



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: 8 December 2020

Language: English

Classification: **Public**

Order Setting the Date for a Second Status Conference and for Submissions

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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 ("Confirmed 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 the "Accused").²

2. On 30 October 2020, the Specialist Prosecutor's Office ("SPO") 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 detention facilities of the Specialist Chamber in The Hague, the Netherlands.⁷

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

² KSC-BC-2020-06, F00026/RED, Pre-Trial Judge, *Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi* ("Confirmation Decision"), 26 October 2020, public.

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/RED, Pre-Trial Judge, *Public Redacted Version of Decision on Request for Arrest Warrants and Transfer Orders*, 26 October 2020, public, with Annexes 1-8, public. Corrected versions of Annexes 7 and 8 were filed on 28 October 2020, *see* F00027/A07/COR/RED and F00027/A08/COR/RED, respectively.

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

⁷ KSC-BC-2020-06, F00048, Registrar, *Notification of Reception of Jakup Krasniqi in the Detention Facilities of the Specialist Chambers*, 4 November 2020, public, with Annex 1, public; F00053, Registrar, *Notification of*

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
5. On 11 November 2020, the Pre-Trial Judge scheduled the first status conference, annexing an agenda for the hearing (“First Status Conference Agenda”) and seeking submissions from the Parties in advance of the hearing.¹²
6. On 18 November 2020, the first status conference took place.¹³ At the end of the hearing, the four Defence teams indicated mid-December as a possible date for the second status conference.¹⁴
7. On 23 November 2020, the SPO made further written submissions on the proposed start date of the trial.¹⁵
8. Also on 23 November 2020, the Pre-Trial Judge issued the “Framework Decision on Disclosure of Evidence and Related Matters” (“Framework Decision on Disclosure”),

Reception of Hashim Thaçi in the Detention Facilities of the Specialist Chambers and Appointment of Counsel, 5 November 2020, public, with Annex 1, public, and Annex 2, confidential; F00054, Registrar, *Notification of Reception of Kadri Veseli in the Detention Facilities of the Specialist Chambers and Appointment of Counsel*, 5 November 2020, public, with Annex 1, public, and Annex 2, confidential; F00055, Registrar, *Notification of Reception of Rexhep Selimi in the Detention Facilities of the Specialist Chambers*, 5 November 2020, public, with Annex 1, public.

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* Transcript, 9 November 2020, public.

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* Transcript, 9 November 2020, public.

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* Transcript, 10 November 2020, public.

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* Transcript, 11 November 2020, public.

¹² KSC-BC-2020-06, F00074, Pre-Trial Judge, *Order Setting the Date for a Status Conference and for Submissions*, 11 November 2020, public, with Annex 1, public. The Parties duly filed their submissions, *see* KSC-BC-2020-06, F00076, Specialist Prosecutor, *Prosecution Submissions for first Status Conference*, 13 November, public; F00082, Krasniqi Defence, *Defence Submissions for First Status Conference on Behalf of Jakup Krasniqi*, 17 November 2020, public; F00083, Selimi Defence, *Defence Submissions for first Status Conference*, 17 November 2020, public; F00085, Thaçi Defence, *Defence for Hashim Thaçi’s Submissions for first Status Conference*, 17 November 2020, public; F00087, Veseli Defence, *Submissions on behalf of Kadri Veseli Status Conference - Wednesday 18 November*, 17 November 2020, public.

¹³ KSC-BC-2020-06, Transcript, 18 November 2020, public.

¹⁴ KSC-BC-2020-06, Transcript, 18 November 2020, p. 178, line 22 to p. 179, line 13, public.

¹⁵ KSC-BC-2020-06, F00097, Specialist Prosecutor, *Prosecution Submissions Further to the Status Conference of 18 November 2020*, 23 November 2020, public.

setting out the principles governing disclosure of evidence between the Parties, a calendar for disclosure extending into July 2021, and the redaction regime applicable to the present case.¹⁶

9. On 27 November 2020, the Defence for Mr Selimi notified the Pre-Trial Judge that it had been unable to reach an agreement with the SPO in relation to the content and timing of providing disclosure charts pursuant to Rule 109(c) of the Rules.¹⁷ That same day, the SPO notified the Pre-Trial Judge: (i) that only partial agreement had been reached with the Defence in relation to the timing and scope of a consolidated disclosure chart; and (ii) of the continuing lack of agreement between the Parties concerning the level of categorisation of disclosed material in the Legal Workflow metadata, to be done at the time of each disclosure.¹⁸

II. APPLICABLE LAW

10. Pursuant to Rule 96(1) of the Rules, following the first status conference, the Pre-Trial Judge shall convene subsequent status conferences as deemed necessary in order to: (i) organise exchanges between the Parties and, where applicable, Victims' Counsel so as to ensure expeditious preparation for trial; (ii) take steps to ensure that all necessary preparations are being conducted by the Parties in a timely and diligent fashion; and (iii) review the status of the case and allow the Parties and, where applicable, Victims' Counsel the opportunity to raise issues in relation thereto.

11. 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

¹⁶ KSC-BC-2020-06, F00099, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 23 November 2020, public, para. 99.

¹⁷ KSC-BC-2020-06, F00106, Selimi Defence, *Defence Notification in Relation to Rule 109(C)*, 27 December 2020, public.

¹⁸ KSC-BC-2020-06, F00108, Specialist Prosecutor, *Submissions on Rule 109(c) Categorisation*, 27 November 2020, public, with Annex 1, public.

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.

12. Pursuant to Rule 95(4) of the Rules, the Pre-Trial Judge shall order the SPO to file, within a set time limit: (i) its pre-trial brief, including any admissions by the Defence and a statement of matters which are not in dispute; (ii) a list of witnesses it intends to call; and (iii) a list of exhibits it intends to present, including, where possible, any Defence objections to authenticity.

13. Pursuant to Rule 95(5) of the Rules, after submission of the items under Rule 95(4) of the Rules, the Pre-Trial Judge shall invite the Defence to file a pre-trial brief within a set time limit. Moreover, within a time limit set by the Pre-Trial Judge, the Defence shall notify the SPO of its intention to offer a defence of alibi or any other grounds excluding criminal responsibility, including that of diminished or lack of mental capacity, intoxication, necessity, duress, and mistake of fact or law.

14. Pursuant to Rule 96(2) of the Rules, with the Accused's written consent after receiving advice from Counsel, a status conference may be conducted: (i) in the Accused's presence, with Counsel participating via video-conference; (ii) in Defence Counsel's presence, with the Accused participating via video-conference; or (iii) in the Accused's absence, with Counsel present or participating via video-conference. In addition, any request to attend the status conference via video-conference, shall be made 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.¹⁹

¹⁹ 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.

III. DISCUSSION

15. Having considered the preferences expressed by the Parties during the first status conference, the Pre-Trial Judge convenes the second status conference on Thursday, 17 December 2020, at 11:00 hours.

16. During the hearing, the Pre-Trial Judge will ask the Parties for their updates, if any, on the outstanding issues detailed in the First Status Conference Agenda, and the written and oral submissions they have made thereon to date. Specifically and in addition, the Pre-Trial Judge will seek updates on the following issues, in the sequence set out below:

(1) Disclosure:

- a. Whether the Parties are facing any difficulties related to the disclosure of evidentiary material;
- b. Whether any further progress has been made *inter partes* in reaching agreement on the level of categorisation of disclosed material pursuant to Rule 109(c) of the Rules, and the timing of submission of the related chart;

(2) SPO investigations and next steps:

- c. Whether an estimated date of completion can be provided for the SPO's outstanding investigations;
- d. The SPO's estimate of when it will be able to file its pre-trial brief and related material pursuant to Rule 95(4)(a)-(c) of the Rules, in light of the disclosure calendar set out in the Framework Decision on Disclosure;

(3) Defence investigations and next steps:

- e. Whether, based on the SPO's estimates and the ongoing disclosure of evidence process (scheduled to continue until July 2021), the Defence can provide more information on the status of its investigations;
- f. Similarly, whether the Defence can provide more information on any intention to make requests concerning unique investigative opportunities, pursuant to Rule 99(1) of the Rules; and
- g. Whether the Defence can provide more information on any intention to give notice of an alibi or grounds for excluding responsibility, pursuant to Rule 95(5) of the Rules, and any associated disclosure, pursuant to Rule 104(1) and (2) of the Rules.

17. Finally, the Parties will be asked to share their views on the date of a third status conference in this case.

18. The Parties are invited to file written submissions, if they so wish, on any of the above matters, including the topics discussed at the first status conference, any other matter related to the ongoing disclosure process not covered in the agenda of the second status conference, or any difficulty related to the disclosure of evidentiary material. The SPO is invited to file any such submissions by Monday, 14 December 2020, at 16:00 hours, and the Defence is invited to do so by Tuesday, 15 December 2020, at 16:00 hours.

IV. DISPOSITION

19. 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, on **Thursday, 17 December 2020, at 11:00 hours;**

- b. **REQUESTS** the SPO to provide written submissions, if it so wishes, by **Monday, 14 December 2020, at 16:00 hours**, as set forth in paragraph 18; and
- c. **REQUESTS** the Defence to provide written submissions, if they so wish, by **Tuesday, 15 December 2020, at 16:00 hours**, as set forth in paragraph 18.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Tuesday, 8 December 2020
At The Hague, the Netherlands.