



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

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: Specialist Prosecutor

Date: 28 March 2022

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Prosecution response to 'Thaçi Defence Supplemental Submissions on the SPO's Proposed Framework for Contacts with Witnesses '

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1. The Thaçi Defence Supplemental Submission¹ should be summarily dismissed. It is improperly filed, misrepresents the relief sought, and, in any event, is without merit.
2. The proposed framework for contacts with witnesses² is the subject of a pending request awaiting a ruling from the Pre-Trial Judge. The Thaçi Defence Supplemental Submission is outside the statutory briefing and hearing schedule³ and amounts to an unauthorised sur-reply.
3. In bringing this to the Trial Panel's attention in the guise of some newfound discovery following an anonymous witness contact, the Thaçi Defence illustrates the necessity of adopting a general procedure on such contacts.
4. There is no indication at all as to who the Thaçi Defence is referencing in its filing. Such detail should not be addressed now, but there may well be a justifiable reason why this person has not yet been told they are a witness of the Specialist Prosecutor's Office ('SPO'). Furthermore, SPO witnesses may have good reasons not to tell the Defence everything they know about their involvement in the case when directly contacted.
5. The Thaçi Defence Supplemental Submission also does not add anything to the discussion. The SPO has already argued that the protocol should apply as a general procedure and not be dependent upon witness consent.⁴ The SPO also does not present its request exclusively as a protective measure, but also makes reference to Article 39(1) of the Law⁵ and the ability of the Pre-Trial Judge to adopt procedures that facilitate the

¹ Thaçi Defence Supplemental Submissions on the SPO's Proposed Framework for Contacts with Witnesses, KSC-BC-2020-06/F00741, 21 March 2022 ('Thaçi Defence Supplemental Submission').

² See, *inter alia*, Prosecution submissions on confidential information and contacts with witnesses, KSC-BC-2020-06/F00594, 3 December 2021 ('Prosecution Initial Submissions'); Prosecution response to 'Registrar's Submissions on Proposed Protocol for Interviews with Witnesses', KSC-BC-2020-06/F00693, 14 February 2022 ('Prosecution Further Submissions').

³ Order to the Registrar for Submissions, KSC-BC-2020-06/F00650, 21 January 2022; Decision on Request for Hearing, KSC-BC-2020-06/F00698, 16 February 2022.

⁴ Transcript, 22 February 2022, pp.974-975.

⁵ Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law').

fair and expeditious conduct of the proceedings.⁶ The protocol requested could be adopted completely independently of Rule 80⁷ if the Pre-Trial Judge were so inclined. The International Criminal Court ('ICC'), whose witness contact protocol largely formed the basis for the SPO's request, also has a provision about seeking consent for protective measures⁸ and this provision has not created any barrier to establishing a general ICC protocol.

6. Consent is already a key feature of the proposal under consideration, noting that consent is necessary to be interviewed by an opposing party.⁹ The SPO has also received information from one international organisation that it has serious concerns about the Defence directly contacting its current or former staff, so there is known interest in a procedure removing the possibility of direct opposing party contact even from international witnesses. The organisation in question has specifically requested that the matter be regulated by the court and through the Registry.

7. For these reasons, the Thaçi Defence Supplemental Submission should be dismissed.

Word count: 558



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Monday, 28 March 2022

At The Hague, the Netherlands.

⁶ Transcript, 22 February 2022, p.966.

⁷ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

⁸ Rule 87(1) of the ICC Rules of Procedure and Evidence.

⁹ Prosecution Initial Submissions, KSC-BC-2020-06/F00594, para.6(a)-(b).