



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**In:** KSC-BC-2020-06  
**Specialist 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 Prosecutor

**Date:** 8 September 2021

**Language:** English

**Classification:** Public

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**Public Redacted Version of 'Submission of corrected Indictment and request to amend pursuant to Rule 90(1)(b)', KSC-BC-2020-06/F00455, dated 3 September 2021**

**with public redacted Annex 1**

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## I. INTRODUCTION

1. Pursuant to the Decision,<sup>1</sup> the SPO hereby submits a corrected Indictment.<sup>2</sup> Additionally, in light of the Decision<sup>3</sup> and pursuant to Article 39(8) of the Law<sup>4</sup> and Rule 90(1)(b) of the Rules,<sup>5</sup> the SPO requests leave to amend the Indictment to include allegations relating to:<sup>6</sup>

- a. two, related detention sites located at [REDACTED] municipality at or in connection with which KLA members committed acts of persecution, imprisonment/arbitrary detention, other inhumane acts/cruel treatment, torture, murder, and enforced disappearance ('First Category');<sup>7</sup>
- b. two incidents of persecution and murder committed in connection with the [REDACTED] detention site and a modification of the timeframe for the [REDACTED] detention site ('Second Category');<sup>8</sup> and
- c. two incidents of the Accused's personal participation in the crimes charged ('Third Category', collectively with the First Category and Second Category, 'Proposed Amendments').<sup>9</sup>

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<sup>1</sup> Decision on Defence Motions Alleging Defects in the Form of the Indictment, KSC-BC-2020-06/F00413, 22 July 2021, Confidential ('Decision'), paras 176, 179(d).

<sup>2</sup> See Annex 1. In line with the Decision, changes were made to paragraphs 35, 40, 43, 47-51, 57-59, 75, 94-95, 136, and 171 of the Indictment. In addition, two typographical errors were corrected in paras 43 and 165. The SPO notes the separate amendment ordered in KSC-BC-2020-06/F00412, which is not addressed in this filing.

<sup>3</sup> See, for example, Decision, KSC-BC-2020-06/F00413, paras 92, 159-160, 171.

<sup>4</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

<sup>5</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

<sup>6</sup> Annex 2 contains a version of the Indictment with the proposed amendments.

<sup>7</sup> See Annex 2, paras 68, 105, 157 (with corresponding amendments to Schedules A-C). An outline demonstrating the relevance of the evidentiary material to the First Category amendments is provided in Annex 3.

<sup>8</sup> See Annex 2, paras 93, 174 (with corresponding amendments to Schedules A-B). An outline demonstrating the relevance of the evidentiary material to the Second Category amendments is provided in Annex 4.

<sup>9</sup> See Annex 2, paras 42-43, 141. An outline demonstrating the relevance of the evidentiary material to the Third Category amendments is provided in Annex 5.

2. Leave to include the Proposed Amendments should be granted. The Proposed Amendments are factually supported, contribute to the accuracy, consistency, and detail of the Indictment, are in the interests of victims and justice, and are not prejudicial to or inconsistent with the rights of the Accused.

## II. SUBMISSIONS

3. The Proposed Amendments do not add new counts or new modes of liability. Rather, they provide additional factual allegations and clarifications supporting the existing charged crimes and modes of liability. As such, they do not constitute new or more serious charges<sup>10</sup> and Rule 86(3)-(4) does not apply.<sup>11</sup>

4. Nonetheless, to facilitate the Panel's consideration of the matter, the Proposed Amendments are submitted with supporting material<sup>12</sup> and outlines demonstrating the relevance of the evidentiary material to each of the Proposed Amendments.<sup>13</sup> As these materials demonstrate, the Proposed Amendments are supported by concrete and tangible material and, although such assessment is not required in this instance, meet the

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<sup>10</sup> Decision, KSC-BC-2020-06/F00413, paras 27-40, 91 (considering that factual allegations like those in the Proposed Amendments – which go to, *inter alia*, the places, times, and commission of the crimes charged, the direct participation of the Accused in criminal incidents, and the identities of the perpetrators and victims – constitute facts and particulars supporting or underpinning the charges). *See also Prosecutor v. Gucati and Haradinaj*, Decision on the Defence Appeals Against Decision on Preliminary Motions, KSC-BC-2020-07/IA004/F00007, 23 June 2021, para.37, *citing with approval* ICTR, *Prosecutor v. Muvunyi*, ICTR-00-55A-AR73, Decision on Prosecution Interlocutory Appeal Against Trial Chamber II Decision of 23 February 2005, 12 May 2005, para.19 ('There is a clear distinction between counts or charges made in an indictment and the material facts that underpin the charge or count. The count or charge is the legal characterization of the material facts which support the count or charge.').

<sup>11</sup> Rule 90(2) provides that Rule 86(3)-(4) only apply where the SPO seeks to include new charges or substitute more serious charges.

<sup>12</sup> The supporting materials will be disclosed as a separate package through Legal WorkFlow. While these materials have either been disclosed, with appropriate redactions, and/or were subject of prior protective measures requests and decisions, the SPO has redisclosed, as one package, the complete materials to facilitate the Pre-Trial Judge's review.

<sup>13</sup> *See* Annexes 3-5.

standard required in Rule 86(4).<sup>14</sup> Moreover, the Proposed Amendments are sufficiently detailed and clear to enable adequate defence preparation.<sup>15</sup>

5. To the extent Defence submissions are envisaged under Rule 90(1)(b), they should be limited to the impact of the Proposed Amendments on the Accused's rights at this stage of proceedings. Provided the Pre-Trial Judge is satisfied that the Proposed Amendments are not prejudicial,<sup>16</sup> the admissibility and weight of the evidence falls outside the scope of his review<sup>17</sup> and the Panel need not resolve any competing submissions about the supporting materials.<sup>18</sup>

#### A. THE PROPOSED AMENDMENTS ARE IN THE INTERESTS OF VICTIMS AND JUSTICE

6. Absent the Proposed Amendments, the relevant victims would be deprived of their rights to participate in proceedings and seek reparations before this court.<sup>19</sup> In this regard, the public and victims have a right to and interest in the effective investigation and prosecution of the crimes related to the Proposed Amendments.<sup>20</sup>

7. The Proposed Amendments would ensure that the factual allegations in the Indictment more fully reflect: (i) the scope of the criminal incidents in which the Accused

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<sup>14</sup> See Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi, KSC-BC-2020-06/F00026, 26 October 2021, Strictly Confidential and *Ex Parte* ('Confirmation Decision'), para.48.

<sup>15</sup> The form and language of the Proposed Amendments are consistent with existing factual allegations in the Indictment, which the Pre-Trial Judge has already found to be sufficiently clear and detailed. See Decision, KSC-BC-2020-06/F00413, para.177.

<sup>16</sup> The only required consideration under Rule 90(2) is whether an amendment is prejudicial to or inconsistent with the rights of the Accused.

<sup>17</sup> Confirmation Decision, KSC-BC-2020-06/F00026, para.50.

<sup>18</sup> See, similarly, ICTY, *Prosecutor v. Stanišić and Simatović*, IT-03-69-PT, Decision on Defence Requests for Certification to Appeal Decision Granting Prosecution Leave to Amend the Amended Indictment, 8 February 2006.

<sup>19</sup> See Framework Decision on Victims' Applications, KSC-BC-2020/06/F00159, 4 January 2021, paras 28, 32; Public Redacted Version of the First Decision on Victims' Participation, KSC-BC-2020/06/F00257/RED, 21 April 2021, paras 42, 45-48.

<sup>20</sup> See European Court of Human Rights ('ECtHR'), *Marguš v. Croatia*, Application No.4455/10, Judgment, 27 May 2014, paras 126-127, 139 (considering the 'unanimously recognized obligation of States to prosecute and punish grave breaches of fundamental human rights').

are alleged to have directly participated and underlying acts allegedly committed by JCE Members and Tools;<sup>21</sup> (ii) the geographical and/or temporal scope of alleged underlying criminal acts within the [REDACTED] municipality and at the [REDACTED] detention site; and (iii) the victims of the crimes charged, including, insofar as two victims at [REDACTED] are female, the gender of detainees.

B. THE PROPOSED AMENDMENTS ARE NOT PREJUDICIAL TO THE RIGHTS OF THE ACCUSED

8. The Proposed Amendments are consistent with and do not prejudice the Accused's rights to prepare an effective defence and be tried without undue delay.<sup>22</sup>

9. This request has been made at an appropriate stage, while the pre-trial phase is ongoing and litigation relating to preliminary motions is still pending. This request follows the Decision, which ordered corrections to resolve potential ambiguities in the Indictment, including in relation to the Accused's personal participation in the crimes, detention sites, and murder and enforced disappearance victims. Requesting the Proposed Amendments together at this stage, and in light of the Decision, facilitates and streamlines the process and avoids unnecessary, multiple amendments at different times.

10. With respect to the First Category and Second Category, while investigation had commenced before the confirmation proceedings in this case, interviews of key witness - which were necessary to a consideration of the strength and relevance of these additional factual allegations<sup>23</sup> - occurred thereafter. The Third Category follows the Pre-Trial Judge's finding that, in order to plead further instances of the Accused's personal participation in the crimes charges, the SPO would be required to seek an amendment.<sup>24</sup>

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<sup>21</sup> See Annex 2, para.35 (defining the term 'JCE Members and Tools').

<sup>22</sup> See ICTY, *Prosecutor v. Karadžić*, IT-95-5/18-PT, Decision on Prosecution Motion to Amend the First Amended Indictment, 16 February 2009, para.30 (in assessing where an amendment will cause prejudice, the two key factors are whether it would deprive the accused of an adequate opportunity to prepare an effective defence or adversely affect the right to be tried without undue delay).

<sup>23</sup> See, similarly, ICTR, *Prosecutor v. Muvunyi*, ICRT-00-55A-AR73, Decision on Prosecution Interlocutory Appeal Against Trial Chamber II Decision of 23 February 2005, 12 May 2005, para.51.

<sup>24</sup> Decision, KSC-BC-2020-06/F00413, para.91.

11. Moreover, the Proposed Amendments concern only additional factual allegations underpinning the existing charges, follow the same fact patterns as those already pleaded, and do not alter the nature of the charges. The Proposed Amendments would not introduce any new crimes or modes of liability to the Indictment. Rather, the Accused would be charged with the same crimes and modes of liability in relation to two additional sites, which are related, and additional victims (First Category and Second Category) and two additional instances of the Accused's personal participation in the crimes (Third Category). The Proposed Amendments: (i) relate to locations and incidents already included in the Indictment; and (ii) contribute to the accuracy, consistency, and detail of the Indictment and a more complete understanding of the Accused's conduct and the SPO's case. Any necessary further Defence investigation or preparation would be relatively limited should the request be granted.

12. Finally, the supporting material subject of this request – which consists of evidence upon which the SPO intends to rely to prove the allegations in the Proposed Amendments – has already been disclosed to the Defence pursuant to Rule 102(1) and/or is subject of prior protective measures decisions.<sup>25</sup>

13. Based on a cumulative consideration of the interests and rights of the parties, victims, and public, the Proposed Amendments, which are relatively narrow in scope, advance, rather than detract, from the overall expeditiousness and fairness of the proceedings and are not inconsistent with and do not prejudice the Accused.

### III. CLASSIFICATION

14. This filing and its annexes are strictly confidential and *ex parte* in accordance with Rule 82(4) and to give effect to existing protective measures. Confidential redacted and, as appropriate, public redacted versions will be filed.

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<sup>25</sup> See, in relation to Category 1: [REDACTED]; in relation to Category 3: [REDACTED].

IV. RELIEF REQUESTED

15. For the foregoing reasons, the SPO requests the Pre-Trial Judge to grant leave for the Proposed Amendments.

**Word count: 1772**



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**Jack Smith**

**Specialist Prosecutor**

Wednesday, 8 September 2021

At The Hague, the Netherlands.