

**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 Christoph Barthe  
Judge Guénaél Mettraux  
Judge Fergal Gaynor, Reserve Judge

**Registrar:** Dr Fidelma Donlon

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

**Date:** 16 July 2024

**Language:** English

**Classification:** Public

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**Public Redacted Version of ‘Thaçi Defence Additional Submissions on Pending Litigation Arising from the Special Investigative Measures’**

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**Specialist Prosecutor’s Office**

Kimberly P. West

**Counsel for Victims**

Simon Laws

**Counsel for Hashim Thaçi**

Luka Misetic

**Counsel for Kadri Veseli**

Ben Emmerson

**Counsel for Rexhep Selimi**

Geoffrey Roberts

**Counsel for Jakup Krasniqi**

Venkateswari Alagendra

## I. INTRODUCTION

1. The present submissions form part of an increasingly large record of litigation surrounding the special investigative measures (“SIMs”) [REDACTED]. This litigation has already consumed considerable resources of the parties and Trial Panel, despite [REDACTED].

2. At the present time, the Case 06 record remains sealed off from the materials collected through the operation of the SIMs. The first indication that the SPO intended to engineer a overlap between these proceedings [REDACTED] was a Request on 1 May 2024,<sup>1</sup> in which it sought to add over 2,000 pages of materials to the SPO Exhibit List.<sup>2</sup> The Defence for Mr Hashim Thaçi (“Defence”) has set out why the SPO had not shown timely notice or good cause for the addition of these items to the Exhibit List,<sup>3</sup> as required by Rule 118(2) of the KSC Rules.<sup>4</sup> For the Defence, this remains the position, and the issue should end here.

3. Prior to the SPO Request, the Defence teams had already sought certification of [REDACTED] issues arising from irregularities and errors in the decisions authorising and governing the operation of the SIMs. [REDACTED] certified [REDACTED] discrete and narrow aspects of these issues.<sup>5</sup> [REDACTED], the Trial Panel informed the parties and participants that it would issue a ruling on the SPO Request, after the Court of Appeals Panel had issued its ruling.<sup>6</sup>

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<sup>1</sup> KSC-BC-2020-06/F02279, SPO, *Prosecution request to amend the Exhibit List with confidential Annex 1*, 1 May 2024, confidential (“SPO Request”).

<sup>2</sup> See items listed in Annex 1 to the SPO Request.

<sup>3</sup> KSC-BC-2020-06/F02314, Specialist Counsel, *Thaçi Defence Response to ‘Prosecution request to amend the Exhibit List’ (F02279)*, 15 May 2024, confidential.

<sup>4</sup> KSC-BD-03/Rev3/2020, Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, 2 June 2020 (“KSC Rules”).

<sup>5</sup> [REDACTED].

<sup>6</sup> [REDACTED].

4. [REDACTED], the Court of Appeals Panel issued its decision.<sup>7</sup> The Appeals Panel's decision was limited to adjudicating [REDACTED]. The majority of the Defence concerns as to the legality, implementation and operation of the SIMs have not been subjected to any appellate review.<sup>8</sup>

5. Now that the Appeal Decision has been rendered, the Trial Panel has indicated that it will rule on the pending SPO Request. In accordance with the Trial Panel's invitation,<sup>9</sup> the Defence provides these additional submissions in light of the subsequent developments.

## II. SUBMISSIONS

### A. REFERRAL TO THE CONSTITUTIONAL COURT

6. The [REDACTED], impact on Mr Thaçi's rights under the Constitution of the Republic of Kosovo ("Constitution"). Pursuant to Article 113(7) of the Constitution, and Article 49(3) of the KSC Law,<sup>10</sup> individuals are authorised to refer to the Specialist Chamber of the Constitutional Court "alleged violations [...] of their individual rights and freedoms guaranteed by the Constitution".

7. Having received and reviewed the Appeal Decision, the Defence notifies the Trial Panel of its intention to refer violations of Mr Thaçi's fundamental rights, as reflected in the Defence Motion for exclusion of materials *in limine*,<sup>11</sup> to the Specialist Chamber of the Constitutional Court.

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<sup>7</sup> [REDACTED] ("Appeal Decision").

<sup>8</sup> [REDACTED].

<sup>9</sup> KSC-BC-2020-06, Transcript of Hearing, 10 July 2024, Oral Order, pp. 17914-17915. See also the clarifications at pp. 18047-18049.

<sup>10</sup> Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("KSC Law").

<sup>11</sup> KSC-BC-2020-06/F02312/CONF, Specialist Counsel, *Thaçi Defence Motion for exclusion of materials in limine*, 17 May 2024, confidential and *ex parte* ("Defence Exclusion Motion").

8. Rule 20 of the Rules of Procedure for the Specialist Chamber of the Constitutional Court provides that:

Any individual, including the accused and the victims, alleging a violation by the Specialist Chambers or by the Specialist Prosecutor's Office of their individual rights and freedoms as guaranteed under the Constitution may lodge a referral before the Specialist Chamber of the Constitutional Court if: (a) all effective remedies provided by law against the alleged violation have been exhausted; and (b) the referral is filed within two (2) months from the date of the notification of the final ruling concerning the alleged violation.

9. The Appeal Decision was notified to the parties on 4 July 2024. As such, the Defence has until 4 September 2024 to file a referral before a Specialist Chamber of the Constitutional Court, and will do so within this timeframe.

B. NEXT STEPS IN CASE 06

10. In addition to the SPO Request, the Trial Panel has also been seized with the Defence Exclusion Motion, which seeks the exclusion of all material arising from the SIMs and associated interference investigations from the Case 06 proceedings, filed on 17 May 2024. Both these motions remain pending, in accordance with the Panel's direction that it would issue a ruling only following the decision of the Appeals Panel.

11. In terms of next steps in Case 06, the Defence agrees with the oral submissions of the Defence for Mr Kadri Veseli on 10 July 2024,<sup>12</sup> to the extent that issues of admissibility and/or exclusion of materials from the SIMs will only become relevant if the Trial Panel grants the SPO Request to add the 2,000 pages of additional materials to the SPO Exhibit List. As such, the Defence agrees that an appropriate first step should be the adjudication of the SPO Request. Should the Trial Panel grant the SPO Request and authorise the introduction of the material gathered through the SIMs into Case 06, the Defence invites the Trial Panel to stay its adjudication of the Defence

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<sup>12</sup> KSC-BC-2020-06, Transcript of Hearing, 10 July 2024, pp. 18046-18047.

Exclusion Motion, until such time as the SPO seeks to tender any of these materials for admission into the record of the case.

12. This approach promotes efficiency. It would also give time for a Specialist Chamber of the Constitutional Court to adjudicate the forthcoming Defence referral. Giving time for the Constitutional Court to rule will avoid potentially conflicting decisions or the risk that materials admitted in Case 06 are subsequently designated by a higher court as having been illegally obtained. Given that the SPO has not yet sought the admission of any of these materials, this order of events is logical, and would help to streamline this parallel litigation.

### III. REQUEST FOR RECLASSIFICATION

13. [REDACTED] Consequently, the Defence requests reclassification of the confidential and *ex parte* versions of the Defence Exclusion Motion, and the reply as confidential, as there is no longer any need to retain the *ex parte* status.

[Word count: 1,350 words]

Respectfully submitted,



**Luka Misetic**

**Counsel for Hashim Thaçi**

Tuesday, 16 July 2024

At The Hague, The Netherlands