

**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:** Defence Counsel for Jakup Krasniqi

**Date:** 5 October 2021

**Language:** English

**Classification:** Public

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**Public Redacted Version of**

**Krasniqi Defence Response to the SPO Submission of Corrected Indictment and**

**Request to Amend Pursuant to Rule 90(1)(b), KSC-BC-2020-06/F00480, dated**

**20 September 2021**

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**Specialist Prosecutor**

Jack Smith

**Counsel for Victims**

Simon Laws QC

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Kadri Veseli**

Ben Emmerson QC

**Counsel for Rexhep Selimi**

David Young

**Counsels for Jakup Krasniqi**

Venkateswari Alagendra, Aidan Ellis

## I. INTRODUCTION

1. The Defence for Jakup Krasniqi (“Defence”) hereby respond to the Specialist Prosecutor’s Office (“SPO”) confidential 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 confidential redacted Annexes 1-3, confidential Annex 4, and confidential redacted Annex 5.<sup>1</sup>
2. The Defence cannot meaningfully respond whilst much of the Proposed Amendments and evidential material said to underly them remains redacted. Accordingly, it is submitted that a lesser redacted or unredacted version of the Amendments must be provided to the Defence before the Defence are required to make submissions on the Amendments.
3. In the alternative, the Defence submit that the Proposed Amendments should be rejected because the SPO has delayed unjustifiably in submitting them and this inevitably impacts on Defence preparations and investigations.

## II. PROCEDURAL HISTORY

4. On 26 October 2020, the Pre-Trial Judge confirmed the Indictment (“Indictment”) against Hashim Thaçi (“Mr. Thaçi”), Kadri Veseli (“Mr. Veseli”), Rexhep Selimi (“Mr. Selimi”) and Jakup Krasniqi (“Mr. Krasniqi”) (collectively “Accused”).<sup>2</sup>

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<sup>1</sup> KSC-BC-2020-06, F00455/CONF/RED, Specialist Prosecutor, *Confidential 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* (“SPO Submissions” or “Submissions”), 8 September 2021, confidential, with Annexes 1-5, confidential. The public redacted version of the SPO Submissions and Annex 1 was filed on the same date.

<sup>2</sup> KSC-BC-2020-06, F00026/CONF/RED, Pre-Trial Judge, *Confidential Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi* (“Confirmation Decision”), 19 November 2020, confidential. A public redacted version was filed on 30 November 2020, F00026/RED. KSC-BC-2020-06, F00034, Specialist Prosecutor, *Submission of Confirmed*

5. On 8 September 2021, the SPO filed the confidential redacted version of its Submissions in which it requests, under Article 39(8) of the Law<sup>3</sup> and Rule 90(1)(b) of the Rules,<sup>4</sup> the leave of the Pre-Trial Judge to amend the Indictment by including new allegations relating to:

- a. two related detention sites located at [REDACTED] 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”);
- b. two incidents of persecution and murder committed in connection with [REDACTED] detention site and a modification of the timeframe for the [REDACTED] detention site (“Second Category”); and
- c. two incidents of the Accused’s personal participation in the crimes charged (“Third Category”).<sup>5</sup>

6. The SPO submits that 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.<sup>6</sup>

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*Indictment and Related Requests*, 30 October 2020, confidential, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential. On 4 November 2020, a further corrected confirmed Indictment, was submitted, in strictly confidential and *ex parte* (F00045/A01), confidential redacted (F00045/A02), and public redacted version (F00045/A03). On 11 December 2020, a lesser redacted version of F00045/A02 was submitted, namely F00134, confidential.

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

<sup>4</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>5</sup> SPO Submissions, para. 1(a)-(c) (collectively “Proposed Amendments”).

<sup>6</sup> SPO Submissions, paras 3-13.

### III. A LESSER REDACTED OR UNREDACTED VERSION OF THE AMENDED INDICTMENT MUST BE PROVIDED

7. The Defence submit that the SPO filed its Proposed Amendments without providing a lesser redacted or an unredacted version of the Indictment. The redactions applied to several paragraphs of the Indictment containing the Proposed Amendments completely hide the substance of the Proposed Amendments.<sup>7</sup> As such it is impossible for the Defence to take an informed decision and make meaningful submissions in relation to the Proposed Amendments. The Defence must therefore reserve its position regarding the Proposed Amendments until a lesser redacted or unredacted version of the Amended Indictment is made available to the Defence, the request for which is made herein by the Defence.

8. Rule 90(1)(b) and (2)-(4) of the Rules vest the Defence with the right to oppose any proposed amendments to the Indictment, including those amendments amounting to “new charges” or “more serious charges”. Rule 90(1)(b) guarantees the Accused’s right to be “heard” on the Proposed Amendments. Requiring the Defence to make its submissions in relation to the heavily or fully redacted parts of the Proposed Amended Indictment inevitably denies the Defence a fair opportunity to be heard on the Proposed Amendments. The Defence’s understanding is in line with existing international practice, which permits the Defence to challenge the form of any amendment of the Indictment regardless of whether the amendments result in new or more serious charges.<sup>8</sup>

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<sup>7</sup> See, in particular, paras 42-43 and 141 in Annex 2 to the SPO Submissions as examples of heavily or fully redacted paragraphs of the Indictment, in relation to which the SPO is seeking the leave of the Pre-Trial Judge to amend the Indictment. Annexes 3-5 which provide the SPO outlines on the relevance of the evidentiary material to the three categories of the Proposed Amendments do not provide any assistance to the Defence in relation to the heavily or fully redacted parts of the Indictment.

<sup>8</sup> See, among other authorities, ICTR, *Prosecutor v. Muvunyi*, ICTR-00-55A-AR73, Appeals Chamber, *Decision on Prosecution Interlocutory Appeal Against Trial Chamber II Decision of 23 February 2005*, 12 May

9. The extent of the redactions applied to the Proposed Amendments and to certain evidence said to support the Amendments constitute a serious prejudice to the Accused. First, the Accused is deprived of knowing the scope and the effect of the Amendments. Second, the Accused is denied the ability to obtain adequate particulars in relation to redacted parts of the charges and underlying evidence, which affects the right of the Accused to adequate notice of the charges. Third, the extent of the redactions inevitably affects the ability of the Defence to conduct its investigations and preparations in an efficient and timely manner.

10. Indeed, the Defence submit that the SPO requests to amend the Indictment should in principle be assessed after all the redactions applied to the Indictment have been lifted and the Defence have received an unredacted version of the Indictment. Only an unredacted Indictment will provide the Defence with a fair opportunity to conduct a proper assessment of Amendments proposed by the SPO and make meaningful submissions on whether (i) the Proposed Amendments are intended to have any material effect upon the charges; (ii) the proposed new material allegations amount to new or more serious charges under Rule 90(2) of the Rules as opposed to facts that underpin or support existing charges made in the unamended Indictment; (iii) the Proposed Amendments are indeed narrow in scope;<sup>9</sup> and (iv) there is any possible risk of causing undue prejudice to the Defence inherent to both the addition and the amendment of a charge.

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2005, paras 20, 25, 27, 29, 31 and 37; ICTY, *Prosecutor v. Lukić*, IT-98-32/1-PT, Trial Chamber III, *Decision Granting Prosecution's Motion to Amend Indictment and Scheduling Further Appearance*, 1 February 2006, paras 17–18; *Prosecutor v. Delić*, IT-04-83-PT, Trial Chamber III, *Decision on the Prosecution's Submission of Proposed Amended Indictment and Defence Motion Alleging Defects in Amended Indictment*, 30 June 2006, paras 55-56; *Prosecutor v. Beara*, IT-02-58-PT, Pre-Trial Judge, *Decision on Prosecution Motion to Amend the Indictment*, 24 March 2005, p. 3; *Prosecutor v. Popović et al.*, IT-05-88-PT, Trial Chamber II, *Decision on Further Amendments and Challenges to the Indictment*, 13 July 2006, para. 11; *Prosecutor v. Haradinaj et al.*, IT-04-84-PT, Trial Chamber II, *Decision on Motion to Amend the Amended Indictment*, 12 January 2007, para. 18.

<sup>9</sup> SPO Submissions, para. 13.

11. Moreover, the Defence note that certain evidence said to support the Amendments in particular in Annexes 3 and 5 is also redacted.<sup>10</sup> Those redactions further constrain the ability of the Defence to effectively respond to the Proposed Amendments. For instance, if the evidence supporting the Amendments is wholly redacted, the Defence are prevented from understanding when that evidence was obtained in order to make submissions on whether the SPO has acted expeditiously in seeking amendments.

#### IV. THE SPO HAS UNJUSTIFIABLY DELAYED THE SUBMISSION OF THE PROPOSED AMENDMENTS

12. The SPO justifies the delay in submitting the Proposed Amendments by explaining, with respect to the First Category and Second Category, that, while its investigations had commenced before the confirmation proceedings, the interviews of a key witness occurred thereafter and that the Third Category followed the Pre-Trial Judge's finding that, in order to plead further instances of the Accused's personal participation in the crimes charged, the SPO would be required to seek an amendment of the Indictment.<sup>11</sup>

13. The Defence, however, note that the unredacted references to [REDACTED] witness interviews referenced (i) in Annex 3 to the Submissions are dated [REDACTED], [REDACTED], [REDACTED]; (ii) in Annex 4 are dated [REDACTED]; and (iii) in Annex 5 are dated [REDACTED]. The SPO does not justify or provide a

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<sup>10</sup> See, for instance, KSC-BC-2020-06, F00455/CONF/RED/A03, Specialist Prosecutor, *Annex 3 to Confidential 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, 8 September 2021, confidential, pp. 5-10, 14-15, 18, 23; F00455/CONF/RED/A05, Specialist Prosecutor, *Annex 5 to Confidential 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, 8 September 2021, confidential, pp. 2-3.

<sup>11</sup> SPO Submissions, para. 10.

reasonable explanation for not having sought, with due diligence, amendments to the Indictment based on the witness statements predating the confirmation of the Indictment on 26 October 2020. Most of the evidence relied on by the SPO was in its possession prior to the confirmation of the Indictment. Nor does the SPO justify or explain the delay in only submitting the Proposed Amendments after being in the possession of the witness statements it obtained. If the latest interview relied upon was carried out in [REDACTED], it follows that the SPO has delayed for almost [REDACTED].

14. Further, there was nothing novel in the Pre-Trial Judge's finding that instances of personal participation of the Accused in crimes must be exhaustively pleaded.<sup>12</sup> The SPO cannot claim that they only became aware of the need to seek to amend the Indictment upon receipt of that finding, which was itself in line with all international precedents.<sup>13</sup>

15. The Defence therefore submit that the Proposed Amendments should be rejected because the SPO has unjustifiably delayed the submission of the Proposed Amendments. This delay inevitably impacts on Defence preparations and investigations. The new allegations will have to be investigated thoroughly by the Defence and the addition of new allegations thus necessarily increases the time that it will take the Defence to conduct an effective investigation. The Accused have been in detention since early November 2020. It is not appropriate now to prolong their detention by permitting the SPO to make amendments [REDACTED] – [REDACTED] – [REDACTED].

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<sup>12</sup> KSC-BC-2020-06, F00413, Pre-Trial Judge, *Decision on Defence Motions Alleging Defects in the Form of the Indictment*, 22 July 2021, confidential, para. 91.

<sup>13</sup> See, for instance, ICTY, *Prosecutor v. Blaškić*, IT-95-14-A, Appeals Chamber, *Judgement*, 29 July 2004, para. 210.

## V. CONCLUSION AND RELIEF SOUGHT

16. Based on the above, the Defence therefore request that a lesser redacted or unredacted version of the Amendments must be provided to the Defence before the Defence are required to make meaningful submissions on the Proposed Amendments. The Defence therefore reserve its position regarding the Proposed Amendments until such version of the Amended Indictment is made available to the Defence.

17. In the alternative, the Defence request that the Pre-Trial Judge reject the Proposed Amendments, as the SPO has delayed unjustifiably in submitting these Amendments, which inevitably affects the Defence effective preparations and investigations.

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Tuesday, 5 October 2021

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Tuesday, 5 October 2021

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