

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: Counsel for Kadri Veseli

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**Public Redacted Version of
Veseli Defence Submissions on the Supporting Material Submitted by the SPO
in Respect of the First Category and Second Category of
Amendments to the Indictment (F00668, dated 31 January 2022)**

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I. INTRODUCTION

1. Pursuant to filing KSC-BC-2020-06/F00635, the Defence for Mr Kadri Veseli (“Defence”) hereby submits its submissions on the supporting material in relation to the First Category and Second Category of amendments.¹
2. The evidentiary material submitted by the SPO in respect of the First and Second Categories fails to meet the evidentiary threshold required by the Law and Rules. The SPO request should be denied in its entirety.

II. SUBMISSIONS RELATING TO THE APPLICABLE LAW

3. Pursuant to Article 39(2) and 39(8) of the Law, as well as Rules 90(2), 86(3) and 86(4) of the Rules, the Pre-Trial Judge shall examine the supporting material in relation to each of the charges and shall determine whether a ‘well-grounded suspicion’ exists against the Accused. The standard is not further defined in the Rules.
4. Pursuant to article 19(1.12) of the Kosovo Code of Criminal Procedure,² the ‘well-grounded suspicion’ standard that applies to the filing of an indictment requires that the SPO is in “[p]ossession of admissible evidence that would satisfy an objective observer that a criminal offence has occurred and the defendant has committed the offence.”
5. Except for ICC case law,³ reliance on the case law of certain international *ad hoc* tribunals is inapposite, considering the considerably lower (*prima facie*) threshold adopted by such courts and tribunals. In particular, the Defence notes that determining whether a ‘well-grounded suspicion’ exists necessarily

¹ F00635, Decision Concerning Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b), 23 December 2021, para. 53(d).

² [Official Gazette of the Republic of Kosovo, No. 37, 28 December 2012.](#)

³ The Rome Statute appears to adopt a similar evidentiary threshold (“substantial grounds to believe that the person committed the crimes charged”).

involves “weighing the evidence.”⁴ It follows that, when assessing each piece of supporting material, the Pre-Trial Judge “may evaluate ambiguities, inconsistencies and contradictions in the evidence or doubts as to the credibility of witnesses.”⁵

6. Contrary to the Rules of Procedure and Evidence of a hybrid international tribunal,⁶ neither the Law,⁷ nor the Rules,⁸ support the view that the Pre-Trial Judge is barred from considering other publicly available information⁹ which may be adduced by the Defence, all the more so, considering that the present proceeding differs from the original confirmation decision, which is conducted on an *ex parte* basis. While the Defence understands that the Pre-Trial Judge’s assessment is based predominantly on the submitted material, as well as, where applicable, any previous material referenced therein,¹⁰ nothing should prevent the Pre-Trial Judge from relying on publicly available information, such as ICTY case-law.¹¹

III. SUBMISSIONS RELATING TO THE FIRST AND SECOND CATEGORIES

A. First Category

7. The First Category alleges four separate incidents relating to: i) [REDACTED]; ii) [REDACTED]; (iii) [REDACTED]; and iv) [REDACTED].

⁴ *Contra*, F00635, para. 46.

⁵ ICC, *Prosecutor v. Callixte Mbarushimana*, ICC-01/04-01/10/514, [Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled ‘Decision on the confirmation of charges’](#), 30 May 2012, para. 46.

⁶ STL, Rules of Procedure and Evidence, 18 December 2020.

⁷ Law, Art. 39(2).

⁸ Rule 86.

⁹ *Contra* F00026/CONF/RED, Confidential Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, 19 November 2020, para. 49.

¹⁰ For instance, relevant modes of liability charged.

¹¹ *See*, Defence submissions in Section B(2) (Non-existence of a state of armed conflict during the time-frame of the commission of the alleged crimes); or submissions in paragraph 29.

1. Link Between the Charged Events and Mr Veseli

8. At the outset, the Defence submits that the evidentiary material submitted by the SPO fails entirely to establish any link between the charged events and Mr Veseli, any of the co-accused, or any named JCE member in the confirmed indictment. The obligation to establish such link is a *sine qua non* requirement for the Pre-Trial Judge to even assess whether a well-grounded suspicion exists with regard to the crimes alleged. In this regard, the Defence agrees with the view espoused by the ICC, according to which:

[W]henver the evidence submitted by the Prosecution does not allow for the establishment of a link between the charged events and the suspect, 'due to its being flimsy, inconsistent or otherwise inadequate', not only is the Pre-Trial Chamber under a duty to decline to confirm the charges, but it is also advisable 'to refrain from delving into the legal analysis of the fact, including the correspondence between the objective features of the fact, on the one hand, and the objective and subjective elements of a given crime, on the other.'¹²

9. Irrespective of whether the evidentiary material in support of the incidents alleged in the First Category would satisfy an objective observer that a criminal offence has occurred, no material is adduced to prove that i) the acts or omissions were committed in pursuance of the common criminal plan to "take control over Kosovo", ii) that the crimes were committed by any member of the JCE or tool thereof; iii) that any of the accused or named JCE members had any knowledge of the crimes committed or otherwise contributed significantly in the implementation of the common plan; and iv) that the Accused had any effective control over the perpetrators or their immediate superiors.
10. In the alternative, the evidentiary material submitted by the SPO fails to indicate whether the alleged crimes constituted a natural and foreseeable consequence of the common plan and Mr Veseli willingly took that risk.

¹² ICC, *The Prosecutor v. Mahamat Said Abdel Kani*, ICC-01/14-01/21-218-Red, [Public redacted version of Decision on the confirmation of charges against Mahamat Said Abdel Kani](#), 9 December 2021, para. 49.

11. As for superior/commander responsibility, there is no evidence to suggest that Mr Veseli had any *de facto* or *de jure* effective control over zone commanders and deputy commanders as well as their subordinates. Most importantly, there is no evidence to suggest that Mr Veseli should have been aware, or 'on notice' of the risk that crimes might be carried out by subordinates here.
12. Finally, with regard to aiding and abetting, the evidentiary material fails to indicate any evidence which would satisfy an objective observer that Mr Veseli (or any other co-accused or named JCE member) provided assistance, encouragement, and/or moral support which had a substantial effect on the perpetration of the crimes charged in the indictment. Nor is there evidence to show that Mr Veseli was aware that the alleged crimes would be committed, and his acts or omissions would have contributed to their commission.¹³
13. The Defence submits that the total lack of any material that would establish a link between the crimes charged and Mr Veseli, via any of the charged modes of liability, is sufficient for a finding that the required evidentiary threshold has not been met.

2. Material Obtained in Flagrant Violation of the Rules

14. The Defence understands that challenges to the admissibility of the evidence may be submitted during other stages of the proceedings. However, as the Pre-Trial Judge has warranted, any material that was obtained in violation of the Law and the Rules will not be accepted.¹⁴
15. At paragraph 390 of the Pre-Trial Brief, the SPO alleges that the perpetrators of the crimes committed in Budakovë and Semetishtë were, amongst others,

¹³ F00455/CONF/RED/A03, ANNEX 3 to Confidential Redacted Version of 'Submission of corrected Indictment and request to amend pursuant to Rule 90(1)(b)', dated 3 September 2021, 8 September 2021, para. 54.

¹⁴ F00026/CONF/RED, para. 50.

'[REDACTED]'. This clearly indicates the intention of the SPO to consider these individuals as suspects.

16. While [REDACTED] was correctly interviewed as a suspect, and in presence of his counsel,¹⁵ [REDACTED], who allegedly transported, along with [REDACTED], three individuals ([REDACTED]) from Budakovë to Semetishtë, was interviewed as a witness,¹⁶ thereby violating his basic constitutional rights to be informed of the charges against him; of his right to remain silent; or the right to be assisted by counsel.¹⁷
17. The Defence notes that [REDACTED] was also questioned as a witness,¹⁸ in clear disregard of the Constitution, the Law and Rule 138(2)(b).¹⁹

3. Whether a Well-Founded Suspicion Exists with Regard to the Crimes Alleged

18. In the alternative, the Defence submits that the SPO has failed to meet its evidentiary threshold with regard to the crimes charged.

i) [REDACTED]

19. The SPO relies entirely on the SPO interview of [REDACTED].²⁰ While corroboration is not a legal requirement in order to prove a crime or criminal conduct, [REDACTED]'s account is riddled with inconsistencies, contradictions, and assertions that give rise to doubts as to credibility, which

¹⁵ 089115-TR-ET Part 1 RED, p. 3.

¹⁶ 088941-TR-ET Part 1 RED, p. 2.

¹⁷ Law, Art. 38(3).

¹⁸ 078562-TR-ET Part 1 RED, p. 2.

¹⁹ Rule 138(2)(b) ('admission of the evidence would be antithetical to or would seriously damage the integrity of the proceedings').

²⁰ F00455/CONF/RED/A03, pp. 2-4; 9; 10-13; 17; 24.

renders his evidence patently insufficient to meet the required standard of proof.

20. For instance, despite [REDACTED]'s claims that [REDACTED]²¹ and [REDACTED];²² [REDACTED];²³ and [REDACTED],²⁴ the medical report of [REDACTED] prepared by a [REDACTED] clearly indicates that "[REDACTED]" [REDACTED]'s tendency to exaggerate was noticed by the SUP authorities themselves²⁵ as well as by the SPO.²⁶
21. Moreover, it is telling that [REDACTED] fails entirely to mention [REDACTED] in his statement of [REDACTED], which was given immediately after his release. The claim that he did not trust the investigative Judge due to his Turkish ethnicity is not credible, considering that [REDACTED] also failed to mention these two other detainees in his statement to Serbian authorities on [REDACTED] as well as on [REDACTED].²⁷
22. Finally, his open bias towards the KLA (by insisting on calling them terrorists)²⁸ further undermines his credibility.

ii) [REDACTED]

23. According to the material submitted by SPO, [REDACTED] carried out the arrest of [REDACTED] as well as of [REDACTED], presumably²⁹ on the orders

²¹ 078045-TR-ET Part 1 RED, p. 30.

²² 078045-TR-ET Part 2 RED, p. 7.

²³ *Ibid*, p.19.

²⁴ 025430-025437 RED, para. 8.7.

²⁵ 078045-TR-ET Part 2 RED, p. 25 ('[REDACTED]').

²⁶ *Ibid*, p. 1.

²⁷ 025420-025429 RED.

²⁸ 078045-TR-ET Part 1 RED, pp. 10, 14, 24; 078045-TR-ET Part 2 RED, p. 17.

²⁹ 088944-TR-ET Part 3 RED, 15 December 2020, p. 10.

of [REDACTED], who himself allegedly acted pursuant to a request from the leadership of the village.³⁰

24. [REDACTED] were brought to a location next to Budakovë HQ, where they stayed for approximately one or two days.³¹ The material does not indicate, and the SPO does not allege, that [REDACTED] were mistreated in Budakovë.³² They were questioned by a legal advisor, [REDACTED], who despite reasonable suspicions,³³ was not able to conclusively establish whether they were involved in spying operations.³⁴ [REDACTED] proposed to [REDACTED] to either release them or send them to a higher institution, at the brigade level in [REDACTED] for further clarification.³⁵
25. According to the SPO, [REDACTED] were transferred, pursuant to an order from [REDACTED], from Budakovë into the custody of a KLA member named [REDACTED] at the entrance of Semetishtë.³⁶ However, according to the SPO's evidence, the intended destination was actually [REDACTED].
26. During his SPO interview, [REDACTED] stated that [REDACTED] issued an order to him and [REDACTED] to transport [REDACTED] to the 123 Brigade in [REDACTED]. However, at the entrance of Semetishtë, they were stopped by a KLA military police checkpoint. In [REDACTED]'s words:
- [REDACTED].³⁷
27. On 23 August 1998, Serbian authorities found the dead bodies of [REDACTED] on asphalt crossroad between [REDACTED] and [REDACTED]. During the

³⁰ *Ibid*, p. 14.

³¹ *Ibid*, p. 16.

³² F00455/CONF/RED/A03, pp. 13-14; 088941-TR-ET Part 3 RED, p. 12.

³³ 078562-TR-ET Part 3 RED, pp. 29-31.

³⁴ *Ibid*, p. 29.

³⁵ *Ibid*, p. 31.

³⁶ F00455/CONF/RED/A03, pp. 13-14.

³⁷ 088944-TR-ET Part 3 RED, pp. 16-17, p. 20 ('[REDACTED]'); 089115-TR-ET Part 3 RED, p. 15.

autopsy it was shown that the projectiles used to kill the two women were [REDACTED].

28. [REDACTED] [REDACTED] was killed during a fight with Serbian forces. A Serbian ballistics expert subsequently provided the opinion that the projectile that killed [REDACTED] came from the same firearm as was recovered from [REDACTED]'s body.³⁸ The information contained in the report is insufficient for it to be tested.
29. Moreover, the evidence of linkage between the revolver recovered by Serbian Authorities as belonging to [REDACTED] and the projectile found in [REDACTED] must be assessed against the backdrop of a concerted campaign by Serbian authorities to manipulate crime scenes in order to discredit the KLA by framing them for crimes against the civilian population.³⁹
30. Even cast in the light most favourable to the Prosecution, the above indicates only that the murders of [REDACTED] was the result of a rogue individual within KLA ranks. There is no evidence which would link the murders with either the leadership of Batalion 2 ([REDACTED]) or Brigade 123 (Zone Commander Blerim Kuqi), let alone the General Staff level or Mr. Veseli.
31. The evidence offered in support of other allegations of torture, cruel and inhuman treatment, as well as enforced disappearance⁴⁰ is equally insufficient to meet the evidentiary threshold, considering that neither Battalion 2 in

³⁸ SITF00032949-SITF00032968, p. SITF00032963.

³⁹ See, 078562-TR-ET Part 3 RED, ([REDACTED]); see also *Prosecutor v Dordevic*, IT-05-87/1-T, Judgement, 23 February 2011, para. 2102 ('The Chamber's findings set out above demonstrate a pattern in Kosovo involving generally a lack of reporting and investigation of crimes committed by Serbian forces against Kosovo Albanian civilians, from 1998 until at least the end of the NATO campaign in June of 1999'), para. 2103 ('The evidence discloses a consistent pattern of conduct involving MUP personnel, and at times VJ, by which complex efforts were made to prevent the discovery of killings, and to frustrate their investigation').

⁴⁰ The Defence reserves its position to challenge the legal definition of the crime of enforced disappearance at a different stage.

Budakovë, nor the 123 Brigade in [REDACTED] had any information on the whereabouts of [REDACTED].

iii) Redacted Material⁴¹

32. The Defence notes that the whole incident underpinning material facts, including any evidentiary material, remains entirely redacted. The Defence is therefore entirely prevented from being heard and contributing in regard this specific portion of the proceedings.
33. The Defence reiterates that such sweeping redactions violate a multitude of fair trial rights guaranteed by the Constitution and international human rights instruments.

B. Second Category

1. Link between the Charged Events and Mr Veseli

34. The Defence reiterates the above considerations (paras 8-13) *mutatis mutandis* with regard to the Second Category. Considering the timeframe of the alleged charges, namely a period when the KLA had ceased to exist, the SPO fails to even link the alleged crimes with the 'actual' KLA. Furthermore, there is no indication to suggest that the Zone Commander of Karadak had any knowledge or involvement with the crimes charged; or that Mr Veseli and/or any alleged JCE member had any knowledge and significantly contributed to the commission of said crimes.

2. Non-existence of a State of Armed Conflict during the Time-Frame of the Commission of the Alleged Crimes

35. Contrary to proceedings which concern preliminary motions, the present proceeding indisputably requires the SPO to prove, subject to the required

⁴¹ F00455/CONF/RED/A03, pp. 7-8.

threshold of well-grounded suspicion, that a state of armed conflict existed during end of June -August 1999 in Kosovo between the KLA and Serbian forces.

36. The Defence recalls that the Pre-Trial Judge has already answered this question in the affirmative.⁴² However, that finding was based upon *ex parte* proceedings. The Pre-Trial Judge will now have the advantage of relying upon submissions of all parties in the proceedings.
37. The Defence has elsewhere provided substantial submissions relating to the end of the non-international armed conflict in Kosovo, which are hereby confirmed and incorporated by reference.⁴³

3. The Alleged Purpose of the JCE is Moot

38. The SPO alleges that the Accused “and other members of the joint criminal enterprise shared the common purpose to gain and exercise control over all of Kosovo by means including unlawfully intimidating, mistreating, committing violence against, and removing those deemed to be opponents.”
39. Starting from 10 June 1999, the KLA had successfully liberated Kosovo from Serbian invading forces. On the evidence put forward to support this allegation, the SPO has not connected the alleged crimes to the alleged common criminal plan. It is highly illogical to believe that any of the crimes alleged to have occurred in Gjilan, would have contributed towards the purported common purpose to “gain and exercise control over Kosovo”. There is further no evidence to support this link.

⁴² F00026/CONF/RED, para, 137.

⁴³ F00225, Preliminary motion by the Defence of Kadri Veseli to Challenge the Indictment, 15 March 2021, paras 40-74.

40. Indeed, while in 'actual' JCEs the common purpose was directed towards the civilian population (*see for instance, in the Dordević case: "to modify the ethnical balance in favour of Serbia"*), in the present case, a JCE 'to gain control of Kosovo' would reasonably exist only against a government or entity with governmental powers (such as UNMIK) or an individual prominently representing one of the above. No such allegation is made here.
41. It follows that the SPO has failed to substantiate that the alleged crimes were part of a JCE to gain and exercise control over Kosovo.

4. The Evidentiary Threshold is not met

i) [REDACTED]

42. There is no direct evidence to support this charge. The only direct evidence available alleges that [REDACTED] went voluntarily to the Boarding School in Gjilan and was never seen again. There is no evidence which proves that i) [REDACTED] was 'abducted' by the KLA; ii) that he was subjected to mistreatment or murdered inside the Boarding School; iii) that the Boarding School was operated by the KLA; iv) that the relevant zone commander and leadership in the Karadak Zone was aware of any crimes; and v) that any of the accused had any role or involvement with activities in the Karadak Zone after June 1999.

ii) [REDACTED]

43. Similarly, a review of the material submitted by the SPO shows: i) no indication⁴⁴ whether '[REDACTED]' or the persons who took [REDACTED] away were KLA members or whether they were acting under KLA orders; ii) the witness is not clear whether [REDACTED] was actually transferred to the

⁴⁴ 078047-TR-ET Part 1 RED pp. 18-19.

Boarding School;⁴⁵ and iii) all the information concerning [REDACTED]'s whereabouts were based on hearsay.⁴⁶

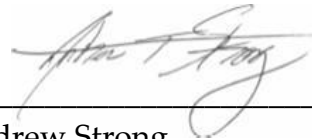
IV. CONCLUSION

44. Considering the above, the Defence respectfully requests the Pre-Trial Judge to find that the SPO has not met its evidentiary burden with respect to the First and Second Categories and accordingly reject the request to amend the Indictment.

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⁴⁵ Compare 078047-TR-ET Part 1 RED, p. 15 ([REDACTED]) with. 078047-TR-ET Part 1 RED, p. 20 ([REDACTED]).

⁴⁶ *Ibid.* The information is hearsay from [REDACTED].