

1 Tuesday, 10 May 2022
2 [Further Appearance]
3 [Open session]
4 [The accused entered court via videolink]
5 --- Upon commencing at 10.00 a.m.

6 JUDGE GUILLOU: Good morning, everyone. And welcome, whether
7 you are in or outside the courtroom.

8 Madam Court Officer, can you please call the case.

9 THE COURT OFFICER: Good morning, Your Honour. This is case
10 KSC-BC-2020-06, The Specialist Prosecutor versus Hashim Thaci, Kadri
11 Veseli, Rexhep Selimi, and Jakup Krasniqi.

12 JUDGE GUILLOU: Thank you, Madam Court Officer.

13 Now I would kindly ask the parties and participants to introduce
14 themselves, starting with the Prosecutor's office.

15 Mr. Prosecutor.

16 MR. TIEGER: Thank you, Your Honour. And good morning to you
17 and everyone inside and outside the courtroom. Alan Tieger and
18 Dounia Hattabi appear for the Specialist Prosecutor's Office.

19 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

20 Now I turn to the Defence, please.

21 Microphone, please, Mr. Kehoe.

22 MR. KEHOE: [via videolink] Good morning, Your Honour. Gregory
23 Kehoe, Luka Misetic, and Dastid Pallaska for President Hashim Thaci.

24 JUDGE GUILLOU: Thank you, Mr. Kehoe.

25 And for the record, I note that Mr. Thaci attends the hearing

1 via VTC.

2 Now I turn to the victims, please.

3 Mr. Laws.

4 MR. LAWS: [via videolink] Good morning to Your Honour and to
5 everyone. I'm Simon Laws. I'm counsel for the victims in this case.

6 May I please introduce also my co-counsel, Maria Radziejowska,
7 who is in the courtroom with Your Honour this morning.

8 JUDGE GUILLOU: Thank you, Mr. Laws.

9 And finally I turn to the Registry.

10 Mr. Nilsson, please.

11 MR. NILSSON: Good morning, Your Honour. And good morning,
12 colleagues. Jonas Nilsson, Judicial Services Division, representing
13 the Registry today.

14 JUDGE GUILLOU: Thank you, Mr. Nilsson.

15 On 3 September 2021, the Specialist Prosecutor's Office filed a
16 request to amend the indictment pursuant to Rule 90(1)(b).

17 The SPO presented three categories of amendments. The first
18 category consisted of two detention sites located at
19 Suhareke/Suva Reka municipality at or in connection with which KLA
20 members committed acts of persecution, imprisonment/arbitrary
21 detention, other inhumane acts/cruel treatment, torture, murder, and
22 enforced disappearance.

23 The second category consisted of two incidents of persecution
24 and murder committed in connection with a detention site in
25 Gjilan/Gnjilane municipality and a modification of the timeframe for

1 the Gjilan/Gnjilane detention site.

2 The third category consisted of two incidents of the accused's
3 personal participation in the crimes charged.

4 On 23 December 2021, I issued a first decision on the SPO
5 request in which I granted the SPO's motion to amend the indictment
6 in relation to the third category of proposed amendments, which I
7 considered not to constitute new charges.

8 Further, I found that the first and second categories of
9 amendments were new charges and therefore must be assessed against
10 the requisite evidentiary threshold of a well-grounded suspicion, as
11 per Rule 86(4) of the Rules, and in light of the evidence submitted
12 as per Rule 86(3) of the Rules.

13 The parties were ordered to file their responses and reply on
14 the question of whether supporting material to the amendments deemed
15 to constitute new charges support a finding of well-grounded
16 suspicion, pursuant to Rule 86(4) of the Rules.

17 On 22 April 2022, I confirmed the first and the second category
18 of amendments on the charges against the accused contained therein.
19 I also ordered the SPO to submit by Friday, 29 April 2022, an amended
20 indictment with the first category and second category of amendments.

21 On 29 April the SPO filed its amended indictment, a lesser
22 confidential redacted and public redacted versions of the first
23 category evidentiary outline, and a confidential and public redacted
24 version of the amended second category evidentiary outline.

25 And, finally, on 2 May 2022, I scheduled this Initial

1 Appearance.

2 Before I continue, Madam Court Officer, can you check with the
3 Detention Unit, because I don't see Mr. Thaci on screen, please.
4 Thank you very much. I think it's because the angle of the camera
5 wasn't seeing Mr. Thaci.

6 Now allow me to explain the specific purpose of this Further
7 Appearance for the benefit of the accused and those joining us in the
8 public gallery and online.

9 Today's hearing is not a trial. No evidence will be presented
10 or debated, and the guilt or innocence of the accused will not be
11 discussed or decided.

12 The purpose of this Initial Appearance is regulated by
13 Article 39 of the Law and Rules 92 and 90 of the Rules. According to
14 these provisions, as Pre-Trial Judge, I shall have the new charges in
15 the Confirmed Indictment read to the accused; confirm that the
16 accused understands the new charges; satisfy myself that the rights
17 of the accused, in particular, his right to counsel, are respected;
18 and inform the accused that within 30 days of today's hearing he will
19 be called upon to admit guilt or plead not guilty on each new charge
20 set out in the Confirmed Amended Indictment.

21 However, if the accused wishes to do so, he may immediately
22 admit guilt or plead not guilty.

23 I expect the parties to adhere to these matters, which I will
24 address in turn. Should either party wish to discuss any other
25 matter not expressly foreseen in the context of the Initial

1 Appearance, they're invited to do so in writing by making a filing
2 before me.

3 First, Mr. Thaci, may I ask you to confirm that you have
4 received the Confirmed Amended Indictment dated 29 April 2022?

5 THE ACCUSED THACI: [via videolink] [No interpretation].

6 JUDGE GUILLOU: I think there is an issue with the sound with
7 Mr. Thaci. May I ask the audio-visual technician to check that this
8 is on, please.

9 Mr. Thaci, I think this sound connection has now been fixed. So
10 I will ask you again to confirm if you have received the Confirmed
11 Indictment dated 29 April 2022. Mr. Thaci.

12 THE ACCUSED THACI: [via videolink] [Interpretation] [Microphone
13 not activated].

14 MR. KEHOE: [via videolink] I believe he's on mute there,
15 Your Honour.

16 JUDGE GUILLOU: Apparently the microphone is still muted on this
17 end.

18 [Pre-Trial Judge and Court Officer confers]

19 JUDGE GUILLOU: So I am told that the audio-visual technicians
20 are working on fixing the connection. It might take a couple of
21 seconds.

22 I can now hear that the microphone is on, Mr. Thaci. So finally
23 we have solved the problem. So sorry for the interruption.

24 So, Mr. Thaci, may I ask you to confirm that you received the
25 Confirmed Amended Indictment dated 29 April 2022?

1 Mr. Thaci, can you hear me?

2 THE ACCUSED THACI: [via videolink] Yes.

3 JUDGE GUILLOU: Thank you very much. So I will ask you again to
4 confirm that you have received the Confirmed Amended Indictment dated
5 29 April 2022?

6 THE ACCUSED THACI: [via videolink] [Interpretation] Yes.

7 JUDGE GUILLOU: Thank you.

8 I will now ask the Court Officer to read out the new charges
9 contained in the Confirmed Amended Indictment, as foreseen in
10 Article 39 of the Law and Rule 92.

11 Madam Court Officer.

12 MR. KEHOE: [via videolink] Your Honour, the matter can be
13 expedited. Of course, we'll waive the reading at this point. It
14 really doesn't -- it just adds more volume to the entire matter. So
15 we have gone through this with our client. It's, honestly, more the
16 same, absent the redactions. So we will waive reading of the new --
17 of any of the new elements in the indictment.

18 JUDGE GUILLOU: Thank you, Mr. Kehoe.

19 Mr. Thaci, are you in agreement that we do not read out the new
20 charges at the hearing today?

21 THE ACCUSED THACI: [via videolink] [Interpretation] Yes.

22 JUDGE GUILLOU: Thank you, Mr. Thaci.

23 Then I will ask the Court Officer not to read out all the new
24 charges today, and it's accessible to the public in the written
25 filings accessible online.

1 Mr. Thaci, I wish to remind you that this is not the time to
2 contest the new charges but simply to acknowledge your understanding
3 of the charges. You will have ample opportunity to challenge the
4 charges with the assistance of your counsel.

5 Mr. Thaci, did you understand the new charges contained in the
6 Confirmed Indictment as they are in the indictment that has been
7 distributed to you?

8 THE ACCUSED THACI: [via videolink] [Interpretation] No.

9 JUDGE GUILLOU: When I say "do you understand," I mean -- I
10 don't ask if you agree with them. I just say if you've been able to
11 understand what they mean.

12 THE ACCUSED THACI: [via videolink] [Interpretation] I don't -- I
13 didn't understand them, because I didn't have an opportunity to read
14 them. They are heavily redacted.

15 MR. KEHOE: [via videolink] Your Honour, the issue, quite simply,
16 for our client is that have we gone through these new charges with
17 him? Yes. But, you know, as with most of these -- most of these
18 charges, they are so redacted with names, events, time, it's just
19 more of the same that we've had from the beginning that it makes my
20 client, President Thaci, as I'm sure with the other accused, without
21 any way to grasp an understanding of exactly what the
22 Specialist Prosecutor is advancing.

23 It's a continuing difficulty. We're adding more volume to
24 something that's already there, and then at crucial points throughout
25 all this there are numerous redactions, and in this instance, we have

1 more.

2 You know, at this point, it's not adding much to this -- these
3 additions aren't adding much to the equation. They are redactions
4 that make it impossible for him to understand. We have gone through
5 this with President Thaci, and we will just expedite matters by
6 interposing a plea of not guilty at this time. I think that will
7 curtail much of the questioning of President Thaci at this juncture.

8 JUDGE GUILLOU: Thank you, Mr. Kehoe.

9 Mr. Thaci, do you want to add anything on this topic?

10 THE ACCUSED THACI: [via videolink] [Interpretation] No. Just
11 that I plead not guilty. Although, as I said, I didn't understand
12 the indictment, because I couldn't read the full indictment, but I
13 plead not guilty.

14 MR. KEHOE: [via videolink] Your Honour, I trust you understand
15 the difficulty for anybody, you know, giving a knowledgeable decision
16 on anything when there are so many redactions to the document. So
17 given those redactions, President Thaci is interposing a plea of not
18 guilty. It's just, honestly, this is more of the same of what we've
19 seen in the past.

20 So that's the position of President Thaci at this juncture.

21 JUDGE GUILLOU: Thank you, Mr. Kehoe.

22 I just note for the public that there are, indeed, redactions in
23 the document, and they mainly refer to the names of potential
24 witnesses and victims, and they are authorised by myself in a
25 judicially explained and detailed decision.

1 MR. KEHOE: [via videolink] Yes. May I --

2 JUDGE GUILLOU: Now, let me recall your rights before the Court,
3 Mr. Thaci. So the Law on the Specialist Chambers and the Rules of
4 Procedure and Evidence guarantee you a number of rights, and I will
5 read out the most important ones.

6 First, you have the right to be presumed innocent until proven
7 guilty beyond reasonable doubt.

8 In the determination of the charges against you, you are
9 entitled to a fair and public hearing subject to any measures ordered
10 for the protection of victims and witnesses.

11 You have the right to be informed promptly and in detail in a
12 language which you understand of the nature and cause of the charges
13 against you.

14 You have the right to adequate time and facilities for the
15 preparation of your defence and to communicate with the counsel of
16 your own choosing.

17 You have the right to be tried within a reasonable time.

18 You have the right to be tried in your presence and to defend
19 yourself through your counsel.

20 You have the right to have counsel assigned to you and without
21 payment if you do not have sufficient means to pay for it.

22 You have the right to examine or have examined the witnesses
23 against you and to obtain the attendance and examination of witnesses
24 on your behalf.

25 You have the right to have the free assistance of an interpreter

1 if you cannot understand or speak the language used in the court.

2 You have the right not to be compelled to testify against
3 yourself or to admit guilt.

4 You have the right to remain silent, and no adverse inference
5 shall be drawn from your silence.

6 You also have the right to make unsworn statements relevant to
7 the case, and you may appear as a witness under oath.

8 You have the right to lodge preliminary motions.

9 You have the right to receive the supporting material to the
10 amended indictment submitted for confirmation.

11 You have the right to receive all statements of witnesses whom
12 the Specialist Prosecutor intends to call to testify at trial in the
13 language you understand and speak.

14 You have the right to receive immediately any information which
15 may reasonably suggest your innocence and mitigate your guilt or
16 affect the credibility or reliability of the Specialist Prosecutor's
17 evidence as soon as the information is in its custody, control, or
18 actual knowledge.

19 You have the right that all material and relevant evidence or
20 facts in possession of the Specialist Prosecutor be made available to
21 you before the beginning of and during the proceedings. This right
22 is only subject to restrictions which are strictly necessary and when
23 counterbalancing protections are applied.

24 You have the right not to be detained for an unreasonable period
25 prior to the opening of the case, to request review of decisions on

1 your detention, and to appeal such decisions directly before the
2 Court of Appeal.

3 And, finally, you have the right to appeal, either directly or
4 through the certification process, as provided for under the Rules.

5 Mr. Thaci, I read you the most important rights that you enjoy
6 in accordance with the applicable legal framework. Can you confirm
7 that you understood these rights?

8 THE ACCUSED THACI: [via videolink] [Interpretation] Yes.

9 JUDGE GUILLOU: Thank you, Mr. Thaci.

10 I wish to inform you that according to Article 21(5) of the Law,
11 you may not represent yourself because you are currently in
12 detention. Representation by counsel is therefore mandatory.
13 However, I take note that you have been, and you are today,
14 represented by counsel, so I am therefore satisfied that the accused
15 is presently represented by counsel for today and for the next steps
16 of the procedure.

17 I will now, Mr. Thaci, formally ask you of your plea, even if
18 you indicated it before. So you have, in theory, 30 days from today
19 to be called upon to admit your guilt or plead not guilty. But if
20 you wish, you can plead guilty or not guilty today.

21 So, therefore, Mr. Thaci, I will ask you to indicate to me
22 formally whether you will plead guilty or not guilty for the new
23 charges contained in the Confirmed Amended Indictment.

24 Mr. Thaci.

25 MR. KEHOE: [via videolink] Mr. President, I don't know if there

1 is a problem with the audio -- the audio again on this. But I
2 believe that the Court can accept our interposing a plea of not
3 guilty for the President at this time.

4 JUDGE GUILLOU: Mr. Thaci, can you confirm? You have the floor.

5 THE ACCUSED THACI: [via videolink] Yes, it's okay now.

6 [Interpretation] Your Honour, as I said earlier, the new charges
7 are heavily redacted. I wasn't able to read them in full. But
8 anyway, I plead not guilty.

9 JUDGE GUILLOU: Thank you very much, Mr. Thaci. This is noted.

10 At this point, I would like the parties and participants, if
11 they have any other issue they would like to raise. I will start
12 with the Specialist Prosecutor's Office.

13 Mr. Prosecutor.

14 MR. TIEGER: Thank you, Your Honour. Nothing to raise.

15 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

16 Mr. Laws.

17 MR. LAWS: [via videolink] No thank you, Your Honour.

18 JUDGE GUILLOU: Thank you, Mr. Laws.

19 Now I turn to the Defence.

20 Mr. Kehoe, please.

21 MR. KEHOE: [via videolink] Briefly, Your Honour.

22 Just to note for the record that our initial appeal concerning
23 the defects in the original indictment are still pending in the
24 Appellate Chamber, so the Court should be aware of that.

25 The other issue is the timeframe for motions under Rule 94 is 21

1 days. That 21 days runs from today, I take it, Your Honour. And I
2 raise that up so the Court can correct me if I am mistaken in that
3 regard.

4 JUDGE GUILLOU: Thank you, Mr. Kehoe.

5 This is correct. Even if the rules are not absolutely clear on
6 the starting point in the case of an amended indictment, I consider
7 that the time limit starts from today. So the 21-day deadline starts
8 from today.

9 MR. KEHOE: [via videolink] Yes, Your Honour. We will be filing
10 a motion, notwithstanding the redactions, which make it, in some
11 instances, virtually incomprehensible. So we will be filing some
12 motions in that regard. So I thank you for confirming that
13 timeframe.

14 JUDGE GUILLOU: Thank you, Mr. Kehoe.

15 I don't see any other parties or participants requesting the
16 floor. So this concludes today's hearing. I thank the parties and
17 participants for their participation, and the hearing is adjourned.

18 Thank you.

19 --- Whereupon the Further Appearance adjourned
20 at 10.23 p.m.

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