



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: 2 December 2021

Language: English

Classification: Public

Order Setting the Date for Ninth Status Conference and for Submissions

Specialist Prosecutor
Jack Smith

Counsel for Victims
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Counsel for Hashim Thaçi
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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 ("Mr Selimi"), and Jakup Krasniqi (collectively referred to as the "Defence").²
2. On 12 March 2021, the Pre-Trial Judge issued the "Decision on Categorisation of Evidence Under Rule 109(c) and Related Matters", 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 2021.³
3. On 24 June 2021, pursuant to a request of the Specialist Prosecutor's Office ("SPO"),⁴ the Pre-Trial Judge extended the deadlines in relation to Rule 102(3) material.⁵

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*, 26 October 2020, public; F00045/A03, Specialist Prosecutor, *Further Redacted Indictment*, 4 November 2020, public. A confidential further lesser redacted version of the confirmed indictment was submitted on 11 December 2020, F00134, confidential. Subsequent to the Decision on Defects in the Form of the Indictment, a confidential redacted version, F00455/CONF/RED/A01, and a public redacted version, F00455/RED/A01, of the corrected Confirmed Indictment were filed on 8 September 2021.

³ 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.

⁴ KSC-BC-2020-06, F00356, Specialist Prosecutor, *Prosecution Request for Extension of Time Limit to Provide Rule 102(3) Notice*, 18 June 2021, public.

⁵ KSC-BC-2020-06, F00370, Pre-Trial Judge, *Decision on Prosecution Request for Extension of Time Limit to Provide its Rule 102(3) Notice*, 24 June 2021, public, para. 16.

4. On 21 July 2021, the Pre-Trial Judge extended the deadline for the provision of Rule 102(1)(b) material to 27 September 2021.⁶
5. On 8 September 2021, the Pre-Trial Judge issued a decision amending the procedure in relation to disclosure of Rule 102(3) material.⁷
6. On 24, 28, and 30 September 2021, the Pre-Trial Judge granted various requests for extension of time in relation to the disclosure of Rule 102(3) material.⁸
7. On 18 October 2021, following a request of the SPO,⁹ the Pre-Trial Judge suspended the SPO deadlines in relation to Rule 102(3) material and ordered the Defence and Victims' Counsel to make observations on the SPO request, if they so wish, in their submissions for the upcoming status conference.¹⁰
8. On 29 October 2021, pursuant to a scheduling order of the Pre-Trial Judge,¹¹ an eighth status conference was held ("Eighth Status Conference")¹² in which: (i) the

⁶ KSC-BC-2020-06, Transcript of Hearing, 21 July 2021, public, p. 536, lines 4-9.

⁷ KSC-BC-2020-06, F00460, Pre-Trial Judge, *Decision on the Defence Request for an Amended Rule 102(3) Notice*, 8 September 2021, public.

⁸ KSC-BC-2020-06, F00487, Pre-Trial Judge, *Decision on Prosecution Request for Extension of Time Limit*, 24 September 2021, public, para. 14; F00496, Pre-Trial Judge, *Decision on Prosecution Request for Extension of Time Limit*, 28 September 2021, para. 14; F00489, Pre-Trial Judge, *Decision on Prosecution Request for Extension of Time Limit*, 30 September 2021, para. 14.

⁹ KSC-BC-2020-06, F00527, Specialist Prosecutor, *Prosecution Request for Extension of Time Limit*, 14 October 2021, public.

¹⁰ KSC-BC-2020-06, F00528, Pre-Trial Judge, *Order in Relation to Prosecution Request for Extension of Time Limit*, 18 October 2021, public.

¹¹ KSC-BC-2020-06, F00531, Pre-Trial Judge, *Order Setting the Date for a Eighth Status Conference and for Submissions*, 18 October 2021, public.

¹² KSC-BC-2020-06, Transcript of Hearing, 29 October 2021, public. Seven status conferences were held prior to that at regular intervals, namely on 18 November 2020, 17 December 2020, 16 February 2021, 24 March 2021, 19 May 2021, 21 July 2021, and 14 September 2021. See 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; Transcript of Hearing, 18 November 2020, public; F00130, Pre-Trial Judge, *Order Setting the Date for a Second Status Conference and for Submissions*, 8 December 2020, public; Transcript of Hearing, 17 December 2020, public; F00185, Pre-Trial Judge, *Order Setting the Date 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; Transcript of Hearing, 16 February 2021, public; F00227, Pre-Trial Judge, *Order Setting the Date for a Fourth Status Conference and for Submissions*, 17 March 2021, public; Transcript of Hearing, 24 March 2021, public; F00300, Pre-Trial Judge, *Order Setting the Date for a Fifth Status Conference and for Submissions*, 14 May 2021, public, para. 19; Transcript of Hearing,

deadline for the disclosure of outstanding Rule 102(1)(b) material and the translation of such material was extended to 31 January 2022;¹³ (ii) the remaining Defence deadlines for Rule 102(3) material were suspended;¹⁴ (iii) the deadline for the SPO's pre-trial brief and related material was set to 17 December 2021;¹⁵ and (iv) the SPO was ordered to provide its Rule 109(c) chart by 28 January 2022.¹⁶

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.

19 May 2021, public; F00393, Pre-Trial Judge, *Order Setting the Date for a Sixth Status Conference and for Submissions*, 12 July 2021, public, para. 15; Transcript of Hearing, 21 July 2021, public; F00461, Pre-Trial Judge, *Order Setting the Date for a Seventh Status Conference and for Submissions*, 8 September 2021, public; Transcript of Hearing, 14 September 2021, public.

¹³ KSC-BC-2020-06, Transcript of Hearing, 29 October 2021, public, p. 753, lines 21-25 to p. 754, lines 1-3.

¹⁴ KSC-BC-2020-06, Transcript of Hearing, 29 October 2021, public, p. 754, lines 5-16.

¹⁵ KSC-BC-2020-06, Transcript of Hearing, 29 October 2021, public, p. 752, line 23 to p. 753, line 2.

¹⁶ KSC-BC-2020-06, Transcript of Hearing, 29 October 2021, public, p. 753, lines 3-4.

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 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.¹⁷

¹⁷ 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

14. Having considered the scheduling preferences expressed by the Parties and Victims' Counsel as well as courtroom availability, the Pre-Trial Judge convenes the Ninth Status Conference in this case on Wednesday, 15 December 2021, at 14:30.

15. During the hearing, the Pre-Trial Judge will ask the Parties for updates, if any, on the outstanding issues from the Eighth 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. Whether the SPO foresees any difficulty in meeting its deadline of 31 January 2021 for the disclosure and translation of Rule 102(1)(b) material and whether the SPO can give an estimate of how much of such material remains to be disclosed;
- b. Whether the Parties can provide an update on their progress towards the completion of the procedure for the disclosure of Rule 102(3) material, in particular whether and what deadlines can be re-established for such material;
- c. 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;
- d. Whether progress has been made in the disclosure process with respect to Rule 107 material, and whether any additional applications pursuant to this rule are imminent;

- e. Whether the SPO has been able to create witness entities in Legal Workflow¹⁸ and whether the Defence has any further requests in relation to this matter;
- f. Whether progress has been made in *inter partes* discussions concerning the categorisation of documents linked to Mr Selimi;¹⁹ and
- g. Whether progress has been made in *inter partes* discussions concerning the linking of translations, lesser redacted versions, and corrected versions of documents to their originals in Legal Workflow.²⁰

(2) Translations:

- a. What progress has the Language Services Unit made in the translation of the preliminary witness list (F542/A02); and
- b. Whether the Parties have made any further urgent requests for translation.

(3) SPO investigations and next steps:

- a. Whether the SPO can provide a further update on the estimated date of completion of outstanding investigative steps;
- b. Whether there are any anticipated issues with the 17 December 2021 deadline for the filing of the SPO's pre-trial brief and related material pursuant to Rule 95(4)(a)-(c) of the Rules; and
- c. Whether there are any anticipated issues with the SPO's 28 January 2022 deadline for providing a Rule 109(c) chart.

¹⁸ KSC-BC-2020-06, Transcript of Hearing, 29 October 2021, public, p. 673, lines 11-21, p. 674, lines 6-13, p. 755, lines 23-25.

¹⁹ KSC-BC-2020-06, Transcript of Hearing, 29 October 2021, public, p. 671, line 18 to p. 672, line 13, and p. 756, lines 2-9.

²⁰ KSC-BC-2020-06, Transcript of Hearing, 29 October 2021, public, p. 756, lines 2-9.

(4) Defence investigations and next steps:

- a. Whether the Defence can provide more information on the status of their investigations;
- b. 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
- c. 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.

(5) Detention:

- a. Whether any COVID-19 risk mitigation measures have changed since the Registry's fifth update on such measures.

16. Finally, taking into consideration courtroom availability, the Parties and participants are invited to indicate their availability on Friday, 4 February 2022 for the next status conference in this case.

17. The Parties and participants are invited to file written submissions, if they so wish, on any of the above matters. Should the Parties or participants 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 Parties and participants are invited to file any such submissions by Friday, 10 December 2021.

IV. DISPOSITION

18. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a. **DECIDES** to convene a status conference in the presence of the SPO, Victims' Counsel and the Defence, at **14:30** on **Wednesday, 15 December 2021**; and
- b. **REQUESTS** the Parties and participants to provide written submissions, if they so wish, by **Friday, 10 December 2021**, as set forth in paragraph 17, above.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Thursday, 2 December 2021
At The Hague, the Netherlands.