



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2020-06
Name: The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli,
Rexhep Selimi, and Jakup Krasniqi
Before: Trial Panel II
Judge Charles L. Smith III
Judge Christoph Barthe
Judge Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge
Registrar: Dr Fidelma Donlon
Date: 18 January 2023
Classification: PUBLIC

[POST SESSION - REDACTION ORDER]

The Trial Panel II FINDS that only the video/ images recorded from 11:38 to 11:53 of the status conference held on 16 December 2022 contains confidential information and ORDERS this information shall be removed/ edited from the PUBLIC visual recording only, while ensuring that the audio recording and transcripts remain available in all official languages. Hearing 16 December 2022, transcript reference Page 44 Line 24 (time code 11:38:03) to Page 54 Line 4 (time code 11:52:26) to be removed/ edited.

Table with 3 columns: Line number, Transcript text, and Time code. The transcript text contains several redacted sections indicated by black boxes.

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47:1 That, in our common experience of witness statements, those
 2 statements are read by the witness, signed or initialled by the
 3 witness, and then signed at the last page. With the use of all of
 4 these depositions, I submit to Your Honour it is the rare case where
 5 that transcript is given to the witness and say, "Witness X, is this
 6 everything that you want to say and do you want to make any changes
 7 in it?" That being said, there are going to be challenges to those
 8 submissions and we will just -- on the relevance issue, Your Honour,
 9 we are going to take that up on a case-by-case basis.
 10 With the protective measures, I am encouraged by the comments by
 11 counsel to say that they are monitoring their witnesses to see if
 12 they still need protective measures. We have brought to the
 13 attention of the SPO, on various occasions, that their witnesses have
 14 given public statements on TV or in the media in Friskine and asked
 15 them to take that into consideration whether or not protective
 16 measures are still warranted.
 17 Some of the people that have made those public statements are
 18 still protected witnesses as we speak, and we encourage the SPO to
 19 revisit that issue as often and as necessary to ensure that if a
 20 witness does not need protective measures or has waived it or done
 21 something to undercut the entire procedure, that those measures are
 22 lifted.
 23 PRESIDING JUDGE SMITH: Thank you, Mr. Kehoe.
 24 Mr. Emerson, anything to add?
 25 MR. EMMERSON: [via videolink] No. I sound like a scratched

48:1 record. The only comments that I have to make are matters that touch
 2 upon the issue that needs to be raised on which Your Honours need to
 3 decide whether you'll be hearing submissions in open court or in
 4 closed session.
 5 PRESIDING JUDGE SMITH: Thank you.
 6 Mr. Young.
 7 MR. YOUNG: Your Honour, nothing I need to add save that
 8 Your Honour may be aware that we should have notes on 19 November
 9 which deals with the 135 proposed facts. And the reality is that the
 10 Prosecution reply on 16 November and they informed us that the
 11 Defence will not -- in fact, the agreed facts wouldn't be agreed.
 12 It's very important -- these are very important because we set
 13 out 135 agreed facts in relation to Serb atrocities. They relate to
 14 the period of time of the indictment. They relate to very important
 15 features of the case, and it's welcome to know that the Prosecution
 16 will not be objecting to the Serb atrocities. But we want the
 17 detail. We want the detail because this could be relevant to the
 18 relevance of the charges that we face.
 19 So we want to know exactly what their position is in relation to
 20 135. It may well be that they have changed their position from the
 21 refusal to accept 135 acts, but we have clearly stated that these are
 22 important that we know exactly where we stand. And we've taken the
 23 liberty of getting these out in a public document which Your Honour
 24 has and which Your Honour can see. Thank you.
 25 PRESIDING JUDGE SMITH: Thank you.

49:1 Mr. Ellis. Oh, I'm sorry.
 2 MR. BAIRESO: We agree with the submissions that have been
 3 already made by the other Defence teams, and we support them. We
 4 will respond in writing too when the SPO will file for the admission
 5 of the statements and all other evidence under 153, 154, 155, and
 6 that includes the statements and the transcripts other than obtained
 7 by -- received not under KSC but by other investigative bodies and
 8 courts, including EULEX, GMMH, and so on. Thank you.
 9 PRESIDING JUDGE SMITH: The Defence has seen the first 49
 10 witnesses, and you know the identity of some of them. And I will ask
 11 you, first of all, in general terms, and we'll begin with Mr. Schow,
 12 if those that you know is there an extensive cross-examination for
 13 these witnesses, or have you been able to assess that?
 14 MR. KERHOE: I will tell you, Judge, and I'll give you a partial
 15 answer, because I don't have a full answer to that. The witnesses
 16 that I have reviewed and assessed, the cross-examination will be
 17 extensive.
 18 PRESIDING JUDGE SMITH: Extensive.
 19 MR. KERHOE: I can tell you, for instance, I have been spending
 20 times with my colleagues on the international witnesses because there
 21 are fewer redactions there. Those cross-examinations will be
 22 extensive.
 23 PRESIDING JUDGE SMITH: What do you call "extensive"? I mean,
 24 are we talking a day?
 25 MR. KERHOE: A day. I would say a day. I don't -- I don't

50:1 generally do a cross-examination on issues that don't pertain to my
 2 client, for instance. Just going across the board. I will focus it
 3 on matters related to my client and the JCE.
 4 PRESIDING JUDGE SMITH: And is the Defence talking about these
 5 cross-examinations and thinking about possibly consolidating the
 6 cross-examination with one attorney handling one and another attorney
 7 handling another?
 8 MR. KERHOE: Not so much with one attorney handling one and
 9 someone else handling another, because it is very client-specific --
 10 PRESIDING JUDGE SMITH: Yes.
 11 MR. KERHOE: -- as I'm sure Your Honour understands. But is
 12 there a discussion, and have we talked with Mr. Young what we want to
 13 do, for instance, with a particular witness? Of course.
 14 PRESIDING JUDGE SMITH: Just keeping in mind the timing, we
 15 don't want to end up with extensive cross-examination over the same
 16 subject with each of you. It doesn't serve any purpose.
 17 MR. KERHOE: And I agree with Your Honour, there will be always
 18 in multi-defendant cases, I'm sure Your Honour has seen, there is
 19 some limited overlap, but I don't think it behooves us or the Court
 20 to have extensive overlap.
 21 PRESIDING JUDGE SMITH: No commando cross-examinations, though.
 22 In and out with a few questions?
 23 MR. KERHOE: Well, I shouldn't say that, Judge. I have done that
 24 in the past. Especially in identity issues. We have cases I'm sure
 25 Your Honour is familiar with.

51:1	PRESIDING JUDGE SMITH: It sometimes is the best way to go.	11:47:38
2	MR. KEHOE: It is.	11:47:40
3	PRESIDING JUDGE SMITH: Thank you.	11:47:41
4	Mr. Emerson, anything to add?	11:47:42
5	MR. EMMERSON: [via videolink] Yes, briefly. So far as the	11:47:45
6	Vesell Defence is concerned, there is only on the witness who's	11:47:46
7	evidence we know and have seen, that is to say leaving aside the	11:47:50
8	witness we are going to talk about at a later stage, there's only one	11:47:53
9	witness in the first 40 that I anticipate would take a considerable	11:47:57
10	amount of time as far as the Vesell Defence is concerned.	11:48:01
11	In fact, having cross-examined him in other proceedings, he's a	11:48:07
12	witness who's testified in numerous cases. His evidence generally	11:48:11
13	covers a very wide compass and can go on for quite a while. And, I	11:48:19
14	mean, I don't need to mention the name. It isn't protected. But it	11:48:24
15	relates to internal KLA organisation and matters of that nature which	11:48:28
16	are going to be, obviously, important questions for the Panel to deal	11:48:33
17	with thoroughly.	11:48:39
18	As far as cooperation is concerned. I mean, I personally regard	11:48:40
19	that as just a matter of basic professional standards. But you will	11:48:46
20	be aware, I'm sure, that the practice in the Yugoslavia tribunal was	11:48:54
21	to have a general expectation of what the maximum time would be that	11:49:00
22	anybody was permitted to cross-examine and then to depart from that	11:49:03
23	only where the Defence have given an indication or the Prosecution,	11:49:09
24	if it's the other way around, that they're going to need longer for a	11:49:14
25	particular witness. And that is, at least, a benchmark. But,	11:49:17
52:1	Obviously, one doesn't want to see cross-examinations expanding to	11:49:22
2	fill up the space.	11:49:25
3	But it's an option that does focus the minds of all concerned,	11:49:25
4	including the cross-examiner, and may be something that the	11:49:30
5	Trial Chamber would want to give consideration to.	11:49:34
6	PRESIDING JUDGE SMITH: [Microphone not activated].	11:49:37
7	MR. EMMERSON: [via videolink] I'm sorry, I --	11:49:39
8	PRESIDING JUDGE SMITH: That was my fault. I didn't have my	11:49:41
9	microphone on. Thank you. We have discussed this and it will be	11:49:43
10	continue to be discussed. We have not made a decision right now	11:49:47
11	about limiting cross-examination, but it is something that we have to	11:49:50
12	think about. So thank you for reminding us of that.	11:49:53
13	Mr. Young, anything to add.	11:49:58
14	MR. YOUNG: Yes, nothing to add to what Mr. Kehoe said. Thank	11:50:01
15	you, Your Honour.	11:50:03
16	PRESIDING JUDGE SMITH: And from the --	11:50:04
17	MR. BALESU: Your Honour, thank you. Mr. Ellis will address you	11:50:08
18	on this item.	11:50:11
19	PRESIDING JUDGE SMITH: Thank you.	11:50:11
20	MR. ELLIS: Your Honour, simply to say that on the first 40	11:50:13
21	witnesses, there are a variety of witnesses some of whom I anticipate	11:50:17
22	cross-examination will be relatively swift. But there are others for	11:50:23
23	whom it may well be more expensive.	11:50:27
24	We, of course, have heard what the Court said about cooperation,	11:50:31
25	and it's certainly not my intention, speaking fourth, simply to	11:50:34
53:1	repeat questions that have been put by others. We'll avoid that,	11:50:41
2	Your Honours.	11:50:47
3	PRESIDING JUDGE SMITH: Thank you very much.	11:50:48
4	MR. KEHOE: Your Honour, may I just follow-up on one point just	11:50:49
5	to bring it to the Court's attention.	11:50:51
6	There may be instances where we would change the order of	11:50:53
7	cross-examination. For instance, if it pertains to a particular	11:50:56
8	accused more than others, that counsel would start first. It just	11:51:00
9	would shorten the cross-examination for anybody that follows.	11:51:03
10	PRESIDING JUDGE SMITH: Thank you. That's a good idea and we	11:51:05
11	encourage it.	11:51:06
12	Now, Mr. Laws, I ask you the same general questions. You've	11:51:15
13	seen the 40 witnesses and have given some thought to this I'm sure.	11:51:18
14	Can you give us some general estimation of your view to	11:51:26
15	cross-examination of these people and the time limits?	11:51:29
16	MR. LAWS: Yes, Your Honour. I certainly can. Very limited is	11:51:33
17	my time estimate.	11:51:37
18	PRESIDING JUDGE SMITH: Thank you. That's a great answer.	11:51:39
19	Mr. Laws, another question. Are you planning to file a	11:51:48
20	pre-trial brief in this matter?	11:51:52
21	MR. LAWS: Your Honour, no, we're not.	11:51:55
22	PRESIDING JUDGE SMITH: You are not?	11:51:57
23	MR. LAWS: No.	11:51:59
24	PRESIDING JUDGE SMITH: Thank you.	11:51:59
25	Well, it is almost 12.00. We estimated that fairly well. So we	11:52:05
54:1	will take a half-hour break. We'll just make it to 12.30, and we	11:52:10
2	will come back. We'll have some brief orders. And we'll take up the	11:52:16
3	requests for private session or closed session and deal with that at	11:52:21
4	that time.	11:52:26

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Judge Charles L. Smith, III
Presiding Judge

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