

In: KSC-BC-2020-06
Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Trial Panel II
Judge Charles L. Smith III, Presiding
Judge Christoph Barthe
Judge Guénaël Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr. Fidelma Donlon

Filing Participant: Specialist Counsel for Hashim Thaçi

Date: 23 October 2023

Language: English

Classification: Public

**Public Redacted Version of Corrected Version of
Thaçi Defence Notice of Objection to Victims' Counsel Cross-examination of
W03780 and W04147**

Specialist Prosecutor

Kimberly P. West

Counsel for Victims

Simon Laws KC

Counsel for Hashim Thaçi

Gregory Kehoe

Counsel for Kadri Veseli

Ben Emmerson KC

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Jakup Krasniqi

Venkateswari Alagendra

I. INTRODUCTION

1. On 10 October 2023, Victims' Counsel filed his 'Seventh Notification of Wish to Cross-Examine Witnesses', related to six additional witnesses from those notified as to be called by the Specialist Prosecutor's Office ("SPO") in filing F01828.¹

2. Victims' Counsel expressed his wish to cross-examine, *inter alia*, W03780 and W04147. The Defence hereby provides notice that it will object to Victims' Counsel cross-examining the mentioned witnesses, on the basis that cross-examination (i) is not sufficiently justified, and (ii) would be prejudicial to the Defence's preparation for its cross-examination.

II. APPLICABLE LAW

3. Rule 114(2) of the RPE provides: "whenever the personal interests of victims participating in the proceedings are affected, and unless otherwise provided in the Rules, Victims' Counsel may, under the control of the Panel: [...] (b) ask questions of witnesses."²

4. The Order on Conduct of Proceedings³ states in paragraph 34 that "questioning of witnesses by Victims' Counsel shall be limited in principle to: (i) the harm or injury done to victims and circumstances in which this occurred; (ii) the consequences of those acts, on the victim, close relatives or the community to which he or she belongs; and (iii) the appropriate relief to remedy the harm done to the victim."

¹ Rule 114(2) RPE.

² F01845, *Victims' Counsel's Seventh Notification of Wish to Cross-Examine Witnesses*, 10 October 2023.

³ F01226/A01, *Annex 1 to the Order on the Conduct of Proceedings*, 25 January 2023.

5. Paragraph 35 adds that “Where Victims’ Counsel wishes to ask questions on any other issue, he shall seek leave from the Trial Panel together with: (i) a brief indication of the issue; (ii) a justification for the request; and (iii) an estimate of the time necessary for the additional questioning.

III. SUBMISSIONS

6. It should be noted at the outset that neither W03780 nor W04147 are victims in these proceedings nor relative of victims.

7. Victims’ Counsel indicates that he wishes to question W04147 in relation to [REDACTED]; the request is justified on the basis that W04147 was [REDACTED].

8. Victims’ Counsel further indicates that he wishes to question W03780 on the basis that the witness [REDACTED], and that the [REDACTED].

9. The Defence submits that, based on the information provided in Victims’ Counsel submission, it is not possible to assess whether the areas that Victims’ Counsel wants to question the witnesses about are sufficiently relevant to the interests of the victims, and therefore whether questioning of these witnesses by Victims’ Counsel is sufficiently justified.⁴

10. Victims’ Counsel has confirmed, following Defence *inter partes* inquiries, that he is not prepared to disclose the identities of VPPs in advance of the hearing, or in other words, before it is clear that such disclosure is necessary because a request to cross-

⁴ See F01226, Order on Conduct of Proceedings, paras. 34 and 35; see also Transcript of 14 July 2023, T-5689 line 21 to T-5691 line 5.

examine a witness by Victims' Counsel has been made and granted by the Trial Panel.⁵ Victims' Counsel has however indicated that [REDACTED].⁶

11. The Defence reiterates its position as explained during the hearing of 13 July 2023 in response to Victims' Counsel notification of his wish to question W04746. In particular, the Defence submits, as it did at the time, that allowing Victims' Counsel to question W03780 and W04147 regarding the participating victims would be prejudicial to the Defence's preparation for its cross-examination of the two witnesses.

12. It is the broader Defence position that, as part of its right to have sufficient time to prepare for cross-examination, the Defence is entitled to receive adequate notice from Victims' Counsel about potential areas of questioning so that the Defence may be prepared to conduct its own cross-examination on those same areas, if necessary.

13. It follows that, when Victims' Counsel intends to question a witness in relation to specific victims or VPPs, the identities of these victims or VPPs should be disclosed to the Defence sufficiently in advance of cross-examination in order to allow the Defence to prepare accordingly in a meaningful way. This would involve a variation of the protective measures in place, when appropriate, to be requested by Victims' Counsel and decided by the Trial Panel sufficiently in advance to allow the Defence to prepare for cross-examination.

14. In this particular case, while [REDACTED], this is only the case since 18 October 2023; in relation to W03780, Victims' Counsel refers to [REDACTED], none of which are known to the Defence.

⁵ Email correspondence of 18 October 2023.

⁶ [REDACTED].

15. For the reasons set out above, the Thaçi Defence hereby notifies the parties and the Trial Panel that it will object to Victims' Counsel request for leave to cross-examine W03780 and W04147.

Word count: 977

Respectfully submitted on 23 October 2023,

A handwritten signature in blue ink, appearing to read 'G. W. Kehoe', is written over a horizontal line. Below the line, there is a small rectangular box, likely a placeholder for a name or title.

Gregory W. Kehoe
Counsel for Hashim Thaçi

Explanatory Note:

In the title of the filing, 'W04741' was deleted and replaced by 'W04147'.

In paragraphs 2, 11, 14 and 15, 'W04741' was deleted and replaced by 'W04147'.