

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: 15 February 2022

Language: English

Classification: Public

**Thaçi Defence Reply to Victims' Counsel Further Submissions on the SPO's
Framework for Handling of Confidential Information and Contacts with
Witnesses During Investigations**

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I. INTRODUCTION

1. The Defence for Mr Hashim Thaçi (“Defence”) hereby replies to the Victims’ Counsel Further Submissions on the SPO’s Framework for Handling of Confidential Information and Contacts with Witnesses During Investigations.¹ The Defence submits that the Victims’ Counsel Further Submissions should be struck from the record by the Pre-Trial Judge since they have not been validly made and that the Victims’ Counsel should be reminded of his obligation to abide by the deadlines set by the Rules of Procedure and Evidence (“Rules”).

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.²

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.³

4. On 15 December 2021, the Defence objected to the framework proposed, which violates Mr Thaçi’s fundamental rights.⁴ The Defence invited the Pre-Trial Judge to conduct a hearing to hear the parties and participants’ submissions on contacts with

¹ KSC-BC-2020-06/F00690, 14 February 2022 (“Victims’ Counsel Further Submissions”).

² KSC-BC-2020-06/F00594 (“SPO Request”).

³ KSC-BC-2020-06/F00605, Victims’ Counsel Response to Prosecution Submissions on Confidential Information and Contacts with Witnesses.

⁴ Thaçi Response.

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.⁵ 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.⁶

6. The Victims' Counsel and the SPO did not file any reply to the Defence submissions of 15 December 2021.

7. 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, and invited the Parties and Victims' Counsel to respond to the Registrar's submissions by 14 February 2021.⁷ The Registrar filed her Submissions on 3 February 2022.⁸

8. During the status conference held on 4 February 2022, the Pre-Trial Judge recalled that the parties could respond to the Registrar's Submissions by 14 February 2022 and he invited the parties to present their views on whether additional oral arguments were necessary concerning the handling of confidential information and

⁵ KSC-BC-2020-06/F00626, Selimi Defence response to "Prosecution submissions on confidential information and contacts with witnesses".

⁶ 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.

⁷ KSC-BC-2020-06/F00650, Order to the Registrar for Submissions ("Order for Submissions").

⁸ KSC-BC-2020-06/F00679, Registrar's Submissions on Proposed Protocol for Interviews with Witnesses, 3 February 2022 ("Registrar' Submissions").

the parties' contact with witnesses, or whether they preferred *inter partes* discussions at this stage, the 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.⁹

9. 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.¹⁰ The Defence for Mr Veseli, Mr Selimi and Mr Krasniqi also supported holding of hearing, noting that it could be held in public.¹¹ The SPO, Victims' Counsel and Registry confirmed their availability to discuss the matter during a hearing,¹² the date of 22 February being convenient for all the parties and participants. The Victims' Counsel stated that he was '*neutral as to whether the further submissions should be made orally or in writing.*'¹³

10. However, without having been authorised to file general submissions ahead on an eventual hearing on 22 February 2022, the Victims' Counsel filed its Further Submissions on 14 February 2022, outside the scope of the Registrar' Submissions.

11. On the same day, the SPO and the Defence for Mr Thaçi, Mr Veseli, Mr Selimi and Mr Krasniqi filed their observations in response to the Registrar' Submissions, commenting the queries raised by the Registrar.¹⁴

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

¹⁰ *Ibid.*, p. 861.

¹¹ *Ibid.*, p. 862-864.

¹² *Ibid.*, p. 864-865.

¹³ *Ibid.*, p. 864.

¹⁴ KSC-BC-2020-06/F00693, Prosecution response to 'Registrar's Submissions on Proposed Protocol for Interviews with Witnesses'; KSC-BC-2020-06/F00691, Selimi Defence Response to "Registrar's Submissions on Proposed Protocol for Interviews with Witnesses"; KSC-BC-2020-06/F00692, Thaçi Defence Response to the Registrar's Submissions on Proposed Protocol for Interviews with Witnesses; KSC-BC-2020-06/F00694, Veseli Defence Response to Registrar's Submissions on Proposed Protocol for Interviews with Witnesses; KSC-BC-2020-06/F00695, Krasniqi Defence Response to Registrar's Submissions on Proposed Protocol for Interviews with Witnesses.

III. APPLICABLE LAW

12. Pursuant to Rule 76 of the Rules of Procedure and Evidence (“Rules”), *“Unless otherwise provided in the Rules, any response to a motion shall be filed within ten (10) days of the motion and any reply to a response shall be filed within five (5) days of the response. The Panel shall only consider a reply or parts thereof addressing new issues arising from the response. Applications for extension of time shall be filed sufficiently in advance to enable the Panel to rule on the application before the expiry of the relevant time limit.”*

13. Pursuant to Article 41 of the Registry Practice Direction on Files and Filings before the Kosovo Specialist Chambers,¹⁵ *“Any motion and response thereto shall not exceed 6,000 words. Any reply to such response shall not exceed 2,000 words. » Pursuant to its Article 16(3), “Filings submitted outside the time limits prescribed by the Rules or set by a Panel shall be processed and distributed by CMU in accordance with Article 25. The relevant Panel shall decide in accordance with the Rules whether to accept the Filing as validly made.”*

IV. DISCUSSION

14. By its Order for Submissions issued on 21 January 2022, reiterated during the status conference of 4 February 2022, the Pre-Trial Judge invited the Parties and Participants to respond *only* to the Registrar’s Submissions; he did not authorise them to comment all the previous submissions on the issue of contact with witnesses.

15. However, the Victims’ Counsel used the opportunity to comment on the Registrar’s Submissions to reply and refute the Defence submissions filed on 15 December 2015, while neither the Victims’ Counsel nor the SPO did submit any reply within the five days allocated for such a reply. The Victims’ Counsel Further

¹⁵ KSC-BD-15, 17 May 2019 (“Registry Practice Direction on Files and Filings”).

Submissions do not contain any observations in response to the Registrar's Submissions but essentially criticizes the Defence submissions on contact with witnesses. Thus, they have been filed in violation of both the deadline and word limit defined for a reply by Rule 76 of the Rules and Article 41 of the Registry Practice Direction on Files and Filings.

16. In consequence, the Pre-Trial Judge should not accept the Victims' Counsel Further Submissions as validly made, as per Article 16(3) of the Registry Practice Direction on Files and Filings. The Defence asks the Pre-Trial Judge to order that they be struck from the record and to remind the Victims' Counsel that he should abide by the deadlines for responses and replies set by the Rules and not circumvent them.

17. For the avoidance of doubt, the Defence disputes the substance of the submissions of Victims' Counsel Further Submissions, both factually and legally.

V. CONCLUSION

18. For the foregoing reasons, the Defence respectfully requests the Pre-Trial Judge to:

- DECIDE not to accept Victims' Counsel Further Submissions as validly made;
- STRIKE the Victims' Counsel Further Submissions from the record;
- REMIND the Victims' Counsel that he should abide by the deadlines for responses and replies set by the Rules.

[Word count: 1375]

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

Tuesday, 15 February 2022

At Tampa, United States