



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

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

Date: 16 February 2022

Language: English

Classification: **Public**

Decision on Request for Hearing

Specialist Prosecutor
Jack Smith

Counsel for Victims
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THE PRE-TRIAL JUDGE,¹ pursuant to Articles 39(1) and (13) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 3 December 2021, the Specialist Prosecutor's Office ("SPO") provided its submissions on handling confidential information and contacts with witnesses ("SPO Submissions").²
2. On 10 December 2021, Victims' Counsel responded to the SPO Submissions ("Victims' Counsel Response").³
3. On 15 December 2021, the Defence for Hashim Thaçi, Rexhep Selimi, Jakup Krasniqi and Kadri Veseli ("Thaçi Defence", "Selimi Defence" "Krasniqi Defence" and "Veseli Defence" respectively, and "Defence Teams" collectively) responded to the SPO Submissions ("Defence Responses").⁴
4. On 21 January 2022, the Pre-Trial Judge, having regard to the fact that the SPO's proposals foresee an extensive role for the Registry and that the Defence Responses extensively address the proposed involvement of the Registry, ordered the Registrar to provide submissions on any matter arising from the SPO

¹ KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

² KSC-BC-2020-06, F00594, Specialist Prosecutor, *Prosecution Submissions on Confidential Information and Contacts with Witnesses*, 3 December 2021, public.

³ KSC-BC-2020-06, F00605, Victims' Counsel, *Victims' Counsel Response to Prosecution Submissions on Confidential Information and Contacts with Witnesses*, 10 December 2021, public.

⁴ KSC-BC-2020-06, F00625, Specialist Counsel, *Thaçi Defence Response to Prosecution Submissions on Confidential Information and Contacts with Witnesses*, 15 December 2021, public ("Thaçi Response"); F00626, Specialist Counsel, *Selimi Defence Response to "Prosecution Submissions on Confidential Information and Contacts with Witnesses"*, 15 December 2021, public; F00627, Specialist Counsel, *Krasniqi Defence Response to Prosecution Submissions on Confidential Information and Contacts with Witnesses*, 15 December 2021, confidential (a public redacted version was submitted on 17 December 2021, F00627/RED); F00628, Specialist Counsel, *Veseli Defence Response to Prosecution Submissions on Confidential Information and Contacts with Witnesses*, 15 December 2021, public.

Submissions, Victims' Counsel Response and/or Defence Responses by no later than 4 February 2022 ("21 January 2022 Order").⁵

5. On 3 February 2022, the Registry provided its submissions in accordance with the 21 January 2022 Order ("Registry Submissions").⁶

6. On 14 February 2022, Victims' Counsel,⁷ the SPO,⁸ and the Defence Teams⁹ responded to the Registry Submissions in accordance with the 21 January 2022 Order.

II. SUBMISSIONS

7. The Thaçi Defence requests that the Pre-Trial Judge conveys a hearing to hear submissions on the issues raised by the SPO Submissions, as these are crucial matters for defence investigations which should not be dealt with through limited written submissions, especially since any measure imposed by the Pre-Trial Judge

⁵ KSC-BC-2020-06, F00650, Pre-Trial Judge, *Order to the Registrar for Submissions*, 21 January 2022, public, paras 5-7.

⁶ KSC-BC-2020-06, F00679, Registrar, *Registrar's Submissions on Proposed Protocol for Interviews with Witnesses*, 3 February 2022, confidential.

⁷ KSC-BC-2020-06, F00690, Victims' Counsel, *Victims' Counsel Further Submissions on the SPO's Framework for Handling of Confidential Information and Contacts with Witnesses During Investigations*, 14 February 2022, public. The Pre-Trial Judge notes that the Thaçi Defence requests that these submissions be struck from the record, see KSC-BC-2020-06, F00697, Specialist Counsel, *Thaçi Defence Reply to Victims' Counsel Further Submissions on the SPO's Framework for Handling of Confidential Information and Contacts with Witnesses During Investigations*, 15 February 2022, public, paras 1, 18. The Pre-Trial Judge considers that the Thaçi Defence's request does not affect the present decision, including the conduct of the hearing on the matters under consideration, and will be addressed in due course.

⁸ KSC-BC-2020-06, F00693, Specialist Prosecutor, *Prosecution Response to 'Registrar's Submissions on Proposed Protocol for Interviews with Witnesses'*, 14 February 2022, confidential.

⁹ KSC-BC-2020-06, F00691, Specialist Counsel, *Selimi Defence Response to "Registrar's Submissions on Proposed Protocol for Interviews with Witnesses"*, 14 February 2022, confidential; F00692, Specialist Counsel, *Thaçi Defence Response to the Registrar's Submissions on Proposed Protocol for Interviews with Witnesses*, 14 February 2022, public; F00694, Specialist Counsel, *Veseli Defence Response to Registrar's Submissions on Proposed Protocol for Interviews with Witnesses*, 14 February 2022, public; F00695, Specialist Counsel, *Krasniqi Defence Response to Registrar's Submissions on Proposed Protocol for Interviews with Witnesses*, 14 February 2022, confidential.

will likely remain applicable during trial (“Request”).¹⁰ The Veseli Defence, Selimi Defence and Krasniqi Defence support the Request.¹¹

8. The SPO submits that submissions have already been made in writing, and that there is the opportunity for the Parties to reply further in light of the Registry Submissions.¹² Victims’ Counsel is neutral as to whether further submissions should be made orally or in writing.¹³

III. APPLICABLE LAW

9. Pursuant to Article 39(1) and (13) of the Law, the Pre-Trial Judge shall have the power to, *inter alia*, make any necessary orders or decisions to ensure the case is prepared properly and expeditiously for trial.

IV. DISCUSSION

10. The Pre-Trial Judge observes that, while a hearing regarding the matters arising from the SPO Submissions is not mandatory under the Law or the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (“Rules”),¹⁴ these matters: (i) have not been adjudicated before in the context of pre-trial proceedings before the Specialist Chambers; and (ii) require careful assessment given the arguments contained in the written submissions of the Parties and Participants, including the arguments raised by the Defence Teams as to the right to a fair trial. In addition, in the SPO’s response to the Registry Submissions, the

¹⁰ Thaçi Response, paras 4, 42, 43; KSC-BC-2020-06, Transcript, 4 February 2022, public, p. 861, lines 7-15; Thaçi Defence’s response to Registry Submissions, paras 1, 12-15.

¹¹ KSC-BC-2020-06, Transcript, 4 February 2022, public, p. 862, lines 23-24, p. 863, lines 15-21, p. 864, lines 2-3; Veseli Defence’s response to the Registry Submissions, paras 16-17.

¹² KSC-BC-2020-06, Transcript, 4 February 2022, public, p. 864, lines 9-12.

¹³ KSC-BC-2020-06, Transcript, 4 February 2022, public, p. 864, lines 19-20.

¹⁴ See for instance KSC-BC-2020-06, F00178, Pre-Trial Judge, *Decision on Kadri Veseli’s Application for Interim Release*, 22 January 2021, public, para. 62; F00150, Pre-Trial Judge, *Decision on the Conduct of Detention Review and Varying the Deadline for Preliminary Motions*, 16 December 2020, public, para. 18.

SPO proposes amendments to the proposals set forth in the SPO Submissions, and the Defence Teams and Victims' Counsel have not had an opportunity to express their views on these proposals.

11. In these particular circumstances, the Pre-Trial Judge grants the Request and convenes a hearing on Tuesday, 22 February 2022. The Pre-Trial Judge orders the Parties and Participants to address, if applicable and to the extent that they have not done so in their written submissions, the following questions:

- (i) what is the specific legal basis for the proposals set forth in the SPO Submissions and, in particular, are these proposals exclusively based on Rule 80 of the Rules;
- (ii) should the proposals set forth in the SPO Submissions regarding contacts with witnesses apply to all witnesses included in the SPO's list of witnesses or only to specific categories of witnesses (such as witnesses in respect of whom protective measures have been ordered - for instance witnesses for whom the delayed disclosure of their identities until 30 days before their testimony has been authorised - or witnesses who specifically indicate that they wish to invoke these measures) and are specific arrangements for dual status witnesses required;
- (iii) what is the position of the SPO in relation to the arguments contained in the Defence Responses regarding the right to a fair trial;
- (iv) do the Defence Teams intend to organise joint interviews of witnesses included in the SPO's list of witnesses;
- (v) can the Registry, in light of the responses to the Registry Submissions, provide more specific information on the ramifications of its proposed

involvement in respect of the proposals set forth in the SPO Submissions that concern contacts with witnesses of other Parties and Participants;¹⁵

(vi) what is the position of the Defence Teams, Victims Counsel and Registry in relation to the adjusted proposals set forth in the SPO's response to the Registry Submissions;

(vii) do the Parties and Participants consider that the model developed at the International Criminal Court regarding the matters under consideration or a particular model developed at another international or internationalised court could be applied at the Specialist Chambers; and

(viii) should *inter partes* discussions be conducted and, if so, could such discussions be completed by no later than 31 March 2022.

12. In addition, considering that a hearing is not an opportunity for the Parties and Participants to restate arguments set forth in written submissions or to elaborate on matters not connected to the matters under consideration, each Party and Participant shall be allowed to make submissions on any other matters arising directly from the SPO Submissions insofar as such matters have not been previously addressed. Each Party and Participant shall be afforded a maximum of fifteen minutes to provide its submissions, excluding the time required to answer any questions posed by the Pre-Trial Judge.


13. Finally, the Pre-Trial Judge observes that, even though the Registry Submissions are classified as confidential, Victims' Counsel, the Thaçi Defence and the Veseli Defence filed public responses to the Registry Submissions. Even though these responses do not reveal confidential information, the Pre-Trial Judge reminds the Parties and Participants that, in accordance with Rule 82(4) of the Rules, any response, reply or other filing related to the original filing shall bear the same classification unless otherwise ordered by a Panel.

¹⁵ Registry Submissions, paras 10-11.

V. DISPOSITION

14. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a) **GRANTS** the Request and convenes a hearing on **Tuesday, 22 February 2022** from 14:30 hours until 18:00 hours under the conditions identified in the present decision;
- b) **ORDERS** the Registrar and Krasniqi Defence to submit public redacted versions of the Registry Submissions (F00679) and the Krasniqi Defence's response to the Registry Submissions (F00695) respectively, or to indicate that these filings may be reclassified as public by no later than **Monday, 21 February 2022**; and
- c) **ORDERS** the Registrar to reclassify the Selimi Defence's response to the Registry Submissions (F00691) and the SPO's response to the Registry Submissions(F00693) as public.



Judge Nicolas Guillou
Pre-Trial Judge

Dated this Wednesday, 16 February 2022

At The Hague, The Netherlands.