



SPECIALIST PROSECUTOR'S OFFICE
ZYRA E PROKURORIT TË SPECIALIZUAR
SPECIJALIZOVANO TUŽILAŠTVO

In: KSC-BC-2020-06
Specialist 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 Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Prosecutor's Office

Date: 15 January 2025

Language: English

Classification: Confidential and *Ex Parte*

Prosecution submissions on 'Referral Pursuant to Section 12(5) of the Directive on Counsel'

Specialist Prosecutor's Office

Kimberly P. West

Counsel for Rexhep Selimi

Geoffrey Roberts

1. The Specialist Prosecutor's Office ('SPO') hereby files these submissions on the Referral,¹ in which the Registrar seeks the Trial Panel's determination as to the existence of a conflict of interest arising out of Fadil FAZLIU's request to be represented by David Young in Case 12.² Between 12 November 2020 and 13 February 2024, Mr Young represented Rexhep SELIMI in Case 6,³ initially as Lead Counsel and from 5 May 2023, as Co-Counsel.⁴

2. For the reasons given in the Referral,⁵ Case 6 and Case 12 are substantially related and there is a potential conflict of interest. For example, during Mr Young's representation of SELIMI in Case 6, the Single Judge authorised the SPO to covertly monitor non-privileged visits of, *inter alia*, THAÇI and SELIMI, and obtain related records from the KSC⁶ Detention Centre. Evidence of these non-privileged visits has been disclosed to SELIMI and was the subject of litigation, including in relation to SELIMI's detention conditions.⁷ It is therefore possible that Mr Young obtained confidential information from SELIMI in relation to the same material that has been and/or will be disclosed to FAZLIU in Case 12.⁸

¹ Referral Pursuant to Section 12(5) of the Directive on Counsel, KSC-BC-2020-06/F02799, 18 December 2024, Confidential and *Ex Parte* ('Referral'). The SPO was notified of the Referral on 19 December 2024.

² *Specialist Prosecutor v. Thaçi et al.*, KSC-BC-2023-12 ('Case 12').

³ *Specialist Prosecutor v. Thaçi et al.*, KSC-BC-2020-06 ('Case 6').

⁴ Referral, KSC-BC-2020-06/F02799, paras 2-5.

⁵ Referral, KSC-BC-2020-06/F02799, paras 14-19.

⁶ Kosovo Specialist Chambers ('KSC').

⁷ See e.g. Further Decision on the Prosecution's Urgent Request for Modification of Detention Conditions for Hashim Thaçi, Kadri Veseli, and Rexhep Selimi, KSC-BC-2020-06/F01977, 1 December 2023.

⁸ In relation to potential conflicts arising from confidentiality obligations, see e.g. ICC, *Prosecutor v. Ruto and Sang*, ICC-01/09-01/11, Second Public Redacted Version of Reasons for the Decision on the Replacement of Duty Counsel for a Witness, 18 December 2024, paras 49-61.

3. In these circumstances, before the Registrar can appoint Mr Young as FAZLIU's Counsel, Mr Young must first 'obtain the informed consent of each potentially affected client and notify the relevant Panel(s), which shall determine whether a conflict of interest exists'.⁹ To the SPO's knowledge, no evidence of such informed consent has been provided.

4. This filing is confidential and *ex parte* pursuant to Rule 82(4) of the Rules.¹⁰ The SPO does not object to reclassification as public, if and when considered appropriate by the Panel.

Word count: 485



Kimberly P. West

Specialist Prosecutor

Wednesday, 15 January 2025

At The Hague, the Netherlands.

⁹ Code of Professional Conduct for Counsel and Prosecutors Before the Kosovo Specialist Chambers, KSC-BC-07-Rev1, 28 April 2021, Article 28(4)(b)(1). *See also Specialist Prosecutor v. Mustafa*, Decision on Prosecution Motion Regarding Conflict of Interest of Defence Counsel, KSC-SC-2024-02/F00008, 25 January 2024, para.8; Decision on Defence Counsel Request for Determination Pursuant to Article 28(4)(b)(i) of the Code of Professional Conduct for Counsel and Prosecutors (Conflict of Interest), KSC-BC-2020-06/F02112, 8 February 2024, para.27.

¹⁰ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules').