



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: 17 March 2021

Language: English

Classification: **Public**

Order Setting the Date for a Fourth 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 against Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi (collectively referred to as the "Defence").²
2. On 18 November 2020, pursuant to a scheduling order of the Pre-Trial Judge,³ the first status conference was held.⁴
3. 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.⁵
4. On 17 December 2020, pursuant to a scheduling order of the Pre-Trial Judge,⁶ a second status conference was held.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; KSC-BC-2020-06, F00045/A03, Specialist Prosecutor, *Further Redacted Indictment*, 4 November 2020, public.

³ 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.

⁴ KSC-BC-2020-06, Transcript of Hearing, 18 November 2020, public.

⁵ KSC-BC-2020-06, F00099, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 23 November 2020, public, para. 99.

⁶ 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).

⁷ KSC-BC-2020-06, Transcript of Hearing, 17 December 2020, public.

5. On 16 February 2021, pursuant to scheduling orders of the Pre-Trial Judge,⁸ a third status conference was held (“Third Status Conference”).⁹

6. On 12 March 2021, the Pre-Trial Judge issued the “Decision on Categorisation of Evidence Under Rule 109(c) and Related Matters” (“Rule 109(c) Decision”), in which case-specific categorisation of Rule 102(1)(b) material was ordered and the deadline for disclosure of such material was extended to 23 July 2021.¹⁰

II. APPLICABLE LAW

7. 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.

8. 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.

⁸ KSC-BC-2020-06, F00185, Pre-Trial Judge, *Order Setting the for a Third Status Conference and for Submissions*, 3 February 2021, public; F00193, Pre-Trial Judge, *Order Rescheduling the Third Status Conference*, 9 February 2021, public.

⁹ KSC-BC-2020-06, Transcript of Hearing, 16 February 2021, public.

¹⁰ KSC-BC-2020-06, F00218, Pre-Trial Judge, *Decision on Categorisation of Evidence under Rule 109(c) and Related Matters*, 12 March 2021, public, para. 22.

9. 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.

10. 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.

11. 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.¹¹

¹¹ 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

12. Having considered the scheduling preferences expressed by the Parties, the Pre-Trial Judge convenes the fourth status conference in this case on Wednesday, 24 March 2021, at 11:00 hours.

13. During the hearing, the Pre-Trial Judge will ask the Parties for updates, if any, on the outstanding issues from the Third 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:

- a. What progress has been made in the disclosure of Rule 102(1)(b) material by the SPO by the newly stipulated deadline of 23 July 2021, in particular, how much of such material remains to be disclosed and whether the SPO envisages filing further protective measures requests for the Rule 102(1)(b) material by 6 April 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, any request for protective measures for such material is imminent;
- c. Whether the Parties are facing or foresee any difficulties related to the disclosure process with respect to Rule 107 material, and whether any application pursuant to this rule is imminent;

(2) SPO investigations and next steps:

- d. Whether the SPO can further update on the estimated date of completion for outstanding investigative steps;

- e. Whether the SPO can provide an 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 and the Rule 109(c) Decision;

(3) Defence investigations and next steps:

- f. Whether the Defence can provide more information on the status of its investigations and whether all Defence teams will be able to start their investigations by mid-April;
- g. 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;
- h. 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;

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

- i. Whether the SPO has provided the Defence with its proposal on points of agreement on law and/or facts, pursuant to Rules 95(3) and 156 of the Rules;
- j. When the Parties expect to be able to identify a list of issues subject to dispute and one with issues not subject to dispute; and

(5) Preliminary Motions:

- k. Whether, in light of the number of preliminary motions filed by the Defence, the SPO and the Defence are in position to meet their respective deadlines for

the filing of responses and replies, or whether an extension of time is requested.

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

15. 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 and Defence are invited to file any such submissions by Monday, 22 March 2021.

IV. DISPOSITION

16. 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, at **11:00 hours on Wednesday, 24 March 2021**; and
- b. **REQUESTS** the SPO and the Defence to provide written submissions, if they so wish, by **Monday, 22 March 2021**, as set forth in paragraph 15.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Wednesday, 17 March 2021
At The Hague, the Netherlands.