



SPECIALIST PROSECUTOR'S OFFICE  
ZYRA E PROKURORIT TË SPECIALIZUAR  
SPECIJALIZOVANO TUŽILAŠTVO

**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:** Specialist Prosecutor

**Date:** 10 June 2022

**Language:** English

**Classification:** Public

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**Prosecution response to THAÇI Defence preliminary motion on the form of the amended Indictment**

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## I. INTRODUCTION

1. The Motion<sup>1</sup> has not established any defects in the form of the Amendments<sup>2</sup> and should be dismissed. Contrary to the THAÇI Defence's assertions, the requirements set out in Article 38(4) of the Law<sup>3</sup> and Rule 86(3) of the Rules<sup>4</sup> are met. Indeed, the form of the Amendments is consistent with other allegations in the Indictment, which the Pre-Trial Judge has already found to be sufficiently clear and specific.<sup>5</sup>

## II. SUBMISSIONS

2. At the outset, the Specialist Prosecutor's Office notes that the THAÇI Defence's submissions concerning paragraph 93 of the Indictment have no legal basis and should be summarily dismissed, as the challenged allegations fall outside the scope of the Amendments.<sup>6</sup>

3. On its merits, the Motion is based on repetitive submissions<sup>7</sup> that have already been considered and rejected by the Pre-Trial Judge.<sup>8</sup> As in previous submissions, the THAÇI Defence improperly: (i) seeks evidentiary details which need not be pleaded in the Indictment and have been or will be provided in accordance with the relevant framework; and (ii) challenges certain allegations in isolation, without regard to the

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<sup>1</sup> Motion Alleging Defects in the Indictment against Mr Hashim Thaçi, KSC-BC-2020-06/F00824, 31 May 2022 ('Motion').

<sup>2</sup> Annex 1 to Submission of amended Indictment and related documents, KSC-BC-2020-06/F00789/A01, 29 April 2022, Strictly Confidential and *Ex Parte* ('Indictment'), paras 68, 93, 105, 157, 174 ('Amendments').

<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> Decision on Defence Motions Alleging Defects in the Form of the Indictment, KSC-BC-2020-06/F00413, 22 July 2021, Confidential ('Indictment Decision'), para.177.

<sup>6</sup> The only amendment made to paragraph 93 was to the timeframe, which the THAÇI Defence does not take issue with. Its challenges to the pleading of perpetrators, victims, and role of the Accused concern allegations in paragraph 93 that are not part of the Amendments and therefore fall outside the scope of Rules 90 and 97.

<sup>7</sup> *Compare* Motion, KSC-BC-2020-06/F00824, paras 19-26; *and* Motion Alleging Defects in the Indictment against Mr Hashim Thaçi, KSC-BC-2020-06/F00215, 12 March 2021, Confidential, paras 23-24, 58-60.

<sup>8</sup> Indictment Decision, KSC-BC-2020-06/F00413, paras 127-128, 137-177.

Indictment as a whole.<sup>9</sup> When considered in the appropriate context and circumstances of this case,<sup>10</sup> the Motion fails to identify, let alone substantiate, any pleading defect in the Amendments.

4. *The perpetrators are sufficiently identified in the Amendments.*<sup>11</sup> The perpetrators are identified by category or group as Kosovo Liberation Army ('KLA') members, linked to bases, headquarters, certain events, and time periods,<sup>12</sup> and in relation to Budakovë/Budakovo and Semetishtë/Semitište, also referred to by brigade and KLA operational zone.<sup>13</sup> Insofar as the Defence claims that no perpetrators are identified in paragraph 174,<sup>14</sup> it ignores the reference to the relevant location and other parts of the Indictment,<sup>15</sup> which, read together with paragraph 174, sufficiently identify the perpetrators.<sup>16</sup> Accordingly, considering (i) the detailed information provided, (ii) that the charged crimes and modes of liability do not depend on the specific identities of individual perpetrators, and (iii) the nature and overall scale of the crimes charged in the Indictment, additional details regarding the perpetrators need not be pleaded and constitute evidentiary matters for trial.<sup>17</sup>

5. *The victims are sufficiently identified in the Amendments at paragraphs 68, 93, and 105.*<sup>18</sup> The victims are identified by category and group in reference to approximate minimum number, detention location, time period, and other particulars relevant to

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<sup>9</sup> Indictment Decision, KSC-BC-2020-06/F00413, paras 28-29. *See also* Consolidated Prosecution response to THAÇI, SELIMI, and KRASNIQI preliminary motions on the form of the Indictment, KSC-BC-2020-06/F00258, 23 April 2021 ('Initial Response'), para.6 and the sources cited therein.

<sup>10</sup> *See also* Initial Response, KSC-BC-2020-06/F00258, paras 2-5, 37-38 (setting out in the detail the scope and nature of the charges, which necessarily inform the requisite level of pleading specificity in this case).

<sup>11</sup> *Contra* Motion, KSC-BC-2020-06/F00824, paras 17, 19-21.

<sup>12</sup> Indictment, KSC-BC-2020-06/F00789/A01, paras 68, 93, 105, 135, 157, 174. *See, similarly*, Initial Response, KSC-BC-2020-06/F00258, paras 12-13, 27.

<sup>13</sup> Indictment, KSC-BC-2020-06/F00789/A01, paras 68, 157.

<sup>14</sup> Motion, KSC-BC-2020-06/F00824, para.21.

<sup>15</sup> *See, for example*, Indictment, KSC-BC-2020-06/F00789/A01, paras 35, 55, 93, 135, 140.

<sup>16</sup> *See, similarly*, Indictment Decision, KSC-BC-2020-06/F00413, para.151.

<sup>17</sup> *See, similarly*, Indictment Decision, KSC-BC-2020-06/F00413, paras 75, 151.

<sup>18</sup> *Contra* Motion, KSC-BC-2020-06/F00824, para.22. The Defence only challenges the pleading of victims in the Amendments at paragraphs 68, 93, and 105 of the Indictment.

the crimes. Certain victims are also identified by name,<sup>19</sup> ethnicity,<sup>20</sup> and (perceived) political affiliation.<sup>21</sup> Considering (i) the detailed information provided, (ii) the scale and nature of the charged crimes in the Indictment, which are alleged to have been committed against hundreds of victims and directed against a group or collectivity, and (iii) that physical commission is not alleged, additional details regarding the victims need not be pleaded and constitute evidentiary matters for trial.<sup>22</sup>

6. *The locations of the crimes are sufficiently identified in the Amendments at paragraphs 68, 105, and 157.*<sup>23</sup> The Budakovë/Budakovo and Semetishtë/Semetište crime sites are identified by village, municipality, and their connection with/use by KLA members, including members of Brigade 123 of the Pashtrik Operational Zone. Considering (i) the detailed information provided, (ii) scale and nature of the charged crimes, and (iii) the fact that physical commission is not alleged, additional details regarding the locations of the crimes need not be pleaded and constitute evidentiary matters for trial.<sup>24</sup>

7. *The Indictment adequately pleads the Accused's role in the crimes charged.*<sup>25</sup> When the Amendments are read together with the rest of the Indictment, it is evident that the Accused are allegedly responsible for crimes at, *inter alia*, Budakovë/Budakovo, Semetishtë/Semetište, and Gjilan/Gnijlane: (i) through their participation in a joint criminal enterprise ('JCE');<sup>26</sup> (ii) as aider and abettors;<sup>27</sup> and/or (iii) as superiors for crimes committed by their subordinates.<sup>28</sup> As previously found by the Pre-Trial Judge:<sup>29</sup>

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<sup>19</sup> Indictment, KSC-BC-2020-06/F00789/A01, para.157.

<sup>20</sup> Indictment, KSC-BC-2020-06/F00789/A01, para.135.

<sup>21</sup> Indictment, KSC-BC-2020-06/F00789/A01, para.105.

<sup>22</sup> *See, similarly*, Indictment Decision, KSC-BC-2020-06/F00413, para.152.

<sup>23</sup> *Contra* Motion, KSC-BC-2020-06/F00824, para.23. The Defence only challenges the pleading of locations in the Amendments at paragraphs 68, 105, and 157 of the Indictment.

<sup>24</sup> *See, similarly*, Indictment Decision, KSC-BC-2020-06/F00413, para.153.

<sup>25</sup> *Contra* Motion, KSC-BC-2020-06/F00824, paras 21, 24-26.

<sup>26</sup> Indictment, KSC-BC-2020-06/F00789/A01, paras 32-53.

<sup>27</sup> Indictment, KSC-BC-2020-06/F00789/A01, para.54.

<sup>28</sup> Indictment, KSC-BC-2020-06/F00789/A01, paras 55-57.

<sup>29</sup> Indictment Decision, KSC-BC-2020-06/F00413, para.174 (citations omitted).

None of the aforementioned modes of liability contain an element requiring that the Accused played a direct role in the commission of the charged crimes. Rather, the Accused's link to the charged crimes is to be established by means of their: (i) contribution to the common purpose which amounts to or involves the commission of a crime provided for in the Law (JCE); (ii) assistance, encouragement, or moral support to the commission of a crime where this support has a substantial effect on the perpetration of the crime (aiding and abetting); and/or (iii) failure to take necessary and reasonable measures to prevent the crimes of *de jure* or *de facto* subordinates or to punish the perpetrators of crimes committed by such subordinates (superior responsibility).

8. Accordingly, considering that the Pre-Trial Judge has previously found that the charged modes of liability are pleaded with sufficient clarity and specificity,<sup>30</sup> additional detail regarding the Accused's alleged link or role need not be provided in the Amendments.<sup>31</sup>

9. In sum, all material facts, including in relation to the Amendments, have been pleaded in the Indictment with sufficient clarity and specificity to enable the Accused to fully understand the nature and cause of the charges against them. In accordance with the established framework, the Defence has received and will continue to receive the evidentiary details supporting the pleaded material facts, including those sought in the Motion, thereby ensuring the fairness of the proceedings.<sup>32</sup>

### III. RELIEF REQUESTED

10. For the foregoing reasons, the Pre-Trial Judge should dismiss the Motion in its entirety.

**Word count: 1310**



**Jack Smith**

**Specialist Prosecutor**

Friday, 10 June 2022

At The Hague, the Netherlands.

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<sup>30</sup> Indictment Decision, KSC-BC-2020-06/F00413, Part IV, Sections C-E.

<sup>31</sup> See, *similarly*, Indictment Decision, KSC-BC-2020-06/F00413, para.175.

<sup>32</sup> Indictment Decision, KSC-BC-2020-06/F00413, para.29. See also Initial Response, KSC-BC-2020-06/F00258, para.44 and the sources cited therein.