

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

Before: Court of Appeals Panel
Judge Michèle Picard
Judge Emilio Gatti
Judge Kai Ambos

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hashim Thaçi

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Thaçi Defence Request for Extension of the Time Limit for Appeal against the ‘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 (“the 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’.¹ The Pre-Trial Judge determined that the challenges raised in the Impugned Decision did not constitute jurisdictional challenges,² and as such an appeal did not lie as of right.

2. On 17 September 2021, the Defence requested certification to appeal the Impugned Decision on the basis of eight issues.³ On 26 October 2021, the Defence were notified of the Pre-Trial Judge’s decision granting leave to appeal the Impugned Decision on four issues.⁴

3. On 26 October 2021, the President assigned a Court of Appeals Panel to determine the appeal of the Impugned Decision.⁵

4. The Defence hereby respectfully requests an extension of the time limit to submit its appeal against the Impugned Decision until **Monday, 15 November 2021**, for the reasons set out below.

¹ 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”).

² Impugned Decision, paras. 54-55.

³ KSC-BC-2020-06/F00473, Thaçi Defence Request for Certification to Appeal the “Decision on Motions Challenging the Legality of the SC and SPO and Alleging Violations of Certain Constitutional Rights of the Accused”, 17 September 2021, para. 10.

⁴ KSC-BC-2020-06/F00546, Decision on Applications for Leave to Appeal “Decision on Motions Challenging the Legality of the SC and SPO and Alleging Violations of Certain Constitutional Rights of the Accused”, 25 October 2021 (“Certification Decision”), paras. 67-68.

⁵ KSC-BC-2020-06/IA013/F00001, Decision Assigning a Court of Appeals Panel, 26 October 2021, para. 4.

II. SUBMISSIONS

5. In accordance with Rule 170(2) of the Rules,⁶ “[w]here certification has been granted pursuant to Rule 77(3), the Appellant may file an appeal within ten (10) days of the certification.” Therefore, the deadline for the appeal of the Impugned Decision is Friday, 5 November 2021.

6. 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*.

7. Good cause exists for the present request for variation of the time limit. The issues for which certification has been granted are of objective significance and complexity. They concern issues of structural fairness of the KSC as an institution, whether reliance on the foundational documents of the Court respects the presumption of innocence, the interplay between the Kosovo Constitution and the Court’s temporal mandate, and the proper interpretation of the jurisprudence of the European Court of Human Rights as it relates to numerous structural aspects of the institution.

8. These issues are multi-layered and complex. Additional time would assist the Defence in providing focused, comprehensive and detailed submissions on these critical issues. Rule 9(5)(a) of the Rules provides the scope for variations of the time frame in cases like the present, where the issues warrant deeper review to allow the parties to properly deal with issues of such significance. Significantly, two of the issues certified for appeal have been re-formulated by the Pre-Trial Judge, meaning that the Defence’s anticipated appellate arguments will require additional research and argumentation.

⁶ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 (“Rules”).

9. Moreover, the variation sought by the Defence is limited and reasonable. The parties have previously been granted extensions of time by the Pre-Trial Judge in relation to filings on this topic.⁷ Similar extensions have been granted for other appeals of preliminary motions which are of comparable significance and complexity. Notably, the Defence is seeking a shorter extension of time than that granted by the Court of Appeals Panel in relation to both the appeal against the preliminary motions on jurisdiction⁸ and the appeal against the preliminary motions on defects in the form of the indictment.⁹ While these decisions do not bind the Court of Appeals Panel, the Defence submit that the same reasons which justified the variations in relation to the preliminary motions on jurisdiction also support the present request.

10. Finally, given the good cause for the limited variation being sought, the Defence submits that additional time will negate any prejudice which could arise from the delayed adjudication of these central questions.

III. REQUESTED RELIEF

11. Accordingly, the Defence respectfully requests the Court of Appeals Panel to:
- a. **ORDER** that the appeal against the Impugned Decision be filed by **Monday, 15 November 2021**.

⁷ See, e.g., KSC-BC-2020-06/F00190/CONF/RED, Confidential Redacted Version of Decision on Specialist Prosecutor's Second Request for Protective Measures and Renewed Request for Protective Measures and Procedural Matters, 5 February 2021 ("Procedural Matters Decision"), paras. 141-142, 144(l), 144(n); KSC-BC-2020-06, Transcript of Fourth Status Conference – Oral Order 5, 24 March 2021, p. 391, lns. 11-19.

⁸ KSC-BC-2020-06/IA009/F00005, Decision on Requests for Variation of Time Limits, 28 July 2021, para. 8.

⁹ KSC-BC-2020-06/IA012/F00004, Decision on Thaçi's and Krasniqi's Requests for Variation of Time and Word Limits, 27 October 2021, para. 12.

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Respectfully submitted,



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Thursday, 28 October 2021

At The Hague, The Netherlands