



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:** 7 September 2022

**Language:** English

**Classification:** Public

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**Decision on Thaçi Defence Request for Leave to Appeal the Decision on Motion  
Alleging Defects in the Form of the Amended Indictment**

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Article 45(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 77 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 30 October 2020, further to the Pre-Trial Judge's decision confirming the indictment against Hashim Thaçi ("Mr Thaçi"), Kadri Veseli, Rexhep Selimi and Jakup Krasniqi,<sup>2</sup> the Specialist Prosecutor's Office ("SPO") submitted the indictment as confirmed, with redactions as authorised by the Pre-Trial Judge ("Confirmed Indictment").<sup>3</sup>

2. On 22 July 2021, the Pre-Trial Judge issued a decision wherein the SPO was ordered to file a corrected version of the Confirmed Indictment by 3 September 2021 ("First Defects Decision").<sup>4</sup> On 22 August 2022, the Court of Appeals confirmed the First Defects Decision ("Court of Appeals Decision on First Defects Decision").<sup>5</sup>

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<sup>1</sup> KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

<sup>2</sup> KSC-BC-2020-06, F00026, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, strictly confidential and *ex parte*. A confidential redacted version was filed on the same day, F00026/CONF/RED. A public redacted version was filed on 30 November 2020, F00026/RED.

<sup>3</sup> KSC-BC-2020-06, F00034, Specialist Prosecutor, *Submission of Confirmed Indictment and Related Requests*, 30 October 2020, confidential, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential. A further corrected confirmed indictment, correcting certain clerical errors, was submitted on 4 November 2020, strictly confidential and *ex parte* (F00045/A01), with confidential redacted (F00045/A02) and public redacted (F00045/A03) versions. A lesser confidential redacted version was submitted on 11 December 2020 (F00134).

<sup>4</sup> KSC-BC-2020-06, F00413, Pre-Trial Judge, *Decision on Defence Motions Alleging Defects in the Form of the Indictment*, 22 July 2021, confidential, para. 179(d). A public redacted version was filed on the same day, F00413/RED.

<sup>5</sup> KSC-BC-2020-06, IA012/F00015, Court of Appeals Panel, *Decision on Defence Appeals Against Decision on Motions Alleging Defects in the Form of the Indictment*, 22 August 2022, confidential. A public redacted version was filed on the same day, IA012/F00015/RED.

3. On 3 September 2021, the SPO filed its “Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)”,<sup>6</sup> in which it also submitted an amended indictment to be confirmed by the Pre-Trial Judge.<sup>7</sup>
4. On 23 December 2021, the Pre-Trial Judge issued the “Decision Concerning Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)” in which the Parties were ordered to file their responses and reply, as the case may be, on the question of whether the supporting material to the amendments deemed to constitute new charges support a finding of well-grounded suspicion pursuant to Rule 86(4) of the Rules.<sup>8</sup>
5. On 22 April 2022, after hearing from the Parties, the Pre-Trial Judge issued a decision confirming the new charges and ordering the SPO, *inter alia*, to file an amended indictment.<sup>9</sup>
6. On 29 April 2022, the SPO filed an amended indictment (“Confirmed Amended Indictment”).<sup>10</sup>

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<sup>6</sup> KSC-BC-2020-06, F00455, Specialist Prosecutor, *Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)*, 3 September 2021, strictly confidential and *ex parte*, with Annexes 1-5, strictly confidential and *ex parte*. Confidential redacted and public redacted versions were filed on 8 September 2021, F00455/CONF/RED and F00455/RED, respectively. The further corrected Confirmed Indictment, strictly confidential and *ex parte* is contained in F00455/A01, with confidential redacted (F00455/CONF/RED/A01) and public redacted (F00455/RED/A01) versions. A confidential further lesser redacted version of the Confirmed Indictment was filed on 17 January 2022, F00647/A01.

<sup>7</sup> KSC-BC-2020-06, F00455/A02, Specialist Prosecutor, *Annex 2 to Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)*, 3 September 2021, strictly confidential and *ex parte*. A confidential redacted version was filed on 8 September 2021, F00455/CONF/RED/A02.

<sup>8</sup> KSC-BC-2020-06, F00635, Pre-Trial Judge, *Decision Concerning Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)*, 23 December 2021, confidential, paras 48, 53(d), (e). A public redacted version as filed on 23 December 2021, F00635/RED.

<sup>9</sup> KSC-BC-2020-06, F00777, Pre-Trial Judge, *Decision on the Confirmation of Amendments to the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 22 April 2022, strictly confidential and *ex parte*. A confidential redacted version was filed on the same day, F00777/CONF/RED. A lesser confidential redacted version was filed on 16 May 2022, F00777/CONF/RED2. A public redacted version was filed on 6 May 2022, F0777/RED.

<sup>10</sup> KSC-BC-2020-06, F00789, Specialist Prosecutor, *Submission of Amended Indictment and Related Documents*, 29 April 2022, public, with Annex 1, strictly confidential and *ex parte*, Annexes 2-4, confidential, and Annexes 5-7, public.

7. On 22 July 2022, the Pre-Trial Judge granted, in part, a motion of the Defence for Mr Thaçi (“Thaçi Defence”) alleging defects in the form of the Confirmed Amended Indictment (“Impugned Decision”).<sup>11</sup>
8. On 19 August 2022, the Thaçi Defence requested certification to appeal the Impugned Decision (“Request”).<sup>12</sup>
9. On 31 August 2022, the SPO responded to the Request (“Response”).<sup>13</sup> The Thaçi Defence did not file a reply.

## II. SUBMISSIONS

10. The Thaçi Defence requests leave to appeal the Impugned Decision on the following four issues (collectively, “Four Issues”):

- (1) Whether the [Pre-Trial Judge (“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 (“First Issue”);
- (2) Whether the PTJ erred in finding that the identity of the victims of crimes charged in paragraph 93 of the Indictment (notwithstanding the amendment ordered at paragraph 37 of the Impugned Decision), 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 (“Second Issue”);
- (3) Whether the PTJ erred in finding that the location of the commission of crimes charged in paragraph 157 of the Indictment

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<sup>11</sup> KSC-BC-2020-06, F00895, Pre-Trial Judge, *Decision on Motion Alleging Defects in the Form of the Amended Indictment*, 22 July 2022, public.

<sup>12</sup> KSC-BC-2020-06, F00931, Specialist Counsel, *Thaçi Defence Request for Certification to Appeal the “Decision on Motion Alleging Defects in the Form of the Amended Indictment”*, 19 August 2022, public. The SPO for its part did not seek leave to appeal the Impugned Decision; see KSC-BC-20-06, F00932, Specialist Prosecutor, *Prosecution Notice Relating to Decision F00895*, 19 August 2022, public.

<sup>13</sup> KSC-BC-2020-06, F00942, Specialist Prosecutor, *Prosecution Response to Thaçi Defence Request for Leave to Appeal Decision F00895*, 31 August 2022, public.

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 (“Third Issue”); and

- (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 (“Fourth Issue”).<sup>14</sup>

11. The Thaçi Defence submits that the Four Issues arise from the Impugned Decision and amount to neither a mere disagreement with the Impugned Decision nor a hypothetical concern.<sup>15</sup> The Thaçi Defence argues that the Four Issues relate to the right of the Accused to be informed promptly and in detail of the nature and cause of the charges against him, which are factors that can significantly affect the fair and expeditious conduct of proceedings and the outcome of trial.<sup>16</sup> The Thaçi Defence further argues that matters concerning the specificity and clarity of an indictment may benefit from an authoritative determination by the Court of Appeals at the earliest opportunity.<sup>17</sup>

12. The SPO responds that the Request should be rejected as it fails to meet the requirements for leave to appeal under Article 45 of the Law and Rule 77 of the Rules.<sup>18</sup> The SPO argues that the Four Issues concern indictment pleading standards that have already been addressed by the Court of Appeals in the context of this case.<sup>19</sup> The SPO maintains that the Defence has not made a showing regarding the expeditious conduct of the proceedings or outcome of trial nor whether the issues would materially advance proceedings considering that an authoritative

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<sup>14</sup> Request, para. 19.

<sup>15</sup> Request, para. 20.

<sup>16</sup> Request, para. 22.

<sup>17</sup> Request, para. 23.

<sup>18</sup> Response, paras 1, 6.

<sup>19</sup> Response, paras 1-2.

determination has already been made by the Court of Appeals and repetitive appeals proceedings on such matters would only risk delay and disruption.<sup>20</sup>

### III. APPLICABLE LAW

13. Pursuant to Article 45 of the Law, a Court of Appeals Panel shall hear interlocutory appeals from an accused or from the SPO in accordance with the Law and the Rules. Interlocutory appeals, other than those that lie as of right, must be granted leave to appeal through certification by the Pre-Trial Judge or Trial Panel on the basis that they involve an issue which would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial and for which, in the opinion of the Pre-Trial Judge or Trial Panel, an immediate resolution by a Court of Appeals Panel may materially advance proceedings.

14. Rule 77(2) of the Rules further provides that the Panel shall grant certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, including, where appropriate remedies could not effectively be granted after the close of the case at trial, and for which an immediate resolution by the Court of Appeals Panel may materially advance the proceedings.

### IV. DISCUSSION

15. A right to appeal arises only if the Pre-Trial Judge is of the opinion that the standard for certification set forth in Article 45(2) of the Law and Rule 77(2) of the

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<sup>20</sup> Response, paras 4-5.

Rules has been met.<sup>21</sup> The Pre-Trial Judge recalls the interpretation of these provisions as set out in detail previously.<sup>22</sup>

16. Mindful of the restrictive nature of this remedy, the following specific requirements apply:

1. Whether the matter is an “appealable issue”;
2. Whether the issue at hand would significantly affect:
  - (1) The fair and expeditious conduct of the proceedings, or
  - (2) The outcome of the trial; and
3. Whether, in the opinion of the Pre-Trial Judge, an immediate resolution by the Court of Appeals Panel may materially advance the proceedings.<sup>23</sup>

#### A. FIRST ISSUE

17. The Pre-Trial Judge notes that the issue of the specificity of the pleading of joint criminal enterprise members who directly perpetrated the crimes underlying the new charges constitutes a discrete topic emanating from the Impugned Decision.<sup>24</sup> The Pre-Trial Judge accordingly finds that the First Issue is an appealable issue.

18. As concerns the significant effect on the fair and expeditious conduct of the proceedings or the outcome of the trial, the Pre-Trial Judge notes that the First Issue repeats verbatim the Thaçi Defence’s previous ground of appeal raised in relation to its appeal of the First Defects Decision.<sup>25</sup> While the First Issue relates to different paragraphs of the Confirmed Amended Indictment, namely paragraphs 68, 93 and

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<sup>21</sup> KSC-BC-2020-06, F00172, Pre-Trial Judge, *Decision on the Thaçi Defence Application for Leave to Appeal* (“Thaçi Decision on Leave to Appeal”), 11 January 2021, public, para. 9.

<sup>22</sup> *Thaçi Decision on Leave to Appeal*, paras 10-17.

<sup>23</sup> *Thaçi Decision on Leave to Appeal*, para. 10.

<sup>24</sup> Impugned Decision, paras 26, 27, 30, 47.

<sup>25</sup> Court of Appeals Decision on First Defects Decision, paras 11(t), 64, 146.



174, the principles to be applied remain the same.<sup>26</sup> In particular, the Court of Appeals confirmed that, when, in addition to being identified by category, perpetrators are narrowed down to those who were allegedly present during specific events, as delineated by the temporal and geographic parameters provided therein, sufficient notice has been provided to the Defence.<sup>27</sup> The Pre-Trial Judge therefore considers that granting leave to appeal the First Issue would result in repetitive appeal proceedings. In this context, the Pre-Trial Judge finds that the Thaçi Defence has not demonstrated how the First Issue would impact the fair and expeditious conduct of the proceedings or the outcome of the trial.

19. In light of the above, the remaining requirement of the certification test arising from Article 45(2) of the Law and Rule 77(2) of the Rules need not be addressed. Leave to appeal the First Issue is therefore rejected.

## B. SECOND ISSUE

20. The Pre-Trial Judge notes that, as explained in the Impugned Decision,<sup>28</sup> the amendment in paragraph 93 of the Confirmed Amended Indictment concerned the addition of only one victim, whose name was ordered to be added by the SPO, even though detailed information had been provided, in principle.<sup>29</sup> The names of other victims, mentioned in that paragraph, did not form part of the Pre-Trial Judge's assessment in the Impugned Decision and, therefore, cannot be challenged now by the

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<sup>26</sup> Compare Court of Appeals Decision on First Defects Decision, paras 72-73, 76-77 with Impugned Decision, paras 24-31. The Pre-Trial Judge clarified in para. 27 of the Impugned Decision that the Confirmed Amended Indictment specifically mentioned the group of perpetrators and their affiliation (Confirmed Amended Indictment, para. 68), specific unit (Confirmed Amended Indictment, para. 68), Kosovo Liberation Army ("KLA") headquarters (Confirmed Amended Indictment, para. 93) and temporal and geographical parameters (Confirmed Amended Indictment, para. 174).

<sup>27</sup> Court of Appeals Decision on First Defects Decision, para. 77.

<sup>28</sup> See Impugned Decision, para. 37.

<sup>29</sup> See Impugned Decision, paras 35, 38.



Thaçi Defence. The Pre-Trial Judge accordingly finds that the Second Issue is not an appealable issue as it does not arise from the Impugned Decision.

21. In light of the above, the remaining requirements of the certification test arising from Article 45(2) of the Law and Rule 77(2) of the Rules need not be addressed. Leave to appeal the Second Issue is therefore rejected.

### C. THIRD ISSUE

22. The Pre-Trial Judge notes that the issue of the specificity of pleading the location of the commission of the alleged crimes underlying the new charges constitutes a discrete topic emanating from the Impugned Decision.<sup>30</sup> The Pre-Trial Judge accordingly finds that the Third Issue is an appealable issue.

23. As concerns the significant effect on the fair and expeditious conduct of the proceedings or the outcome of the trial, the Pre-Trial Judge notes that the Third Issue repeats verbatim the Thaçi Defence's previous ground of appeal raised in relation to its appeal of the First Defects Decision.<sup>31</sup> While the Third Issue relates to a different paragraph of the Confirmed Amended Indictment, namely paragraph 157, the principles to be applied remain the same.<sup>32</sup> In particular, the Court of Appeals confirmed that, the degree of specificity required for a pleaded location will depend on the nature of the SPO's case, and cannot be the same as that of the underlying evidence underpinning the charges.<sup>33</sup> The Court of Appeals further confirmed that the location to or from where persons detained at a specified detention site were allegedly transferred does not constitute a material fact to be pleaded in the indictment.<sup>34</sup> The

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<sup>30</sup> Impugned Decision, paras 41-43.

<sup>31</sup> Court of Appeals Decision on First Defects Decision, paras 11(v), 152.

<sup>32</sup> Compare Court of Appeals Decision on First Defects Decision, para. 152 with Impugned Decision, para. 41. The Pre-Trial Judge clarified in para. 41 of the Impugned Decision that the Confirmed Amended Indictment specifically mentioned the relevant village or municipality and associated KLA brigade and operational zone (Confirmed Amended Indictment, para. 157).

<sup>33</sup> Court of Appeals Decision on First Defects Decision, para. 152.

<sup>34</sup> Court of Appeals Decision on First Defects Decision, para. 152.

Court of Appeals concluded that pleaded locations, having been identified at a minimum by town or village need not be pleaded with further specificity in light of: (i) the detailed information that has been provided as to the exact location of the alleged crime, where available; (ii) the nature and scale of the charged crimes; and (iii) the fact that the Accused are not charged with having physically perpetrated any of the alleged crimes.<sup>35</sup> The Pre-Trial Judge therefore considers that granting leave to appeal the Third Issue would result in repetitive appeal proceedings. In this context, the Pre-Trial Judge finds that the Thaçi Defence has not demonstrated how the Third Issue would impact the fair and expeditious conduct of the proceedings or the outcome of the trial.

24. In light of the above, the remaining requirements of the certification test arising from Article 45(2) of the Law and Rule 77(2) of the Rules need not be addressed. Leave to appeal the Third Issue is therefore rejected.

#### D. FOURTH ISSUE

25. The Pre-Trial Judge notes that the issue of the specificity of pleading the Accused's alleged link to the alleged crimes underlying the new charges constitutes a discrete topic emanating from the Impugned Decision.<sup>36</sup> The Pre-Trial Judge accordingly finds that the Fourth Issue is an appealable issue.

26. As concerns the significant effect on the fair and expeditious conduct of the proceedings or the outcome of the trial, the Pre-Trial Judge notes that the Fourth Issue repeats verbatim the Thaçi Defence's previous ground of appeal raised in relation to its appeal of the First Defects Decision.<sup>37</sup> While the Fourth Issue relates to different paragraphs of the Confirmed Amended Indictment, namely paragraphs 68, 93, 105,

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<sup>35</sup> Court of Appeals Decision on First Defects Decision, para. 152.

<sup>36</sup> Impugned Decision, para. 46.

<sup>37</sup> Court of Appeals Decision on First Defects Decision, paras 11(x), 158-159.

157 and 174, the principles to be applied remain the same.<sup>38</sup> In particular, the Court of Appeals confirmed that, it is through the modes of liability that the Accused's alleged link to the charged crimes is pleaded, and given that the conduct of the Accused alleged to have given rise to criminal responsibility is amply pleaded through these modes of liability, any further information on the Accused's alleged link to and/or role in the charged crimes would not constitute material facts to be included in the Confirmed Amended Indictment, but evidentiary issues that should be addressed at trial.<sup>39</sup> The Pre-Trial Judge therefore considers that granting leave to appeal the Fourth Issue would result in repetitive appeal proceedings. In this context, the Pre-Trial Judge finds that the Thaçi Defence has not demonstrated how the Fourth Issue would impact the fair and expeditious conduct of proceedings or the outcome of trial.

27. In light of the above, the remaining requirements of the certification test arising from Article 45(2) of the Law and Rule 77(2) of the Rules need not be addressed. Leave to appeal the Fourth Issue is therefore rejected.

## V. DISPOSITION

28. For the above-mentioned reasons, the Pre-Trial Judge hereby:

**REJECTS** leave to appeal the Four Issues.

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<sup>38</sup> Compare Court of Appeals Decision on First Defects Decision, paras 158-159 with Impugned Decision, para. 46. The Pre-Trial Judge clarified in paragraph 46 of the Impugned Decision that the pleaded modes of liability do not require a direct role in the commission of the charged crimes and held that Mr Thaçi's link to the charged crimes, as set forth in paragraphs 68, 93, 105, 157 and 174 of the Confirmed Amended Indictment, is established by his contribution to the common purpose, assistance, encouragement or moral support, and his failure to take necessary and reasonable measures to prevent the crimes or punish the perpetrators.

<sup>39</sup> Court of Appeals Decision on First Defects Decision, para. 158.



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**Judge Nicolas Guillou**  
**Pre-Trial Judge**

Dated this Wednesday, 7 September 2022  
At The Hague, the Netherlands.