

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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**Public Redacted Version of ‘Thaçi Defence Motion Justifying Request for Unique
Investigative Opportunities
with confidential Annexes 1-8’**

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I. INTRODUCTION

1. On 7 October 2022, the Defence for Hashim Thaçi (“Defence”) filed a notice indicating that it will seek unique investigative opportunities in relation to nine witnesses pursuant to Rule 99 of the Rules,¹ and in the alternative, depositions pursuant to Rule 100.² In that Notice, the Defence set out in detail the type of measures requested, the location where the measures are to be carried out, the number of witnesses, and the recommended procedure.³ The Defence incorporates that submission herein and will not repeat it here, save where it is necessary for clarity.

2. The Defence hereby files its reasons justifying the need for such measures pursuant to the oral order made by the Pre-Trial Judge (“PTJ”) on 8 September 2022.⁴

3. The Defence is filing this Motion as confidential as it refers to the identity and personal information of proposed witnesses.⁵ It will file a public redacted version shortly.

II. APPLICABLE LAW

A. UNIQUE INVESTIGATIVE OPPORTUNITIES

4. Rule 99(1) provides that:

“Where the Parties consider that an investigation presents a unique opportunity to take testimony from a witness or to examine, collect or test evidence which may not be available subsequently at trial, the Pre-Trial Judge may upon the request of

¹ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 (“Rules”).

² KSC-BC-2020-06/F01018, Thaçi Defence Notice of Unique Investigative Opportunities, 7 October 2022 (“Notice”), paras. 16-17.

³ Notice, paras. 10-15.

⁴ KSC-BC-2020-06, Transcript of Fourteenth Status Conference, Oral Order 1, 8 September 2022, Public, p. 1582 line 21 to p. 1583 line 6.

⁵ See Rule 82.

a Party take such measures as may be necessary to ensure the preservation of the evidence.”

5. Rule 99(3) provides:

“The measures referred to in paragraph (1) include:

(a) upon request by the Parties or *proprio motu*, participation of the Pre-Trial Judge or of a Judge assigned by the President in a unique investigative opportunity;

(b) making recommendations or orders regarding procedures to be followed;

(c) directing that a record be made of the proceedings; and

(d) authorising Specialist Counsel to attend and represent the interests of the Defence.”

6. Rule 99(4) provides:

“The admissibility of evidentiary material collected or preserved for trial pursuant to this Rule shall be governed at trial by Rule 138, and given such weight as determined by the Trial Panel.”

B. DEPOSITIONS

7. Rule 100(1) provides:

“Where there is reason to believe that the evidence of a potential witness may otherwise become unavailable, the Pre-Trial Judge may decide, *proprio motu* or upon request by a Party, that a deposition be taken for use at trial, regardless of whether or not the person whose deposition is sought is able physically to appear before the Specialist Chambers to give evidence.”

8. Rule 100(2) provides:

“The motion for the taking of a deposition shall indicate the name and whereabouts of the person whose deposition is sought, the date and place at which the deposition is to be taken, a statement of the matters on which the person is to be examined and of the circumstances justifying the taking of the deposition.”

III. IDENTITY OF THE WITNESSES

9. At the outset the Defence notes that it previously notified the Court that it would be seeking unique investigative opportunities; or in the alternative, a deposition for 9 witnesses.⁶ However, at the date of filing, the Defence, for reasons beyond its control, is only able to apply for these measures in respect of 8 witnesses, as follows (in alphabetical order):

Full Name	Description and Age
Steve BENNETT	Director of the OSCE Department of Police Education and Development, United Nations Mission in Kosovo, 1999-2006. Age: 78 years old
[REDACTED] Current SPO witness W04147	[REDACTED] Age: [REDACTED]
General Wesley CLARK	Supreme Allied Commander Europe of NATO, and Commander-in-Chief of the United States European Command from 1997 to May 2000. Age: 77 years old
Jock COVEY	Principal Deputy of the UN Mission in Kosovo (UNMIK) 1999 to 2001. Age: 78 years old
Michael DURKEE	Political advisor to NATO Supreme Allied Commanders in Europe (SACEUR) Clark, 1998-1999 Age: 83 years old

⁶ Notice, para. 5.

Daan W. EVERTS	Head of the OSCE Office in Tirana, Albania and then of the OSCE Office in Pristina in 1999. Age: 81 years old
Bernard KOUCHNER	Special Representative for the Secretary General of the UN Interim Administration on Kosovo (UNMIK), July 1999 to January 2001 Age: 82 years old
Ambassador William WALKER	Head of OSCE KVM from 17 October 1998 – mid-June 1999 Age: 87 years old

10. The Defence review of the SPO's evidence continues. It is mindful that the SPO will be disclosing the identity of 67 witnesses, and approximately 46,000 pages of new, less redacted or unredacted evidence 30 days before trial,⁷ and it may be that having reviewed that evidence and understanding the SPO's case more fully, it will apply to add one or two more witnesses. The Defence assures the court that any such application will be timely.

11. In confidential Annexes 1-8 attached, the Defence has provided a precis for each of the proposed witnesses, containing:

- (i) Name;
- (ii) Age and/or Date of birth;
- (iii) Whereabouts; and
- (iv) Statement of the matters on which the person is to be examined.

⁷ KSC-BC-2020-06/F00952, Prosecution submissions for fourteenth status conference, 5 September 2022, para. 11. While in this filing, it was stated that the identity of 68 witnesses would be disclosed 30 days before trial, the identity of one witness has subsequently been disclosed, see: KSC-BC-2020-06/F00977/CONF/RED, Confidential Redacted Version of 'Prosecution notification regarding non-standard redactions pertaining to W03821's identity', 12 October 2022, and Disclosure Packages 567-569.

This information is technically required pursuant to Rule 100(2) for the Defence's alternate submission under Rule 100, but is also relevant to the reasons and justification for the Defence's primary request under Rule 99.

12. The Defence has detailed below the circumstances justifying its request for a unique investigative opportunity under Rule 99; or in the alternative, the taking of a deposition under Rule 100; and the location and date of any such procedure for each witness.

IV. PROCESS

13. The Defence adopts its submissions in its Notice regarding the process by which the 8 unique investigative opportunities pursuant to Rule 99 should be pursued. In short, in advance of trial, the 8 witnesses would give live evidence in open session in the Kosovo Specialist Chambers ("KSC") courtroom in The Hague, before at least one, but preferably all three members of the Trial Panel (appointed by the President at the invitation of the PTJ), in the presence of the accused. These 8 witnesses would be examined in chief by the Defence, followed by potential cross examination by Counsel for the other accused, the SPO, Victims Counsel and the member/s of the Trial Panel as desired.⁸

14. In the alternative, should the PTJ not be persuaded by the Defence request for unique investigative opportunities under Rule 99, the Defence invites the PTJ to preserve the evidence of these 8 witnesses via depositions under Rule 100 in advance of trial.⁹ Pursuant to the Rule 100(3), the PTJ "may observe" such depositions.

⁸ Notice, paras. 10 to 14.

⁹ Notice, para. 15.

V. JUSTIFICATION

15. The 8 witnesses were all, in the Indictment period, senior international diplomats, administrators and military figures serving in high level positions in the North Atlantic Treaty Organization (NATO); the Organization for Security and Co-operation in Europe (OSCE); the United Nations (UN); the UN Interim Administration in Kosovo (UNMIK); the Kosovo Monitoring Mission (KVM); and [REDACTED]. They interacted with Mr Thaçi both on a professional and in some cases, a personal level. As detailed below in paragraphs 35-36, they will all testify about matters that are central to the case against Mr Thaçi including the structure of the Kosovo Liberation Army ("KLA") and General Staff and Mr Thaçi's role in both; the demilitarization and disarmament of the KLA after the war including Thaçi's role in this; and the causes and organised nature, or lack thereof, of the violence in 1999. Given their standing and roles in Kosovo in 1998-1999, their unique vantage point and involvement with the key individuals who shaped the events in question, these 8 witnesses will undoubtedly provide some of the most important evidence the Court will hear in this case, for either side.

16. All 8 witnesses are of advanced age – ranging from 77 to 87 (as stated above) - and of varying degrees of health. Ideally, the Defence would call these 8 witnesses in its own case (at the close of the SPO's case) and they would be heard in the same fashion as all other witnesses called by the Defence. However, due to their advanced age, there is a real risk that their evidence "may not be available subsequently at trial",¹⁰ or at least by the time that the Prosecution closes its case, and the Defence case begins, either through death of the individual due to old age or incapacity. Indeed, the Defence notes that it has already lost two potential witnesses: Former US Secretary of State, Madeleine Albright, who died this year aged 84, and former US diplomat, Richard Holbrooke, who died in 2010 aged 69. These examples demonstrate the very

¹⁰ Per Rule 99.

real need to preserve the evidence of these 8 individuals. Consequently, the Defence's proposal for a unique investigative opportunity pursuant to Rule 99 (akin to a deposition) for each witness listed above will ensure that the Defence does not lose the opportunity to call these witnesses.

17. Critical to justifying the Defence request is estimating when the Defence case is likely to begin and how old the 8 witnesses will be by then – i.e., can the Defence simply wait till it puts on its case to call them? As with any criminal trial, this is not an exact science, however, the Defence has attempted to estimate based on the information it has about the size and breath of the SPO's case, as set out below.

18. There are currently 18,226 exhibits on the SPO's Exhibit List,¹¹ and 319 witnesses on the SPO's Witness List.¹² This is made up of:¹³

- (i) 40 witnesses whose testimony will be 'live';
- (ii) 196 Rule 154 witnesses;¹⁴
- (iii) 51 Rule 153 witnesses;¹⁵ and

¹¹ KSC-BC-2020-06/F00967/A02, Annex 2 – Prosecution submission of amended exhibit list, 13 September 2022 ("SPO Exhibit List"). However, this figure does not account for the PTJ's recent decisions authorising further materials to be added to the SPO Exhibit List, see: KSC-BC-2020-06/F01057/CONF/RED, Pre-Trial Judge, Confidential Redacted Version of Decision on Prosecution Rule 102(2) Submission and Related Requests, 27 October 2022 ("PTJ Rule 102(2) Decision"), para. 58(b); KSC-BC-2020-06/F01058/CONF/RED, Pre-Trial Judge, Confidential Redacted Version of Decision on Prosecution Request to Add Two Witnesses and Associated Materials, 27 October 2022 ("PTJ Second Witness Decision"), para. 47(b).

¹² KSC-BC-2020-06/F00948/A02, Annex 2 - Revised Witness List, 2 September 2022 ("SPO Witness List"). This figure does not include the four witnesses that were recently authorised to be added to the SPO Witness List, see: PTJ Rule 102(2) Decision, para. 58; PTJ Second Witness Decision, para. 47.

¹³ This breakdown does not include details for the four new witnesses that were recently authorised to be added to the SPO Witness List, see: PTJ Rule 102(2) Decision, para. 58; PTJ Second Witness Decision, para. 47.

¹⁴ Rule 154 provides for admission of written statements and transcripts in lieu of direct examination, but cross-examination is possible for the parties.

¹⁵ Rule 153 provides for admission of written statements and transcripts in lieu of oral testimony, with cross-examination only possible with judicial authorisation.

(iv) 32 Rule 155 witnesses, including 30 who are deceased.¹⁶

19. The SPO's most recent estimate of the time needed for direct examination of the witnesses it intends to call is 709 hours.¹⁷ There has been no formal discussion about the time estimate for cross-examination or re-examination by the defence to date, although at a minimum, equality of arms dictates that the Defence be granted the same time as the SPO. Whether that is collectively, or for each defendant, is a matter to be argued before the Trial Panel. Further, the SPO's recent decision to call 196 witnesses pursuant to Rule 154 may impact on the time needed for cross-examination.¹⁸

20. Subject to the above, the SPO's calculation of 709 hours, if matched by a minimum of 709 hours of cross examination by the defence in total, brings the time needed to hear witness evidence in the SPO's case to 1418 hours. Assuming the Court sits 4 days a week, and 6 hours per day, the SPO case will take a minimum of 236 sitting days, to which one must add judicial recess (6 weeks in 2022), and the official court holidays (6 days in 2022), taking the total time to hear the SPO's witness evidence including cross examination by the defence to 66 weeks. This calculation is based on this case having access to a court room 4 days a week for 6 hours a day. If this case has to share a court room with another case, then an adjustment will have to be made which will lengthen the time it takes to hear the SPO's case.

¹⁶ Rule 155 provides for admission of written statements of unavailable persons and of persons subjected to interference. The evidence of these witnesses would be wholly in writing, with neither direct examination or cross-examination possible.

¹⁷ KSC-BC-2020-06/F00948, Prosecution submission of revised witness list, 2 September 2022, para. 6. This estimate of hours does not include the estimates for the four new witnesses recently authorised to be added to the SPO Witness List: see: PTJ Rule 102(2) Decision, para. 58; PTJ Second Witness Decision, para. 47.

¹⁸ KSC-BC-2020-06, Transcript of Fourteenth Status Conference, Oral Order 1, 8 September 2022, Public, pp. 1517-1519.

21. To get an accurate estimate of when the Defence case may begin, it is necessary to add to this figure of 66 weeks (with the caveat that it is based on having full time use of a court room), sufficient time for the following including, but not limited to: questions posed to the SPO's witnesses by the Legal Representative for the Victims; legal arguments; adjournments for disclosure and review of evidence pertaining to the 96 witnesses whose identity and unredacted materials will only be disclosed to the Defence shortly before or during proceedings, and investigation of the same; time for the preparation, argument, decision and potential appeal of any application to dismiss the charges, pursuant to Rule 130; and other factors that may impact the length of the trial such as the sickness of the accused, witnesses or even members of the Trial Panel; unavailability of witnesses, the majority of whom will be travelling from overseas; and finally, whether the Legal Representative of the Victims calls witnesses between the close of the Prosecution case and the opening of the Defence case. Consequently, assuming the SPO's case starts in spring 2023 and, being realistic, it is unlikely that the Defence case will begin before early 2025.

22. While no two cases are the same, it is perhaps also instructive to consider the time it took the prosecution to present its case in multi-handed trials at the ICTY in which they called over 100 witnesses. For example, in *Šainović et al.*,¹⁹ the six accused were charged with four counts of crimes against humanity and one count of war crimes; there were 117 prosecution witnesses; and 1,455 prosecution exhibits. The prosecution case ran from 10 July 2006 until 1 May 2007, and the defence case ran from 6 August 2007 until 16 May 2008. Thus, the time from the start of the prosecution case to the start of the defence case was 392 days. However, as is clear from the cited statistics, the scope of the *Šainović* case was smaller, both in terms of crimes charged and the number of witnesses, which were approximately one third of those that the

¹⁹ See: ICTY, *Prosecutor v. Šainović et al.*, IT-05-87, 'Case Information Sheet', available https://www.icty.org/x/cases/milutinovic/cis/en/cis_sainovic_al_en.pdf. Following the acquittal of Milan Milutinović, the name of the case was changed from *Milutinović et al.* to *Šainović et al.*

SPO intends to call in this case. That said the Defence notes that there were six accused and therefore likely six cross examinations. Notwithstanding, and realising it is approximate, had the ICTY prosecutor called 319 witnesses in *Šainović* and charged 10 counts, as in this case, one would expect the time it took from the start of the prosecution's case to the start of the defence case to almost treble, bringing it to somewhere around 1,176 days.

23. In *Popović et al.*,²⁰ the seven accused were charged between them with two counts of genocide and conspiracy to commit genocide and six counts of crimes against humanity and war crimes.²¹ The prosecution called 182 witnesses and there were 2,906 prosecution exhibits. The prosecution case ran from 21 August 2006 to 7 February 2008, and the defence case from 2 June 2008 to 12 March 2009. The time from the start of the prosecution case to the start of the defence case was therefore 651 days. Again, the scope of *Popović et al.* was smaller in terms of crimes charged, and the number of witnesses were just over half those on the SPO's witness list. However, the number of cross-examinations would have been more as there were seven accused. Notwithstanding, and realising it is approximate, had the prosecution called 319 witnesses in *Popović et al.*, and charged 10 counts, as in this case, one would expect the time it took from the start of the prosecution case to the start of the defence case to at least double, bringing it to somewhere around 1,302 days.

²⁰ See: ICTY, *Prosecutor v. Popović et al.*, IT-05-88. 'Case Information Sheet,' available https://www.icty.org/x/cases/popovic/cis/en/cis_popovic_al_en.pdf.

²¹ Specifically: Popović, Beara, Nikolić, Pandurević and Borovčanin were charged with: One count of genocide (Count 1); and One count of conspiracy to commit genocide (Count 2); Five counts of crimes against humanity: Extermination (Count 3); Murder (Count 4); Persecutions (Count 6); Inhumane acts (forcible transfer) (Count 7); Deportation (Count 8); One count of the violations of the laws or customs of war: Murder (Count 5); and Miletić and Gvero with four counts of crimes against humanity: Murder (Count 4); Persecutions (Count 6); Inhumane acts (forcible transfer) (Count 7); Deportation (Count 8) and One count of the violations of the laws or customs of war: Murder (Count 5).

24. On any view, as stated above, it is unlikely that the Defence case will begin before early 2025. By this time, all of the 8 individuals listed above will then be in their 80's (many mid to late 80's) or, in the case of William Walker, his 90's. Moreover, their evidence, as set out in paragraphs 35-36 is some of the most important the Court can expect to hear and certainly is indispensable for Mr Thaçi's defence.

25. Had this trial taken place closer to the end of the war, we would not be in this situation. However, the SPO indicted Mr Thaçi in 2020, more than 20 years after the end of the conflict, and is not yet ready for trial. Mr Thaçi should not be prejudiced because of this, which is entirely beyond his control. It is imperative that the Court step in and guarantee Mr Thaçi's fundamental fair trial right "to obtain the attendance and examination of witnesses on his or her behalf *under the same conditions* as witnesses against him".²² The Defence submit that by granting its application for 8 unique investigative opportunities, as set out above and in the Notice, it will do so.

26. While this is the first time that the KSC has been seized of a motion requesting unique investigative opportunities or depositions and thus no guidance can be drawn from its jurisprudence to assist the PTJ, the Defence submits that support for the basis on which it applies to the PTJ under Rule 99 (age and the length of time before the defence case is likely to be heard) can be found in the case law of the ad-hoc tribunals. While the ICTY and ICTR did not have any provision for unique investigative opportunities, they did have a procedure for the parties to apply to the Trial Chamber (rather than a PTJ as at the KSC) to take depositions pursuant to their Rule 71.²³ A review of the case law of those Tribunals indicates that the time before the defence case is likely to be heard and the age of the witness were factors that merited the granting of depositions to preserve evidence that would otherwise be unavailable if they did not act. For example, in *Krajišnik and Plavšić*, the Trial Chamber considered

²² KSC Law, Article 21(4)(f) (emphasis added).

²³ ICTR, Rules of Procedure and Evidence, Rule 71; ICTY, Rules of Procedure and Evidence, Rule 71.

that it would be “in the interests of justice” to allow the Defence to take deposition evidence because of the “the age and infirmity of the witness, and the length of time before the defence case is likely to be heard.”²⁴ In *Nzabonimana*, the Defence filed a motion seeking the deposition of a witness on the basis of his old age and frail health. Whilst this application hinged primarily on the ill health of the witness (which is not currently a factor in play in this case), it was also based on his age. The Trial Chamber granted the application “in the interests of justice”, finding that the witness would be unable to attend at trial and his testimony was “sufficiently important to make it unfair to proceed without it.”²⁵ Moreover, they ordered that one of their number, Judge Mparny Rajohson be the Presiding Officer in the deposition.²⁶ Consequently, there is authority for the proposition advanced by the Defence that the age and likely time until the Defence case are reasons upon which a decision granting a mechanism to preserve evidence that may otherwise be unavailable can be based.

27. In the alternative, should the PTJ not be persuaded by the Defence request for unique investigative opportunities pursuant to Rule 99, the Defence invites the PTJ to grant it the right to conduct depositions pursuant to Rule 100 with all 8 witnesses. It would be justified on the same basis as any unique investigative opportunity - the likely time until the commencement of the Defence case combined with the age of the witnesses mean that there is a real risk that their evidence will no longer be available by the time the Defence case starts and thus must be preserved now.

28. However, while preserving their evidence (which may otherwise become unavailable), depositions would not, unlike the unique investigative opportunities

²⁴ ICTY, *Prosecutor v. Krajišnik and Plavšić*, IT-00-39 & 40-PT, Trial Chamber, Decision to proceed by way of deposition pursuant to Rule 71, 16 November 2001.

²⁵ ICTR, *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Trial Chamber III, Decision on Callixte Nzabonimana’s motion for protection measures and deposition of witness RW-42, 27 October 2009, para. 10.

²⁶ *Ibid.*, Order No. III, p. 6.

proposed, guarantee Mr Thaçi's fundamental fair trial right "to obtain the attendance and examination of witnesses on his or her behalf *under the same conditions* as witnesses against him". This is because Rule 100 makes no provision for anyone other than the PTJ to be present at a deposition.²⁷ This is different from a Rule 99 measure in which the Rules provide a non-exhaustive list of possible "measures", one of which is the "participation" in the unique investigative opportunity of a judge assigned by the President and there is nothing to prevent her appointing all three judges of the Trial Panel to hear this evidence live as proposed.²⁸

29. By contrast, if a deposition is taken under Rule 100, the Trial Panel will only hear this evidence in the Defence case when the 8 recordings are played in Court, thus depriving them of the ability to ask any questions they may have of the witnesses, and to observe their demeanour and comportment. While watching a recording of their evidence is better than losing the opportunity to call this evidence at all, it is far from "*under the same conditions* as witnesses against him". Given their standing and roles in Kosovo in 1998-1999, their unique vantage point and involvement with the key individuals who shaped the events in question, these 8 witnesses will undoubtedly provide some of the most important evidence the Court will hear in this case, for either side. They all interacted with Mr Thaçi, both on a professional and in some cases, a personal level.²⁹ Consequently, the Defence submit that it would be beneficial for at least one member of the Trial Panel, or ideally all three, to hear this evidence live so that they can observe the witnesses and ask their own questions as appropriate. This is not possible in a deposition under Rule 100, but only under Rule 99, hence why that is the Defence's preferred option.

²⁷ Rule 100(3).

²⁸ See Notice, paras. 10-11.

²⁹ Notice, para. 7.

VI. W04147

30. One witness the Defence has included above is currently included on the SPO Witness List: W04147. The Witness Protocol³⁰ prevents the Defence from communicating with him, however, Defence communications with him prior to the imposition of the Protocol have led to his inclusion. His evidence is important for the Defence, and the SPO has not made any application to preserve his testimony via deposition or otherwise. [REDACTED]. Therefore, the Defence seek an exception be made to the Protocol that allows the Defence to meet with him and prepare him for a deposition to preserve his testimony pursuant to Rule 99 or in the alternative Rule 100.

VII. LOCATION AND DATE OF MEASURES/DEPOSITIONS

31. As detailed in the Notice, the Defence requests that “the measures” under Rule 99; or in the alternative depositions under Rule 100 for each of the 8 witnesses, be carried out in open session in the courtroom of the KSC, in The Hague, if they are well enough to travel, as it is more cost effective to bring the witnesses to the tribunal. Such a presentation will save untold resources on the parties, the Registry, and the relevant judge(s), should these measures instead be taken individually in locations far from the courtroom in The Hague. The experience of video-link testimony in other international tribunals is a testament to the massive resources that would be necessary should these measures occur on an individual basis.

32. The Defence suggests that the earliest date that it is realistic to carry out these procedures is February 2023. This is based on the anticipated time it will take for this

³⁰ 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 containing 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”).

request to be decided by the PTJ, which will involve a potential SPO response to this motion, and any Defence reply.

33. All of the potential witnesses that the Defence have been in contact with are available in February 2023, apart from one. Jock Covey is available in April 2023 and we propose that his “measures” be carried out then. The Defence is unable to ascertain the availability of W04147 in February 2023 due to the Witness Protocol.

34. It is estimated that it will take up to two days to carry out the “measures” for each witness. As stated in the Notice, it will consist of an examination in chief by the Thaçi Defence and potentially cross examination by the other accused’s counsel, and the SPO, together with questions, if desired, from the Victims Counsel and the Trial Panel.

VIII. AREAS ON WHICH THE WITNESSES WILL BE EXAMINED

35. As is outlined in detail in the annexes, these 8 witnesses will testify about matters that are central to the case against Mr Thaçi, including, but not limited to, Mr Thaçi’s role in the events that are the subject matter of the Indictment. This includes the structure, organization or lack thereof, of the diverse groups of individuals making up the KLA, and those persons holding themselves out as KLA, but who were in no way related to the KLA; Mr Thaçi’s degree of authority within and over the KLA or lack thereof; and his interest in working with and securing the support of the international community to seek a political solution to the conflict, and his opposition to inter-ethnic violence and revenge killings that threatened that support; the authority, or not, of the General Staff over the KLA on the ground and the latter’s military capacity; the demilitarization and disarmament of the KLA after the war including Thaçi’s role in this; and the causes and organised nature, or lack thereof, of the violence in 1999. They will also testify about the historical and political

background of the conflict and post conflict situation in Kosovo including the Rambouillet conference and its aftermath and Mr Thaçi's role.

36. As stated in the Notice, each of these 8 witnesses "had personal contact with Mr. Thaçi, working with him and other major actors, local and international, on the main issues facing them all during this time. They will provide their observations of Mr. Thaçi, and describe their interactions with him, including his conduct, attitudes and behavior during the Indictment period that are relevant to the charges against him. As such, their evidence, coming from years of experience in conflict and post conflict environments, will provide the Trial Panel with a unique and valuable look into the events and persons so crucial in understanding the conflict in Kosovo and the crimes charged in the Indictment. Their live testimony, as it is rigorously tested through cross examination and questions from the Trial Panel, will greatly assist the Trial Panel in finding the truth of what occurred and ultimately assessing the guilt or innocence of Mr. Thaçi."³¹

VIII. CONCLUSION

37. Ideally, the Defence would call these 8 witnesses in its own case (at the close of the SPO's case) and they would be heard in the same fashion as all other witnesses called by the Defence. However, due to the advanced age of these witnesses, Mr Thaçi cannot risk waiting until the start of the Defence case to call them as their evidence may not be available, hence this request for unique investigative opportunities pursuant to Rule 99, to allow their testimony to be "taken", "examined" and "tested" in the same way as all other witnesses in this case in advance of trial.

38. In the alternative, the Defence requests the PTJ to preserve the evidence of these 8 witnesses pursuant to depositions which he "may observe" under Rule 100.

³¹ Notice, para. 9.

Word count: 5,143 words

Respectfully submitted,



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Tuesday, 1 November 2022

At Tampa, United States