

In: KSC-BC-2020-06

Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: **Pre-Trial Judge**
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Counsel for Kadri Veseli

Date: 14 February 2022

Language: English

Classification: Public

**Veseli Defence Response to
Registrar's Submissions on Proposed Protocol for Interviews with Witnesses**

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I. INTRODUCTION

1. The Defence for Mr Kadri Veseli (“Defence”) hereby responds to the Registrar’s submissions¹ and provides further information as requested by the Registrar.² The following information should help the Registrar assess the financial and human resources implications of the SPO Proposed Protocol.

II. PROCEDURAL BACKGROUND

2. On 3 December 2021, the SPO proposed a protocol for (i) handling of confidential information during investigations and for (ii) contacts with witnesses (“SPO Submissions”).³
3. On 15 December 2021, the Defence filed its response.⁴
4. On 21 January 2022, the Pre-Trial Judge ordered the Registrar to assess the feasibility of the SPO request.⁵
5. On 3 February 2022, the Registrar filed its submissions on the witness protocol, requesting further information from the defence teams to accurately assess and determine the financial and human resources implications of the SPO request.⁶

¹ F00650, Order to the Registrar for Submissions, 21 January 2022.

² F00679, Registrar’s Submissions on Proposed Protocol for Interviews with Witnesses, 3 February 2022, para 11 (“Registrar submissions”).

³ F00594, Prosecution submissions on confidential information and contacts with witnesses, 3 December 2021 (“SPO submissions”).

⁴ F00628, Veseli Defence Response to Prosecution Submissions on Confidential Information and Contacts with Witnesses, 15 December 2021 (“Defence Response”).

⁵ F00650.

⁶ F00679, para 11.

II. SUBMISSIONS

A. Response to the Registrar Request for Further Information

6. As requested by the Registrar, the Defence hereby offers more information on its investigation protocol regarding witnesses.⁷

i. The Approximate Number of Witnesses to be Interviewed

7. The Defence estimates at this stage interviewing between 25% - 33% of the SPO witnesses as part of its investigation which roughly amounts to 80-110 witnesses. As the investigation progresses and leads are uncovered, this number may increase.

ii. Whether the Individual Witnesses Would be Interviewed Once or Whether Multiple Interviews with Individual Witnesses is a Possibility

8. The Defence envisages that it is likely that multiple interviews will be conducted with the same witness given the sheer volume of information which must be incorporated and covered with certain witnesses. Furthermore, follow-up interviews are also likely to be conducted as the investigation and the SPO case unfold.

iii. The Country Location of the Interviews, to Estimate the Cost of Travel and Mission Support

9. The Defence notes that unlike the SPO, the Defence teams do not have the power to subpoena witnesses and compel them to speak to the Defence. By contrast, the Defence investigation relies entirely on witnesses *voluntarily* meeting and speaking to the Defence. As a result, the Defence attempts to make it as comfortable and convenient as possible for the witnesses.

⁷ F00679, para 11.

10. This typically involves travelling to the witnesses' preferred location in order to meet them on their own terms. This also involves extreme flexibility regarding the timing of an interview, to maximize convenience for witnesses rather than imposing upon them set times. For these reasons, the Defence intends to conduct as many interviews as possible in Kosovo or in whichever country the witnesses currently reside.

iv. The Estimated Duration of the Individual Interviews, for an Assessment of Human Resources and Costs

11. The witness interviews will vary in length. Realistically, the shortest substantive interviews will likely range from one to three hours. Whereas more in depth interviews will take longer, particularly given the need for translation. The Defence envisages that the longest productive block of time an interview can last is approximately three hours. As noted above, in some cases, there may be a need for multiple interviews.

v. Should the Proposals be Ordered, the Approximate Period of Time During which Registry Resources Will be Required to Implement the Proposals

12. The time period shall be ongoing. The Defence can start investigations immediately and conduct them over the course of the next year. It has been suggested that trial could start before the Defence completes its investigation. The Defence will need to be able to access witnesses on an ongoing "rolling" basis.

B. The Elaboration of a Better Suited Protocol

13. As mentioned in the Defence Response⁸ and reiterated in the Registrar submissions,⁹ the *Gucati and Haradinaj* Protocol is not transferable to this case.

⁸ F00628, paras 6-12.

⁹ F00679, para 8.

This case will involve hundreds of additional witnesses. The scope of investigation is incomparably larger and the proceedings are at different stages.¹⁰

14. Instead of replicating the *Gucati and Haradinaj* Protocol to this case, the Defence proposes to discuss a more appropriate protocol which would be better tailored to the magnitude of this case, respecting the accused's rights¹¹ and ensuring the protection and well-being of witnesses -- which are goals all parties share. The Proposed Protocol is extraordinarily restrictive; and would cause extreme delay for the Defence investigation and for the trial.
15. The Defence highlights its desire to conduct interviews in a respectful manner for all participants involved and its wish for efficient and expeditious proceedings. The Defence also acknowledges its obligations under the existing legal framework, which currently offers sufficient protection.¹²

III. HEARING

16. The Defence remains available on 22 February 2022 and believes it is in the interest of justice to hold a hearing on the establishment of a witness protocol.

IV. CONCLUSION

17. For the above-mentioned reasons, the Defence respectfully requests the Pre-Trial Judge to reject the SPO's Request as the Proposed Protocol is not suitable for this case. The Defence, further, requests the Pre-Trial Judge to order a more

¹⁰ F00628, paras 6-12.

¹¹ "Article 21(4) enshrines the minimum guarantees accorded to the Accused, which, according to the principle of legality may only be limited by law" there are no provisions on the establishment of such a restrictive protocol. *See* F00628, paras 13-15.

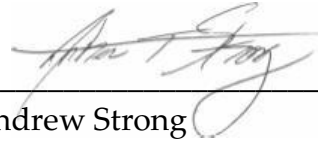
¹² F00628, paras 16-18.

appropriate protocol for this case, which would be elaborated during the 22 February hearing.

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