

**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:** 14 February 2022

**Language:** English

**Classification:** Public

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**Thaçi Defence Response to the Registrar’s Submissions on Proposed Protocol for  
Interviews with Witnesses**

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## I. INTRODUCTION

1. The Defence for Mr Hashim Thaçi (“Defence”) hereby replies to the Registrar’s Submissions on Proposed Protocol for Interviews with Witnesses.<sup>1</sup> The Defence maintains its previous submissions wherein it points out the SPO proposed protocol violates Mr Thaçi’s fundamental rights and constitutes an attempt to add more protective measures, while the SPO is time barred from doing so.<sup>2</sup> Given the limited answers given and numerous queries raised by the Registry, the Defence reiterates that the eventual adoption of a protocol on contacts with witnesses and handling of confidential information during investigations requires a full debate in the presence of the parties, participants and the Registry. These issues are crucial for defence investigations. The fairness of the trial for the Accused is at stake.

## II. PROCEDURAL BACKGROUND

2. On 3 December 2021, the SPO filed its Prosecution submissions on confidential information and contacts with witnesses, proposing a framework for (i) contacts with witnesses; and (ii) handling of confidential information during investigations.<sup>3</sup>

3. On 10 December 2021, the Victims’ Counsel filed a Response to Prosecution Submissions on Confidential Information and Contacts with Witnesses, suggesting that the proposed framework for contacts with witnesses should not apply to contact between the Victims’ Counsel team and dual status witnesses.<sup>4</sup>

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<sup>1</sup> KSC-BC-2020-06/F00679, 3 February 2022, notified on 4 February 2022 (“Registrar’s Submissions”).

<sup>2</sup> KSC-BC-2020-06/F00625, Thaçi Defence Response to Prosecution submissions on confidential information and contacts with witnesses (“Thaçi Response”), paras 2-3.

<sup>3</sup> KSC-BC-2020-06/F00594 (“SPO Request”).

<sup>4</sup> KSC-BC-2020-06/F00605, Victims’ Counsel Response to Prosecution Submissions on Confidential Information and Contacts with Witnesses.

4. On 15 December 2021, the Defence objected to the framework proposed, which violates Mr Thaçi's fundamental rights.<sup>5</sup> The Defence invited the Pre-Trial Judge to conduct a hearing to hear the parties and participants' submissions on contacts with witnesses and handling of confidential information during investigations and to dismiss the SPO Request.

5. On the same day, the Defence for Mr Selimi asked the Pre-Trial Judge to (i) deny the SPO submissions in their entirety; or, in the alternative, (ii) apply only those provisions of the Proposed Framework for witnesses who are on the SPO witness list, have been proven to be at risk by the SPO and specifically request such measures.<sup>6</sup> The Defence for Mr Krasniqi and the Defence for Mr Veseli requested the Pre-Trial Judge to reject the SPO Request and, eventually, to instruct the parties to engage in *inter partes* discussions regarding a protocol for this case.<sup>7</sup>

6. On 21 January 2022, the Pre-Trial Judge ordered the Registrar to provide submissions on any matter arising from the parties' submissions, including, if applicable, proposals as to the practical implementation and/or modalities of the Registry's role.<sup>8</sup> The Registrar filed her Submissions on 3 February 2022.

7. During the status conference held on 4 February 2022, the Pre-Trial Judge invited the parties to present their views on whether additional oral arguments were necessary concerning the handling of confidential information and the parties' contact with witnesses, or whether they preferred *inter partes* discussions at this stage, the

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<sup>5</sup> Thaçi Response.

<sup>6</sup> KSC-BC-2020-06/F00626, Selimi Defence response to "Prosecution submissions on confidential information and contacts with witnesses".

<sup>7</sup> KSC-BC-2020-06/F00627, Krasniqi Defence Response to Prosecution Submissions on Confidential Information and Contacts with Witnesses; KSC-BC-2020-06/F00628, Veseli Defence Response to Prosecution Submissions on Confidential Information and Contacts with Witnesses.

<sup>8</sup> KSC-BC-2020-06/F00650, Order to the Registrar for Submissions.

degree to which such a hearing could be conducted in public, and, finally, whether the parties would be available on 22 February, if such a hearing would be scheduled.<sup>9</sup>

8. The Defence confirmed that a hearing on these matters was crucial, stressing that the position suggested by the SPO was an invasion of the Defence camp, of the attorney-client privilege, and untenable.<sup>10</sup> The Defence for Mr Veseli, Mr Selimi and Mr Krasniqi also supported the holding of a hearing, noting that it could be held in public.<sup>11</sup> The SPO, Victims' Counsel and Registry confirmed their availability to discuss the matter during a hearing,<sup>12</sup> the date of 22 February being convenient for all the parties and participants.

### III. DISCUSSION

9. While the Registry confirmed that it is feasible to consult and advise the Parties/Participants in the manner suggested by the SPO with regard to the handling of confidential information during investigations,<sup>13</sup> the Defence reiterates, as stressed by the other defence teams, that it is unnecessary for the Pre-Trial Judge to issue a protocol on this issue, team members being bound by codes of ethics and/or by confidentiality agreements signed with the KSC.<sup>14</sup>

10. The Registry has not yet provided its position on the feasibility of the framework proposed by the SPO for contact with witnesses, requiring further information from the Parties/Participants.

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<sup>9</sup> KSC-BC-2020-06, Transcript of Tenth Status Conference, 4 February 2022 ("Tenth Status Conference"), p. 860.

<sup>10</sup> *Ibid.*, p. 861.

<sup>11</sup> *Ibid.*, p. 862-864.

<sup>12</sup> *Ibid.*, p. 864-865.

<sup>13</sup> Registrar's Submissions, para. 9.

<sup>14</sup> Thaçi Response, para. 36.

11. As submitted previously, it is critical that any regime adopted respect the fundamental rights of the Accused, such as the rights to have adequate time and facilities for the preparation of his defence, to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him, and not to be forced to testify against himself or admit his guilt, protected by Kosovo Constitution, the Law N° 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office and the European Convention on Human Rights. Similarly, the Defence should not be forced to disclose its Defence work product (including its investigations and investigative theories and areas of interest), privileged pursuant to Rules 104, 106 and 111 of the Rules of Procedure and Evidence.

12. The Defence reiterates that a full oral debate is required, the written submissions filed to date before the Pre-Trial Judge being insufficient to address the many questions that remain unresolved.

13. The Defence wishes to develop its previous submissions with regards to the legal and practical impediments raised by the SPO proposed framework, which is not only unnecessarily burdensome but also contravenes the KSC Law and Rules and the Accused's rights.

14. All parties and participants are willing and available to debate on these issues on 22 February 2022. A hearing will be more efficient than *inter partes* discussions, which would require several weeks if not months to reach a common position between the parties and would, ultimately, require the Pre-Trial Judge's intervention to rule on any remaining disagreements. Thus, the holding of such a hearing is in the interest of the proper administration of justice.

#### IV. CONCLUSION

15. For the foregoing reasons, the Defence asks the Pre-Trial Judge to convene a hearing to hear the parties and participants' submissions on contacts with witnesses and handling of confidential information during investigations.

**[Word count: 1,118 words]**

Respectfully submitted,

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

**Gregory W. Kehoe**

**Counsel for Hashim Thaçi**

Monday, 14 February 2022

At Tampa, United States