

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

**Before:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Specialist Counsel for Hashim Thaçi

**Date:** 2 September 2021

**Language:** English

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**Thaçi Defence Request for an Extension of Time for Request for Certification to Appeal “Decision on Motions Challenging the Legality of the SC and SPO and Alleging Violations of Certain Constitutional Rights of the Accused”**

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## I. INTRODUCTION

1. On 1 September 2021, the defence for Mr Hashim Thaçi (“Defence”) was notified of the Pre-Trial Judge’s ‘Decision on Motions Challenging the Legality of the SC and SPO and Alleging Violations of Certain Constitutional Rights of the Accused’.<sup>1</sup> The Pre-Trial Judge determined that the challenges raised in the Impugned Decision did not constitute jurisdictional challenges,<sup>2</sup> and as such an appeal does not lie as of right.

2. In accordance with Rule 77(1) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), when a Party seeks to appeal a decision for which an appeal does not lie as of right, that Party shall request certification from the Panel that rendered the impugned decision within seven (7) days thereof. Rule 9(5)(a) of the Rules allows for the variation of any time limit prescribed by the Rules, upon a showing of good cause or *proprio motu*.

3. The Defence submits that good cause exists in the present case for a limited variation of the time limit **until Friday, 17 September 2021**, for the reasons set out below.

## II. SUBMISSIONS

4. There can be no doubt that the issues raised by the Defence and adjudicated in the Impugned Decision are complex and novel. The Impugned Decision spans numerous weighty topics, many of which are being addressed for the first time before this court, including questions of interplay between the KSC Law,<sup>3</sup> the Constitution of

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<sup>1</sup> KSC-BC-2020-06/F00450, Decision on Motions Challenging the Legality of the SC and SPO and Alleging Violations of Certain Constitutional Rights of the Accused, 31 August 2021 (“Impugned Decision”).

<sup>2</sup> Impugned Decision, paras. 54-55.

<sup>3</sup> Law No.05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office.

Kosovo,<sup>4</sup> and relevant Constitutional Court rulings.<sup>5</sup> Even taking into account the judicial recess, the period of time taken by the Pre-Trial Judge to render the Impugned Decision was significant,<sup>6</sup> reflecting the complexity of the legal questions at issue.

5. Rule 77(1)'s timeframe of seven (7) days within which to seek certification of decisions applies equally to decisions on simple procedural questions, and lengthy and complex rulings such as the Impugned Decision. It is submitted that Rule 9(5)(a) of the Rules provides scope for variations in cases like the present, where the issues involved warrant deeper review before certification can meaningfully be sought.

6. The requested variation would allow the parties to seek effective instructions and consult internally about whether certain challenges should indeed be pursued on appeal. This process of analysing the Impugned Decision to determine whether legitimate and credible avenues of appeal exist, and framing errors in a manner that seek to meet the criteria for certification, is often just as complex drafting the appeal itself. The variation sought would accordingly assist the Defence to prepare a meaningful request for certification to appeal, which may ultimately contribute to a more streamlined appeal process.

7. Thirdly, the variation being requested is a reasonable and limited one. Given the good cause for the limited variation being sought, the Defence submits that the additional time will negate any prejudice which could arise from the delayed adjudication of these central questions.

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<sup>4</sup> Constitution of the Republic of Kosovo.

<sup>5</sup> Kosovo Constitutional Court, *Assessment of an Amendment to the Constitution of the Republic of Kosovo Proposed by the Government of the Republic of Kosovo and Referred by the President of the Assembly of the Republic of Kosovo on 9 March 2015 by Letter No. 05-433/DO-318*, KO 26/15, 15 April 2015.

<sup>6</sup> The Defence's Reply was filed on 14 May 2021, meaning that the Impugned Decision was rendered three months and 18 days after the close of the written pleadings: see, e.g., KSC-BC-2020-06/F00305, Thaçi Defence Reply to "Prosecution response to preliminary motions concerning the status of the Kosovo Specialist Chambers and allegations of rights violations", 14 May 2021.

### III. RELIEF SOUGHT

8. Accordingly, the Defence respectfully requests the Pre-Trial Judge to:

**FIND** that good cause exists pursuant to Rule 9(5)(a) of the Rules for a variation of the time limit; and

**ORDER** that any request for certification to appeal the Impugned Decision be filed by **Friday, 17 September 2021**.

**Word count: 678 words**

Respectfully submitted,



**Gregory W. Kehoe**

**Counsel for Hashim Thaçi**

Tuesday, 2 September 2021

At Tampa, United States