



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**File number:** KSC-BC-2018-01

**Before:** The President of the Specialist Chambers  
Judge Ekaterina Trendafilova

**Registrar:** Fidelma Donlon

**Date:** 8 April 2024

**Language:** English

**Classification:** Public

---

## Decision on Defence Requests for Substitution or Recusal of a Judge

---

**Single Judge:**

Judge Nicolas Guillou

**Counsel for Hashim Thaçi:**

Luka Misetic

**Specialist Prosecutor's Office:**

Kimberly P. West

**Counsel for Kadri Veseli:**

Ben Emmerson

**Counsel for Rexhep Selimi:**

Geoffrey Roberts

**THE PRESIDENT** of the Specialist Chambers (“President”), noting Articles 26(4), 31(2), (3) and 33(2) of the Law on Specialist Chambers and Specialist Prosecutor’s Office (“Law”), Rule 20(3) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules” and “KSC”, respectively), Rule 5 of the Rules on the Assignment of Specialist Chambers Judges from the Roster of International Judges (“Rules on Assignment”), and Article 10 of the Code of Judicial Ethics for Judges Appointed to the Roster of International Judges of the Kosovo Specialist Chambers (“Code of Judicial Ethics”), herewith renders a decision on the “Thaçi Defence Request[s] for Substitution or Recusal of a Judge” (“Request” and “Alternative Request”, respectively; collectively “Requests”).<sup>1</sup>

## I. PROCEDURAL BACKGROUND

1. On 29 May 2018, Judge Nicolas Guillou was assigned as a Single Judge to “consider any request for judicial authorisation and related matters submitted by the Specialist Prosecutor prior to the filing of an indictment and the ensuing assignment of a Pre-Trial Judge under Article 33(1)(a) of the Law”.<sup>2</sup>
2. On 5 December 2023, Judge Nicolas Guillou was elected Judge of the International Criminal Court (“ICC”) and on 8 March 2024, he was sworn in at the ICC.
3. On 14 March 2024, Mr Hashim Thaçi filed the Requests.
4. The Specialist Prosecutor’s Office did not respond.
5. On 5 April 2024, in a confidential memorandum, Judge Nicolas Guillou provided to the President a reasoned notification that he will not recuse himself.

## II. SUBMISSIONS

6. Mr Thaçi requests that Judge Guillou be substituted as a Single Judge in the present proceedings or in the alternative, a panel of three judges be assigned to determine his application in accordance with Rule 20(3) of the Rules.<sup>3</sup> With respect to the Request concerning Judge Guillou's substitution, Mr Thaçi submits that Article 31(3) of the Law precludes a Judge from engaging in any other occupation of a professional nature, once assigned to exercise duties for the KSC, which is meant to preserve a Judge's judicial independence.<sup>4</sup> According to Mr Thaçi, Judge Guillou has been "subject to two sets of competing Presidencies, timetables, obligations, and mandates".<sup>5</sup> Mr Thaçi asserts that Judge Guillou therefore answers to two courts, which in turn affects his independence and the principle that judges shall not take instruction "from any source other than those which properly govern his judicial activities within the Court itself".<sup>6</sup> Mr Thaçi further argues that as of mid-August 2024, Judge Guillou will be seised with a number of cases at the ICC, which he will have to prepare for in advance and which will render him unavailable for the proceedings at the KSC.<sup>7</sup>

7. Regarding the Alternative Request, Mr Thaçi requests that Judge Guillou be recused "on the basis that his obligation of independence pursuant to Article 31 of the KSC Law, which requires him to be independent in the performance of his functions, and not engage in any other occupation of a professional nature, can no longer be met".<sup>8</sup> Mr Thaçi contends that Rule 20(1) of the Rules precludes Judge Guillou from

---

<sup>1</sup> F00615, Thaçi Defence Request[s] for Substitution or Recusal of a Judge, 14 March 2024.

<sup>2</sup> KSCPR-2018/F00004, Decision Assigning a Single Judge, 29 May 2018 (strictly confidential and *ex parte*), p. 5. The decision was reclassified as public on 28 September 2020.

<sup>3</sup> Requests, paras 6, 32, 33, 35 and 37.

<sup>4</sup> Requests, para. 21. See also Requests, paras 22, 24-27.

<sup>5</sup> Requests, para. 22.

<sup>6</sup> Requests, para. 22. See also Requests, para. 23.

<sup>7</sup> Requests, para. 28. See also Requests, paras 29-31.

<sup>8</sup> Requests, para. 33. See also Requests, para. 34.

sitting in any case which may affect his judicial independence or the integrity of the proceedings and therefore requests that a panel of three Judges be assigned in accordance with Rule 20(3) of the Rules.<sup>9</sup>

### III. DISCUSSION

#### *a) Request for Substitution*

8. Mr Thaci's Requests are fundamentally premised on the contention that Judge Guillou's independence may be impaired following his appointment as a Judge of the ICC in March 2024.

9. As to Mr Thaci's Request for Judge Guillou's substitution, the President recalls Articles 26(4), and 31(2) and(3) of the Law and Article 10 of the Code of Judicial Ethics in conjunction with Rule 5 of the Rules on Assignment. The essence of Articles 26(4) and 31(2) and (3) of the Law is premised on the assumption of a Judge's engagement or undertaking an activity or occupation that will likely interfere with his or her judicial functions and consequently preventing the President from carrying out her duty to assign the respective Judge. Rule 5 of the Rules on Assignment supports this reading, and provides that in "the event that a Judge [...] becomes unable to perform his or her duties at a later stage", i.e. following the time of the initial assignment, the "President shall substitute that Judge". Thus, the President's competence to substitute a Judge cannot be triggered unless that Judge becomes unable to perform his or her duties as a result of an actual engagement in another activity or occupation.

10. This is not the case with respect to Judge Guillou's situation. Judge Guillou will only exercise his judicial functions at the ICC as of 19 August 2024.<sup>10</sup> It follows that until that time Judge Guillou remains available to perform his duties at the KSC.

---

<sup>9</sup> Requests, paras 35, 37.

<sup>10</sup> See ICC, ICC-01/14-185, Decision Assigning Judges to Divisions and Recomposing Chambers, 12 March 2024; see also, Requests, para. 26.

Accordingly, the President rejects the Request concerning Judge Guillou's substitution.

*b) Alternative Request for disqualification of Judge Guillou*

11. The President notes that Mr Thaçi requests in the alternative the assignment of a Panel of three Judges in accordance with Rule 20(3) of the Rules to adjudicate a request for Judge Guillou's recusal.<sup>11</sup> The President recalls in this regard that requests for recusal can only be undertaken by the Judges themselves.<sup>12</sup> Accordingly, the President understands the Alternative Request to be that for Judge Guillou's disqualification and will therefore proceed in accordance with Rule 20(3) of the Rules.

12. The President recalls that an unacceptable appearance of bias exists where the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.<sup>13</sup> There is a strong presumption of impartiality attached to a Judge, which cannot be easily rebutted.<sup>14</sup> It is for the party alleging bias to adduce reliable and sufficient evidence to rebut that presumption, for no Judge may be disqualified on the basis of sweeping or abstract allegations that are neither substantiated nor detailed.<sup>15</sup>

13. This high threshold is required because "just as any real appearance of bias on the part of a judge undermines confidence in the administration of justice, it would be as much of a potential threat to the interests of the impartial and fair administration of justice if judges were to disqualify themselves on the basis of unfounded and unsupported allegations of apparent bias".<sup>16</sup> Indeed, to find otherwise will impinge

---

<sup>11</sup> See Requests, para. 37.

<sup>12</sup> Cf. KSC-BC-2020-07, Decision on the Application for Recusal or Disqualification, 6 August 2021 ("Disqualification Decision"), para. 30.

<sup>13</sup> Disqualification Decision, para. 31.

<sup>14</sup> Disqualification Decision, para. 31.

<sup>15</sup> Disqualification Decision, para. 31.

<sup>16</sup> Disqualification Decision, paras 32- 33.

on the ability of Judges to carry out their duties in accordance with the mandate of the respective judicial body, including the KSC, and as such would have a chilling effect on the administration of justice.

14. As mentioned above, Judge Guillou has been appointed as a Judge of the ICC and will only be called to the seat of the court on a full-time service as of 19 August 2024.<sup>17</sup> In other words, any arguments by Mr Thaçi in relation to Judge Guillou's availability and the potential impact his appointment as an ICC Judge has on the efficiency of proceedings before the KSC are premature. Thus, Mr Thaçi's suggestions as to the professional activities Judge Guillou may or may not have to undertake as a Judge of the ICC prior to taking up office in August 2024 and his ability to exercise his functions as a Single Judge before the KSC are speculative in nature. Mr Thaçi has advanced no arguments that Judge Guillou's work as a Single Judge has been impacted or that the proceedings to which he is assigned in this capacity have slowed down as a result of his appointment as an ICC Judge in March 2024.

15. It should also be recalled that it falls squarely within the functions of the President to consider, in consultation with the Judge, his or her availability and to decide accordingly whether to assign the Judge to exercise duties before the KSC. The President further recalls that decisions taken in this capacity are administrative in nature and are not subject to appeal by the parties.<sup>18</sup> It follows that decisions taken by the President in relation to the availability of Judges to exercise official functions cannot be challenged in this respect.

16. Turning to Mr Thaçi's arguments challenging Judge Guillou's independence, the President notes that Mr Thaçi has not advanced any arguments demonstrating how Judge Guillou's appointment as an ICC Judge impacts or will impact his

---

<sup>17</sup> See ICC, ICC-01/14-185, Decision Assigning Judges to Divisions and Recomposing Chambers, 12 March 2024.

<sup>18</sup> Cf. Disqualification Decision, paras 21-22.

independence *vis-à-vis* any proceedings related to Mr Thaçi. Indeed, beyond allegations of a general nature suggesting that Judge Guillou cannot be considered independent by virtue of his appointment as an ICC Judge and asserting that he will be taking instructions from Presidents at two different institutions, Mr Thaçi does not point to anything concrete or specific that demonstrates any (appearance) of bias on the part of Judge Guillou in relation to the proceedings involving Mr Thaçi.

17. The President further notes in this respect that Mr Thaçi does not provide any arguments as to how Judge Guillou's judicial position at the ICC - a court which has no overlapping jurisdiction with the KSC, may affect his independence.<sup>19</sup> Similarly, Mr Thaçi does not demonstrate what instructions, if any, Judge Guillou would be taking from either President – other than those related to administrative matters or assignments to cases – which would have no bearing on Judge Guillou's independence.<sup>20</sup> Instead, Mr Thaçi conflates arguments related to Judge Guillou's availability, which are for the President to consider and are administrative in nature, with Judge Guillou's judicial independence.<sup>21</sup>

18. As noted above, Judge Guillou's availability to exercise his functions as Single Judge is a matter for the President to assess and is administrative in nature. The President therefore finds Mr Thaçi's Alternative Request for the disqualification of Judge Guillou as Single Judge lacking in substance and summarily dismisses it.

#### IV. DISPOSITION

19. For the foregoing reasons, the President hereby:

- a. **REJECTS** the Request to substitute Judge Guillou; and
- b. **SUMMARILY DISMISSES** the Alternative Request for the disqualification of

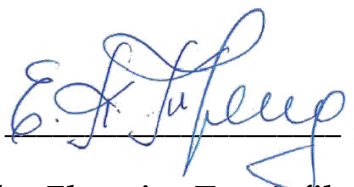
---

<sup>19</sup> See Requests, para. 22.

<sup>20</sup> See Requests, para. 22.

<sup>21</sup> See Requests, paras 23-32.

Judge Guillou as lacking in substance.

A handwritten signature in blue ink, appearing to read 'E. Trendafilova', written over a horizontal line.

**Judge Ekaterina Trendafilova,  
President of the Specialist Chambers**

Dated this Monday, 8 April 2024

At The Hague,

The Netherlands