

**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:** Specialist Counsel for Hashim Thaçi

**Date:** 1 February 2022

**Language:** English

**Classification:** Confidential

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**Thaçi Defence Reply to SPO’s Consolidated Response to Defence Requests for Certification to Appeal the “Decision Concerning Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)”**

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**Specialist Prosecutor**

Jack Smith

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Kadri Veseli**

Ben Emmerson

**Counsel for Victims**

Simon Laws

**Counsel for Rexhep Selimi**

David Young

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

## I. INTRODUCTION AND APPLICABLE LAW

1. On 26 October 2020, the Pre-Trial Judge (“PTJ”) confirmed the indictment<sup>1</sup> against Mr. Thaçi (“Accused”) and his co-accused.<sup>2</sup> On 3 September 2021, the SPO requested leave to amend the Indictment to include three categories of allegations.<sup>3</sup> On 23 December 2021, the PTJ granted the SPO’s motion to amend the Indictment as requested (“Impugned Decision”).<sup>4</sup>

2. On 17 January 2022, the Defence for the Accused (“Defence”) applied for certification for leave to appeal from the Impugned Decision (“Application”).<sup>5</sup> On 27 January 2022, the SPO filed its response (“Response”).<sup>6</sup> The Defence hereby replies to the Response pursuant to Rule 76 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”), focussing on “new issues arising from the response”.

3. This Reply is filed as confidential pursuant to Rule 82(4) as it relates to the Impugned Decision which was classified as confidential. The Defence has no objection to it being reclassified as public.

## II. SUBMISSIONS

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<sup>1</sup> KSC-BC-2020-06/F000134, Lesser Redacted Version of Redacted Indictment, KSC-BC-2020-06/F00045/A02, 4 November 2020, 11 December 2020 (“Indictment”).

<sup>2</sup> KSC-BC-2020-06/F00026/CONF/RED, Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, 20 October 2020 (“Confirmation Decision”).

<sup>3</sup> KSC-BC-2020-06/F00455/CONF/RED, 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, 8 September 2021 (“Submission of Corrected Indictment and Request to Amend”).

<sup>4</sup> KSC-BC-2020-06/F00635/CONF, Decision Concerning Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b), 23 December 2021 (“Impugned Decision”).

<sup>5</sup> KSC-BC-2020-06/F00645, Thaçi Defence Request for Certification to Appeal the “Decision Concerning Submissions of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)”, 17 January 2022.

<sup>6</sup> KSC-BC-2020-06/F00658, Prosecution Consolidated response to Defence requests for certification to appeal the “Decision Concerning Submissions of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)”, 27 January 2022.

A. MISCHARACTERIZATION OF DEFENCE SUBMISSIONS

4. Contrary to the SPO's submissions,<sup>7</sup> the Defence has not dealt with its requests for leave to appeal together in a 'generic manner', without demonstrating that they 'meet the necessary requirements'. Rather, the Defence identified four distinct appealable issues in its Application: these issues are discrete; emanate from the ruling; relate to an identifiable topic; and are not abstract/hypothetical questions.<sup>8</sup> Contrary to the Response, the Defence *has* provided specific arguments for each Issue for each limb of the test for certification.<sup>9</sup>

B. FIRST ISSUE

5. The SPO mistakenly submits that the Defence has failed to identify an appealable issue and simply disagrees with the Impugned Decision.<sup>10</sup> This is incorrect. The Defence has identified an appealable issue - the finding that the Defence can make meaningful challenges to the proposed amendments, before it has received a lesser redacted version of the Indictment and Outlines, and thus before it can read the proposed amendments which are currently redacted.<sup>11</sup> The fact that the PTJ has deemed the redactions necessary and that he explained this in the Impugned Decision does not, contrary to the SPO's submissions,<sup>12</sup> affect the fact that this is an appealable issue.

6. Additionally, contrary to the SPO's submission,<sup>13</sup> this issue is not now 'moot' because the PTJ granted leave to amend the Indictment *before* the SPO filed a lesser

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<sup>7</sup> Response, paras. 4, 18, 23.

<sup>8</sup> Application, paras. 10, 11.

<sup>9</sup> *See*, Application, para. 10.

<sup>10</sup> Response, paras. 8, 9.

<sup>11</sup> Application, paras. 10, 11.

<sup>12</sup> Response, para. 9.

<sup>13</sup> Response, para. 10.

redacted version of the Indictment. This is because the redactions that are the subject of the First Issue are still present in the lesser redacted Indictment.<sup>14</sup> So the First Issue remains an *issue*.

7. The SPO mischaracterizes the Defence arguments about the violation of the Accused's right to be heard as "loose and unsupported".<sup>15</sup> They are not. Rather, they were presented simply as they are simple.<sup>16</sup> If the Accused cannot read proposed amendments to the Indictment because they are redacted, how can he make meaningful submissions on them (as the PTJ found he could) and how can proceedings in those circumstances be deemed fair?

8. Finally, the SPO mischaracterizes the Defence arguments about how the four issues as a group satisfy the last prong of the certification test as "generalized". Arguments were only grouped together in paragraphs 17-18 of the Application where the same reasoning applied, to avoid repetition. The Defence in this case and in *Gucati* and *Haradinaj* took the same approach in their applications for certification to appeal their respective decision on defects in the indictment. The PTJ did not find fault with those approaches and drafted his decisions in the same manner.<sup>17</sup> This is therefore not an error by the Defence.

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<sup>14</sup> KSC-BC-2020-06/F00647, Prosecution Submission of Lesser Redacted Versions of Indictment and Rule 86(3)(b) Outline with Confidential Redacted Annexes, 17 January 2022.

<sup>15</sup> Response, para. 12.

<sup>16</sup> Application, para. 13.

<sup>17</sup> See, KSC-BC-2020-06/F0047, Thaçi Defence Request for Certification to Appeal the "Decision on Defence Motions Alleging Defects in the Form of the Indictment", 27 August 2021; KSC-BC-2020-06, Decision on Defence Applications for Leave to Appeal the Decision on Defence Motions Alleging Defects in the Form of the Indictment, 18 October 2021; KSC-BC-2020-07/F00169, Decision on the Defence Applications for Leave to Appeal the Decision on the Defence Preliminary Motions, 1 April 2021; KSC-BC-2020-07/F00151, Application for Leave to Appeal through Certification from Decision KSC-BC-2020-07/F00147 pursuant to Article 45(2) and Rule 77(1), 15 March 2021; KSC-BC-2020-07/F00153, Application for Leave to Appeal through certification from Decision KSC-BC-2020-07/F00157 pursuant to Article 45(2) and Rule 77(1), 15 March 2021.

C. SECOND ISSUE

9. The SPO misunderstands the nature of the test on a certification to appeal. The moving party is not required to specify what it thinks the PTJ should have done differently,<sup>18</sup> that is a matter for appeal if granted. Rather, they have to identify how the “issue” fits the test outlined above which the Defence has done.

**III. CONCLUSION AND RELIEF SOUGHT**

10. For the reasons set out in the Application, the Defence respectfully requests the PTJ grant leave to appeal.

[Word count: 1000 words]

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'G. W. Kehoe', is written over a white rectangular box.

**Gregory W. Kehoe**

**Counsel for Hashim Thaçi**

Tuesday, 1 February 2022

At Tampa, United States

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<sup>18</sup> Response, para. 18.