



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: 31 August 2022

Language: English

Classification: Public

Prosecution response to THAÇI Defence request for leave to appeal
Decision F00895

Specialist Prosecutor's Office

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1. The Request¹ should be rejected because it fails to demonstrate that any of the Issues² meet the strict threshold for leave to appeal³ under Article 45 of the Law⁴ and Rule 77 of the Rules.⁵ In particular, the Issues concern indictment pleading standards that have already been addressed by the Court of Appeals in the context of this case. Accordingly, leave to appeal any of the Issues would only result in repetitive appeals proceedings, risking delay and disruption.

2. In ruling on challenges to the form of the Initial Indictment,⁶ the Court of Appeals has already addressed and dismissed grounds of appeal ('Grounds'),⁷ which used similar language and concerned the same pleading principles as the Issues:⁸

<u>Grounds</u>	<u>Issues</u>
Whether the Pre-Trial Judge erred in finding that the Indictment was not defective in respect of the pleading of the identities of perpetrators of [charged crimes] in the absence of further particulars, given the obligation on the prosecution to plead the material facts underpinning each of the charges ("Eleventh Thaçi Issue")	Issue 1: Whether the PTJ erred in finding that the pleading of the identity of the joint criminal enterprise members who directly perpetrated the crimes underlying the charges in paragraphs 68, 93 and 174 of the Indictment was sufficiently detailed (and thus not defective), given the obligation on the prosecution to plead the material facts underpinning each of the charges.

¹ Thaçi Defence Request for Certification to Appeal the "Decision on Motion Alleging Defects in the Form of the Amended Indictment", KSC-BC-2020-06/F00931, 19 August 2022 ('Request').

² The Request raises four issues ('Issues'). See Request, KSC-BC-2020-06/F00931, para.19. The Issues challenge the Decision on Motion Alleging Defects in the Form of the Amended Indictment, KSC-BC-2020-06/F00895, 22 July 2022 ('Decision').

³ The applicable law has been set out in prior decisions. See, for example, Decision on the Krasniqi Defence Application for Leave to Appeal, KSC-BC-2020-06/F00479, 20 September 2021, para.14; *Specialist Prosecutor v. Gucati and Haradinaj*, Decision on Defence Applications for Leave to Appeal the Decision on the Defence Preliminary Motions, KSC-BC-2020-07/F00169, 1 April 2021, paras 12, 14-15, 17.

⁴ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). All references to 'Article' or 'Articles' herein refer to the Law, unless otherwise specified.

⁵ 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.

⁶ Indictment, KSC-BC-2020-06/F00034/A01, 30 October 2020, Strictly Confidential and *Ex Parte* ('Initial Indictment').

⁷ The grounds corresponding to the Issues ('Grounds'), as set out in the following table, are identified in subparagraphs 11(t), (u), (v), and (x) of the Decision on Defence Appeals Against Decision on Motions Alleging Defects in the Form of the Indictment, KSC-BC-2020-06/IA012/F00015, 22 August 2022, Confidential ('Appeal Decision').

⁸ The Issues concern certain amendments to the Initial Indictment, as confirmed by the Pre-Trial Judge. See Decision on the Confirmation of Amendments to the Indictment, KSC-BC-2020-06/F00777, 22 April 2022, Strictly Confidential and *Ex Parte*, para.11.

Whether the Pre-Trial Judge erred in finding that the Indictment was not defective in the absence of further particulars as to the identity of the victims of crimes [...], given the obligation on the prosecution to plead the material facts underpinning each of the charges (“Twelfth Thaçi Issue”)	Issue 2: Whether the PTJ erred in finding that the identity of the victims of crimes charged in paragraph 93 of the Indictment [...] was pleaded in sufficient detail (and thus not defective), given the obligation on the prosecution to plead the material facts underpinning each of the charges.
Whether the Pre-Trial Judge erred in finding that the Indictment was not defective in the absence of further particulars as to the location of the crimes [...], given the obligation on the prosecution to plead the material facts underpinning each of the charges (“Thirteenth Thaçi Issue”)	Issue 3: Whether the PTJ erred in finding that the location of the commission of crimes charged in paragraph 157 of the Indictment was pleaded in sufficient detail (and thus not defective), given the obligation on the prosecution to plead the material facts underpinning each of the charges.
Whether the Pre-Trial Judge erred in finding that the Indictment was not defective in the absence of further particulars about Thaçi’s link to the charged crimes and the role he played, given the obligation on the prosecution to plead the material facts underpinning each of the charges and Thaçi’s right to be adequately informed about his role in the alleged crimes (“Fifteenth Thaçi Issue”)	Issue 4: Whether the PTJ erred in finding that additional details as regards the accused’s alleged link to the crimes charged in paragraphs 68, 93, 105, 157 and 174 of the Indictment were pleaded in sufficient detail (and thus not defective), given the obligation on the prosecution to plead the material facts underpinning each of the charges and the Accused’s right to be adequately informed about his role in the alleged crimes.

3. The Defence fails to explain why the Issues justify certification at this stage and despite the previous appeals proceedings⁹ concerning the Grounds.¹⁰ The generic arguments in the Request,¹¹ if accepted and without more, would mean that any issue concerning Indictment specificity or clarity automatically satisfies the leave to appeal standard. This is contrary to the statutory framework.¹²

4. Indeed, the Defence does not demonstrate that the Issues would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial.

⁹ While the Appeal Decision was issued following the Request, the relevant proceedings were pending at the time of the Request.

¹⁰ See, similarly, ICTR, *Prosecutor v. Gatete*, ICTR-00-61-I, Decision on Defence Application for Certification to Appeal the Chamber’s Decision on Defects in the Indictment, 19 August 2009, para.8.

¹¹ Request, KSC-BC-2020-06/F00931, paras 21-23.

¹² There is no automatic right of appeal for decisions pertaining to indictment form. See Article 45(2); Rule 97(1)(a), (3). See also ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-PT, Decision on Milivoj Petković’s Application for Certification to Appeal Decision on Motions Alleging Defect in the Form of Indictment, 19 September 2005; ICTY, *Prosecutor v. Jović*, IT-95-14 & 14/2, Decision on Defence Application for Certification on Interlocutory Appeal, 3 February 2006.

Instead, the Request merely repeats *verbatim* parts of its previous request for certification against the Initial Indictment Decision.¹³ By ignoring the fact that the Issues presently raised by the Defence mirror the Grounds, which were already under appellate scrutiny, the Request is fundamentally flawed. Considering the Appeal Decision and the fact that the Defence has received or will receive all information necessary for its preparations in accordance with the applicable framework,¹⁴ the Issues can have no impact on the fairness and expeditiousness of the proceedings or outcome of the trial.¹⁵

5. For the same reasons, appellate resolution of the Issues would not materially advance the proceedings. The interpretation and application of the relevant legal standards in the context of this case have already been resolved in the Appeal Decision and repetitive appeals proceedings on such matters would only risk delay and disruption.¹⁶

6. Accordingly, the Request fails to meet the leave to appeal standard and should be denied.

Word count: 1284



Jack Smith

Specialist Prosecutor

Wednesday, 31 August 2022

At The Hague, the Netherlands.

¹³ Compare Request, KSC-BC-2020-06/F00931, para.22 with *Thaçi* Defence Request for Certification to Appeal the "Decision on Defence Motions Alleging Defects in the Form of the Indictment, KSC-BC-2020-06/F00447, 27 August 2021, para.13. The full citation for the 'Initial Indictment Decision' is below.

¹⁴ See, similarly, Decision on Defence Motions Alleging Defects in the Form of the Indictment, KSC-BC-2020-06/F00413, 22 July 2021, Confidential ('Initial Indictment Decision'), paras 29, 104; Appeal Decision, KSC-BC-2020-06/IA012/F00015, para.55.

¹⁵ See, similarly, ICTY, *Prosecutor v. Stanišić and Župljanin*, IT-08-91-PT, Decision on Defence Motions for Certifications, 22 April 2009 ('*Stanišić and Župljanin* Decision'), paras 12-13.

¹⁶ See, similarly, *Stanišić and Župljanin* Decision, para.14.