



**In:** KSC-BC-2020-06  
**The 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 Mettreaux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

**Filed by:** Registrar

**Date:** 26 January 2024

**Language:** English

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**Additional Registrar's Submissions Concerning the Termination of  
Representation by Counsel and Other Defence Team Members**

**with three confidential and *ex parte* Annexes**

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Kimberly P. West

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Simon Laws

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Registrar

**Counsel for Hashim Thaçi**

Gregory Kehoe

**Counsel for Kadri Veseli**

Ben Emmerson

**Counsel for Rexhep Selimi**

Geoffrey Roberts

**Counsel for Jakup Krasniqi**

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## I. BACKGROUND

1. On 19 January 2024, the Registrar notified the Trial Panel of a letter which Mr Hashim Thaçi ('Mr Thaçi') addressed to Trial Panel II and which concerned the withdrawal of Mr Gregory Kehoe ('Mr Kehoe') as his Counsel.<sup>1</sup>

2. Subsequently, on 19 January 2024, Mr Kehoe filed before the Trial Panel a motion to withdraw as Counsel for Mr Thaçi (together with one Co-Counsel, three Legal Associates and five Support Team Members ('Nine Defence Team Members')), citing Article 23(2)(2) of the Code of Professional Conduct for Counsel<sup>2</sup> and asserting that Mr Thaçi: (i) has failed to fulfil an obligation to himself and the Nine Defence Team Members; (ii) has been given reasonable warning that the above-mentioned persons would seek termination unless the obligation was fulfilled.<sup>3</sup> Mr Kehoe also requests the Trial Panel to: (i) direct the Registrar to "appoint" counsel for Mr Thaçi pursuant to Section 12(1)(b) of the Directive on Counsel; and (ii) direct the Specialist Chambers to pay for the costs necessarily and reasonable incurred by himself and the Nine Defence Team Members during a transition period not exceeding 45 days from the date on which replacement counsel is assigned or appointed, pursuant to Section 16(4) of the Directive on Counsel.<sup>4</sup>

## II. SUBMISSIONS

3. Turning first to Mr Kehoe's request for the Trial Panel to allow the withdrawal of himself and the Nine Defence Team Members, the Registrar notes that, pursuant to Section 16(2)(b) of the Directive on Counsel, a request for early termination of

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<sup>1</sup> KSC-BC-2020-06, F02068, Notification from Hashim Thaçi to the Trial Panel and Request for Approval of Termination of Representation by Counsel with one confidential Annex, 19 January 2024, confidential ('Notification'), paras 1-2.

<sup>2</sup> Registry Practice Direction, Code of Professional Conduct – for Counsel and Prosecutors Before the Kosovo Specialist Chambers, KSC-BD-07-Rev1, 28 April 2021, public ('Code of Professional Conduct for Counsel').

<sup>3</sup> KSC-BC-2020-06, F02069, Motion to Withdraw By Lead Counsel for Hashim Thaçi, 19 January 2024, public ('Motion'), paras 10, 21.

<sup>4</sup> Registry Practice Direction, Directive on Counsel, KSC-BD-04-Rev1, 28 April 2021, public ('Directive on Counsel'); Motion, paras 17-19, 21.

representation must be supported by a showing of good cause. Although Mr Kehoe refers to Article 23(2)(a)(2) of the Code of Professional Conduct for Counsel, he provides no specific information in support of his assertion which would allow the Registrar to engage in the necessary assessment under Section 16(2)(b) of the Directive on Counsel.<sup>5</sup> The Registrar has therefore sought further information from Mr Kehoe on this point on 22 January 2024,<sup>6</sup> and followed up on this request for information on 26 January 2024. The Registrar will share this information with the Trial Panel, alongside an assessment of whether good cause exists for early termination, as soon as Mr Kehoe responds.

4. The Registrar notes that Section 16(1) of the Directive on Counsel also requires that, “[w]hen considering early termination or suspension of representation pursuant to this Section, the Registrar shall have due regard to the *importance of continuity of representation* and must obtain the approval of any Panel seized of the matter in which Counsel is acting” (emphasis added).

5. In this regard, the Registrar notes that Mr Thaçi’s Defence team currently consists of 36 persons, including one Counsel, seven Co-Counsel, five Consultants, ten Legal Associates and seven Support Team Members. Thus, should the withdrawal of Counsel and the Nine Defence Team Members proceed as Mr Kehoe describes, Mr Thaçi’s Defence team would still consist, at the date of this filing, of 26 persons, including six Co-Counsel and five Consultants, who all have several years of experience in the case at hand. In addition, the majority of them have over or well-over a decade of experience in (international) criminal litigation, and the six Co-Counsel and one of the Consultants are duly admitted to the List of Counsel and may be assigned or appointed as Counsel for Mr Thaçi.

6. Turning to Mr Kehoe’s request for a direction to the Registrar to “appoint” counsel to Mr Thaçi under Section 12(1)(b) of the Directive on Counsel,<sup>7</sup> the Registrar

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<sup>5</sup> See Motion, paras 9-10.

<sup>6</sup> Annex 1, confidential and *ex parte*.

<sup>7</sup> Motion, para. 21(ii).

notes that it is unclear what Mr Kehoe is requesting. In his request for relief, Mr Kehoe points to Section 12(1)(b) of the Directive on Counsel, which concerns the *assignment* of counsel in cases where the accused is partially or fully indigent, but Mr Kehoe uses the word “appoint”, which appears rather in Section 12(1)(a) of the Directive on Counsel and applies where the Accused has sufficient means to retain counsel.<sup>8</sup> Mr Kehoe also argues in the body of his motion that “[t]he Registrar should *assign* Specialist Counsel to Mr. Thaçi without payment by Mr. Thaçi in any such case *if* he does not have sufficient means to pay for it”, and mentions “the date upon which replacement Counsel is *assigned or appointed*” later in the motion.<sup>9</sup>

7. Moreover, the Registrar notes that she has not received any request from Mr Thaçi for the appointment or assignment of counsel, nor has Mr Thaçi submitted the information relevant to assessing whether he fully or partially lacks the means to retain counsel under the Legal Aid Regulations, which is a prerequisite for the assignment of counsel to him.<sup>10</sup> The Registrar has only received a verbal indication from Mr Thaçi that his Co-Counsel, Mr Luka Mišetić (‘Mr Mišetić’), would succeed Mr Kehoe as Counsel.<sup>11</sup> However, Mr Mišetić subsequently clarified via e-mail on 19 January 2024 that no agreement had been reached between himself and Mr Thaçi in that regard.<sup>12</sup> Mr Mišetić also thereafter informed the Defence Office on 24 January 2024 that discussions regarding replacement counsel were still ongoing.

8. Consequently, the Registrar hereby informs the Trial Panel, pursuant to Section 14(4)(a) of the Directive on Counsel, that Mr Thaçi has not made a request for the appointment or assignment of replacement counsel. In light of this, the Defence Office has written to Mr Thaçi to: (i) enquire as to whether he is seeking the appointment or the assignment of counsel to succeed Mr Kehoe; and (ii) remind him of the procedures applicable in each alternative, including the documents he must

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<sup>8</sup> See also Directive on Counsel, ss 13-14.

<sup>9</sup> Motion, paras 14 (emphasis added), 18 (emphasis added).

<sup>10</sup> See Directive on Counsel, s. 14(1).

<sup>11</sup> See Notification, para. 2.

<sup>12</sup> KSC-BC-2020-06, CRSPD413, E-mail from Luka Mišetić to CMU Regarding F02068, 19 January 2024.

submit to request replacement counsel and, if requesting the assignment of counsel, the documents he must submit and the information he must provide in order for an assessment of indigence to be carried out under the Legal Aid Regulations.<sup>13</sup> The Registrar will keep the Trial Panel apprised of any progress in this regard.

9. Turning finally to Mr Kehoe's request regarding the payment of costs for a transitional period,<sup>14</sup> the Registrar notes that Mr Kehoe asserts that he, as Counsel, and the Nine Defence Team Members "will continue to act or assist replacement Counsel for a period not exceeding forty-five (45) days from the date upon which replacement Counsel is assigned or appointed".<sup>15</sup> However, Section 16(4) of the Directive on Counsel states that the Registrar "may", "[i]n the interests of justice", instruct the terminated "Counsel" to undertake this period of transitional work.

10. In this regard, the Registrar notes that: (i) the Registrar's determination of whether it is in the interests of justice to instruct Counsel to undertake such transitional work, and if so for how long, is restricted to terminated Counsel; (ii) the Registrar has to date not been in a position to make such a determination, given that the issue of the withdrawal of Mr Kehoe and the Nine Defence Team Members from Mr Thaçi's Defence team has yet to be settled, and no request for the appointment or assignment of replacement counsel has been submitted, as detailed above; and (iii) while the Registrar understands that the Government of Kosovo, through the Ministry of Justice, has been covering the expenses for Mr Thaçi's Defence team, it has sought confirmation from the Ministry of Justice that, if an instruction is given by the Registrar that transitional work is to be undertaken by the terminated Counsel, this would continue to be covered by the Government of Kosovo.<sup>16</sup> The Registrar therefore submits that it is premature to consider Mr Kehoe's request for a direction regarding payment for such transitional work.

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<sup>13</sup> Annex 2, confidential and *ex parte*.

<sup>14</sup> Motion, para. 21(iii).

<sup>15</sup> Motion, para. 18.

<sup>16</sup> Annex 3, confidential and *ex parte*.

11. Pursuant to Rule 82(3)-(4) of the Rules, the Registrar submits that this filing is classified as confidential as it relates to filings bearing the same classification. Moreover, Annex 1 is filed confidentially and *ex parte*, as it contains communications between the Registrar, Mr Kehoe and Mr Thaçi concerning the professional relationship between the latter two persons. In addition, Annex 2 is filed confidentially and *ex parte* as it contains communications between the Head of the Defence Office and Mr Thaçi regarding his representation. Finally, Annex 3 is filed confidentially and *ex parte*, as it contains communications between the Head of the Defence Office and Kosovo's Ministry of Justice.

**Word count: 1516**

A handwritten signature in cursive script, reading "Fidelma Donlon", is written over a horizontal line.

**Dr Fidelma Donlon**

**Registrar**

Friday, 26 January 2024

At The Hague, the Netherlands