the Additional Supporting Material only recently became available, is of limited scope and length, and is relevant to the charges in the Revised Indictment.⁹

II. APPLICABLE LAW

5. 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.

6. 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.

7. 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.

⁸ Exhibit 17: [REDACTED] (3 pages); Exhibit 19: [REDACTED] (2 pages); Exhibits 21 and 22: [REDACTED] (3 pages) and [REDACTED] (3 pages); Exhibit 23: [REDACTED] (1 page); Exhibit 26: [REDACTED] (2 pages) and [REDACTED] (2 pages); Exhibits 27 and 28: [REDACTED] (1 page), [REDACTED] (2 pages) and [REDACTED] (1 page); Exhibit 29: [REDACTED] (3 pages); Exhibit 30: [REDACTED] (2 pages); Exhibit 31: [REDACTED] (8 pages); Exhibit 32: [REDACTED] (2 pages); Exhibit 33: [REDACTED] (1 page); Exhibit 35: [REDACTED] (2 pages); Exhibits 37 and 38: [REDACTED] (3 pages) and [REDACTED] (3 pages); Exhibit 40: [REDACTED] (1 page); Exhibit 41: [REDACTED] (10 pages); Exhibit 44: [REDACTED] (2 pages); Exhibits 45 and 46: [REDACTED] (9 pages) and [REDACTED] (9 pages); Exhibit 47: [REDACTED] (14 pages); Exhibit 48: [REDACTED] (4 pages); Exhibit 49: [REDACTED] (9 pages); Exhibit 50: [REDACTED] (1 page); Exhibit 51: [REDACTED] (3 pages); Exhibit 52: [REDACTED] (8 pages); Exhibit 53: [REDACTED] (4 pages); Exhibit 54: [REDACTED] (1 page).

⁹ Request, para. 5.

III. DISCUSSION

8. When deciding to permit the SPO to present additional material for a second time, 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.

9. Despite the fact that the Request is filed more than three months after the Indictment, the Pre-Trial Judge considers that, in the present circumstances, the Request is timely, considering that the interview of said suspect was conducted only two weeks ago. Despite the noticeable length of the Additional Supporting Material,¹⁰ the Request will not jeopardise the six month timeframe set out in Rule 85(5) of the Rules for the rendering of a decision on the review of the Revised Indictment.

10. The Pre-Trial Judge further notes that the Additional Supporting Material presented consists of the suspect's statement and documents discussed during his recent interview, which are *prima facie* relevant to the charges pleaded in the Revised Indictment.

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

12. Furthermore, and as a consequence of the above, the Pre-Trial Judge orders the SPO to prepare a supplement to the Rule 86(3)(b) outline already submitted, demonstrating the relevance of the Additional Supporting Material to each factual allegation that fulfils the relevant legal requirement(s) of the crime(s), including the contextual elements, and/or mode(s) of liability, as the case may be.¹¹

¹⁰ The Additional Supporting Material amounts to 458 pages in total.

¹¹ The relevance of the supporting material is demonstrated by indicating the specific paragraph(s) or page(s) that contain the information fulfilling the legal requirement(s), thus excluding background information and context. The preciseness of the Rule 86(3)(b) outline assists in the expeditious analysis of the supporting material.

IV. DISPOSITION

13. The Pre-Trial Judge hereby:

- a. **GRANTS** the Request; and
- b. **ORDERS** the SPO to submit a supplement to the Rule 86(3)(b) outline, as described in paragraph 11, by **Monday, 24 August 2020**.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Thursday, 30 July 2020
At The Hague, the Netherlands.