



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

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

Judge Christoph Barthe

Judge Guénaél Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 6 May 2025

Language: English

Classification: Confidential

**Decision on Urgent Thaçi Defence Request Concerning Access in Case KSC-BC-
2023-12 to Selected Documents from Case KSC-BC-2020-06**

Specialist Prosecutor

Kimberly P. West

Counsel for Hashim Thaçi

Luka Mišetić

Counsel for Victims

Simon Laws

Counsel for Kadri Veseli

Rodney Dixon

Pre-Trial Judge (Case 12)

Marjorie Masselot

Counsel for Rexhep Selimi

Geoffrey Roberts

Counsel for Hashim Thaçi (Case 12)

Sophie Menegon

Counsel for Jakup Krasniqi

Venkateswari Alagendra

TRIAL PANEL II ("Panel"), pursuant to Articles 21(2), 4(c) and (6), 23, and 40(2) and (6) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 81(1) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 29 April 2025, the Defence for Hashim Thaçi ("Mr Thaçi") in Case KSC-BC-2020-06 ("Case 06") ("Thaçi Defence") filed a request asking the Panel to grant access to selected filings ("Selected Filings") from Case 06 to the Pre-Trial Judge, the Thaçi Defence, and the Specialist Prosecutor's Office ("SPO") in Case KSC-BC-2023-12 ("Case 12") ("Request").¹
2. On the same day, upon request of the Thaçi Defence,² the Panel ordered a variation of the briefing schedule for the response by the SPO to 2 May 2025. The Panel also informed the Parties that it would not entertain any reply.³
3. On 1 May 2025, the Thaçi Defence filed a corrected version of the list of selected filings appended to the Request ("Corrected List").⁴
4. On 2 May 2025, the SPO filed its response to the Request ("Response").⁵

¹ RAC003/F00001, Specialist Counsel, *URGENT Thaçi Defence Request Concerning Access in Case KSC-BC-2023-12 to Selected Documents from Case KSC-BC-2020-06*, 29 April 2025, confidential, with Annex 1 confidential.

² Request, paras 5, 9.

³ CRSPD800, 29 April 2025, confidential.

⁴ RAC003/F00002, Specialist Counsel, *Submission of Corrected Version of Annex 1 to 'URGENT Thaçi Defence Request Concerning Access in Case KSC-BC-2023-12 to Selected Documents from Case KSC-BC-2020-06'* (RAC003/F00001/A01), 1 May 2025, confidential, with Annex 1, confidential ("Corrected List").

⁵ RAC003/F00003, Specialist Prosecutor, *Prosecution Response to Urgent THAÇI Request for Access in Case KSC-BC-2023-12*, 2 May 2025, confidential.

II. SUBMISSIONS

5. The Thaçi Defence requests that the Panel grant access to confidential selected filings from the Case 06 record to the Pre-Trial Judge, the Thaçi Defence, and the SPO in Case 12.⁶ In support, the Thaçi Defence submits that: (i) the two cases are intrinsically linked, as Case 12 concerns allegations of offences against the administration of justice in Case 06 proceedings by Mr Thaçi; and (ii) the Thaçi Defence is currently preparing to file preliminary motions in Case 12, including submissions about how Case 12 relates to Case 06, and the extent to which the SPO investigation into interference with Case 06 witnesses was brought to the attention of the Panel.⁷ The Thaçi Defence avers that to address these matters in its preliminary motions in Case 12, it must be able to refer to the Selected Filings and their content.⁸ It also avers that this information will assist the Pre-Trial Judge in assessing the merits of the Thaçi Defence's preliminary motions in Case 12.⁹ The Thaçi Defence's adds that: (i) as most of the Selected Filings contain confidential information regarding Case 06 witnesses, it does not object to the disclosure to the Pre-Trial Judge of redacted versions of the Selected Filings; and (ii) it does not request that the Selected Filings be made available to Mr Thaçi's co-Accused in Case 12.¹⁰

6. The SPO responds that, given the nature of Case 12, and the record of filings and decisions available to the Pre-Trial Judge therein, in its view, there is no lack of clarity regarding the intersection between Case 06 and Case 12, nor any need for the requested access to the Selected Filings.¹¹ However, the SPO submits that

⁶ Request, paras 1, 5, 9.

⁷ Request, paras 3-4.

⁸ Request, para. 4.

⁹ Request, para. 4.

¹⁰ Request, paras 6-7.

¹¹ Response, para. 4.

it does not oppose the Pre-Trial Judge being granted access to the unredacted, strictly confidential and *ex parte* versions of the Selected Filings.¹²

III. DISCUSSION

7. Preliminarily, the Panel notes that the Thaçi Defence request that access also be granted to the SPO in Case 12.¹³ Noting that the SPO is a singular and independent entity,¹⁴ and the Selected Filings are already available to it, the Panel need not vary protective measures in respect of the SPO and will only entertain the Request insofar as it concerns the Pre-Trial Judge and the Thaçi Defence in Case 12.

8. The Panel has previously addressed requests by the Parties to access, use, and make available to the Panel, Case 06 Parties and participants, documents from different cases.¹⁵ These requests were assessed by the Panel in light of the Defence's right to receive all material and relevant evidence or facts, pursuant to Article 21, and the need to ensure the protection of victims and witnesses, pursuant to Article 23.¹⁶ To decide whether to grant such access, the Panel has adopted and applied without objection the test established at the *ad hoc* tribunals for access to confidential material in a different case.¹⁷

9. The Panel considers that, insofar as the Request is to grant access to selected filings from the Case 06 record to the Pre-Trial Judge and the Thaçi Defence in Case 12, it is comparable in substance to previous requests for access to

¹² Response, para. 5.

¹³ See Request, para. 5.

¹⁴ See, in particular, Arts. 24(2), 35 of the Law.

¹⁵ See RAC001/F00002, Panel, *Decision on Prosecution Request Concerning Access to Confidential Versions of Judgments from Case KSC-BC-2020-05* ("Case 05 Filings Decision"), 30 April 2024 public. See also, Transcript of Hearing, 23 April 2025, p. 26135, line 23 to p. 26138, line 13 ("Cases 04, 05, and 07 Filings Order").

¹⁶ See Case 05 Filings Decision, para. 7.

¹⁷ See Case 05 Filings Decision, para. 8 and references cited therein. See similarly, Cases 04, 05, and 07 Filings Order.

confidential material in other cases. The Panel will therefore apply the test adopted by *ad hoc* tribunals on the matter, namely that: (i) the documents to which access is sought must be identified or described by their general nature; and (ii) a legitimate forensic purpose for such access must be shown.

10. The Thaçi Defence has clearly identified the documents for which access is sought, namely the Selected Filings, and therefore the first prong of this test is met.¹⁸

11. With respect to the legitimate forensic purpose, the Panel observes that the charges in Case 12 concern allegations against Mr Thaçi for obstruction of SPO activities in Case 06, alleged violations of Case 06 orders, and alleged disclosure of confidential Case 06 information.¹⁹ Accordingly, Case 06 and Case 12 are materially linked.²⁰ In this regard, the Panel takes note of the Thaçi Defence submissions that it is preparing to file preliminary motions in Case 12 which it says rely upon matters arising from the Selected Filings.²¹ In order for the Thaçi Defence to make informed and effective submissions on these matters in its preliminary motions in Case 12, and without pre-judging the content of those submissions, the Thaçi Defence requires access to the Selected Filings. By the same token, in order for the Pre-Trial Judge to assess the merits of the issues which the Thaçi Defence intends to raise in its preliminary motions, she must also be granted access to the Selected Filings. As such, and considering that Mr Thaçi is a defendant in both cases and that the SPO does not oppose the Request,²² the Panel finds that there is a specific, legitimate forensic purpose for the access sought by the Thaçi Defence.

¹⁸ See *similarly* Case 05 Filings Decision, para. 9; Cases 04, 05, and 07 Filings Order.

¹⁹ Request, para. 3.

²⁰ See Request para. 3; Response, para. 4.

²¹ See above, para. 5.

²² See above, para. 6.

12. Regarding the protection of witnesses and victims, the Panel notes that the Selected Filings contain confidential information regarding Case 06 witnesses.²³ The Panel recalls that pursuant to Rule 81(1)(a), protective measures ordered in Case 06 shall continue to have effect *mutatis mutandis* in any other proceedings, including Case 12.²⁴ The Panel also understands, based on the Response, that the SPO does not consider that granting the Request would pose a risk to witnesses or victims. The Panel further notes that: (i) the Selected Filings, as identified in the Request, are all confidential filings and/or confidential redacted versions of the identified filings;²⁵ and (ii) the access sought in the Request does not extend to Mr Thaçi's co-Accused in Case 12.²⁶ Additionally, the Panel notes that the SPO does not oppose the Pre-Trial Judge being granted access to the unredacted, strictly confidential and *ex parte* versions of the Selected Filings.²⁷

13. In light of the above, the Panel is satisfied that granting the Request would be consistent with the need to ensure the effective protection of witnesses and victims, provided that the Selected Filings remain confidential in Case 12 and their content is not disclosed to any other Party and/or participant involved in said proceedings, and/or to the public. Any use of the Selected Filings in Case 12 will need to be consistent with the above and not reveal to the public or Parties and participants in these proceedings information that is subject to protective measures.

14. Accordingly, the Panel grants the Request under the above conditions. The Registry is directed to ensure that the Thaçi Defence in Case 12 has access in Legal Workflow to the Selected Filings, as indicated in the Corrected List, and with the

²³ See above, para. 5.

²⁴ See similarly Case 05 Filings Decision, para. 11; Cases 04, 05, and 07 Order.

²⁵ See Corrected List.

²⁶ See above, para. 5.

²⁷ See above, para. 6.

classification identified therein.²⁸ As far as the Request concerns the Pre-Trial Judge, the Panel directs the Registry to ensure that the Pre-Trial Judge has access in Legal Workflow to: (i) the Selected Filings, as indicated in the Corrected List, and with the classification identified therein,²⁹ and to (ii) the unredacted, strictly confidential and *ex parte* versions of the Selected Filings.

15. Finally, the Panel emphasises that the confidential classification of the Selected Filings requires that, pursuant to Rule 82(1)(b), they not be disclosed to the public.

IV. CLASSIFICATION OF FILINGS

16. The Panel notes that the Parties' submissions were filed confidentially. In order to facilitate the publicity of the proceedings, the Panel orders: (i) the Defence to file public redacted versions of its main filings RAC003/F00001 and RAC003/F00002; and (ii) the SPO to file a public redacted version of its Response, within two weeks of the present decision, namely 20 May 2025.

V. DISPOSITION

17. For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS** the Request, in accordance with paragraph 14 of this decision;
- b) **DIRECTS** the Registry to ensure that: (i) the Thaçi Defence in Case 12 is granted access in Legal Workflow to the Selected Filings as indicated in the Corrected List, and with the classification identified therein; and (ii) the Pre-Trial Judge has access in Legal Workflow to the Selected Filings, as indicated in the Corrected List, and with the classification

²⁸ See Corrected List, including available confidential and/or confidential redacted versions(s) of any annex(es) identified thereof.

²⁹ See Corrected List, including available confidential and/or confidential redacted versions(s) of any annex(es) identified thereof.

- identified therein,³⁰ and to the unredacted, strictly confidential and *ex parte* versions of the Selected Filings, in accordance with paragraph 14 of this decision;
- c) **RECALLS** that the confidential classification of the Selected Filings requires that, pursuant to Rule 82(1)(b), they not be disclosed to the public; and
- d) **ORDERS** (i) the Thaçi Defence to file public redacted versions of its main filings RAC003/F00001 and RAC003/F00002; and (ii) the SPO to file a public redacted version of its Response, within two weeks of the present decision, namely 20 May 2025, in accordance with paragraph 16 of the present decision.



Judge Charles L. Smith, III
Presiding Judge

Dated this Tuesday, 6 May 2025
At The Hague, the Netherlands.

³⁰ See Corrected List, including available confidential and/or confidential redacted version(s) of any annex(es) identified thereof.