



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEÇA KOSOVA

In: KSC-BC-2023-12

**The Specialist Prosecutor v. Hashim Thaçi, Bashkim Smakaj, Isni
Kilaj, Fadil Fazliu and Hajredin Kuçi**

Before: Pre-Trial Judge

Judge Marjorie Masselot

Registrar: Fidelma Donlon

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Language: English

Classification: Public

**Decision on Thaçi Defence Request for Certification to Appeal the “Decision on
Framework for the Handling of Confidential Information”**

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THE PRE-TRIAL JUDGE,¹ pursuant to Article 45(2) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law"), and Rule 77 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby issues the following decision.

I. PROCEDURAL BACKGROUND

1. On 12 February 2025, the Pre-Trial Judge issued the "Decision on Framework for the Handling of Confidential Information and Witness Contacts" ("Impugned Decision"), whereby she set out directions on the handling of confidential information during investigations and contacts between a Party and witnesses of the opposing party, or victims.²
2. On 19 February 2025, the Defence for Mr Hashim Thaçi ("Mr Thaçi" and "Thaçi Defence") submitted a confidential and *ex parte* request for certification to appeal the Impugned Decision on one issue ("Request").³
3. On 3 March 2025, the Specialist Prosecutor's Office ("SPO") responded to the Request ("Response").⁴
4. On 5 March 2025, the Thaçi Defence indicated that it did not intend to file a reply.⁵ The other Parties did not make any submissions on the Request.

¹ KSC-BC-2023-12, F00015, President, *Decision Assigning a Pre-Trial Judge*, 6 June 2024, public.

² KSC-BC-2023-12, F00173, Pre-Trial Judge, *Decision on Framework for the Handling of Confidential Information and Witness Contacts*, 12 February 2025, confidential.

³ KSC-BC-2023-12, F00191, Thaçi Defence, *Thaçi Defence Request for Certification to Appeal the Decision on Framework for the Handling of Confidential Information*, 19 February 2025, confidential and *ex parte*. A confidential redacted version was filed on 20 February 2025, F00191/CONF/RED.

⁴ KSC-BC-2023-12, F00200, Specialist Prosecutor, *Prosecution Response to 'Thaçi Defence Request for Certification to Appeal the Decision on Decision for the Handling of Confidential Information'*, 3 March 2025, confidential. A public redacted version was filed on 6 March 2025, F00200/RED.

⁵ See KSC-BC-2023-12, CRSPD38, *Email from the Thaçi Defence via the Court Management Unit regarding a reply to F00200*, 5 March 2025, confidential.

II. SUBMISSIONS

5. The Thaçi Defence requests the Pre-Trial Judge to grant certification to appeal the Impugned Decision with respect to the following issue (“Issue”):

Whether the Accused’s prohibition from any contact “with any witness or victim, whose identity has been notified to the Defence, in the present case or any other case before the SC [Specialist Chambers]” is overly broad and violates the Accused’s rights to legal certainty and to a fair trial in Cases 06 and 12.⁶

6. The Thaçi Defence argues that: (i) the prohibition on witness contacts is overly broad, unclear and unworkable in the absence of an exhaustive list of witnesses in Case 12 or a formal notification of the individuals concerned;⁷ (ii) the application of the prohibition to witnesses dropped from the SPO witness list in Case 06 and not listed in the (Confirmed) Indictment in Case 12 imposes an undue constraint on Mr Thaçi’s ability to put on a defence case in Case 06 as he is prevented from contacting these witnesses in the course of Defence investigations;⁸ and (iii) there is no nexus between Case 12 and any other case, except Case 06, that would justify such a broad prohibition.⁹

7. The Thaçi Defence submits that the Request satisfies the requirements for certification to appeal, as: (i) the Issue arises from the Impugned Decision;¹⁰ (ii) does not amount to mere disagreement;¹¹ (iii) is neither abstract nor hypothetical;¹² (iv) significantly affects the fair and expeditious conduct of the proceedings or the

⁶ Request, paras 3, 23.

⁷ Request, paras 3, 15.

⁸ Request, paras 3, 16.

⁹ Request, paras 3, 17.

¹⁰ Request, paras 13-14.

¹¹ Request, paras 13-14.

¹² Request, para. 14.

outcome of the trial;¹³ and (v) its immediate resolution by a Court of Appeals Panel may materially advance the proceedings.¹⁴

8. The SPO responds that the Request should be rejected as: (i) the Thaçi Defence has not identified an appealable issue;¹⁵ (ii) its arguments constitute a mere disagreement with the Pre-Trial Judge's conclusions and a generalised criticism of the Impugned Decision;¹⁶ (iii) the Thaçi Defence repeats arguments which were already considered by the Pre-Trial Judge;¹⁷ (iv) the Request misrepresents and misinterprets the Impugned Decision;¹⁸ (v) the Issue – even if it amounts to an appealable issue – does not have significant repercussions on the fair and expeditious conduct of the proceedings or the outcome of the trial, as Mr Thaçi can contact witnesses *via* his Counsel and no prejudice is caused;¹⁹ and (vi) the immediate resolution of the matter by the Court of Appeals Panel will not materially advance the proceedings.²⁰

III. APPLICABLE LAW

9. Pursuant to Article 45 of the Law, a Court of Appeals Panel shall hear interlocutory appeals from an accused or from the SPO in accordance with the Law and the Rules. Interlocutory appeals, other than those that lie as of right, must be granted leave to appeal through certification by the Pre-Trial Judge or Trial Panel on the basis that they involve an issue which would significantly

¹³ Request, paras 13, 20.

¹⁴ Request, paras 13, 21.

¹⁵ Response, paras 1-2.

¹⁶ Response, paras 1-2.

¹⁷ Response, para. 3. See KSC-BC-2023-12, F00119, Thaçi Defence, *Thaçi Defence Consolidated Response to Prosecution Request for Protective Measures (F00087) and to Registrar's Related Submissions (F00112)* ("Thaçi Defence Response"), 16 January 2025, confidential, paras 7-19. A public redacted version was filed on 23 January 2025, F00119/RED.

¹⁸ Response, paras 1, 4.

¹⁹ Response, paras 5-8.

²⁰ Response, paras 1, 9.

affect the fair and expeditious conduct of the proceedings or the outcome of the trial and for which, in the opinion of the Pre-Trial Judge or Trial Panel, an immediate resolution by a Court of Appeals Panel may materially advance the proceedings.

10. Pursuant to Rule 77(2) of the Rules, the Panel shall grant certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, including, where appropriate remedies could not effectively be granted after the close of the case at trial, and for which an immediate resolution by the Court of Appeals Panel may materially advance the proceedings.

IV. DISCUSSION

A. LEGAL TEST

11. A right to appeal arises only if the Pre-Trial Judge is of the opinion that the standard for certification set forth in Article 45(2) of the Law and Rule 77(2) of the Rules has been met.²¹ The Pre-Trial Judge incorporates by reference the interpretation of these provisions as set out in detail in the established case-law of the Specialist Chambers.²²

²¹ KSC-BC-2023-12, F00149, Pre-Trial Judge, [Decision on Specialist Prosecutor's Request for Leave to Appeal the "Decision on the Confirmation of the Indictment"](#) ("Decision on Leave to Appeal"), 30 January 2025, public, para. 15; KSC-BC-2020-06, F00172, Pre-Trial Judge, [Decision on the Thaçi Defence Application for Leave to Appeal](#) ("Case 06 Decision on Leave to Appeal"), 11 January 2021, public, para. 9.

²² Decision on Leave to Appeal, paras 15-22; See Case 06 Decision on Leave to Appeal, paras 10-17. See also KSC-BC-2020-07, F00169, Pre-Trial Judge, [Decision on the Defence Applications for Leave to Appeal the Decision on the Defence Preliminary Motions](#) ("Case 07 Decision on Leave to Appeal"), 1 April 2021, public, paras 10-18; KSC-BC-2020-04, F00116, Pre-Trial Judge, [Decision on Application for Leave to Appeal "Decision on Motion Challenging the Form of the Indictment"](#) ("Case 04 Decision on Leave to Appeal"), 29 November 2021, public, paras 11-13.

12. Mindful of the restrictive nature of this remedy,²³ the following specific requirements apply:

- (1) Whether the matter is an “appealable issue”;
- (2) Whether the issue at hand would significantly affect:
 - i. The fair and expeditious conduct of the proceedings, or
 - ii. The outcome of the trial; and
- (3) Whether, in the opinion of the Pre-Trial Judge, an immediate resolution by the Court of Appeals Panel may materially advance the proceedings.²⁴

B. THE ISSUE

13. The Thaçi Defence does not articulate a discrete issue for resolution by the Court of Appeals that emanates from the Impugned Decision, and thus, fails to meet the first requirement of the legal test , *i.e.* “appealable issue”.

14. First, the Pre-Trial Judge observes that the Issue, as formulated by the Thaçi Defence, misrepresents the Impugned Decision. Contrary to the Thaçi Defence submissions, the Pre-Trial Judge did not impose a general order or absolute prohibition on Mr Thaçi against contacting witnesses or victims whose identity was notified to the Defence.²⁵ Rather, the Impugned Decision states that:

The Accused should refrain from any contact or communication, direct or indirect (through any other person, **except Counsel**), of any kind and through any means, with any witness or victim, whose identity has been notified to the Defence, in the present case or any other case before the SC.²⁶

²³ Decision on Leave to Appeal, para. 16. *See also* Case 06 Decision on Leave to Appeal, para. 9.

²⁴ Decision on Leave to Appeal, para. 16. *See also* Case 06 Decision on Leave to Appeal, para. 10; Case 07 Decision on Leave to Appeal, para. 11; Case 04 Decision on Leave to Appeal, para. 12.

²⁵ *Contra* Request, paras 3, 14.

²⁶ Impugned Decision, paras 37, 40(II)(a) (emphasis added).

15. The Impugned Decision explicitly allows Mr Thaçi to contact any witness he so wishes **through his Counsel**. Accordingly, the Pre-Trial Judge finds that the Thaçi Defence misrepresents the Impugned Decision in the manner in which it has formulated the Issue. In fact, the Issue as formulated does not emanate from the Impugned Decision.

16. Second, the Pre-Trial Judge is not persuaded by the Thaçi Defence assertion that Mr Thaçi cannot give instructions to or be consulted by his Counsel on any approach in relation to the individuals covered by the Impugned Decision.²⁷ The Pre-Trial Judge reminds the Thaçi Defence that the Impugned Decision (i) does not prohibit Counsel from contacting or communicating with any witness he/she considers relevant to the case, (ii) does not impede Counsel, in any way, from taking instructions from or consult Mr Thaçi for the purposes of mounting a defence, as long as there is no personal contact between Mr Thaçi and the individuals covered by the Impugned Decision. Counsel's contacts with these individuals do not constitute indirect contact under the Impugned Decision.

17. Third, in relation to the Thaçi Defence argument that Mr Thaçi is now faced with two different regimes regulating his contacts with certain witnesses, the Pre-Trial Judge remains of the view that the prohibition on Mr Thaçi's personal contacts with the witnesses is necessary given the seriousness of the allegations against Mr Thaçi and the underlying conduct for the charges in the present case.

18. Fourth, the Pre-Trial Judge notes that the Thaçi Defence repeats arguments that were considered and dismissed in the Impugned Decision,²⁸ namely that: (i) it is unable to identify all the witnesses concerned by the Impugned Decision;²⁹ and (ii) there is no nexus between the current proceeding and other cases than Case 06

²⁷ Request, para. 16.

²⁸ Impugned Decision, paras 31-32.

²⁹ See Request, para. 15; Thaçi Defence Response, paras 7-19, 37.

to justify a board prohibition.³⁰ As such, the Issue amounts to a mere disagreement with the Impugned Decision.

19. In light of the foregoing, the Pre-Trial Judge finds that the Issue, as identified and formulated by the Thaçi Defence, does not constitute an appealable issue within the meaning of Article 45(2) of the Law and Rule 77(2) of the Rules. Considering the cumulative nature of the legal test, the remaining requirements arising from Article 45(2) of the Law and Rule 77(2) of the Rules need not be addressed. The Request for certification to appeal the Issue is therefore denied.

³⁰ See Request, paras 3, 17; Thaçi Defence Response, para. 44.

V. DISPOSITION

20. For the above reasons, the Pre-Trial Judge hereby:

- a. **DENIES** the Request; and
- b. **ORDERS** the Thaçi Defence to indicate whether the confidential redacted version of its Request (filing F00191/CONF/RED) may be reclassified as public, or file a public redacted version thereof, by **Friday, 14 March 2025**.



Judge Marjorie Masselot
Pre-Trial Judge

Dated this Monday, 10 March 2025

At The Hague, the Netherlands.