

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

Filing Participant: Specialist Counsel for Hashim Thaçi

Date: 30 November 2020

Language: English

Classification: Confidential

**Thaçi Defence Application for Reconsideration
and Extension of Time and Word Limit**

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

I. INTRODUCTION

1. The defence for Mr Hashim Thaçi (“the defence”) requests reconsideration of the Decision Varying Time Limit¹ pursuant to Rule 79 of the Rules of Procedure and Evidence (“RPE”), as well as an extension of the word and time limit to file a response to the Specialist Prosecutor’s Office (“SPO”) Request for Protective Measures,² and Supplement.³

II. PROCEDURAL BACKGROUND

2. On 19 November 2020, the SPO filed its strictly confidential and *ex parte* Request for Protective Measures, and accompanying annexes.⁴ A confidential redacted version of the Request was filed on 24 November 2020.⁵
3. On 26 November 2020, the SPO filed a confidential redacted version of its Supplement to Request for Protective Measure, with accompanying annexes.
4. Pursuant to Rules 9 and 76 of the RPE, the defence was entitled to respond to the Request and Supplement within 10 days of their notification.
5. On 27 November 2020, the Pre-Trial Judge rendered his Decision Varying Time Limit in which he ordered the defence to file a consolidated response to the Request and Supplement by **Friday, 4 December 2020, at 12:00.**

¹ KSC-BC-2020-06/F00104, Decision Varying Time Limit, 27 November 2020 (“Decision Varying Time Limit”).

² KSC-BC-2020-06/F00102/CONF/RED, Confidential Redacted Version of ‘Request for Protective Measures’, 19 November 2020 with confidential Annex 13, 24 November 2020 (“Request”).

³ Confidential Redacted Version of Supplement to Request for Protective Measures with confidential redacted Annexes 1 and 2, KSC-BC-2020-06/F00102, 26 November 2020 (“Supplement”).

⁴ KSC-BC-2020-06, F00094, Specialist Prosecutor, Request for Protective Measures, 19 November 2020, strictly confidential and *ex parte*, with Annexes 1-13, strictly confidential and *ex parte*.

⁵ *See*, Request.

6. On 27 November 2020, counsel for Rexhep Selimi (“Selimi defence”) sought reconsideration of the Decision Varying Time Limit, as well as a variation of the word and time limits to file its response to the Request and Supplement.⁶

III. SUBMISSIONS

7. The measures for protection sought by the SPO (and the evidence relied on in support) comprise over 100 pages of submissions, and are over 32,000 words in length. As such, these submissions are more than five times longer than the normal motion limit of 6,000 words. Regardless, the defence is required to file any response to the Request and Supplement within the usual 10-day time deadline.
8. The length and complexity of the SPO submissions on witness protection are unsurprising. The correct balance to be struck between accommodating the objectively held fears of witnesses, and the imperative of a public trial, is a difficult one. It has oscillated at other international courts between granting blanket applications for entire witness lists on the one hand, and the application of a rigorous standard for the assessment of objective fears on the other.
9. Where the balance is to be struck by this Chamber, will impact on many aspects of the trial process, including the constraints to be placed on defence investigations. Given that this litigation is the first consideration of the important and competing interests in this case, the defence should be afforded the opportunity to make substantiated and thoughtful arguments on whether the Prosecution approach to witness protection is indeed the correct one. The current deadline does not allow for this.

⁶ KSC-BC-2020-06/F00105, Defence Request for Reconsideration of Decision Varying Time Limit and Request for Extension of Time and Word Limit, 27 November 2020 (“Selimi Reconsideration Request”).

10. Notably, in seeking leave to vary the word limit for the Request, the Prosecution invoked “the evidential complexity of the matter, the voluminous nature of the materials being addressed, and the detailed submissions required”.⁷ The same features of this litigation would result in an injustice to the defence, should it be deprived of sufficient time to review and meaningfully respond to the SPO’s extensive submissions and evidence.
11. As such, reconsideration of the Decision Varying Time Limit pursuant to Rule 79 of the RPE is warranted in order to substitute the current deadline with that proposed in the Selimi Reconsideration Request, being **14 December 2020**. Good cause exists for this variation, for the reasons set out above.
12. As regards the 30-day deadline for the submission of supporting material to the indictment imposed by Rule 102(1)(a), this deadline should not be allowed to operate to the detriment of the accused, or to undermine the proper briefing of important questions in the case. The defence accordingly submits that good cause exists pursuant to Rule 9(5)(a) for an extension of the Rule 102(1)(a) deadline for the disclosure of supporting material until such time as the Request and Supplement have been fully briefed and adjudicated, and appropriate redactions applied. Nor would any prejudice arise to the interests of the SPO or Victims’ Counsel by the Pre-Trial Judge immediately disposing of this request pursuant to Rule 9(6).
13. As for the length of its consolidated response, the defence submits that the considerations relied upon by the Prosecution in retroactively seeking an extension of the word limit for the Request,⁸ also provide good cause under

⁷ Request, para. 4.

⁸ Request, para. 295.

Article 36(1) of the Practice Direction⁹ for an equivalent extension of the word limit for the responding parties.

IV. CONCLUSION

14. For the forgoing reasons, the defence requests the Pre-Trial Judge to:

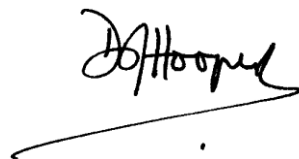
RECONSIDER the Decision Varying Time Limit, and authorise the defence to file any provide a consolidated response to the Request and the Supplement by **14 December 2020, at 12:00;**

AUTHORISE an equivalent variation of the word limit as between the Prosecution and the defence; and

EXTEND the deadline for the SPO submission of supporting material to the indictment under Rule 102(1)(a) pending the adjudication of the Request and Supplement, and implementation of the Pre-Trial Judge's decision.

[Word count: 1049]

Respectfully submitted,



David Hooper

Specialist Counsel for Hashim Thaçi

Monday, 30 November 2020

At London, United Kingdom

⁹KSC-BD-15, Registry Practice Direction, Files and Filings before the Kosovo Specialist Chambers, 17 May 2019.