



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: 29 September 2022

Language: English

Classification: Public

**Public Redacted Version of
Decision on the Prosecution Request to Amend the Indictment**

Specialist Prosecutor
Jack Smith

Counsel for Victims
Simon Laws

Counsel for Hashim Thaçi
Gregory Kehoe

Counsel for Kadri Veseli
Ben Emmerson

Counsel for Rexhep Selimi
David Young

Counsel for Jakup Krasniqi
Venkateswari Alagendra

THE PRE-TRIAL JUDGE,¹ pursuant to Article 39(8) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 90(1)(b), 90(2) and 91(1)(b) 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, the Specialist Prosecutor's Office ("SPO") submitted the indictment as confirmed, with redactions as authorised by the Pre-Trial Judge ("Confirmed Indictment").²

2. On 12 and 15 March 2021, the Defence for Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi ("Accused", collectively) filed their respective preliminary motions challenging the Confirmed Indictment.³

3. 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 2021.⁴

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

² 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).

³ KSC-BC-2020-06, F00215, Thaçi Defence, *Motion Alleging Defects in the Indictment against Mr Hashim Thaçi*, 12 March 2021, confidential. A public redacted version was filed on the same day, F00215/RED. F00225, Veseli Defence, *Preliminary Motion by the Defence of Kadri Veseli to Challenge the Indictment*, 15 March 2021, confidential. A public redacted version was filed on 18 March 2021, F00225/RED2. F00222, Selimi Defence, *Selimi Defence Challenge to the Form of the Indictment*, 15 March 2021, confidential. A public redacted version was filed on 11 May 2021, F00222/RED. F00221, Krasniqi Defence, *Krasniqi Defence Preliminary Motion Alleging Defects in the Indictment*, 15 March 2021, public.

⁴ 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. This decision was confirmed on appeal. See 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.

4. On 3 September 2021, the SPO filed its “Submission of Corrected Indictment and Request to Amend Pursuant to Rule 90(1)(b)”,⁵ in which it also submitted an amended indictment to be confirmed by the Pre-Trial Judge.⁶
5. On 23 December 2021, the Pre-Trial Judge granted the SPO leave to amend the Confirmed Indictment.⁷
6. On 22 April 2022, the Pre-Trial Judge confirmed amendments to the Confirmed Indictment.⁸
7. On 29 April 2022, the SPO filed an amended indictment (“Confirmed Amended Indictment”).⁹
8. On 22 July 2022, the Pre-Trial Judge ordered the SPO to file a further amended Confirmed Amended Indictment by 30 September 2022.¹⁰

⁵ 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 corrected Confirmed Indictment was filed on 17 January 2022, F00647/A01.

⁶ 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.

⁷ 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. A public redacted version was filed on 14 February 2022, F00635/RED.

⁸ KSC-BC-2020-06, F00777, Pre-Trial Judge, *Decision on the Confirmation of Amendments to the Indictment*, 22 April 2022, strictly confidential and *ex parte*, para. 185(a)-(c), (f)-(g). A confidential redacted version was filed on the same day, F00777/CONF/RED. A public redacted version was filed on 6 May 2022, F00777/RED. A lesser redacted confidential version was filed on 16 May 2022, F00777/CONF/RED2.

⁹ 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. This filing includes strictly confidential and *ex parte* (F00789/A01), confidential redacted (F00789/A02) and public redacted (F00789/A05) versions of the Confirmed Amended Indictment.

¹⁰ KSC-BC-2020-06, F00895, Pre-Trial Judge, *Decision on Motion Alleging Defects in the Form of the Amended Indictment* (“Decision on Defects in Amended Indictment”), 22 July 2022, public, para. 49(e).

9. On 12 September 2022, the SPO filed a request to amend the Confirmed Amended Indictment (“Request”).¹¹

II. SUBMISSIONS

10. The SPO requests leave to amend the Confirmed Amended Indictment to remove allegations of crimes committed against at least one victim between about [REDACTED] 1999 at a house in or around Ferizaj/Uroševac in Ferizaj/Uroševac municipality (“Ferizaj/Uroševac Allegations”).¹² The SPO explains that it decided not to rely on the evidence of [REDACTED]¹³ and that it considers that there is now insufficient evidence to prove the Ferizaj/Uroševac Allegations. The SPO argues that the requested amendments are not prejudicial to, or inconsistent with, the rights of the Accused and should be granted.¹⁴

11. In the interests of efficiency, the SPO requests an expedited briefing schedule to enable the filing of one further amended indictment by the 30 September 2022 deadline that also includes any amendments authorised as a result of the present Request.¹⁵

¹¹ KSC-BC-2020-06, F00964, Specialist Prosecutor, *Prosecution Request to Amend the Indictment*, 12 September 2022, confidential. A public redacted version was filed on the same day, F00964/RED.

¹² Request, footnote 3 *referring to* Confirmed Amended Indictment, paras 91, 133, Schedule A, p. 57 (location 2.2), paras 60 and 139 (incorporating by reference, *inter alia*, the acts and omissions described in paragraphs 91 and 133) and explaining that: “The requested amendments comprise: (i) removal of paragraphs 91, 133, and the entry in Schedule A at p. 57 (location 2.2); and (ii) corresponding adjustments to cross-references, paragraph numbers, and Schedule A location numbers”.

¹³ Request, footnote 4 *referring to* KSC-BC-2020-06, F00948, Specialist Prosecutor, *Prosecution Submission of Revised Witness List*, 2 September 2022, public, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential, para. 6 and Annex 3.

¹⁴ Request, para. 1.

¹⁵ Request, para. 2.

III. APPLICABLE LAW

12. Pursuant to Article 39(8) of the Law, after the indictment is confirmed but before the trial has begun, the Specialist Prosecutor may, with the permission of the Pre-Trial Judge having heard the parties, amend the indictment.

13. Pursuant to Rule 90(1)(b) of the Rules, the Specialist Prosecutor may amend an indictment between its confirmation and the assignment of the case to the Trial Panel, with leave of the Pre-Trial Judge who confirmed the indictment, after having heard the Accused. A Panel may grant leave to amend the indictment if satisfied that the amendment is not prejudicial to or inconsistent with the rights of the Accused.

14. Pursuant to Rule 90(2) of the Rules, a Panel may grant leave to amend the indictment if satisfied that the amendment is not prejudicial or inconsistent with the rights of the Accused.

15. Pursuant to Rule 91(1)(b) of the Rules, the Specialist Prosecutor may withdraw charges in an indictment between its confirmation and the assignment of the case to a Trial Panel, with leave of the Pre-Trial Judge who confirmed the indictment.

16. Pursuant to Rule 91(2) of the Rules, the withdrawal of any of the charges in the indictment shall be promptly notified to the Defence.

IV. DISCUSSION

17. At the outset, the Pre-Trial Judge notes that Rule 91(1)(b) of the Rules – which provides that the Specialist Prosecutor may withdraw charges in an indictment between its confirmation and the assignment of the case to a Trial Panel, with leave of the Pre-Trial Judge who confirmed the indictment – vests in the Pre-Trial Judge the power to authorise a withdrawal of charges. Rule 91 of the Rules, however, does not provide a specific legal test to apply when deciding whether or not to grant leave to withdraw charges.

18. The Pre-Trial Judge further notes that Rule 90(2) of the Rules, which governs amendments to the indictment in general, provides that an indictment can only be amended if it is not prejudicial or inconsistent with the rights of the accused. Considering that withdrawing charges is a form of amending the indictment, the Pre-Trial Judge is satisfied that it is appropriate to apply the test set in Rule 90(2) of the Rules to the Request.

19. As regards the Request, the Pre-Trial Judge notes that the deadline for filing responses to the Request has passed,¹⁶ and neither the respective counsel for the Accused nor Victims' Counsel filed responses. The Pre-Trial Judge is accordingly satisfied that the Accused were notified of the Request and given an opportunity to respond should they have wished to do so.

20. The Pre-Trial Judge further observes that, through the Request, the SPO seeks to withdraw from the Confirmed Amended Indictment the Ferizaj/Uroševac Allegations against the Accused. Having considered the circumstances of the Request and the stage of the proceedings, including that the Defence did not oppose the Request and that the Request has been made before the filing of the Defence pre-trial-briefs, the Pre-Trial Judge considers that, in seeking to narrow the scope of the Confirmed Amended Indictment, the Request is not prejudicial to and is consistent with the rights of the Accused.

21. Accordingly, the Pre-Trial Judge authorises withdrawal of the Ferizaj/Uroševac Allegations in paragraphs 91, 133 and Schedule A (location 2.2) of the Confirmed Amended Indictment, and consequent amendments of the Confirmed Amended Indictment, including corresponding adjustments to cross-references, paragraph numbers, and Schedule A location numbers.

¹⁶ Rule 76 of the Rules. The Pre-Trial Judge observes that the responses would have been due by 23 September 2022.

22. The Pre-Trial Judge recalls that the SPO was previously ordered to further amend the Confirmed Amended Indictment by 30 September 2022.¹⁷ In the interest of efficiency, the Pre-Trial Judge orders the SPO to reflect, in the further amended Confirmed Amended Indictment to be filed by 30 September 2022, the withdrawal of charges and amendments authorised in the present decision.

23. Finally, in light of the timing of the present decision, the Pre-Trial Judge considers the request for an expedited briefing schedule to be moot.

V. DISPOSITION

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

- a. **GRANTS** the Request; and
- b. **ORDERS** the SPO to reflect the withdrawal of the Ferizaj/Uroševac Allegations, as set out in paragraph 21 above, in the further amended Confirmed Amended Indictment to be filed by **Friday, 30 September 2022**.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Thursday, 29 September 2022
At The Hague, the Netherlands.

¹⁷ Decision on Defects in Amended Indictment, para. 49(e).