

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: 22 November 2022

Language: English

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**Public Redacted Version of 'Addendum to Thaçi Defence Motion Justifying
Request for Unique Investigative Opportunities**

with confidential Annex 1'

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I. INTRODUCTION

1. On 28 October 2022, the Defence for Hashim Thaçi (“Defence”) filed a motion justifying the need for its application for unique investigative opportunities in relation to eight witnesses pursuant to Rule 99 of the Rules,¹ and in the alternative, depositions pursuant to Rule 100.² This followed the Defence filing of a Notice on 7 October 2022 regarding the same.³

2. In the Motion, the Defence noted that it had previously notified the Court in its Notice that it would be seeking unique investigative opportunities; or in the alternative, a deposition, for nine witnesses. However, at the date of filing, for reasons beyond its control, the Defence was only able to apply for those measures in respect of eight witnesses.⁴ The Defence is now in a position to apply for the measures for the ninth witness it had referred to in its Notice, [REDACTED], and does so here. [REDACTED]. In the Notice, the Defence set out in detail the type of measures requested, the location where the measures are to be carried out, and the recommended procedure.⁵ The Defence incorporates those submissions herein and will not repeat them here, save where it is necessary for clarity.⁶

3. The Defence is filing this Motion as confidential as it refers to the identity and personal information of the proposed witness.⁷

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/F01068, Thaçi Defence Motion Justifying Request for Unique Investigative Opportunities with confidential Annexes 1-8, 28 October 2022 (“Motion”).

³ KSC-BC-2020-06/F01018, Thaçi Defence Notice of Unique Investigative Opportunities, 7 October 2022 (“Notice”).

⁴ Motion, para. 9.

⁵ Notice, paras. 10-15.

⁶ The only difference in the procedure requested in the Notice is that the Defence requests this witness be heard in closed session: *see* para. 11 below.

⁷ *See* Rule 82.

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 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 WITNESS

9. The Defence hereby seeks a unique investigative opportunity; or in the alternative, a deposition, for one additional witness:

Full Name	Description and Age
[REDACTED]	[REDACTED] Age: [REDACTED]

10. In the confidential Annex attached, the Defence has provided a precis for this proposed witness, 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.

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.

IV. PROCESS

11. The Defence adopts the majority of the submissions in its Notice regarding the process by which the unique investigative opportunity should be pursued for this witness pursuant to Rule 99, save a request that he be allowed to testify in closed session, as opposed to open session as for the other witnesses. This is because,

[REDACTED]. Consequently, the Defence request that, in advance of trial, the witness gives live evidence in closed 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. The witness 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

12. 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 this witness via depositions under Rule 100 in advance of trial.⁹ Pursuant to the Rule 100(3), the PTJ “may observe” such depositions.

V. JUSTIFICATION

13. The witness was, in the Indictment period, the [REDACTED]. [REDACTED]. As detailed below in paragraph 19, he will testify about matters that are central to the case against Mr Thaçi, including: Mr Thaçi’s role within the Kosovo Liberation Army (“KLA”); [REDACTED].

14. This witness is [REDACTED]. Ideally, the Defence would call him in its own case (at the close of the SPO’s case) and he would be heard in the same fashion as all other witnesses called by the Defence. However, due to his advanced age, there is a real risk that his 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. The Defence’s proposal for a unique investigative opportunity pursuant to Rule 99 (akin to a deposition) for

⁸ See Notice, paras. 10-14.

⁹ Notice, para. 15.

¹⁰ Per Rule 99.

this witness will ensure that the Defence does not lose the opportunity to call this witness.

15. The Defence recalls, repeats and incorporates here, in their entirety, paragraphs 17 to 29 of its Motion, which contain its justification for requesting a unique investigative opportunity, and/or a deposition.

VI. LOCATION AND DATE OF MEASURE/DEPOSITION

16. As detailed in the Notice, and in the Motion with regards to the other eight witnesses, the Defence requests that “the measures” under Rule 99; or in the alternative depositions under Rule 100 for this witness, be carried out in open session in the courtroom of the KSC, in The Hague, if they are well enough to travel for the reasons contained in paragraph 31 of the Motion.

17. The Defence suggests that the earliest date that it is realistic to carry out these procedures is February 2023, for the same reasons as set out in paragraph 32 of the Motion.

18. It is estimated that it will take up to two days to carry out the “measures” for this witness. As with the other witnesses and 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.

VII. AREAS ON WHICH THE WITNESSES WILL BE EXAMINED

19. As is outlined in detail in the Annex, this witness 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: Mr Thaçi’s

degree of authority within and over the KLA or lack thereof; Mr. Thaçi and the KLA's interest in working with and securing the support of the international community to seek a political solution to the conflict; [REDACTED].

20. This witness had personal contacts with Mr. Thaçi, working with him and other KLA members, as well as other major actors at the local and international level, on the main issues facing them all during this time. He will provide his observations regarding Mr. Thaçi and describe his interactions with him during the Indictment period that are relevant to the charges against him. As such, his evidence, [REDACTED], will provide the Trial Panel with a unique and valuable look into events and persons crucial to understanding the conflict in Kosovo and the crimes charged in the Indictment. His 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.¹¹

VIII. CONCLUSION


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

22. In the alternative, the Defence requests the PTJ preserve the evidence of this witness pursuant to depositions which he "may observe" under Rule 100.

¹¹ Notice, para. 9.

Word count: 1,662 words

Respectfully submitted,



Gregory W. Kehoe

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Tuesday, 22 November 2022

At Tampa, United States