



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: 15 March 2022

Language: English

Classification: **Public**

Order Setting the Date for Eleventh Status Conference and for Submissions

Specialist Prosecutor
Jack Smith

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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 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. A confidential further lesser redacted version of the confirmed indictment was filed on 17 January 2022, F00647/A01, *Confidential Lesser Redacted Version of "Indictment"*, KSC-BC-2020-06/F00455/A01, Dated 3 September 2021, confidential.

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 wished, in their submissions for the upcoming status conference.¹⁰
8. On 29 October 2021, at the eighth status conference: (i) the deadline for the disclosure of outstanding Rule 102(1)(b) material and the translation of such material was extended to 31 January 2022;¹¹ (ii) the remaining Defence deadlines for Rule 102(3) material were suspended;¹² (iii) the deadline for the SPO's pre-trial brief and related material was set to 17 December 2021;¹³ and (iv) the SPO was ordered to provide its Rule 109(c) chart by 28 January 2022.¹⁴

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, Transcript of Hearing, 29 October 2021, public, p. 753, lines 21-25 to p. 754, lines 1-3.

¹² KSC-BC-2020-06, Transcript of Hearing, 29 October 2021, public, p. 754, lines 5-16.

¹³ KSC-BC-2020-06, Transcript of Hearing, 29 October 2021, public, p. 752, line 23 to p. 753, line 2.

¹⁴ KSC-BC-2020-06, Transcript of Hearing, 29 October 2021, public, p. 753, lines 3-4.

9. On 17 December 2021, the SPO filed its pre-trial brief and related material.¹⁵
10. On 28 January 2022, the SPO submitted the Rule 109(c) Chart.¹⁶
11. On 31 January 2022, the SPO filed its notice of Rule 102(1)(b) material indicating that it has disclosed all previously identified Rule 102(1)(b) material.¹⁷
12. On 4 February 2022, pursuant to a scheduling order of the Pre-Trial Judge,¹⁸ a tenth status conference was held (“Tenth Status Conference”).¹⁹

¹⁵ KSC-BC-2020-06, F00631, Specialist Prosecutor, *Submission of Pre-Trial Brief with Witness and Exhibit Lists*, 17 December 2021, confidential, with Annexes 1-3, strictly confidential and *ex parte*. A public redacted version with confidential redacted Annexes 1-3 was filed on 21 December 2021, F00631/RED. A corrected version of the Pre-Trial Brief was filed on 24 February 2022, F00709/A01 (strictly confidential and *ex parte*) and F00709/A02 (confidential redacted).

¹⁶ KSC-BC-2020-06, F00663, Specialist Prosecutor, *Prosecution Submission of Rule 109(c) Chart*, 28 January 2022, public with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential.

¹⁷ KSC-BC-2020-06, F00670, Specialist Prosecutor, *Prosecution Notice of Rule 102(1)(b) Disclosure and Related Requests*, 31 January 2022, strictly confidential and *ex parte*, with Annexes 1-9, strictly confidential and *ex parte*. A confidential redacted version was filed the same day, F670/CONF/RED.

¹⁸ KSC-BC-2020-06, F00655, Pre-Trial Judge, *Order Setting the Date for the Tenth Status Conference and for Submissions*, 25 January 2022, public.

¹⁹ KSC-BC-2020-06, Transcript of Hearing, 4 February 2022, public. Nine 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, 14 September 2021, and 29 October 2021 and 15 December 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, 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; F00531, Pre-Trial Judge, *Order Setting the Date for a Eighth Status Conference and for Submissions*, 18 October 2021, public; Transcript of Hearing, 29 October 2021, public; F00593, Pre-Trial Judge, *Order Setting the Date for a Ninth Status Conference and for Submissions*, 2 December 2021, public; Transcript of Hearing, 15 December 2021, public.

II. APPLICABLE LAW

13. 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.

14. 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.

15. 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.

16. 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.²⁰

III. DISCUSSION

17. Having considered the scheduling preferences expressed by the Parties and Victims' Counsel as well as courtroom availability, the Pre-Trial Judge convenes the Eleventh Status Conference in this case on Thursday, 24 March 2022, at 14:30.

18. During the hearing, the Pre-Trial Judge will ask the Parties for updates, if any, on the outstanding issues from the Tenth 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 Parties can provide an update on the disclosure of material emanating from other proceedings;
- 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: (i) the progress made with respect to existing Defence requests for Rule 102(3) material, including the amount of material that remains to be disclosed with respect to each request; (ii) whether the SPO foresees making any materiality challenges in the near future; (iii) an update on *inter partes* discussions regarding the SPO spreadsheets relating to Rule 102(3) material; and (iv) whether and what deadlines can be reinstated for the disclosure of this material;

²⁰ 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.

- c. Whether the SPO has finalised its review of exculpatory evidence that remains in the SPO's custody, control or actual knowledge that must be disclosed to the Defence, pursuant to Rule 103 of the Rules and, if such disclosure has not been finalised, whether an update can be provided regarding the quantity of material that remains to be reviewed 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; and
- e. Whether any progress has been made in *inter partes* discussions concerning Legal Workflow issues, in particular the populating of witness entities and the linking of translations, lesser redacted versions, and corrected versions to their originals in Legal Workflow.

(2) Translations:

- a. Whether the Parties have made any further urgent requests for translation, including in relation to the Rule 109(c) chart.

(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, including whether investigations can be completed by 6 May 2022.

(4) Defence investigations and next steps:

- a. Whether the Defence can provide more information on the status of their investigations, in particular what steps they have taken to move their investigations forward;

- 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;
- 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;
- d. Whether and when discussions on points of agreement on law and/or facts, pursuant to Rules 95(3) and 156 of the Rules, can resume;
- e. Whether and when the Parties can identify objections to the admissibility of evidentiary material disclosed pursuant to Rule 95(2)(e) of the Rules, in particular whether the Defence can provide objections to the admissibility of Rule 102(1)(b) material by 13 May 2022;
- f. Whether and when the Parties expect to be able to identify a list of issues subject to dispute and one with issues not subject to dispute pursuant to Rule 95(5)(b) of the Rules; and
- g. Whether the Defence can provide a best estimate of when it would be prepared to file pre-trial briefs, in particular whether Defence pre-trial briefs can be filed before the summer recess.

(5) Proposals for streamlining the case:

- a. Whether the Parties would be in a position by the twelfth status conference to conduct *inter partes* discussions and/or file written proposals to streamline trial proceedings that will be included in the handover document provided for under Rule 98(e) of the Rules, including time limits for the presentation of the

parties' cases and/or for the questioning of witnesses, limitations on the number of witnesses, and the use of written evidence and bar table motions.

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

20. 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 Monday, 21 March 2022.

IV. DISPOSITION

21. 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 **Thursday, 24 March 2022**; and
- b. **REQUESTS** the Parties and participants to provide written submissions, if they so wish, by **Monday, 21 March 2022**, as set forth in paragraph 20, above.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Tuesday, 15 March 2022
At The Hague, the Netherlands.