

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: 21 March 2022

Language: English

Classification: Public

**Thaçi Defence Supplemental Submissions on the SPO's Proposed Framework for
Contacts with Witnesses**

Specialist Prosecutor

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Counsel for Victims

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Venkateswari Alagendra

I. INTRODUCTION

1. The Defence for Mr Hashim Thaçi (“the Defence”) hereby files supplemental observations in response to the SPO proposed framework for contacts with witnesses,¹ following new information discovered during its investigations. The Defence wishes to bring to the attention of the Pre-Trial Judge the fact that some witnesses have recently told the Defence that they have not been informed by the SPO that they are on its witness list.²

2. In these circumstances, the Defence submits that it is particularly important that the Pre-Trial Judge obtain the consent of witnesses before putting in place any protocol on contact with witnesses, especially if he were to require that the Defence inform the SPO of its will to contact certain witnesses and/or that the SPO be present during certain Defence interviews.

II. PROCEDURAL BACKGROUND

3. 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.³

4. On 10 December 2021, the Victims’ Counsel filed a Response to Prosecution Submissions on Confidential Information and Contacts with Witnesses.⁴

¹ KSC-BC-2020-06/F00594 (“SPO Request”).

² KSC-BC-2020-06/F00542/A02, Prosecution submission of preliminary witness list, 22 October 2022; KSC-BC-2020-06/F00631RED/A02/CONF/RED, Confidential Redacted List of Witnesses, 17 December 2021.

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

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

5. On 15 December 2021, the Defence objected to the framework proposed and invited the Pre-Trial Judge to conduct a hearing to hear the parties and participants' submissions.⁵ On the same day, the Defence for Mr Selimi, Mr Krasniqi and Mr Veseli asked the Pre-Trial Judge to reject the SPO Request.⁶

6. On 21 January 2022, the Pre-Trial Judge ordered the Registrar to provide submissions on any matter arising from the parties' submissions 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 The Parties and Victim's Counsel filed further observations on 14 February 2022.⁹

7. On 16 February 2022, the Pre-Trial Judge decided to convene a hearing on 22 February 2022 in order to hear the Parties and Victim's Counsel' submissions on contact with witnesses.¹⁰

⁵ KSC-BC-2020-06/F00625, Thaçi Defence Response to Prosecution submissions on confidential information and contacts with witnesses ("Thaçi Response").

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

⁹ KSC-BC-2020-06/F00693, Prosecution response to 'Registrar's Submissions on Proposed Protocol for Interviews with Witnesses'; KSC-BC-2020-06/F00690, Victims' Counsel Further Submissions on the SPO's Framework for Handling of Confidential Information and Contacts with Witnesses During Investigations; 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.

¹⁰ KSC-BC-2020-06/F00698, Decision on Request for Hearing ; KSC-BC-2020-06, Transcript of hearing, 22 February 2022.

III. DISCUSSION

8. The Defence has previously stressed that the SPO proposed framework for contact with witnesses is an impermissible and untimely application for protective measures under Rule 80 of the Rules of Procedure and Evidence (“Rules”),¹¹ which provides that:

(1) Pursuant to Article 23(1) of the Law, a Panel may, *proprio motu* or upon request by a Party, the Witness Protection and Support Office, a witness, or Victims’ Counsel, where applicable, order appropriate measures for the protection, safety, physical and psychological well-being, dignity and privacy of witnesses, victims participating in the proceedings and others at risk on account of testimony given by witnesses, provided that the measures are consistent with the rights of the Accused.

(2) Prior to making an order, the Panel shall seek to obtain the consent of the person in respect of whom the protective measures are sought.

[...]

9. During the hearing of 22 February 2022, the Defence further noted that:

“With regard to witnesses to get protective measures, Rule 80(2) requires consent. Has there been any consent advanced by the SPO concerning any of these witnesses? Has any of these generals in the British army or any diplomats from the United States or France or from Belgium or from Germany, have they given their consent to any of this? I haven't seen anything, in any submission by the Prosecution or by the Victims' Counsel, which, of course, is required under Rule 80. I suspect that no consent was given whatsoever and none was ever asked. In fact, I submit to Your Honour that no request was made of counsel who represented witnesses. Counsel who represented witnesses as to whether or not they consent to these protective measures. It hasn't been done. This is just an across-the-board-we-want-it-our-way position taken by the SPO.”¹²

10. Subsequently, in the course of its investigations, the Defence has discovered that some witnesses identified in the SPO witness list were not aware that the SPO had decided, and officially notified the Pre-Trial Judge, Parties and Victims’ Counsel, of its intention to call them as witnesses in the case against *Mr Thaçi & all*.

¹¹ Thaçi Response, para. 3.

¹² KSC-BC-2020-06, Transcript of hearing, 22 February 2022, p. 986.

11. This further corroborates the fact that the SPO has not asked the views of witnesses on its proposed framework.

12. The Defence submits that in seeking additional protective measures, the SPO has failed to comply with Rule 80(2), because it has not obtained the witnesses' consent to its additional proposed measures.

13. It is therefore especially important that the Pre-Trial Judge obtain the consent of witnesses before adopting a protocol on contact with witnesses, particularly if such protocol would preclude certain witnesses from speaking to the Defence outside the presence of the SPO.

[Word count: 1016]

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

Thursday, 21 March 2022

At Tampa, United States