

**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

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

**Date:** 10 December 2021

**Language:** English

**Classification:** Public

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**Thaçi Defence Submissions for the Ninth Status Conference**

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**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 Alagenda

## I. INTRODUCTION

1. On 2 December 2021, the Pre-Trial Judge (“PTJ”) issued an Order Setting the Date for a Ninth Status Conference and for Submissions.<sup>1</sup>
2. The Defence for Mr Hashim Thaçi (“Defence”) hereby submits its observations on the issues listed by the PTJ in his Order of 2 December 2021.

## II. SUBMISSIONS

### *Item 1: Disclosure*

3. The Defence notes that it has not yet been disclosed the English translations of all the documents disclosed as incriminating by the SPO, nor all the items mentioned in witness statements and interviews, but expects the SPO to disclose such material by the 31<sup>st</sup> of January 2022 at the latest, which corresponds to the SPO deadline to disclose Rule 102(1)(b) material. The Defence will object to any further extension of this deadline, should this be requested.
4. With regard to Rule 102(3) material, the Defence will submit further disclosure requests in the near future. This will include requesting material that was not captured in the previous requests due to the SPO subsequently providing additional information about some documents.
5. The Defence submit that no deadline should be re-established for requesting Rule 102(3) material. It is clear the Defence will need to make further requests for material from the Rule 102(3) Notice in the future: first, as a result of the significant number of witnesses for whom disclosure of their identity is delayed, and second,

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<sup>1</sup> KSC-BC-2020-06/F00593, Order Setting the Date for a Ninth Status Conference and for Submissions, 2 December 2021.

once the Defence have had the opportunity to conduct more fulsome investigations. The Defence must therefore have the ability to conduct further review of the Rule 102(3) notice, and make further requests, each time new information is received.

6. Concerning the creation of the witness entities in Legal Workflow, the Defence notes that at the time of writing the present submissions, approximately 113 entities have been created (amounting to only 35% of the total number of witnesses) and all entities are incomplete. The SPO only started disclosure of these witness entities on 6 December 2021, a mere 9 days before their deadline for completion of this task.<sup>2</sup> This is notwithstanding the SPO's statement during the last status conference that it would work on them as a matter of priority.<sup>3</sup> In addition, as currently disclosed, the profile for each witness contains only their pseudonym; it is missing basic information such as the witness' name, personal details, applicable protective measures and proposed testimony details. Since this information is readily available, including in the SPO's Preliminary Witness List, it is not clear why these fields remain incomplete. The Defence therefore submit that all missing details should be completed by the SPO as a matter of priority, but no later than the deadline of 15 December 2021. Further, while the SPO has linked the witnesses to various documents,<sup>4</sup> key information is missing from the list of documents, such as the document description. Obviously, the lack of information diminishes the utility of such a list and should be resolved as a matter of priority.

7. Despite the goodwill expressed by all parties during the last status conference to put in place a forum to discuss and resolve issues related to Legal Workflow, limited progress has been made and it is unlikely to be held until next year.

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<sup>2</sup> KSC-BC-2020-06, Transcript of the Eighth Status conference, Oral Order 6, 29 October 2021, p. 755 line 12 to p. 756 line 10.

<sup>3</sup> KSC-BC-2020-06, Transcript of the Eighth Status conference, 29 October 2021, p. 673.

<sup>4</sup> The list of documents linked to a witness is accessible only using the 'View Relations' function.

*Item 4: Defence investigations and next steps*

8. The Defence reiterates the difficulties it is encountering in the conduct of its investigations in light of the COVID pandemic, delayed and partial disclosure by the SPO, extensive redactions applied by the SPO in the material disclosed as well as the SPO's purported ongoing investigations. At this stage, no less than 123 witnesses remain anonymous for the Defence.

9. The Defence reserves its right to make requests concerning unique investigative opportunities and to give a notice of an alibi or of grounds for excluding responsibility.

*Other matters*

10. The Defence wishes to address the following additional matters during the forthcoming status conference:

- (i) the pre-detention review of Mr Thaçi, the Defence request to convene a hearing on the pre-trial release measures, and the public disclosure of the SPO's commentary regarding the Kosovo Police, as well as the SPO's assessment of the ability of the Kosovo Police to meet all pre-trial release measures;<sup>5</sup> and
- (ii) The SPO's submissions on confidential information and contacts with witnesses.<sup>6</sup>

11. Given the complexity and importance of the matters, the Defence submits that oral submissions are warranted.

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<sup>5</sup> See, e.g., KSC-BC-2020-06/F00570-CONF, Thaçi Defence Submissions on Second Detention Review, 16 November 2021; KSC-BC-2020-06/F00562/RED, Public redacted version of Prosecution response to Kosovo Police submissions on detention, 29 November 2021.

<sup>6</sup> KSC-BC-2020-06/F00594, Prosecution submissions on confidential information and contacts with witnesses, 3 December 2021.

[Word count: 830 words]

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "G. W. Kehoe", is written over a white rectangular redaction box.

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**Gregory W. Kehoe**

**Counsel for Hashim Thaçi**

Friday, 10 December 2021

At Tampa, United States of America