

**In:** KSC-BC-2020-06  
**The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi**

**Before:** **Trial Panel II**  
Judge Charles L. Smith, III, Presiding  
Judge Christoph Barthe  
Judge Guénaël Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Hashim Thaçi

**Date:** 8 February 2023

**Language:** English

**Classification:** Public

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**Public Redacted Version of 'Thaçi Defence Response to 'Victims' Counsel's Notification of Wish to Cross-Examine Witnesses and Request for Additional Time to Submit Further Notification' (F01253)'**

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1. The Defence for Mr Hashim Thaçi (“Defence”) hereby responds to the Victims’ Counsel’s Notification of Wish to Cross-Examine Witnesses and Request for Additional Time to Submit Further Notification,<sup>1</sup> filed in accordance with the Trial Panel’s Order on the Conduct of Proceedings.<sup>2</sup> Victims’ Counsel wishes to “cross-examine” two witnesses, W04421 [REDACTED] and [REDACTED],<sup>3</sup> who feature among the first twelve witnesses currently listed by the SPO.<sup>4</sup> He requests an extension of time to 13 February 2023 to submit a further notification, if necessary, with regard to one further witness.<sup>5</sup>

2. The present response is limited to the form of the questioning proposed by the Victims’ Counsel. Rule 114(4)(b) of the Rules of Procedure and Evidence provides that *“[w]henever the personal interests of victims participating in the proceedings are affected, and unless otherwise provided in the Rules, Victims’ Counsel may, under the control of the Panel [...] ask questions of witnesses. Where necessary and depending on the circumstances, the Panel shall issue specific guidelines regulating the participation of victims in the proceedings, in accordance with Article 22(3) and (6) of the Law.”*

3. In his Notification, the Victims’ Counsel refers to the “cross-examination” of SPO witnesses, suggesting the use of closed or leading questions in their examination. However, the listed SPO witnesses are not adverse to the Victims’ Counsel, precluding any basis for their “cross-examination” with leading or closed questions.<sup>6</sup> Rather, the

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<sup>1</sup> KSC-BC-2020-06/F01253, 3 February 2023, Confidential (“Notification”).

<sup>2</sup> KSC-BC-2020-06/A01, 25 January 2023, Public (“Order”), para. 33:

*“33. Upon receiving the schedule of witnesses to be called by the SPO or the Defence, Victims’ Counsel shall notify the Trial Panel and the other Parties and participants of those witnesses which he wishes to cross-examine with a general description of the issues or areas of evidence in relation to which he wishes to cross-examine each witness, including a brief explanation as to how the anticipated testimony affects their personal interests.”* (our emphasis) See also KSC-BC-2020-06, Transcript, 16 December 2022, Public p. 1774, lines 2-12.

<sup>3</sup> Notification, paras. 1, 8, 12.

<sup>4</sup> KSC-BC-2020-06/F01243/A01, Annex 1 - Prosecution submission of list of first 12 witnesses and associated information, 1 February 2023, Confidential.

<sup>5</sup> Notification, para. 12.

<sup>6</sup> In this regard, the Defence notes that W04421 [REDACTED].

questioning of these witnesses should be conducted in a neutral manner, using open (non-leading) questions, in order to ensure the fairness of the proceedings and in accordance with the practice of other international criminal tribunals.

4. In the *Katanga and Ngudjolo* case, Trial Chamber II of the ICC ruled that “[t]he Victims’ Legal Representatives shall conduct their questioning in a neutral manner and avoid leading or closed questions, unless specifically authorised by the Chamber to deviate from this rule.”<sup>7</sup> Similarly, in the *Ntaganda* case, Trial Chamber VI confirmed that “[i]f permission is granted to question the witness concerned, the Legal Representative shall stay within the confines of the areas identified in the request. **Unless authorised by the Chamber, the Legal Representative will not ask leading questions.**”<sup>8</sup> In the *Gbagbo and Ble Goude* case, Trial Chamber I reiterated that, “[i]f leave is granted, the LRV will be permitted to question witnesses. **Such questioning shall be conducted in a neutral manner, and to the extent relevant to the victims’ interests.**”<sup>9</sup> The Legal Representative of Victim’s role is different from the Prosecution’s, which must be reflected in the scope and type of questions asked.<sup>10</sup>

5. For the above reasons, the Defence respectfully requests the Trial Panel to order the Victims’ Counsel to conduct his questioning in a neutral manner and to avoid leading or closed questions.

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<sup>7</sup> ICC, *Prosecutor v Katanga & Ngudjolo*, ICC-01/04-01/07-1665, Directions for the conduct of the proceedings and testimony in accordance with rule 140, 20 November 2009, para. 91.

<sup>8</sup> ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-619, Decision on the conduct of proceedings, 2 June 2015, para. 65.

<sup>9</sup> ICC, *Prosecutor v. Gbagbo & Ble Goude*, ICC-02/11-01/15-205, Directions on the conduct of the proceedings, 3 September 2015, para. 37 (as opposed to the non-calling party who was expressly allowed to cross-examine - see para. 36).

<sup>10</sup> ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15-497, Initial Directions on the Conduct of the Proceedings, 13 July 2016, para. 14; ICC, *Prosecutor v. Yekatom & Ngaissona*, ICC-01/14-01/18-631, Initial Directions on the Conduct of the Proceedings, 26 August 2020, para. 19; ICC, *Prosecutor v. Said*, ICC-01/14-01/21-251, Directions on the Conduct of Proceedings, 9 March 2022, para. 27.

[Word count: 720 words]

Respectfully submitted,



**Gregory W. Kehoe**

**Counsel for Hashim Thaçi**

Wednesday, 8 February 2023

At Tampa, United States