

1 Monday, 9 November 2020

2 [Initial Appearance]

3 [Open session]

4 [The accused Thaci entered court]

5 --- Upon commencing at 3.00 p.m.

6 JUDGE GUILLOU: Good afternoon, everyone and welcome inside and
7 outside the courtroom.

8 Before we start, and pursuant to my decision setting the date
9 for this Initial Appearance, the photographers are permitted to take
10 a few photos for one and a half minutes. Before you start, I will
11 ask you not to make any picture of Mr. Thaci next to the security
12 guards, please. You can proceed. Thank you.

13 Thank you very much. You may now leave the courtroom.

14 Mr. Court Officer, could you please call the case.

15 THE COURT OFFICER: Good afternoon, Your Honours. This case
16 KSC-BC-2020-06, The Specialist Prosecutor versus Hashim Thaci, Kadri
17 Veseli, Rexhep Selimi, and Jakup Krasniqi.

18 JUDGE GUILLOU: Thank you very much, Mr. Court Officer.

19 Before asking those present in the courtroom to introduce
20 themselves, I would like to remind, again, a few rules that must be
21 observed at all times in order to make courtroom proceedings smooth.

22 Please make sure you activate your microphone before speaking
23 and you switch it off as soon as you finish.

24 Talk slowly and clearly, as we have interpretation in Albanian
25 and Serbian.

1 Wait five seconds before responding to me or to a party or
2 participant in order to allow the interpreters to finish the
3 interpretation.

4 What is said in this hearing is transcribed in realtime and will
5 be reflected in a transcript available to the parties and to the
6 public after this hearing.

7 I would also like to remind the parties that certain information
8 in this case is subject to protective measures and confidentiality
9 orders. This includes confidential information that has been
10 redacted from the Confirmed Indictment as to the identity of certain
11 individuals, dates, locations, and other information.

12 I also remind everyone that confidential information shall not
13 be disclosed in open session. If any party or participant must go
14 into private session and refer to any confidential information,
15 please indicate the reasons.

16 Now I would kindly ask the parties and participants to introduce
17 themselves, starting with the Specialist Prosecutor's Office.

18 Mr. Prosecutor.

19 MR. TIEGER: Thank you, Your Honour, and good afternoon.

20 The Specialist Prosecutor's Office is represented today by the
21 Specialist Prosecutor, Jack Smith; Deputy Specialist Prosecutor,
22 Alex Whiting; Head of the Legal Advisory Section, Clare Lawson;
23 Prosecutor, David Harbach; and I am Senior Prosecutor, Alan Tieger.

24 JUDGE GUILLOU: Thank you very much.

25 Now I turn to the Defence, please.

1 MR. HOOPER: Good afternoon, Your Honour. My name is David
2 Hooper. I'm a member of the Bar of England and Wales. And I have
3 the honour of appearing on behalf of Hashim Thaci this afternoon. I
4 am assisted today by Ms. Sophie Menegon of the Paris Bar. Several of
5 my colleagues are unable to be here for reasons that I dare say we
6 all know. I'll name them. There is counsel, Mr. Pierre Prosper, who
7 I believe is in San Francisco; Mr. Dastid Pallaska, Kosovo lawyer in
8 Prishtine; Mr. John Greenblatt, who is in Washington, DC; and a
9 number of others, those who assist, who are also in Prishtine.

10 And I say at the outset, it is unfortunate, if I may say so,
11 that this process has been put in place without notice to the
12 Defence -- without adequate notice to the Defence. I'm sure the
13 Prosecution knew and understood not only our interest to be given
14 notice but also, I'm pretty sure, our clear intention to cooperate
15 with the Court, as Mr. Thaci has done throughout the several years
16 pre- and during the constituting of this Court. It could have been
17 better done. After all, these offences reach back 22 years. The
18 Court's been investigating these matters for ten years and five
19 years, and you yourself have had the indictment, I think, for six
20 months.

21 So essentially the first that we knew about these matters coming
22 to fruition, if I can put it like that, was, I think, late on
23 Thursday night -- Wednesday night, that we got notice of that. So
24 it's not been possible to either establish a team, a Defence team.
25 It's not been possible to have people here who would wish to be here.

1 And for our part, we are at a loss to understand why it was necessary
2 to have an institution like this act in such a precipitant manner,
3 and I'll come to address that a little more in due course.

4 Now, Your Honour has, I know, a list to get through, and I'll
5 sit down and enable Your Honour to conform to those duties.

6 Thank you.

7 JUDGE GUILLOU: Thank you very much, counsel.

8 Now I also want to mention that Mr. Thaci is also present in the
9 courtroom, for the record.

10 I turn to the Registrar.

11 Madam Registrar, please.

12 THE REGISTRAR: Good afternoon, Your Honour. Fidelma Donlon,
13 Registrar.

14 JUDGE GUILLOU: Thank you, Madam Registrar.

15 And for the record, I am Nicolas Guillou, Pre-Trial Judge for
16 this case.

17 The accused is appearing today for the first time before the
18 Specialist Chambers, following the indictment confirmed against him.

19 Mr. Thaci, would you please rise. Could you please tell us your
20 full name.

21 THE ACCUSED THACI: [Interpretation] Hashim Haxhi Thaci.

22 JUDGE GUILLOU: What is your place and date of birth?

23 THE ACCUSED THACI: [Interpretation] A Kosovan citizen, born on
24 24 April 1968.

25 JUDGE GUILLOU: Thank you, Mr. Thaci. You may be seated.

1 Let me move to the procedural history of the case.

2 On 26 October 2020, in my capacity as Pre-Trial Judge, I
3 confirmed the indictment submitted by the Specialist Prosecutor
4 against the accused, charging him with six counts of crimes against
5 humanity, namely, persecution, imprisonment, other inhumane acts,
6 torture, murder, and enforced disappearance of persons; and charging
7 him with four counts of war crimes, namely, arbitrary detention,
8 cruel treatment, torture, and murder.

9 The accused was arrested in Kosovo on November 5, 2020, and he
10 was transferred to the detention facilities of the Specialist
11 Chambers in The Hague on the same day.

12 Mr. Thaci, before we proceed any further, I have to make sure
13 that you can follow the proceedings in a language that you can
14 understand and speak. Can you confirm that you understand and speak
15 Albanian?

16 THE ACCUSED THACI: [Interpretation] Yes.

17 JUDGE GUILLOU: Thank you very much.

18 By this I am satisfied that you can follow the proceedings in
19 Albanian, a language that you can understand and speak, in accordance
20 with Rule 92 of the Rules of Procedure and Evidence. If at any
21 moment in the course of the proceedings you are not receiving
22 interpretation, please draw my attention to it immediately.

23 Now allow me to explain the specific purpose of the Initial
24 Appearance for the benefit of the accused and those joining us in the
25 public gallery and following the proceedings online.

1 Today's hearing is not a trial. No evidence will be presented
2 or debated, and the guilt or innocence of the accused will not be
3 discussed or decided. The purpose of this Initial Appearance is
4 regulated by Article 39 of the Law and Rule 92. According to these
5 provisions, as Pre-Trial Judge, I shall:

6 Have the charges in the Confirmed Indictment read to the accused
7 in a language he understands and speaks;

8 Confirm that the accused understands the indictment;

9 Satisfy myself that the rights of the accused, in particular his
10 right to counsel, are respected;

11 Inform the accused that within 30 days of today's hearing he
12 will be called upon to admit guilt or plead not guilty on each charge
13 set out in the indictment. If the accused wishes to do so, he may
14 immediately admit guilt or plead not guilty;

15 And finally, I shall also set all the dates, as appropriate, in
16 performing my functions as Pre-Trial Judge.

17 I expect the parties to adhere to these matters, which I will
18 address in turn. Should either party wish to discuss any other
19 matter not expressly foreseen in the context of the Initial
20 Appearance, they're invited to do so in writing by making a filing
21 before me.

22 First, may I ask you, Mr. Thaci, to confirm that you have
23 received the Confirmed Indictment dated 4 November 2020 in a language
24 that you understand and speak?

25 THE ACCUSED THACI: [Interpretation] Yes.

1 JUDGE GUILLOU: Thank you, Mr. Thaci.

2 I will now ask Mr. Court Officer to read out the charges in the
3 Confirmed Indictment as foreseen in Article 39 of the Law and
4 Rule 92.

5 Mr. Court Officer.

6 THE COURT OFFICER: In the Confirmed Indictment, the
7 Specialist Prosecutor charges Mr. Hashim Thaci with:

8 Count 1: the crime against humanity of persecution, punishable
9 under Article 13(1)(h) of the Law;

10 Count 2: the crime against humanity of imprisonment, punishable
11 under Article 13(1)(e) of the Law;

12 Count 3: the war crime of arbitrary detention, punishable under
13 Article 14(1)(c) of the Law;

14 Count 4: the crime against humanity of other inhumane acts,
15 punishable under Article 13(1)(j) of the Law;

16 Count 5: the war crime of cruel treatment, punishable under
17 Article 14(1)(c)(i) of the Law;

18 Count 6: the crime against humanity of torture, punishable
19 under Article 13(1)(f) of the Law;

20 Count 7: the war crime of torture, punishable under Article
21 14(1)(c)(i) of the Law;

22 Count 8: the crime against humanity of murder, punishable under
23 Article 13(1)(a) of the Law;

24 Count 9: the war crime of murder, punishable under Article
25 14(1)(c) of the Law; and

1 Count 10: the crime against humanity of enforced disappearance
2 of persons, punishable under Article 13(1)(i) of the Law.

3 These crimes were committed between approximately April 1998 and
4 August 1999 at a number of locations in Kosovo and northern Albania,
5 including:

6 Bare, Bajgore, Llapashtice, Majac, Potok and other locations in
7 Podujeve municipality; Drenoc and other locations in Rahovec
8 municipality; Berishe mountains, Llapushnik and other locations in
9 Drenas municipality; Ferizaj and other locations in Ferizaj
10 municipality; Gjilan in Gjilan municipality; Jabllanice in Gjakove
11 municipality; locations in Kacanik municipality; Klecke and other
12 locations in Lipjan municipality; Likoc and other locations in
13 Skenderaj municipality; Malisheve and other locations in Malisheve
14 municipality; Volljake Cave in Kline municipality; Novoberde in
15 Novoberde municipality; Zllash and other locations in Prishtine
16 municipality; Prizren and other locations in Prizren municipality;
17 Suhareke and other locations in Suhareke municipality; and locations
18 in Viti municipality; and
19 Cahan and Kukes, in northern Albania.

20 The crimes under Counts 1, 2, 4, 6, 8, and 10 were committed as
21 part of a widespread or systematic attack directed against the
22 civilian population in Kosovo and northern Albania from at least
23 March 1998 through September 1999. In particular, these crimes
24 targeted "Opponents," who were perceived to have been: (i)
25 collaborating or associating with the Federal Republic of Yugoslavia

1 ("FRY") forces, officials or state institutions; or (ii) otherwise
2 not supporting the aims or means of the Kosovo Liberation Army
3 ("KLA") and later the Provisional Government of Kosovo, including
4 persons associated with the Democratic League of Kosovo, and persons
5 of Serb, Roma, and other ethnicities.

6 The crimes under Counts 3, 5, 7, and 9 were committed against
7 persons not taking active part in the hostilities, and in the context
8 of and associated with a non-international armed conflict in Kosovo
9 between the KLA and forces of the FRY and the Republic of Serbia,
10 including units of the Yugoslav Army, police, and other units of the
11 Ministry of Internal Affairs, and other groups fighting on behalf of
12 the FRY and Serbia from at least March 1998 to approximately
13 16 September 1999.

14 In relation to these crimes, there is a well-grounded suspicion
15 that Mr. Thaci is criminally responsible, pursuant to Article
16 16(1) (a) of the Law for:

17 a. Committing, as a member of the joint criminal enterprise,
18 the crimes under Counts 1 to 10, or alternatively, committing, as a
19 member of the aforementioned joint criminal enterprise, the crimes
20 under Counts 1 to 10 by being aware that such crimes might be
21 perpetrated in carrying out the common purpose of the joint criminal
22 enterprise and by willingly taking that risk; and/or

23 b. Aiding and abetting the crimes under Counts 1 to 10.

24 In addition and in the alternative, there is well-grounded
25 suspicion that Mr. Thaci is criminally responsible, pursuant to

1 Article 16(1)(c) of the Law, as a superior, for the crimes under
2 Counts 1 to 10.

3 JUDGE GUILLOU: Thank you very much, Mr. Court Officer.

4 Mr. Thaci, I wish to remind you that this is not the time to
5 contest the charges but simply to acknowledge that you understand the
6 charges. You will have ample opportunity to challenge the charges
7 with the assistance of your counsel.

8 Mr. Thaci, do you understand the charges contained in the
9 Confirmed Indictment as read out to you by Mr. Court Officer?

10 THE ACCUSED THACI: [Interpretation] Yes, I understood them. I
11 heard them today, I read them, and I do not agree with any of them.

12 JUDGE GUILLOU: Thank you, Mr. Thaci.

13 Now let me inform you of your rights before this Court.

14 The Law on the Specialist Chambers and the Rules of Procedure
15 and Evidence guarantee you a number of rights. I will read out the
16 most important ones.

17 First, you shall be presumed innocent until proven guilty beyond
18 reasonable doubt;

19 In the determination of the charges against you, you are
20 entitled to a fair and public hearing subject to any measures ordered
21 for the protection of victims and witnesses;

22 You have the right to be informed promptly and in detail, in a
23 language which you understand, of the nature and the cause of the
24 charges against you;

25 You have the right to have adequate time and facilities for the

1 preparation of your defence and to communicate with the counsel of
2 your own choosing;

3 You have the right to be tried within a reasonable period of
4 time;

5 You have the right to be tried in your presence and to defend
6 yourself through your counsel;

7 You have the right to have counsel assigned to you and without
8 payment if you do not have sufficient means to pay for it;

9 You have the right to examine or have examined the witnesses
10 against you and obtain the attendance and examination of witnesses on
11 your behalf;

12 You have the right to have the free assistance of an interpreter
13 if you cannot understand or speak the language used in court;

14 You have the right not to be compelled to testify against
15 yourself or to admit guilt;

16 You have the right to remain silent and no adverse inference
17 shall be drawn from your silence;

18 You also have the right to make unsworn statements relevant to
19 the case, and you may appear as a witness under oath;

20 You have the right to lodge preliminary motions to challenge the
21 jurisdiction of the Specialist Chambers, to allege defects in the
22 form of the indictment, and to seek the severance of indictment;

23 You have the right to receive within 30 days of today's hearing
24 the supporting material to the indictment submitted for confirmation;

25 You have the right to receive all statements of witnesses whom

1 the Specialist Prosecutor intends to call to testify at trial in the
2 language you understand and speak, namely, Albanian;

3 You have the right to receive immediately any information which
4 may reasonably suggest your innocence or mitigate your guilt or
5 affect the credibility or reliability of the Specialist Prosecutor's
6 evidence as soon as the information is in his custody, control, or
7 actual knowledge;

8 You have the right that all material and relevant evidence or
9 facts in possession of the Specialist Prosecutor be made available to
10 you before the beginning and during proceedings; this right is only
11 subject to restrictions which are strictly necessary and when any
12 counter-balancing protections are applied;

13 You have the right not to be detained for an unreasonable period
14 prior to the opening of the case, to request review of decisions on
15 your detention, and to appeal such decisions directly before the
16 Court of Appeal;

17 You have the right to appeal directly before the Court of Appeal
18 a decision on preliminary motions challenging the jurisdiction of the
19 Specialist Chambers;

20 And you have the right to seek leave to appeal other decisions.

21 Mr. Thaci, you heard the most important rights you enjoy in
22 accordance with the applicable legal framework of the Specialist
23 Chambers. Do you understand these rights?

24 THE ACCUSED THACI: [Interpretation] Yes.

25 JUDGE GUILLOU: Thank you, Mr. Thaci.

1 I wish to inform you that, according to Article 21(5) of the
2 Law, you may not represent yourself because you're currently in
3 detention. Representation by Specialist Counsel is therefore
4 mandatory.

5 It is my duty as Pre-Trial Judge to ensure that your right to
6 counsel is respected. To this end, I have noted the Registrar's
7 filing, informing me of the appointment of counsel, and I also took
8 note of what your counsel mentioned at the beginning of this hearing.

9 Counsel, can you just confirm that you have been appointed to
10 represent Mr. Thaci?

11 MR. HOOPER: Yes, I confirm. Thank you.

12 JUDGE GUILLOU: Thank you very much, Mr. Hooper.

13 I am, therefore, satisfied that the accused is presently
14 represented by counsel.

15 I will now turn to the possibility for the accused to enter a
16 plea, if any, in accordance with Rule 92.

17 Mr. Thaci, within 30 days from today you will be called upon to
18 admit guilt or to plead not guilty on each charge in the Confirmed
19 Indictment. If you wish to do so, you may also choose to immediately
20 admit guilt or plead not guilty.

21 I would therefore like to ask you if you have had use of the
22 opportunity to discuss the charges in the Confirmed Indictment with
23 your counsel, and if you are prepared to enter a plea at this time.
24 If it is the case, I invite you to stand up while you plead.

25 THE ACCUSED THACI: [Interpretation] Your Honour, the indictment

1 is completely without basis, and I plead not guilty.

2 JUDGE GUILLOU: Thank you, Mr. Thaci.

3 Can I just ask you to confirm that you plead not guilty for all
4 the counts in the indictment?

5 THE ACCUSED THACI: [Interpretation] I reiterate: The indictment
6 is completely without basis and I plead not guilty to all the charges
7 in the indictment.

8 JUDGE GUILLOU: Thank you very much, Mr. Thaci.

9 Now, let me move to the working language of the proceedings.

10 In the Scheduling Order for this Initial Appearance, I asked the
11 parties to make submissions on the working language to be used in the
12 present case, according to Rule 8.

13 Mr. Prosecutor, I know you already mentioned your submission
14 this morning, but if you can please reiterate for the benefit of the
15 accused present. Thank you.

16 MR. TIEGER: Yes, thank you, Your Honour. Our position is that
17 the working language for these proceedings should be English.

18 JUDGE GUILLOU: Thank you, Mr. Prosecutor.
19 Counsel.

20 MR. HOOPER: It will be little surprise that we have little
21 objection to that.

22 As far as Mr. Thaci is concerned, he has English, he can speak
23 English -- some English, but he would need to be assisted, in the way
24 that he is currently, with Albanian translation. Thank you.

25 JUDGE GUILLOU: Absolutely.

1 MR. HOOPER: And similarly with documents, of course, yes.

2 JUDGE GUILLOU: Duly noted. I will issue an order in due course
3 on this matter.

4 As indicated in the order for this Initial Appearance, I will
5 schedule a Status Conference, pursuant to Rule 96, to be held shortly
6 after the Initial Appearances of all the accused. The purpose will
7 be to review the status of the case and to organise exchanges between
8 the parties to ensure expeditious preparation for trial.

9 Mr. Thaci, I wish to remind you that you have the right to
10 attend the Status Conference with your counsel. However, with your
11 written consent and after receiving advice from your counsel,
12 pursuant to Rule 96(2), the Status Conference may be attended by you
13 in person with your counsel participating via video-conference link,
14 by your counsel with you, Mr. Thaci, participating via
15 video-conference link, and it may also take place in your absence,
16 Mr. Thaci, with your counsel present or participating via
17 video-conference link.

18 I will now ask the parties for their views on a suitable date
19 for the Status Conference to be held on or after Wednesday,
20 18 November.

21 And for the Defence, would it be also possible to indicate
22 whether you plan to participate in person or via video-conference and
23 which lawyer, if possible, would participate. This is mainly so that
24 we can organise the video conference with the different lawyers in
25 this case.

1 But first, Mr. Prosecutor.

2 MR. TIEGER: As indicated earlier, Your Honour, the Prosecution
3 is available at the Court's convenience, and the suggested date is
4 suitable.

5 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

6 Mr. Hooper.

7 MR. HOOPER: On behalf of the Defence, and it will be
8 principally me, as lead counsel, who would be hoping to attend any
9 and all hearings, unlike the Prosecution, we are necessarily at a
10 geographical and COVID-ridden disadvantage. Given the arrangements
11 that need to be put in place, the requirement for certain parties to
12 obtain visas, for example, in order to attend, and interested parties
13 - not necessarily just counsel - we would ask for 30 November. I
14 think that's a Monday. It was a date I looked at earlier, but -- I
15 think it was 30 November.

16 But may I come back in a moment, if Your Honour would be
17 gracious enough to allow me to have the floor again, in order to
18 perhaps put that into better context in terms of what we'll be
19 seeking from Your Honour over the next several weeks. Thank you.

20 JUDGE GUILLOU: Thank you, counsel.

21 You will receive a Scheduling Order that will include the agenda
22 in due course. I just want to mention that given our legal
23 framework, we are a bit constrained by some deadlines, especially
24 deadline for disclosure to you. This is why it seems quite difficult
25 to have such a delay before the first Status Conference. But we will

1 try to accommodate as much as we can and as much as it's possible for
2 the disclosure process.

3 As I mentioned this morning, I will ask the SPO in the order
4 scheduling this Status Conference for written submissions by Friday,
5 November 13, and I will also probably then ask the Defence for their
6 observation in reply in the following days.

7 And after the Status Conference, I will issue a decision on the
8 Specialist Prosecutor's disclosure obligation in accordance with
9 Rule 102 and on the redaction regime for the proceedings. And this
10 is an important step for the Defence, because this is what will allow
11 you to get all the evidentiary material.

12 At this point I would like to ask the parties whether they have
13 any other issues they would like to raise. And I remind the parties
14 to give prior notice should any submission require the disclosure of
15 confidential information so that appropriate measures may be taken.

16 Mr. Prosecutor.

17 MR. TIEGER: There is nothing further from the Prosecution, Your
18 Honour.

19 JUDGE GUILLOU: Counsel, you have the floor.

20 MR. HOOPER: Well, I'm grateful for Your Honour inviting me to
21 address you on other matters within the confines, of course, of what
22 is appropriate at this stage, necessarily so.

23 Your Honour has had or been labouring, as it were, with the
24 draft indictment for some six months, and this is the first
25 opportunity that Your Honour has had, in fact, to hear any matters or

1 submissions from the Defence.

2 Now, Mr. Thaci has pleaded not guilty, of course, as we've all
3 heard, to each and every allegation on this indictment, and I wish to
4 make it plain that he disputes the entire narrative of this
5 indictment, as presented by the Prosecution. Of course, we were
6 aware, because the Prosecution announced back in June, that it laid
7 an indictment before Your Honour, an unusual and perhaps wrongful
8 step. But they announced it, and to that extent, we were on notice
9 that that process was in hand. And we now have the indictment,
10 albeit that it's still greatly redacted and so perhaps isn't as
11 informative and instructive to the Defence as it would be if the
12 censorship was lifted.

13 But looking at that indictment, the Defence pose this question:
14 Where are the allegations of organ theft, after all -- and the yellow
15 house? That was the allegation that was the raison d'être of this
16 Court --

17 JUDGE GUILLOU: Sorry, I think Mr. Thaci has a problem with
18 interpretation.

19 MR. HOOPER: Ah, translation wrong. A bit of bilingual drama,
20 as it were. Well, I'll carry on. May I carry on, and I'll address
21 that, perhaps, in due course.

22 JUDGE GUILLOU: So --

23 MR. HOOPER: So I don't know -- if I haven't -- the language is
24 wrong. All right. Or the translation is.

25 JUDGE GUILLOU: Is it, Mr. Thaci, so that I can understand, is

1 it a technical problem?

2 THE ACCUSED THACI: [In English] No, it is the language. It's
3 wrong.

4 MR. HOOPER: Well, I tell you, what I'll try and do to address
5 that as best I can, I will speak --

6 THE ACCUSED THACI: [In English] It's in substance, not
7 technical.

8 MR. HOOPER: Thank you. Very well.

9 Well, to the interpreters, first of all, we all understand
10 the -- ah, right, so maybe we need -- well, there is little I can do
11 about that or doubtless, Your Honour, this afternoon, except I can
12 speak more slowly and I will do so.

13 So let me just repeat the part that I was reaching here for the
14 interpreters, and I was raising this question that -- and it's an
15 important question and one I know that people in Kosovo will be very
16 attentive to, and the question was this: Where are these allegations
17 of organ theft, because they were so significant in terms of the
18 birth this court.

19 THE ACCUSED THACI: [In English] Again, it's wrong. It's wrong.

20 JUDGE GUILLOU: Mr. Thaci --

21 MR. HOOPER: We'll address it in due course. Let me carry on.
22 And if I'm speaking too quickly for the interpreters, please let me
23 know and I will do my best to slow down. But I think I normally
24 speak at a sufficiently slow pace.

25 So where are the -- ah, third time. Where are the allegations

1 of the theft of human organs and the story of the yellow house that
2 featured so prominently in the incentive to create this court
3 following, as we all know, the dramatic half page in Carladel
4 Ponte's book, which was then followed by the Dick Marty report; and
5 which, in those allegations, apart from being a most dreadful stain
6 on Kosovo and Kosovans was, of course, the allegation that propelled
7 the setting up of this court, this Kosovo court.

8 I say "Kosovo court," but looking around I see nothing of Kosovo
9 in it, may I say. There is no emblem here from Kosovo. I don't know
10 why not. It's a very barren place here. And perhaps some attention
11 could be paid to that. If this is a Kosovan court, let us have the
12 black eagle on the red. Let's see it.

13 JUDGE GUILLOU: Then you should wear a red gown, counsel.

14 MR. HOOPER: Well, a Kosovo -- I'm not a member of the Kosovo
15 bar. I'm an independent member of another bar, and I think that's
16 important to bring in, in our costume, into the court. I'm not in
17 the position of Your Honour, or perhaps of my learned friends for the
18 Prosecution, addressed attractively as they are. So there we are.

19 Now, those allegations, Mr. Thaci knew, was nonsense, and
20 because he knew it was nonsense, he assisted the European Commission
21 in the setting up of this court. And we hear that he may not have
22 been cooperative, but you can't be more cooperative than being a
23 midwife at the birth of a court such as this. And so he was.

24 But there we are. Nothing in this indictment - nothing in this
25 indictment - speaks of the theft of organs and those terrible,

1 terrible crimes that were alleged. Instead, it seems we have a
2 collection of incidents in the indictment of offences and events,
3 many of which have been tried at both the International Criminal
4 Tribunal for Yugoslavia or Kosovo courts and Kosovo-based courts, all
5 wrapped up, as it were, and strung together, had placed on top of it
6 a structure of command.

7 Well, those allegations will, through the trial process, be
8 shown, I hope, to be false. They will be fought vigorously and, I
9 anticipate, successfully.

10 Now, we were, as I think I've perhaps indicated, surprised that
11 it was thought necessary to order Mr. Thaci's arrest rather than
12 proceed by summons, and that was done, presumably, following
13 submissions made to you by the Prosecution. We don't have those
14 submissions. It had been my intention to seek to make an application
15 for his immediate interim release this afternoon. I think I gave the
16 Court some little notice of that on Saturday.

17 But it would be, on reflection, we feel, inappropriate to make
18 that application this afternoon without knowing what it is that the
19 Prosecution are specifically alleging, both by way of risk to
20 flight -- well, risk of flight, he's here. He's flown here, so I
21 think we could strike that particular suggestion out. But presumably
22 you were told that he was a risk. Well, there we are.

23 But the second limb of it, which deals with interference, I
24 don't know the allegations that support that conclusion of
25 interference, and we need to know that on an *audi partem* principle,

1 let alone the practicalities of such an application, we need to know
2 what is, in fact, being said.

3 I'd ask Your Honour that, in fact, we be provided with those
4 specific elements of information, separate, distinct, as it were,
5 from supporting material, that the Prosecution put forward in their
6 arguments before the 26th -- up to 26 October so that we can see what
7 those are.

8 I'd also be requesting that an application for interim release
9 be made in the next few weeks, once we have that information, be made
10 before Your Honour, orally, with me in attendance. I know this
11 court, unlike some of the other courts, is moving towards principles
12 of orality, o-r-a-l-i-t-y, and that is something which we embrace.
13 It will give me the opportunity to have Mr. Thaci here, you to hear
14 the arguments from the Prosecution and also from the Defence, and to
15 be fully informed as the independent Judge and figure that you are,
16 to address that question, very important question, particularly these
17 days, and that is: Does this man really merit being detained here or
18 not, given that there's also a presumption at this Court that liberty
19 is assumed, unless certain criteria are fulfilled to justify
20 detention.

21 So in the meantime, bearing in mind that for six months, as it
22 were, you had the Prosecution whispering in your ear, I feel it's
23 appropriate, not inappropriate, to say a few words about Hashim Thaci
24 to Your Honour, who I can present as a man of integrity and honour, a
25 man who has served his country in war and peace, a man who has

1 achieved much and does not merit these allegations.

2 I was provided a book just the other day, so I don't want to
3 speak, as it were, and have these things said from my mouth. I think
4 particularly, as the Prosecutors are here to be almost uniformly
5 American cousins, I'm going to quote from the foreword of this book
6 by Bob Dole, who, of course, we know, is a leading American senator,
7 also a presidential contender when such contenders were respectable,
8 if I can put it like this. He said this at page 8 of the
9 introduction. It's a short paragraph, and I'll read it. He says:

10 "Kosovo has had an incredible journey and one man critical to
11 the development of this bastion of democracy in the Balkans is
12 President Hashim Thaci. As a young man, barely 30 years old, he
13 headed the Kosovar Albanian delegation at the international
14 Conference at Chateau du Rambouillet in France. Thaci came to the
15 table as an unknown quantity. But by the conclusion of the
16 conference two weeks later, he was recognised as the voice of reason
17 during a time of severe internal factionalism. The fate of the
18 nation rested on Thaci's keen ability to convince his fellow fighters
19 to compromise. Not an easy task for those in the field who were
20 witnessing the atrocities being committed by the Serbian forces."

21 So there we are. Spirit of compromise and of justice even
22 within a disgraceful attack by Serbia on the Kosovan people.

23 So he, Hashim Thaci, emerged from those talks, from that war, as
24 a voice of reason from terrible atrocities inflicted on his country
25 by Serbia, and he brought his country, against all odds, to

1 independence and freedom and helped shape the country that we have
2 today. That's a country that is young, youthful, vibrant,
3 multicultural, multi-ethnic, tolerant, supportive of all religions,
4 and one where he was seeking, up until last week, to help put away
5 the past, to seek some measure of reconciliation with Serbia.

6 I have another quote, even shorter, much shorter, but it's very
7 apposite, I think. It's at the back of the book:

8 "Hashim Thaci is the George Washington of Kosovo."

9 That was Joe Biden, US Vice-President 2009-2017, and
10 president-elect today, and I hope Joe is listening.

11 So I say those words. It's not a hagiography on my part. It's
12 a beginning of a balancing. It won't be your job to search for the
13 truth in this matter; it will be that of a panel of other judges.
14 But there we are. These are all first small steps, but we are sure
15 that by the end of it all, the reputation of this man will be
16 vindicated.

17 I was very surprised, I must say, when I walked through that
18 door there a moment ago to meet him this afternoon and he's there in
19 handcuffs. Disgraceful. We're not a punitive body, this court, I
20 hope, and I hope something can be done to address that and not to
21 demean a man to that extent. He takes it well. He's that sort of
22 man.

23 Now, Your Honour, I mentioned that for my part, I'd be grateful
24 if we could have an oral hearing on issues relating to interim
25 release, and I'd anticipate, I hope, that given that the information

1 we want is very little, really, I would have thought, in terms of
2 submissions that may have been placed before Your Honour by the
3 Prosecution to seek an arrest warrant, that that could take place in
4 two weeks or so.

5 Your Honour, I'm presently based quite a long way away, and, as
6 I say, my commitments are such that a date close to 30 November would
7 have, I hope, the advantage to Your Honour of my being here and
8 certainly the advantage to Mr. Thaci of my being here together with
9 others. And I hope that colleagues on other Defence teams and the
10 Prosecution, indeed, are amenable to a date somewhere like that.

11 Whether that's part of or supplementary to the Status
12 Conference, a day before, whatever - probably better to have it
13 before - would be satisfactory. Perhaps that particular application
14 doesn't need to be before the Status Conference; it can be
15 afterwards.

16 Your Honour, I'm very grateful to you and to my friends,
17 actually, for listening with some patience through those submissions.
18 Thank you very much.

19 JUDGE GUILLOU: Thank you very much, Mr. Hooper.

20 I think there is one very important point in what you mentioned
21 is that you need to have access to a lot of evidence and proceedings.
22 This is why we need to have a robust and fast disclosure process so
23 that you can have access to the filings that have been indeed made
24 before the arrest of your client, and this will be made as soon as
25 possible.

1 I guess the Prosecution might want to respond, so Mr. Tieger.

2 MR. TIEGER: I do on a few matters, Your Honour, if I may.

3 First of all, most directly to the matter you just raised, while
4 it is our position that by virtue of the provision of the arrest
5 warrant the Defence is in position to address the matters that gave
6 rise to the arrest warrant, it has been our intention nevertheless to
7 provide an appropriately redacted version of the application for the
8 warrant at the earliest opportunity. We're working on that now. We
9 expect to be able to provide that by the end of the week.

10 We look forward to responding in detail to any written
11 submissions regarding the basis for detention, the factors that need
12 to be considered by the Court in identifying and assessing the risk
13 to the integrity of the proceedings, to the security of victims,
14 witnesses, and others, and we will be addressing that in detail from
15 matters that are traditionally incorporated into such assessments,
16 such as the nature and gravity of the charges, the availability of
17 resources and networks to facilitate flight or interference, leading
18 up to such matters that shed light on the possible risk of
19 interference or flight, including very recent events, such as the
20 fact of Mr. Thaci's, on the very day the arrest process began and he
21 was informed, of pardoning two people convicted for the murder of an
22 alleged collaborator back in 2001 and who were convicted in 2012 and
23 finally apprehended after they had been fugitives for some period of
24 time. Those matters will be addressed in detail, and appropriately
25 so, in the course of the written pleadings and any oral submissions

1 that may follow.

2 I think it is instructive that after reading, in full, an
3 indictment which contains the accounts of dozens and dozens of
4 murders and the plights of hundreds of victims, what we hear about is
5 what Mr. Thaci is not charged with. Each and every one of the
6 charges and the events that are contained in the indictment are
7 squarely within the mandate of this tribunal, and that's what we
8 should be talking about and we will be talking about during the
9 course of this trial.

10 Finally, with respect to the testimonials offered by the
11 Defence, were any of those people here in court now, I would say to
12 them, as we do under other circumstances: Sir, at the time you made
13 that statement, were you aware of the evidence from dozens and dozens
14 of people, from the family members of deceased victims, about the
15 responsibility of the person about whom you're speaking? And that is
16 also what we will address during the course of this trial.

17 Thank you, Your Honour.

18 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

19 Counsel, do you wish to say anything?

20 MR. HOOPER: Merely this:

21 In terms of an application for interim release, given the nature
22 of the laws that make detention an exception, I'd submit it's
23 appropriate for the Prosecution to let me have and let Your Honour
24 have, as it may have done already but for my benefit as well, their
25 arguments to which we can respond. Thank you.

1 JUDGE GUILLOU: Thank you very much.

2 I'd just wish to address one point that you mentioned,
3 Mr. Hooper, regarding the handcuffs. There is no specific treatment
4 for your client. This is the proceedings that we apply to any person
5 who is under the custody of the Specialist Chambers. But I will just
6 give the floor to Madam Registrar for a second so that she can
7 supplement, if she wishes, on the practice of this institution in
8 that matter.

9 Madam Registrar.

10 THE REGISTRAR: Thank you very much, Your Honour.

11 Just to emphasise, as the Pre-Trial Judge has, that the normal
12 procedure for escort to the courtroom does involve the use of
13 handcuffs, which are removed prior to entry into the courtroom. So
14 there was no exception in the procedure today. Thank you.

15 JUDGE GUILLOU: Thank you, Madam Registrar.

16 MR. HOOPER: Would Your Honour just give me one moment. I think
17 Mr. Thaci wanted to say a word to me.

18 [Defence counsel and accused confer]

19 MR. HOOPER: Thank you, Your Honour.

20 It was essentially reflections, really, on what my learned
21 friend said about these two men who were, as he put it, pardoned.
22 There is more of a history to that. But I think I can address Your
23 Honour on that, I hope, at the next opportunity I have before Your
24 Honour, rather than take it forward today. Thank you.

25 JUDGE GUILLOU: Thank you, counsel.

1 Mr. Prosecutor.

2 MR. TIEGER: Thank you, Your Honour.

3 I may have initially misunderstood the final submission of the
4 Defence. If counsel was suggesting that he wanted to have more
5 information about the initial submissions that led to the current
6 detention, we already addressed that.

7 If, on the other hand, he was suggesting that we change the
8 customary order of proof - that is, he wishes to alter the current
9 state of detention but wants to have the Prosecution go forward
10 initially - of course, we would oppose that. That would be contrary
11 to the jurisprudence of all of the ad hoc institutions and the logic
12 behind the application generally.

13 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

14 Mr. Hooper.

15 MR. HOOPER: Well, off-hand I don't know any jurisdictions where
16 it's up to the individual to submit that he should be free as opposed
17 to the state or prosecuting authority making application that he
18 should not be.

19 And you'll bear in mind that your order, under which presently
20 Mr. Thaci is detained, the arrest warrant was issued in the light of
21 submissions, as I understand it, made to you by the Prosecution *audi*
22 *partem*. We haven't had knowledge of those and you haven't heard us
23 on it. And I'm saying that, in fact, it would be fair for us to hear
24 the Prosecution's position so that we can react and make our
25 submissions appropriately to you, rather than for us to have to say,

1 quite contrary to the spirit of the laws, we don't fulfil the
2 criteria. It's for them to show that he does fulfil the criteria.
3 And it's for that reason that we should, I think, proceed in that
4 matter. It wouldn't prevent them, for example, as starting parties,
5 from making a reply to our submissions. But I think it just gets the
6 carriages of that train in the right order.

7 That's the submission. Thank you.

8 JUDGE GUILLOU: Mr. Prosecutor.

9 MR. TIEGER: I don't know if the Court needs to hear from us
10 further, or maybe this is a matter for written submissions, Your
11 Honour, but the reality of the situation is the Prosecution did make
12 submissions, the Court made a decision, the Defence now wishes to
13 have a change in that condition. We would expect it to go forward.
14 We understand that counsel has asked for the information upon which
15 those earlier -- for the information of those earlier submissions,
16 and again, for the second time, I reiterate that we anticipate
17 providing that shortly.

18 So perhaps this is a little bit of talking in circles. He will
19 have that information, he will then file his pleading, and we will
20 respond.

21 JUDGE GUILLOU: Thank you, Mr. Prosecutor.

22 I think we've heard the parties on this matter and we'll wait
23 for the submissions on this issue.

24 Mr. Thaci, I would like to ask you if you have anything to say
25 regarding your arrest, transfer, and detention in The Hague.

1 THE ACCUSED THACI: [Interpretation] Well, everything I wish to
2 say is something that was set out by my Defence counsel. I have
3 nothing else to add.

4 JUDGE GUILLOU: Thank you very much, Mr. Thaci.

5 Finally, I inform you that I will issue a decision ordering the
6 Specialist Prosecutor and the Registrar to reclassify their filings
7 or prepare redacted versions, as the case may be, so that the Defence
8 has access to them as soon as possible.

9 As you remain in detention, Mr. Thaci, I would also like to
10 inform you that you may challenge your detention on remand in
11 accordance with Rule 57, and this will be dealt, as your counsel
12 mentioned, in the following weeks.

13 Unless the parties have anything else to say, this concludes
14 today's hearing. I thank the parties, the Registry for their
15 attendance. I also wish to thank the interpreters, stenographer,
16 audio-visual technicians, and security personnel for their
17 assistance.

18 The hearing is adjourned. Thank you.

19 --- Whereupon the Initial Appearance adjourned at 4.05 p.m.

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