

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: 8 July 2022

Language: English

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Thaçi Defence Submissions for the Thirteenth Status Conference

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I. INTRODUCTION

1. On 1 July 2022, the Pre-Trial Judge issued the ‘Order Setting the Date for a Thirteenth Status Conference and for Submissions.’¹

2. The Defence for Mr Hashim Thaçi (“Defence”) hereby provides written submissions regarding the issues listed by the Pre-Trial Judge in the Order. The Defence reserves the right to present additional submissions orally at the Thirteenth Status Conference.

II. SUBMISSIONS

A. RULE 102(3)² DISCLOSURE

3. Since the Twelfth Status Conference on 20 May 2022, the Defence has made three further (limited) requests for material from the Rule 102(3) notice, comprising approximately 80 documents. In the same period, the SPO has disclosed 1,683 documents pursuant to Rule 102(3), across seven disclosure packages.³ Thus, the total Rule 102(3) disclosure received by the Defence since February 2022 is 2,659 documents, when approximately 6,800 have been requested.

4. While these figures indicate the SPO has increased the pace of its Rule 102(3) disclosure slightly, the Defence remains concerned about the delay in receiving the material it has requested. The Defence therefore requests that the SPO continues to disclose all requested material on a rolling basis, and does not leave the majority of its

¹ KSC-BC-2020-06/F00863, Pre-Trial Judge, Order Setting the Date for a Thirteenth Status Conference and for Submissions, Public (“Order”).

² KSC-BD-03/Rev3/2020, Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, 2 June 2020 (“Rules”).

³ Disclosure Packages 259, 261, 265, 269, 280, 290 and 291.

disclosure or challenges to materiality until the ultimate deadline of 30 September 2022.⁴

5. The Defence advises that it intends to make further requests for Rule 102(3) material. Requests will include items that have become material as a result of ongoing investigations, or which have not been captured in previous requests, due to additional information being provided by the SPO (for example, due to the identity of additional SPO witnesses being disclosed). Consequently, the Defence supports the continued abeyance of any final deadlines for requesting Rule 102(3) material: it must be able to make further requests for Rule 102(3) material if items become material to the Defence investigations or trial preparations.⁵

B. DEFENCE INVESTIGATIONS AND NEXT STEPS

1. Point 2(a): Status of Defence Investigations

6. The Defence is continuing its investigations. However, as submitted previously,⁶ investigations remain hampered by a number of factors outside of the control of the Defence, and will be significantly impacted by the recent implementation of the 'Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant' ("Witness Protocol").⁷ Because of this Witness

⁴ KSC-BC-2020-06, Transcript of Twelfth Status Conference, 20 May 2022 ("Twelfth Status Conference Transcript"), p. 1323 lines 16-25.

⁵ See, e.g., KSC-BC-2020-06/F00671, Taçi Defence Submissions for the Tenth Status Conference, 1 February 2022, Public ("Tenth Status Conference Submissions"), para. 11; KSC-BC-2020-06/F00744, Veseli Defence Submissions for Eleventh Status Conference, 21 March 2022, Public, para. 8.

⁶ See, e.g., Tenth Status Conference Submissions, para. 18; KSC-BC-2020-06, Transcript of Eleventh Status Conference, Oral Order Three, 24 March 2022 ("Transcript of Eleventh Status Conference"), p. 1138 line 15 to p. 1139 line 3; KSC-BC-2020-06/F00804, Taçi Defence Submissions for the Twelfth Status Conference, 18 May 2022, Public ("Twelfth Status Conference Submissions"), para. 10.

⁷ KSC-BC-2020-06/F00854, Pre-Trial Judge, Decision on Framework for the Handling of Confidential Information during Investigations and Contact between a Party or Participant and Witnesses of the Opposing Party or of a Participant, 24 June 2022, Public, pp. 85-91.

Protocol, the Defence had to cancel some scheduled interviews of prosecution witnesses, who were willing to meet with the Defence without any conditions.

2. Point 2(b): Unique Investigative Opportunities

7. At the Twelfth Status Conference, the Defence provided notice that it intended to make requests concerning unique investigative opportunities, pursuant to Rules 99(1), 99(3) and 100 of the Rules.⁸

8. The Defence initially anticipated that such requests would be submitted within the coming months.⁹ However, in light of recent procedural developments, the Defence notes that it will not be possible to make its requests by the Pre-Trial Judge's proposed date of 1 September 2022.¹⁰

9. Depositions cannot be completed without the Defence first meeting with the witnesses it intends to depose. Because of the Witness Protocol, some upcoming interviews had to be cancelled. Preparation for the proposed depositions has been immeasurably delayed by the implementation of the Witness Protocol, due to the level of preparation, organisation and coordination now required for interactions with witnesses that fall within its parameters. The Defence cannot propose any realistic dates for interview to the SPO, without first talking to the witness.¹¹ The summer recess starts in a few days and this holiday season renders any interviews with witnesses more difficult.

⁸ Twelfth Status Conference Submissions, paras. 11-12; KSC-BC-2020-06, Twelfth Status Conference Transcript, p. 1282 line 4 to p. 1283 line 12.

⁹ Twelfth Status Conference Submissions, para. 12.

¹⁰ See Order, para. 22(2)(b).

¹¹ Extremely onerous requirements have been imposed on the Defence if they wish to organise an interview with a person covered by the Witness Protocol (such as a witness on the SPO's witness list): see, *inter alia*, Witness Protocol, paras. II(b) and (d)-(h).

10. In addition, the Defence has been attempting to obtain additional materials from international organisations, including materials which are important for the witnesses that may be deposed by the Defence.¹² However, these organisations have now required that any such request be (re)submitted through the KSC Registry, slowing down the processing of the Defence requests. Ongoing delays in receiving the requested materials from these organisations again contribute to considerable delay in preparing for, and conducting, depositions.

3. Point 2(c): Alibi or Grounds for Excluding Responsibility

11. The Defence will not be able to file any notice of alibi or grounds for excluding responsibility, pursuant to Rule 95(5) of the Rules, by the Pre-Trial Judge's proposed date of 1 September 2022.¹³

12. The Defence remains unable to provide further information as to alibi, in light of the continued substantive redactions in the Indictment and the evidentiary material disclosed by the SPO. It is not possible for the Defence to establish an alibi or grounds for excluding responsibility in circumstances where, for example, the date or location of an allegation is redacted.

13. However, as previously stated,¹⁴ the Defence does intend to give a notice of alibi once further clarity is provided regarding the dates and locations of alleged incidents. Therefore, the Defence reserves its right to give notice of an alibi or grounds for excluding responsibility, pursuant to Rule 95(5) of the Rules.

¹² See, e.g., discussion in Twelfth Status Conference Transcript, p. 1278 line 17 to p. 1279 line 9.

¹³ See Order, para. 22(2)(c).

¹⁴ Twelfth Status Conference Submissions, para. 13; Twelfth Status Conference Transcript, p. 1284, line 23 to p. 1284 line 10; KSC-BC-2020-06, Transcript of Tenth Status Conference, 4 February 2022, p. 933 line 21 to p. 934 line 6.

4. Point 2(d): Agreement on Law and/or Facts

14. The Defence has not received any proposal for agreement on law and does not intend to submit any at this stage.

15. The Defence has continued to review and engage with the SPO regarding the proposal for agreement on facts, pursuant to Rule 95(3) of the Rules. Prior to the last Status Conference, the Defence had agreed nine facts with the SPO. Since then, the Defence has agreed a further nine facts with the SPO – some having been reworded.

16. The Defence remains unable to reach agreement on the other facts proposed by the SPO, in light of the extensive redactions to the Indictment and materials disclosed by the SPO, as well as the number of anonymous witnesses.

17. The Defence intends to submit proposals for agreements on facts related to crimes committed by the Serbs, but it is unlikely that this process will be completed before 1 September 2022.

18. In these circumstances, the Pre-Trial Judge's proposed date of 1 September 2022 for confirming points of agreement appears to be premature.¹⁵

5. Point 2(e): Objections to the Admissibility of Evidence

19. The Defence is not able to file objections to the admissibility of evidence, pursuant to Rule 95(2)(e) of the Rules, by 8 September 2022.¹⁶ This is because:

- (i) The Defence considers it is still premature to identify objections, in light of the voluminous amount of material contained in the SPO's Exhibit

¹⁵ See Order, para. 22(2)(d).

¹⁶ See Order, para. 22(2)(e).

List, the SPO's continuous amendment of its Exhibit List and the extensive redactions to the Exhibit List and material disclosed;¹⁷

- (ii) The Defence has still not been provided with information about the provenance of all evidence that the SPO intends to rely on, and particularly evidence which comes from Serbia or Serbian institutions;
- (iii) The SPO has not clarified yet which documents it intends to tender through the bar and which it intends to tender through witnesses; and
- (iv) The Defence is now hindered in its ability to conduct interviews with witnesses covered by the Witness Protocol, and therefore cannot yet determine its objections to the evidence relevant to these witnesses.

6. Point 2(f): List of Issues Subject and Not Subject to Dispute

20. The Defence is not able to provide a list of the issues subject to dispute and the issues not subject to dispute, pursuant to Rule 95(5)(b) of the Rules, by 8 September 2022.¹⁸ Once again, the Defence considers it is premature to identify such issues, for the same reasons previously given.¹⁹

7. Point 2(g): Pre-Trial Brief

21. The Defence does not currently foresee any difficulty in filing its Pre-Trial Brief by 21 October 2022.

¹⁷ Twelfth Status Conference Submissions, para. 15.

¹⁸ See Order, para. 22(2)(f).

¹⁹ Twelfth Status Conference Submissions, para. 15.

C. PROPOSALS FOR STREAMLINING THE CASE

1. Proposals in Points 3(a), (b) and (c)

22. The Defence supports the proposals made by the Pre-Trial Judge in points 3(a), (b) and (c) of the Order. Such proposals have previously been advanced by the Defence, as measures that would significantly assist the Court to streamline the case.²⁰

2. Point 3(d): Time Limits for Questioning and Designation of one Representative for Cross-Examination

23. The Defence strenuously opposes the imposition of the proposals made by the Pre-Trial Judge in Point 3(d) of the Order. The measures proposed by the Pre-Trial Judge are a clear violation of the rights of the accused, particularly the right to have adequate time and facilities for the preparation of his defence and the right to examine the witnesses against him.²¹ This proposal also clearly fails to appreciate that each Defence team is required to act in the best interests of their client; interests which may not align on any or all issues across each of the defence teams. As such, the defence teams cannot, and should not, be treated as if they are a single unit.

3. Point 3(e): Sitting Days and Times

24. In the interests of efficiency, the Defence proposes that the parties sit for four days per week, for regular Court hours.

²⁰ Twelfth Status Conference Submissions, paras. 24, 26 and 27; Twelfth Status Conference Transcript, p. 1302 line 25 to p. 1304 line 2.

²¹ See Articles 21(4)(c) and (f) of the Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office.

4. Point 3(f): Imposition of Global Time Limits

25. While the Defence supports the imposition of global time limits for each party's case, the Defence opposes the imposition of a time limit of three months for the presentation of each Defence case, as proposed by the Pre-Trial Judge.²² The Defence submits that this time limit is not reasonable having regard to the scope of the case, the number of witnesses relied upon by the SPO in its Witness List and the amount of evidence that may need to be called to ensure an adequate defence of the accused. Further, it is premature to determine the global time limits for the Defence at this stage, as they must necessarily be adjusted having regard to the sitting days and times, as well as the nature of the evidence presented by the SPO.

D. FOURTEENTH STATUS CONFERENCE

26. The Defence will be available for the Fourteenth Status Conference at the Court's convenience on Thursday, 8 September 2022.

[Word count: 2,024 words]

Respectfully submitted,



Gregory W. Kehoe

Counsel for Hashim Thaçi

Friday, 8 July 2022

At Tampa, United States

²² See Order, para. 22(3)(f).