



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi

Before: Trial Panel II

Judge Charles L. Smith III, Presiding Judge

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 14 February 2024

Language: English

Classification: Public

**Decision Approving the Termination of Representation
by Counsel for Hashim Thaçi**

Specialist Prosecutor
Kimberly P. West

Counsel for Hashim Thaçi
Gregory Kehoe

Counsel for Victims
Simon Laws

Counsel for Kadri Veseli
Ben Emmerson

Counsel for Rexhep Selimi
Geoffrey Roberts

Counsel for Jakup Krasniqi
Venkateswari Alagendra

TRIAL PANEL II (“Panel”), pursuant to Articles 21(4)(e), 40(2) and (6)(h), 41(4)(b) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”), Rule 25 of the Rules of Procedure and Evidence (“Rules”), and Sections 16(1), (2)(b) and (4) of the Directive on Counsel (“Directive”),¹ hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 19 January 2024, the Registrar requested approval of termination of representation of Hashim Thaçi (“Mr Thaçi”) by Counsel Gregory Kehoe (“Mr Kehoe”), (“Termination Request”).²
2. On 19 January 2024, Mr Kehoe filed a motion to withdraw as Counsel, together with nine other members of the Thaçi Defence (“Motion”).³
3. On 26 January 2024, the Registrar filed additional submissions concerning the Motion (“Additional Submissions”).⁴
4. On 29 January 2024, the Registrar notified the Panel of a letter from Mr Kehoe (“Kehoe Letter”) containing additional information regarding the Motion (“Additional Information”).⁵
5. On 31 January 2024, the Registrar notified the Panel, Mr Thaçi, and his defence team, of the e-mail response she received from the Kosovo’s Ministry of

¹ KSC-BD-04-Rev1, Registry Practice Direction, *Directive on Counsel*, 28 April 2021.

² F02068, Registrar, *Notification from Hashim Thaçi to the Trial Panel and Request for Approval of Termination of Representation by Counsel*, 19 January 2024, confidential, with Annex, confidential.

³ F02069, Specialist Counsel, *Motion to Withdraw By Lead Counsel for Hashim Thaçi*, 19 January 2024, paras 10, 21.

⁴ F02079, Registrar, *Additional Registrar’s Submissions Concerning the Termination of Representation by Counsel and Other Defence Team Members*, 26 January 2024, confidential, with Annexes 1-3, confidential and *ex parte*.

⁵ F02088, Registrar, *Notification of Letter with Additional Information from Counsel Requesting Early Termination*, 29 January 2024, confidential and *ex parte*, with Annex, confidential and *ex parte*.

Justice regarding the financing of Mr Thaçi's representation ("Registrar Notification").⁶

6. On 31 January 2024, the Panel held an *ex parte* hearing with Mr Thaçi and Counsel, Mr Kehoe and Mr Luka Mišetić ("Mr Mišetić") to discuss Mr Thaçi's representation.⁷

7. On 31 January 2024, the Specialist Prosecutor's Office ("SPO") responded to the Motion ("SPO Response").⁸

8. On 9 February 2024, Mr Mišetić notified the Panel that an agreement had been reached for Mr Mišetić to succeed Mr Kehoe as Counsel ("Notification of Agreement").⁹

II. SUBMISSIONS

9. In the Termination Request, the Registrar requested the Panel to approve the termination of Mr Kehoe's appointment as counsel for Mr Thaçi.¹⁰ The Registrar notified the Panel that it had received a letter in which Mr Thaçi stated that Mr Kehoe would no longer represent him and that the rest of his legal team will continue to represent him ("Thaçi Letter").¹¹ The Registrar also stated that Mr Thaçi indicated orally that Mr Mišetić will succeed Mr Kehoe as his counsel.¹²

10. In the Motion, Mr Kehoe requested the Panel to allow his withdrawal as lead counsel, along with one co-counsel, three legal associates and five support team

⁶ F02093, Registrar, *Notification of Letter with Additional Information Regarding Request for Early Termination of Representation*, 31 January 2023, confidential and *ex parte*, with Annex, confidential and *ex parte*.

⁷ Transcript of Confidential and *Ex Parte* Hearing, 31 January 2024, pp. 12350-12364.

⁸ F02094, Specialist Prosecutor, *Prosecution Response to 'Motion to Withdraw by Lead Counsel for Hashim Thaçi'*, 31 January 2024, confidential.

⁹ F02116, Specialist Counsel, *Notification to the Trial Panel Concerning Engagement of New Counsel*, 9 February 2024, confidential and *ex parte*.

¹⁰ Termination Request, para. 3.

¹¹ Termination Request, para. 1.

¹² Termination Request, para. 2, footnote 3. *See also* Annex 1. *See also* Additional Information, para. 7.

members of the Thaçi Defence (“Additional Defence Team Members”) (“Withdrawal Request”).¹³ Mr Kehoe submitted that Mr Thaçi: (i) has failed to fulfil an obligation towards him and the Additional Defence Team Members; and (ii) has been given reasonable warning that Mr Kehoe and the Additional Defence Team Members would seek termination unless the obligation was fulfilled.¹⁴ In addition, Mr Kehoe requested that the Registrar be directed to appoint a Specialist Counsel for Mr Thaçi pursuant to Section 12(1)(b) of the Directive, without payment by Mr Thaçi if he does not have sufficient means to pay for it (“Appointment Request”).¹⁵ Thirdly, noting that he and the Additional Defence Team Members will continue to act or assist replacement counsel for a period not exceeding forty-five days from the date upon which replacement counsel is assigned or appointed, Mr Kehoe requested that the Panel direct the Specialist Chambers (“SC”) to pay for costs necessarily and reasonably incurred by him and the Members during the transition period (“Payment Request”).¹⁶

11. Regarding the Withdrawal Request, the Registrar informed the Panel, *inter alia*, that: (i) she had not received information from Mr Kehoe regarding good cause;¹⁷ and (ii) should the withdrawal of Mr Kehoe and the Additional Defence Team Members proceed, the Thaçi Defence team would still consist of 26 persons, including six experienced co-counsel.¹⁸ Regarding the Appointment Request, the Registrar noted that Mr Thaçi had neither requested the appointment or assignment of replacement counsel; nor submitted the information relevant to assessing whether he lacks the means to retain counsel under the Legal Aid Regulations.¹⁹ Regarding the Payment Request, the Registrar submitted that the

¹³ Motion, paras 10, 21(i).

¹⁴ Motion, paras 9-11, 21.

¹⁵ Motion, paras 14, 21(ii).

¹⁶ Motion, paras 18-19, 21(iii).

¹⁷ Additional Submissions, para. 3.

¹⁸ Additional Submissions, paras 4-5.

¹⁹ Additional Submissions, paras 7-8.

relief sought is premature since she is not yet in a position to assess whether a transitional work period would be warranted as per Section 16(4) of the Directive.²⁰

12. On the basis of the Kehoe Letter,²¹ the Registrar submitted that she was satisfied that good cause for the requested early termination has been shown and, therefore, reiterated her request that the Panel approve early termination of representation of Mr Kehoe.²² Lastly, noting that she had yet to receive a response on this point, the Registrar requested the Panel to seek confirmation from Mr Thaçi and Mr Mišetić with regard to Mr Thaçi's representation by counsel going forward.²³

13. The SPO responded that the Motion was premature and should be dismissed.²⁴ The SPO averred that there is insufficient information to assess the potential impact of Mr Kehoe's withdrawal on continuity of representation and the fair and expeditious conduct of proceedings, in particular as Mr Thaçi has not yet requested the appointment or assignment of a new lead counsel.²⁵

14. During the *ex parte* hearing of 31 January 2024, the Panel received confirmation from: (i) Mr Thaçi and Mr Kehoe that they regarded their professional relationship as having come to an end with no likelihood of an improvement; and (ii) Mr Thaçi and Mr Mišetić indicated that they were engaged in discussions to replace Mr Kehoe as lead counsel and that they would inform the Panel by Friday, 9 February 2024.²⁶

²⁰ Additional Submissions, paras 9-10 *referring to* Section 16(4) of the Directive.

²¹ Additional Information; Kehoe Letter.

²² Additional Information, para. 6; Kehoe Letter.

²³ Additional Information, para. 7.

²⁴ SPO Response, para. 1.

²⁵ SPO Response, para. 3.

²⁶ Transcript of Confidential and *Ex Parte* Hearing, 31 January 2024, pp. 12351-12355, 12358-12359, 12364-12365.

15. Lastly, through his Notification of Agreement, Mr Mišetić indicated that: (i) pursuant to his agreement with Mr Thaçi, he had requested that the Registry take all steps necessary to facilitate his appointment as counsel; (ii) he intends to complete the process of engagement of co-counsel before the end of February 2024; and (iii) Mr Peter McCloskey will assist as “second chair”, as needed.²⁷

III. APPLICABLE LAW

16. Pursuant to Articles 21(4)(e) and 41(4)(b) of the Law, the Accused is entitled to “defend himself or herself through Specialist Counsel of his own choosing; to be informed, if he or she does not have legal assistance of this right; and to have Specialist Counsel assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it”.

17. Pursuant to Section 16(1) of the Directive, when considering the early termination of representation by Specialist Counsel of an Accused, the Registrar shall have due regard to the importance of continuity of representation and must obtain the approval of the Panel seized of the matter in which Counsel is acting.

18. Pursuant to Section 16(2)(b) of the Directive, the Registrar “shall terminate representation by Counsel in circumstances where: [...] b. Counsel [...] [or] the Accused [...] request withdrawal showing good cause, including where the fiduciary relationship between Counsel and his or her client has failed”.

19. Pursuant to Section 16(4) of the Directive:

[i]n the interests of justice, the Registrar may instruct appointed or assigned Counsel whose representation is to be terminated to continue to act or to assist replacement Counsel for a period not exceeding forty-five (45) days from the date upon which replacement Counsel is assigned or appointed. During this period, the costs necessarily and reasonably incurred by the outgoing Counsel shall be borne by the [SC].

²⁷ Notification of Agreement, paras 1-2.

20. Matters relating to the assignment and withdrawal of counsel are governed primarily by the Directive and, to a lesser extent, by the Code of Professional Conduct for Counsel and Prosecutors Before the Kosovo Specialist Chambers (“Code”).²⁸ Both instruments were adopted pursuant to the Law and the Rules.²⁹ The Rules and all other applicable instruments, including the Directive and the Code, are to be read and applied subject to the Law, which established the SC and SPO.³⁰ That is the natural relationship between an enabling instrument and any other instrument, including the Rules and the Directive, that derive from it.³¹

IV. DISCUSSION

A. JURISDICTION OF THE PANEL OVER THE WITHDRAWAL REQUEST

21. The Panel is seized of two parallel requests in relation to the withdrawal of Mr Kehoe: (i) the Termination Request filed by the Registrar seeking the Panel’s approval for the termination of representation of Mr Thaçi by Mr Kehoe; and (ii) Mr Kehoe’s Withdrawal Request whereby he requests the Panel to allow his withdrawal as lead counsel, along with one co-counsel, three legal associates and five support team members of the Thaçi Defence. While there is no doubt that Section 16(1) of the Directive requires the Registrar to seek the approval of the Panel when seized of a request for early termination or suspension of representation, there is no provision that addresses the scenario now presented to the Panel where it is also seized with a direct request by Counsel or the Accused for the withdrawal of Counsel.

²⁸ KSC-BD-07-Rev1, Registry Practice Direction, *Code of Professional Conduct for Counsel and Prosecutors Before the Kosovo Specialist Chambers*, see in particular, Article 25.

²⁹ Section 1(1) of the Directive; Article 1(1) of the Code.

³⁰ See Article 3 of the Law; Rule 3(1).

³¹ ICTY, *Prosecutor v. Milošević*, IT-02-54-T, [Decision on Assigned Counsel’s Motion for Withdrawal](#) (“Milošević Decision”), 7 December 2004, para. 13.

22. Rule 25(1) provides that the eligibility, required qualification and experience, as well as modalities for withdrawal and removal of Counsel shall be regulated in the Directive on Counsel. The Directive, in turn, provides that the decision of termination of representation is normally with the Registrar.³² This raises the question of the Panel's jurisdiction to decide the issues that have been placed before it in the Withdrawal Request.

23. Consistent with the approach of the International Criminal Tribunal for the Former Yugoslavia ("ICTY") on that point, the Panel is satisfied that "it is not ordinarily appropriate for a Chamber to consider motions on matters that are within the primary competence of the Registrar".³³ On the other hand, the Panel also agrees with the proposition that it would be competent to decide a matter normally within the competence of the Registrar if and when it raises an issue going to the fairness of proceedings.³⁴

24. The Panel is satisfied that Mr Kehoe's Withdrawal Request raises issues going to the fairness of proceedings, at least insofar as it pertains to Mr Kehoe's own withdrawal, so that the Panel has determined that it has jurisdiction to decide this matter. The Panel notes, furthermore, that both the Registrar and the Defence made it clear that they do not dispute the Panel's competence to decide upon this Request.³⁵

³² Section 16 of the Directive.

³³ ICTY, *Prosecutor v. Delalić et al.*, IT-96-21-A, Appeals Chamber, [Order on Esad Landzo's Motion for Expedited Consideration](#), 15 September 1999. See also *Milošević* Decision, para. 10.

³⁴ See e.g. ICTY, *Milošević* Decision, paras 11-12; IT-02-60-AR73.4, Appeals Chamber, *Prosecutor v. Blagojević*, [Public and Redacted Reason for Decision on Appeal by Vidoje Blagojević to Replace his Defence Team](#), 7 November 2003, paras 6-7.

³⁵ See Termination Request, para. 3; Withdrawal Request, para. 21(i).

B. TERMINATION REQUEST AND WITHDRAWAL REQUEST

25. In considering the Termination Request and the Withdrawal Request, the Panel is mindful of Mr Thaçi's right under Article 21(4)(e) of the Law to choose his own Counsel. As regards good cause, the Panel notes that: (i) both Mr Thaçi and Mr Kehoe confirmed their decision to terminate their attorney-client relationship;³⁶ (ii) Mr Kehoe confirmed that a contract between Mr Thaçi, him and the Additional Defence Team Members ended on 31 January 2023 and that neither side wished to continue their professional relationship;³⁷ and (iii) Mr Kehoe provided reasons regarding unpaid fees as underpinning the Withdrawal Request.³⁸ On this basis, the Panel is satisfied that good cause, within the meaning of Section 16(2)(b) of the Directive, has been shown for the early termination of Mr Thaçi's representation by Mr Kehoe.³⁹

26. As regards continuity of representation, the Panel observes that Mr Mišetić confirmed that, subject to the decision of the Registrar, he will replace Mr Kehoe as lead counsel once the requisite procedures under the Directive have been completed.⁴⁰ In addition, the Panel notes that no concerns were raised by Mr Thaçi,⁴¹ the Registrar,⁴² or Mr Kehoe,⁴³ regarding the continuity of representation of Mr Thaçi. To the contrary, the Panel notes that: (i) Mr Thaçi opined that the rest of his legal team will continue to represent him and was committed to providing him with the best possible representation;⁴⁴ (ii) Mr Kehoe suggested that given the size and competency of Mr Thaçi's remaining team a

³⁶ Transcript of Confidential and *Ex Parte* Hearing, 31 January 2024, p. 12354, lines 12-24. *See also* Motion, paras 10, 21; Thaçi Letter; Kehoe Letter.

³⁷ Additional Information, para. 4; Kehoe Letter.

³⁸ Kehoe Letter. *See also* Additional Information, para. 4.

³⁹ Additional Information, para. 6.

⁴⁰ Notification of Agreement.

⁴¹ *See* Thaçi Letter. *See also* Termination Request, para. 2.

⁴² Termination Request, para. 2.

⁴³ *See* Kehoe Letter.

⁴⁴ Thaçi Letter.

period of transitional work by outgoing counsel would not be necessary;⁴⁵ and (iii) the Registrar submitted that, should the withdrawal of Mr Kehoe and the Additional Defence Team Members proceed, the Defence team of Mr Thaçi would still comprise 26 persons, including six co-counsel and five consultants, with several years of experience in this case.⁴⁶ The Panel is therefore satisfied that the continuity of Mr Thaçi's representation will be ensured.

27. In light of the above, the Panel considers that the request for early termination of Mr Kehoe's representation of Mr Thaçi as Counsel accords with Mr Thaçi's rights and adequately ensures his effective representation. The Panel is satisfied that the replacement will cause no unfairness to Mr Thaçi or any of his co-Accused. The Panel is further satisfied that the change of lead counsel will cause no delay in the proceedings. For these reasons, the Panel approves the Termination Request and the Withdrawal Request insofar as it relates to Mr Kehoe's withdrawal.

28. The Panel notes that the Withdrawal Request also seeks an order from the Panel allowing for the withdrawal of one co-counsel, Mr Reeder, three legal associates and five support team members of the Thaçi Defence.⁴⁷ Section 18(5) of the Directive provides that where representation was terminated early or suspended pursuant to Section 16 of this Directive, replacement counsel shall, for reasons of continuity and in consultation with the person represented, generally seek to continue the representation with the team members of previous counsel. This provision adds that co-counsel may be appointed or assigned as replacement counsel unless he or she does not satisfy the relevant requirements under Section 5, or if the person represented objects to such replacement or there are other serious reasons against such a replacement. Section 18(6) goes on to say that where counsel considers termination of the contract with co-counsel, he or she

⁴⁵ Kehoe Letter.

⁴⁶ Additional Submissions, para. 5. *See also* Additional Information, para. 6.

⁴⁷ Withdrawal Request, paras 1, 21(i).

shall inform the Registrar accordingly and should demonstrate that the termination may be accomplished without material adverse effect on the interests of the client(s) and the duration of the proceedings. The Registrar shall inform the relevant Panel accordingly. The Panel is satisfied that the requested withdrawal of a co-counsel could in this case raise an issue of fairness so that the Panel is competent to address that aspect of the Withdrawal Request. The Panel further finds that the reasons that led the Panel to conclude that good cause exists for the withdrawal of Mr Kehoe apply equally to the request pertaining to co-counsel. For that reason, the Panel authorises the withdrawal of Mr Reeder as co-counsel for Mr Thaçi. The Panel does not consider that the withdrawal of other team members (three legal associates and five support team members) is an issue that goes in this case to the fairness of proceedings as would justify its exercising its competence over this part of the Withdrawal Request. The Panel therefore directs the Registrar to deal with this aspect of the Withdrawal Request.

C. APPOINTMENT REQUEST

29. Turning to the Appointment Request, the Panel observes that since the filing of the Motion by Mr Kehoe, Mr Mišetić: (i) confirmed that he and Mr Thaçi have reached an agreement to the effect that Mr Mišetić would succeed Mr Kehoe as lead counsel;⁴⁸ and (ii) indicated that he had requested that the Registry take all steps to facilitate his appointment as Counsel.⁴⁹

30. In light of these developments and pursuant to Section 13 of the Directive, the Panel invites the Registrar to take all the necessary steps to appoint Mr Mišetić as lead counsel for Mr Thaçi as soon as practicable.

31. For these reasons, the Panel finds the Appointment Request to be moot and dismisses it.

⁴⁸ Notification of Agreement, para. 1.

⁴⁹ Notification of Agreement, para. 1.

D. PAYMENT REQUEST

32. Turning to the Payment Request, the Panel recalls that pursuant to Section 16(4) of the Directive, the Registrar may, in the interests of justice, instruct appointed or assigned Counsel whose representation is to be terminated to continue to act or to assist replacement Counsel for a period not exceeding forty-five days from the date upon which replacement Counsel is assigned or appointed. During this period, the costs necessarily and reasonably incurred by the outgoing Counsel shall be borne by the SC.

33. The Panel notes that the Registrar *may* elect to instruct Mr Kehoe to continue to act or to assist replacement counsel. The Panel further observes that replacement counsel has not yet been assigned or appointed at this stage and the Registrar has not issued such instruction to Mr Kehoe. The Panel therefore considers the Payment Request to be premature at this juncture.

34. For these reasons, the Panel dismisses the Payment Request.

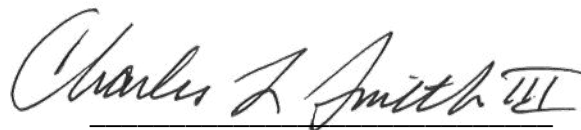
V. CLASSIFICATION

35. The Panel notes that the Termination Request (F02068), the Additional Submissions (F02079), the Additional Information (F02088), Registrar Notification (F02093), the SPO Response (F02094), and the Notification of Agreement (F02116) were filed confidentially as they pertain to pending issues of Mr Thaçi's legal representation. Within a week of the official appointment of Mr Thaçi's new lead counsel, the Panel respectively directs the Registrar, the SPO and Specialist Counsel to file a public redacted version of these filings or to seek their reclassification as public pursuant to Rule 82.

VI. DISPOSITION

36. In light of the foregoing, the Panel hereby:

- (a) **APPROVES** the Termination Request and the Withdrawal Request in respect of the withdrawal of Mr Kehoe and Mr Reeder, which will become effective in relation to Mr Kehoe on the day when a new lead counsel is appointed by the Registrar to represent Mr Thaçi;
- (b) **INVITES** the Registrar to take all the necessary steps to appoint new lead counsel for Mr Thaçi as soon as practicable;
- (c) **DISMISSES** the Appointment Request and the Payment Request;
- (d) **DIRECTS** the Registrar to decide upon the requested withdrawal of the three legal associates and five support team members; and
- (e) **DIRECTS** the Registrar, the SPO and Specialist Counsel, within a week of the official appointment of new lead counsel for Mr Thaçi, to file public redacted versions or seek reclassification as public of their respective filings, namely: the Termination Request (F02068), the Additional Submissions (F02079), the Additional Information (F02088), the Registrar Notification (F02093), the SPO Response (F02094) and the Notification of Agreement (F02116).



Judge Charles L. Smith, III
Presiding Judge

Dated this Wednesday, 14 February 2024

At The Hague, the Netherlands.