

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

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Language: English

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Thaçi Defence Notice of Alibi

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I. INTRODUCTION

1. On 8 September 2022, the Pre-Trial Judge ordered the Defence for Mr Hashim Thaci (“Defence”) to “file notices of alibi or grounds for excluding responsibility to the extent possible pursuant to Rule 95(5) of the Rules by 28 October 2022.”¹
2. For the reasons set out below, the Defence is not able to provide a complete notice of alibi at this time. However, to the extent possible, the Defence has provided details of the location of Mr Thaçi during the Indictment Period² in its Pre-Trial Brief.³ The Defence therefore reserves its right to give notice of an alibi at a later time, and particularly once less redacted materials are provided by the SPO and further clarity is provided regarding the dates and locations of alleged incidents.

II. APPLICABLE LAW

3. Rule 95(5) of the Rules⁴ relevantly provides that:

In addition, within a time limit set by the Pre-Trial Judge, the Defence shall notify the Specialist Prosecutor of its intent to offer a defence of alibi or any other grounds excluding criminal responsibility [...]
4. In raising an alibi, an accused is “merely denying that he was in a position to commit the crime with which he was charged”.⁵ International courts and tribunals have confirmed that an accused does not bear the burden of proof beyond reasonable

¹ KSC-BC-2020-06, Transcript of Fourteenth Status Conference, 8 September 2022, Public (“Transcript of Fourteenth Status Conference”), Oral Order 2, p. 1583 lines 7-13.

² KSC-BC-2020-06/F00999/A02, Annex 2 - Confidential Redacted Version of Amended Indictment, 30 September 2022 (“Indictment”), para. 16, which states: “The JCE Members and Tools (defined below) carried out a widespread or systematic attack against the civilian population of Opponents (defined below) in Kosovo and areas of northern Albania, **from at least March 1998 through September 1999 (the ‘Indictment Period’)**.” (Emphasis added).

³ KSC-BC-2020-06/F01050, Pre-Trial Brief of Mr Hashim Thaçi, 21 October 2022, Confidential (“Pre-Trial Brief”), paras. 116-125.

⁴ Rules of Procedure and Evidence Before the KSC, KSC-BD-03/Rev3/2020, 2 June 2020 (“Rules”).

⁵ ICTY, *Prosecutor v. Popović et al.*, IT-05-88-A, Appeals Chamber, Judgement, 30 January 2015 (“Popović Appeals Judgment”), para. 343.

doubt in relation to establishing an alibi, and must only produce evidence likely to raise a reasonable doubt in the prosecution's case.⁶ Instead, it is the prosecution's burden "to prove the accused's guilt as to the alleged crimes beyond reasonable doubt in spite of the proffered alibi."⁷ Thus, in *Limaj*, the ICTY Trial Chamber (confirmed by the Appeals Chamber) held that:⁸

So long as there is a factual foundation in the evidence for that alibi, the Accused bears no onus to establish that alibi; it is for the Prosecution to "eliminate any reasonable possibility that the evidence of alibi is true". Further, as has been held by another Trial Chamber, a finding that an alibi is false does not in itself "establish the opposite to what it asserts". The Prosecution must not only rebut the validity of the alibi but also establish beyond reasonable doubt the guilt of the Accused as alleged in the Indictment.

III. SUBMISSIONS

5. The Defence ability to provide a complete notice of alibi is currently impeded by the substantive redactions in the SPO's Indictment, Pre-Trial Brief, and evidentiary material. The Defence cannot provide an alibi where the date and/or location of an allegation is redacted. This is particularly the case where the redacted allegations relate directly to the acts and conduct of the Accused. For example, paragraphs 40 to 49 of the Indictment supposedly contain allegations showing that the Accused "personally participated in the treatment of Opponents".⁹ However, paragraphs 41 and 42 are redacted in full, making it impossible for the Defence to know, or respond to, the allegations therein.

6. Concerns about the extent of the SPO's redactions have been repeatedly raised by the Defence,¹⁰ but have not been addressed or resolved by the Court. Instead, only

⁶ *Ibid.*

⁷ ICTY, *Prosecutor v. Limaj et al.*, IT-03-66-A, Appeals Chamber, Judgement, 27 September 2007, para. 63.

⁸ *Ibid.*, para. 64.

⁹ Indictment, para. 40.

¹⁰ *See, e.g.*, Transcript of Fourteenth Status Conference, pp. 1559 line 16 to 1560 line 5; KSC-BC-2020-06/F00870, Taçi Defence Submissions for the Thirteenth Status Conference, 8 July 2022, Public, paras. 12-13; KSC-BC-2020-06/F00804, Taçi Defence Submissions for the Twelfth Status Conference, 18 May

on 28 October 2022 will the Defence be provided with information about when each of the redactions in the Indictment is scheduled to be lifted.¹¹ Consequently, and as repeatedly submitted, the Defence is not in a position to provide a complete notice of alibi until less redacted materials are provided by the SPO and the Defence has access to more information about the date and/or locations of alleged incidents.

7. The Defence further notes that, for some of the modes of liability charged in these proceedings, particularly the alleged joint criminal enterprise, the submission of a notice of alibi is of limited relevance.

8. Nevertheless, the Defence has endeavoured to provide, in good faith, an overview of the movements and locations of Mr Taçi during the Indictment Period; namely, between March 1998 and September 1999. This information is provided in paragraphs 116 to 125 of the Defence's Pre-Trial Brief.¹² The Defence is not currently in a position to provide more information than is contained in this overview.

[Word count: 927 words]

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 Taçi

Friday, 28 October 2022

At Tampa, United States

2022, Public, para. 13; KSC-BC-2020-06, Transcript of Tenth Status Conference, 4 February 2022, Public, pp. 933 line 21 to p. 934 line 6; KSC-BC-2020-06, Transcript of Eighth Status Conference, 29 October 2021, Public, p. 731 lines 8-19, p. 746 lines 14-18.

¹¹ Transcript of Fourteenth Status Conference, Oral Order 5, p. 1584 lines 3-8.

¹² Pre-Trial Brief, paras. 116-125.