



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: 3 February 2021

Language: English

Classification: **Public**

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

Specialist Prosecutor
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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 "Defence").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, F00045/A03, Specialist Prosecutor, *Further Redacted Indictment*, 4 November 2020, 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 Reception of Hashim Thaçi in the Detention Facilities of the Specialist Chambers and Appointment of Counsel*,

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 18 November 2020, pursuant to a scheduling order of the Pre-Trial Judge,¹² the first status conference was held.¹³
6. On 23 November 2020, the Pre-Trial Judge issued the “Framework Decision on Disclosure of Evidence and Related Matters” (“Framework Decision on Disclosure”), 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.¹⁴
7. On 10 December 2020, the Pre-Trial Judge issued the first protective measures decision in this case, in which a decision on protective measures for certain witnesses were deferred (“Protective Measures Decision”).¹⁵

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.

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

¹⁴ KSC-BC-2020-06, F00099, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 23 November 2020, public, para. 99.

¹⁵ KSC-BC-2020-06, F00133/COR/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Corrected Version of First Decision on Specialist Prosecutor's Request for Protective Measures*, 10 December 2020, confidential, para. 132(c), (f), (j), (n).

8. On 17 December 2020, pursuant to a scheduling order of the Pre-Trial Judge,¹⁶ a second status conference was held (“Second Status Conference”).¹⁷

II. APPLICABLE LAW

9. 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.

10. 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.

11. 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.

12. 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

¹⁶ KSC-BC-2020-06, F00130, Pre-Trial Judge, *Order Setting the Date for a Second Status Conference and for Submissions*, 8 December 2020, public, para. 19(a).

¹⁷ KSC-BC-2020-06, Transcript, 17 December 2020, public.

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.

13. 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.¹⁸

III. DISCUSSION

14. Having considered the scheduling preferences expressed by the Parties, the Pre-Trial Judge convenes the third status conference in this case on Thursday, 11 February 2021, at 11:00 hours.

15. During the hearing, the Pre-Trial Judge will ask the Parties for updates, if any, on the outstanding issues from the Second Status Conference, and the written and oral submissions they have made thereon. Specifically and in addition, the Pre-Trial Judge will seek updates on the following issues, in the sequence set out below:

(1) Disclosure:

¹⁸ 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.

- a. What progress has been made in the disclosure of evidentiary material by the SPO, in particular:
 - i. with respect to Rule 102(1)(a) material, whether disclosure obligations with respect to this material have been fulfilled; and
 - ii. with respect to Rule 102(1)(b) material, how much of such material remains to be disclosed and whether the SPO envisages filing protective measures requests for the Rule 102(1)(b) material by 5 March 2021;
- b. Whether there remains exculpatory evidence in the SPO's custody, control or actual knowledge that must be disclosed to the Defence, pursuant to Rule 103 of the Rules, and whether, prior to its disclosure, this material requires a judicial ruling on protective measures; and
- c. Whether the Parties are facing or foresee any difficulties related to the disclosure process, in particular with respect to Rule 107 material.

(2) Translation of the Rule 86(3)(b) outline (F00136/A01):

- d. Whether the Registry can provide an estimate on when translation of the Rule 86(3)(b) outline will be completed; and
- e. Whether such translations can be provided on a rolling basis when translation of a section of the outline has been completed.

(3) Rule 109(c) chart:

- f. Whether any further progress has been made, *inter partes*, in reaching agreement on the Rule 109(c) chart with respect to:
 - i. the format of the chart;

- ii. the level of categorisation of disclosed material, including making the 'Specific Referencing' column optional for the disclosing party;
 - iii. what disclosed material the chart relates to, in particular whether it relates solely to Rule 102(1)(b) material or other material as well;
 - iv. the frequency in which the chart is provided, for instance 15 days from the filing of any pre-trial brief; and additionally,
 - v. the categorisation in the metadata fields in Legal WorkFlow with respect to each item disclosed, in particular whether such categories should mirror the categories in Rule 109(c) of the Rules or whether additional subcategories should be included; and
- g. What impact would each Defence proposal, with respect to the Rule 109(c) chart, have on the SPO's disclosure deadlines and on the SPO's estimate of when it will be able to file its pre-trial brief?

(4) SPO investigations and next steps:

- h. Whether the SPO can further update the estimated date of completion for outstanding investigative steps; and
- i. Whether the SPO's estimate (July 2021) 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 still stands, in light of the Protective Measures Decision and the disclosure calendar set out in the Framework Decision on Disclosure.

(5) Defence investigations and next steps:

- j. 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;
- k. 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
- l. 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.

(6) Points of agreement on matters of law and fact:

- m. Whether the Parties have entered into discussions regarding the possibility to submit points of agreement on law and/or facts, pursuant to Rules 95(3) and 156 of the Rules; and
- n. When would the Parties expect to be able to identify a list of issues subject to dispute and one with issues not subject to dispute?

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

17. The Parties are invited to file written submissions, if they so wish, on any of the above matters. Should the Parties wish to raise any additional matter not listed in this order during the upcoming status conference, they are invited to include these matters in their written submissions. The SPO is invited to file any such submissions by Monday, 8 February 2021, at 16:00 hours, and the Defence is invited to do so by Wednesday, 10 February 2021, at 12:00 hours.

18. The Registry is requested to file written submissions by Monday, 8 February 2021, at 16:00 hours on the translation of the Rule 86(3)(b) outline as noted above.

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, 11 February 2021, at 11:00 hours**;
- b. **REQUESTS** the SPO to provide written submissions, if it so wishes, by **Monday, 8 February 2021, at 16:00 hours**, as set forth in paragraph 17;
- c. **REQUESTS** the Defence to provide written submissions, if they so wish, by **Wednesday, 10 February 2021, at 12:00 hours**, as set forth in paragraph 17;
- d. **REQUESTS** the Registry to provide written submissions, by **Monday, 8 February 2021, at 16:00 hours**, in relation to paragraph 15(2).



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Wednesday, 3 February 2021
At The Hague, the Netherlands.