

**In:** KSC-BC-2023-12

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

**Before:** Pre-Trial Judge  
Judge Marjorie Masselot

**Registrar:** Dr Fidelma Donlon

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

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**Public Redacted Version of Thaçi Defence Preliminary Motion on Jurisdiction**

**With Public Redacted Annex 1**

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## I. INTRODUCTION

1. This motion is filed pursuant to Article 39 of Law on the Specialist Chambers and Specialist Prosecutor's Office ("KSC Law"),<sup>1</sup> Rule 97(1) of the Rules of Procedure and Evidence ("Rules")<sup>2</sup> and the Pre-Trial Judge's decision fixing the deadline for preliminary motions as 8 May 2025.<sup>3</sup> The defence of Mr Hashim Thaçi ("Defence") submits that the indictment in this case<sup>4</sup> ("Indictment") is null for lack of jurisdiction, and requests its dismissal.

<sup>1</sup> Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("KSC Law").

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

<sup>3</sup> [KSC-BC-2023-12/F00260](#).

<sup>4</sup> [KSC-BC-2023-12/F00264/A02](#).

2. In March 2023, days before the commencement of trial in *Prosecutor v Thaçi, Veseli, Selimi, and Krasniqi* ("Case 06"), the SPO suspected that a campaign of interference, allegedly orchestrated by some of the Accused in Case 06, was underway to influence the testimony of Case 06 witnesses. However, the SPO did not seek action from Trial Panel II, even though it was seized of Case 06 and charged with ensuring the integrity and fairness of the Case 06 proceedings, including by taking any measures to prevent, adjudicate and address witness interference.
3. Rather than seeking to halt or prevent interference, the SPO initiated an investigation with a view to additional prosecutions. Leave to do so was not sought from Trial Panel II. Rather, the SPO initiated entirely separate *ex parte* proceedings, first for Special Investigative Measures (SIMs) which included the covert recording of Case 06 defendants, and later for the issuance of an Indictment in a new case. The SPO put these matters before a Single Judge (who later became the Pre-Trial Judge), without authorisation from Trial Panel II.
4. By unilaterally seizing a separate Panel of matters fundamentally connected to the conduct and integrity of Case 06, the SPO engaged in impermissible forum shopping which violated the KSC's framework for judicial powers. Concerns regarding possible witness interference should have immediately been put to Trial Panel II. Only if Trial Panel II determined itself unable to resolve matters and authorised the SPO to seize a separate Panel could the SPO have done so. In the absence of such a determination from Trial Panel II, the Single Judge and Pre-Trial Judge lacked jurisdiction, and the current proceedings are *ultra vires*.
5. The SPO's errors were compounded by those of the President. She assigned as Case 12 Pre-Trial Judge the same two judges who had been wrongly seized as Single Judge by the SPO. This violated the clear provisions of the KSC Law requiring that a Pre-Trial Judge acts only after the filing of an indictment, and that a judge may not be assigned in successive roles within the same matter. Having

been assigned in violation of the KSC Law, the Pre-Trial Judge also lacks jurisdiction for this reason.

6. The consequence of the Pre-Trial Judge's lack of jurisdiction is that the Indictment is void and must be dismissed.
7. This motion is filed as confidential and *ex parte* since it refers to several *ex parte* filings. A confidential redacted version and/or a public redacted version will be filed shortly.

## II. PROCEDURAL HISTORY

### *Early case 06 proceedings*

8. On 26 October 2020, the Case 06 indictment was issued against Messrs Thaçi, Veseli, Selimi, and Krasniqi.<sup>5</sup> Pursuant to a Case 06 arrest warrant, Mr Thaçi was transferred to the KSC detention facility on 5 November 2020.<sup>6</sup> He remains in detention.
9. On 30 November 2022, the President assigned Case 06 to Trial Panel II.<sup>7</sup> On 15 December 2022, the Case 06 Pre-Trial Judge transmitted the Case 06 case file to Trial Panel II.<sup>8</sup>
10. The trial in Case 06 began before Trial Panel II on 3 April 2023, and is ongoing.

### *Proceedings before the Single Judge regarding SIMs*

11. On 28 March 2023, six days before the start of the Case 06 trial, the SPO filed an *ex parte* submission to Judge Guillou, sitting as a Single Judge in proceeding KSC-BC-2018-01, alleging that Mr Thaçi and Mr Veseli were seeking to influence SPO

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<sup>5</sup> [KSC-BC-2020-06/F00026/RED](#).

<sup>6</sup> [KSC-BC-2020-06/F00053](#).

<sup>7</sup> [KSC-BC-2020-06/F01132](#).

<sup>8</sup> [KSC-BC-2020-06/F01166](#).

witnesses in Case 06.<sup>9</sup> In that filing, and a series of subsequent submissions,<sup>10</sup> the SPO requested that the Single Judge authorise SIMs.

12. Between 31 March 2023 and 5 June 2024, Single Judge Guillou issued at least<sup>11</sup> 17 *ex parte* orders granting the SPO's requests for SIMs concerning three Case 06 defendants.<sup>12</sup> The authorised measures included covert monitoring of non-privileged detention centre visits and telephone calls.
13. On 5 June 2024, Judge Guillou resigned from the KSC and the President assigned Judge Masselot as Single Judge.<sup>13</sup> Judge Masselot continued to be seized of SPO requests for further SIMs, and made orders granting SIMs and/or extending or managing those granted by Judge Guillou.<sup>14</sup>
14. A number of the Single Judge's decisions allowing SIMs also "authorised" the SPO to [REDACTED].<sup>15</sup>

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<sup>9</sup> [KSC-BC-2023-12/INV/F00004/RED](#). This and other filings made in the proceeding KSC-BC-2018-01 have been imported into the case file of the current case pursuant to KSC-BC-2023-12/INV/F00003.

<sup>10</sup> [KSC-BC-2023-12/INV/F00006/RED](#); [KSC-BC-2023-12/INV/F00009/RED](#); [KSC-BC-2023-12/INV/F00011/RED](#); [KSC-BC-2023-12/INV/F00013/RED](#); [KSC-BC-2023-12/INV/F00016/RED](#); [KSC-BC-2023-12/INV/F00018/RED](#); [KSC-BC-2023-12/INV/F00021/RED](#); [KSC-BC-2023-12/INV/F00023/COR2/RED](#); [KSC-BC-2023-12/INV/F00027/RED](#); [KSC-BC-2023-12/INV/F00054RED](#); [KSC-BC-2023-12/INV/F00064RED](#).

<sup>11</sup> Not all of the documents concerning SPO SIM requests have been included in the record of this case or made available to the Defence.

<sup>12</sup> KSC-BC-2023-12/INV/F00005/CONF/RED; KSC-BC-2023-12/INV/F00007/CONF/RED; KSC-BC-2023-12/INV/F00012/CONF/RED; KSC-BC-2023-12/INV/F00014/COR/CONF/RED; KSC-BC-2018-01/F00355/CONF/RED; KSC-BC-2023-12/INV/F00020/CONF/RED; KSC-BC-2023-12/INV/F00022/COR/CONF/RED; KSC-BC-2018-01/F00377/CONF/RED; KSC-BC-2023-12/INV/F00025/CONF/RED; [REDACTED]; KSC-BC-2018-01/F00394/CONF/RED; KSC-BC-2018-01/F00429/CONF/RED; KSC-BC-2023-12/INV/F00028/CONF/RED; KSC-BC-2018-01/F00444/CONF/RED; KSC-BC-2023-12/INV/F00057/CONF/RED; KSC-BC-2023-12/INV/F00066/CONF/RED2; [KSC-BC-2023-12/INV/F00089/RED](#).

<sup>13</sup> KSC-BC-2018-01/F00697/COR, p. 2. See also KSC-BC-2018-01/F00698.

<sup>14</sup> KSC-BC-2018-01/F00803; [REDACTED].

<sup>15</sup> [REDACTED].

*Case 06 proceedings during the period of the SIM requests before the Single Judge*

15. On 31 March 2023, the SPO made [REDACTED].<sup>16</sup> Further such filings followed.<sup>17</sup>

In these filings, the SPO stated that it was “[REDACTED].”<sup>18</sup> Eventually, it also revealed that [REDACTED].<sup>19</sup> However, before 17 November 2023, all SPO requests in respect of its interference investigation were made before the Single Judge; none were put to Trial Panel II.

16. On 17 November 2023, Mr Thaçi and his Case 06 counsel were made aware for the first time of the SIMs, through a SPO request to modify detention conditions. That filing revealed that “[p]ursuant to judicial authorisation from the Single Judge, the SPO has covertly audio-recorded non-privileged visits to [Mr Thaçi, Mr Veseli and Mr Selimi] in the Detention Centre”.<sup>20</sup>

*Proceedings in Case 12*

17. On 13 December 2023 the SPO requested the assignment of a Pre-Trial Judge under Article 33(1)(a) of the KSC Law. The President assigned Judge Guillou as Pre-Trial Judge.<sup>21</sup>

18. On 15 December 2023, the SPO submitted its first proposed indictment.<sup>22</sup>

19. On 5 June 2024, following Judge Guillou’s resignation, the President assigned Judge Masselot as Pre-Trial Judge.<sup>23</sup>

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<sup>16</sup> [REDACTED].

<sup>17</sup> [REDACTED].

<sup>18</sup> [REDACTED].

<sup>19</sup> From the material available to the Defence it is not clear [REDACTED], as some material remains redacted in the relevant filings (for example in [REDACTED]). By [REDACTED] the SPO mentioned [REDACTED]: [REDACTED]. (see also [REDACTED]).

<sup>20</sup> [KSC-BC-2020-06/F01933/RED](#), para. 6.

<sup>21</sup> [KSC-BC-2023-12/F00001](#).

<sup>22</sup> [KSC-BC-2023-12/F00002](#).

<sup>23</sup> [KSC-BC-2023-12/F00015](#).

20. Following Pre-Trial Judge orders for clarification or more information, an indictment was confirmed on 29 November 2024.<sup>24</sup> On 14 April 2025, in response to a partly successful SPO appeal,<sup>25</sup> the Pre-Trial Judge issued an amended confirmation decision.<sup>26</sup> The SPO submitted the Indictment on 16 April 2025.<sup>27</sup> It is the basis of the present case (also referred to as “Case 12”).

### **III. THESE MATTERS SHOULD HAVE BEEN BROUGHT BEFORE TRIAL PANEL II**

#### **A. THE INDICTMENT CONCERNS ALLEGATIONS RELATED TO CASE 06**

21. The present case concerns matters which are intrinsically linked to Case 06. The Indictment’s contention is that the defendants shared confidential Case 06 information, violated orders made in Case 06 concerning SPO witnesses in Case 06,<sup>28</sup> and obstructed the work of the SPO and KSC in Case 06. Indeed, the Pre-Trial Judge has herself referred to “the inherent link between Case 06 and the present proceedings”.<sup>29</sup> The SPO itself now argues that evidence obtained through its SIMs are relevant to Case 06 and should form part of the evidence in that case.<sup>30</sup>

#### **B. TRIAL PANEL II HAS EXCLUSIVE JURISDICTION OVER ALL MATTERS CONCERNING CASE 06**

22. Under Article 40 of the KSC Law, a Trial Panel is responsible for all first-instance decisions concerning the case before it. The Trial Panel’s powers under Article 40 are comprehensive and exclusive. Once the Panel is seized, the KSC Law grants it complete authority over *all* matters concerning case. The KSC Law also makes no

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<sup>24</sup> [KSC-BC-2023-12/F00036](#).

<sup>25</sup> [KSC-BC-2023-12/IA002/F00012/RED](#).

<sup>26</sup> [KSC-BC-2023-12/F00260](#).

<sup>27</sup> [KSC-BC-2023-12/F00264/A02](#).

<sup>28</sup> As illustrated by the fact that the SPO disclosed [REDACTED] under Rule 102(1)(a) or Rule 102(1)(b); see, *inter alia*, [REDACTED].

<sup>29</sup> [KSC-BC-2023-12/F00173/RED](#), para. 32.

<sup>30</sup> [KSC-BC-2020-06/F03120](#).

provision for any *other* Panel to act regarding the case (other than on appeal from a Trial Panel decision). This is made clear by several sources.

23. Article 40 itself states that the Trial Panel “shall be responsible for the conduct of the trial proceedings” (Article 40(1)). It is the Trial Panel which is charged with ensuring that “a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses” (Article 40(2)).
24. Further detail on a Trial Panel’s role is provided in Article 40(6), and Rule 116. The former empowers a Trial Panel to exercise any functions or powers that the Pre-Trial judge held prior to transfer of the case.<sup>31</sup> Rule 116 sets out areas of authority, including disclosure obligations, protective measures, communication between the parties, and conditions of detention. These are listed *inclusively*: Trial Panels are empowered by the KSC Law and the Rules even beyond these specific areas, to oversee any aspect of a case that has a bearing on its fairness.
25. Further, article 40(2) not only grants a Trial Panel necessary *powers*, it also creates an “*obligation*” on the Trial Panel “to ensure that the trial is fair and expeditious and that the proceedings are conducted with full respect for the rights of the Accused”.<sup>32</sup> A Trial Panel could not fulfil this obligation if a separate panel has been seized with matters concerning the conduct of the case (such as questions of compliance with orders made in the case) , putting those matters outside the Trial Panel’s control. Without control of all aspects of the case, the Trial Panel is unable

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<sup>31</sup> Article 40(6)(a), referring to the powers set out in Article 39. Article 39 powers include handling matters such as the privacy and protection of witnesses, the preservation of evidence, and the issuance of orders pertaining to special investigative measures: Article 39(3) and (11).

<sup>32</sup> [KSC-BC-2020-04/F00434/RED](#), paras 14, 31, 39. See also [KSC-BC-2020-06/F01977](#), para. 22.



to ensure respect for the rights of the Accused, such as their right to privacy and to privileged communication with counsel.

26. Article 40(2) reflects a cornerstone principle of international criminal law and equivalent provisions are found in the frameworks of other tribunals.<sup>33</sup> They have been held to establish a trial chamber's absolute and exclusive authority over proceedings, subject only to appellate oversight. Referring to the Rome Statute's equivalent provision, the ICC Appeals Chamber stated that:

...the Trial Chamber, subject only to the powers of the Appeals Chamber, is the ultimate guardian of a fair and expeditious trial. Article 64 (2) of the Statute provides that it is the Trial Chamber which shall ensure that the trial is conducted fairly, expeditiously and with full respect for the rights of the accused. As correctly noted in the Impugned Decision, the Appeals Chamber has previously confirmed that "[t]he ultimate responsibility for securing justice and ensuring fairness has been given to the Chamber (Article 64(2) of the Statute) and these responsibilities cannot be delegated by, or removed from, the judges".<sup>34</sup>

27. The principle is partly a reflection of a trial chamber's "innate understanding of the process thus far",<sup>35</sup> which means it is best placed to oversee matters concerning the proceedings. More importantly, it is an essential element of fair trial guarantees. Fair trial rights require the existence of a judicial panel with the powers and information to enforce them. Thus, for example, the ICC has relied on European Court jurisprudence regarding disclosure as necessarily implying a requirement for trial chamber powers to regulate disclosure.<sup>36</sup> Trial Panel control over a case is "a fundamental criterion for any trial to be fair."<sup>37</sup> Where a Trial Chamber loses control of proceedings, it may become impossible to ensure a fair trial.<sup>38</sup>

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<sup>33</sup> Rome Statute, Article 64(2); ICTY Statute, Article 20(1); ICTR Statute, Article 19(1); ECCC Law, Article 33new; SCSL Rules of Procedure and Evidence, Rule 26bis.

<sup>34</sup> [ICC-01/04-01/06-2582](#), para. 47. See also [ICC-01/04-01/07-2259](#), paras 33, 53, 77; ICC, *Prosecutor v Lubanga*, [ICC-01/04-01/06-1486](#), para. 46.

<sup>35</sup> [ICC-01/04-01/06-2582](#), para. 56.

<sup>36</sup> [ICC-01/04-01/06-1401](#), paras 82-88; upheld on appeal in [ICC-01/04-01/06-1486](#), paras 46-47.

<sup>37</sup> [ICC-01/04-01/06-2582](#), para. 48.

<sup>38</sup> [ICC-01/04-01/06-2582](#), para. 58.

### C. TRIAL PANEL II'S EXCLUSIVE JURISDICTION INCLUDES OVERSIGHT OF CONTEMPT ALLEGATIONS

28. There is no question that this complete authority of the Trial Panel extends to the handling of misconduct or breach of orders. This is a normal part of a trial chamber's role in any international tribunal. For example, at the ICC, Trial Chamber V(B) held that its Article 64(2) powers covered alleged misconduct beyond those explicitly mentioned in the Rome Statute article 70:

It is axiomatic that [Article 64(2) and Article 64(6)(f)] grant sufficient power to impose sanctions for breaches of its own orders as without such power it could not ensure a fair trial or otherwise perform its functions....

These broadly framed provisions may indeed be seen as a codification of the concept of "inherent powers" which provide courts with authority to undertake all acts reasonably required to efficiently perform their functions. In the view of the Chamber this necessarily includes the ability to sanction breaches of its own orders and similar misconduct occurring outside the courtroom.<sup>39</sup>

29. At the KSC, the conclusion that the Trial Panel is responsible for handling matters concerning the administration of justice in a case before it is reinforced by the Rules. Under Rule 81, a Panel maintains its jurisdiction over protective measures it has ordered, and as long as it is seized of the case, is the only Panel empowered to modify them. Rule 65 gives a Panel powers to sanction non-compliance with an order made by that Panel.
30. Indeed, the exclusive jurisdiction of a Trial Panel must encompass the full power and responsibility to determine how allegations of contempt or witness interference concerning the case are handled. The KSC's texts do not address this question specifically. However, this is the approach that the ICTY adopted as a necessary corollary to a Trial Chamber's exclusive jurisdiction over a case. At the KSC, which also grants a Trial Panel exclusive jurisdiction over all aspects of a case (including authorising investigative measures), the same approach should follow.

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<sup>39</sup> [ICC-01/09-02/11-747](#), paras 14-15.

## 1. The ICTY and ICC models

31. At the ICTY, Rule 77 gave a trial chamber the power to initiate a contempt investigation by an ICTY or independent prosecutor, or to “initiate proceedings itself”.<sup>40</sup> The relevant Practice Direction further elaborated, and most relevantly stated that:

The Chamber in which the contempt allegedly occurred shall adjudicate the matter unless there are exceptional circumstances such as cases in which the impartiality of the Chamber may be called into question, warranting the assignment of the case to another Chamber.<sup>41</sup>

32. It is clear from the caselaw of the ICTY that the Practice Direction merely articulated principles which were a necessary consequence of the Tribunal’s judicial structure. In a case in which counsel sought to have a separate chamber handle an allegation of contempt, Judge Bonomy explained the reason why the “main case” trial chamber had presumptive control over the matter:

It is vital to the proper administration of justice that a court maintains its authority over the conduct of proceedings before it.<sup>42</sup>

33. Judge Bonomy went on to explain that there would be some circumstances in which contempt should be handled by a different chamber – particular where a question of bias arose.<sup>43</sup> The ICTY procedure dealt with this possibility by creating a rebuttable presumption, with the “main case” chamber taking the decision as to whether to send contempt proceedings to a separate chamber, and thus maintaining its exclusive jurisdiction over matters related to the case.

34. It is noteworthy that a different procedure is used at the ICC because of that Court’s different legal framework. Generally, the ICC Prosecution has first brought suspicions of contemptuous conduct before the Trial Chamber which is

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<sup>40</sup> ICTY, [Rules of Procedure and Evidence](#), IT/32/Rev.50, 8 July 2015, rule 77.

<sup>41</sup> ICTY, [Practice Direction on Procedures for the Investigation and Prosecution of Contempt Before the International Tribunal](#), IT/227, 6 May 2024, para. 13.

<sup>42</sup> *Milošević* [Contempt Decision](#), para. 8.

<sup>43</sup> *Ibid.*, para. 7, 10.

seized of the case.<sup>44</sup> However, Trial Chambers have referred investigative requests to Pre-Trial Chambers.<sup>45</sup> This is unavoidable under the ICC's legal texts, as they grant judicial powers concerning investigations *exclusively* to Pre-Trial Chambers.<sup>46</sup> Trial Chambers are not given all the powers of Pre-Trial Chambers, but only those relating to confirmation of charges hearings.<sup>47</sup>

35. Judges of the ICC have identified the difficulties that this division of judicial authority creates where contempt investigations occur. In *Ntaganda* the accused was subjected to a lengthy investigation but never charged with offences concerning the administration of justice. The Trial Chamber expressed frustrations that investigations authorised by a Pre-Trial Chamber were impacting the main case trial, including through the ongoing generation of large volumes of disclosure:

In May 2016, the Chamber became aware of the fact that the Prosecution had been granted access to additional non-privileged calls of the accused, and since that time has twice, in June and September 2016, urged the Prosecution to conclude its investigations in an expeditious manner and make all relevant disclosure. The Chamber emphasised that such investigations cannot be permitted to continue indefinitely in a manner which could impact the proceedings in this case.<sup>48</sup>

36. The Appeals Chamber also voiced concerns over the problems raised by separate and parallel proceedings:

.. The Appeals Chamber nonetheless finds that ... [the Pre-Trial Chamber Single Judge] should have promptly sought instructions from the Trial Chamber on whether disclosure of such material might 'prejudice further or ongoing investigations' and whether such material or information had to be disclosed to Mr Ntaganda.

The Appeals Chamber notes that the Trial Chamber became aware of the Prosecutor's access to additional parts of recordings of non-privileged

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<sup>44</sup> Eg see: [ICC-01/05-01/08-2412](#); [ICC-01/05-01/08-2548-Red4](#); [ICC-01/04-02/06-349-Red3](#); [ICC-01/09-01/11-2028-Red](#); [ICC-02/04-01/15-482-Red](#).

<sup>45</sup> [ICC-01/05-01/08-2606-Red](#); [ICC-01/09-01/11-2034](#), para. 11.

<sup>46</sup> Rome Statute, article 57(3), especially paragraphs (a).

<sup>47</sup> Rome Statute, article 64(6)(a), conferring on Trial Chambers the same power granted to Pre-Trial Chambers under article 61, but not those granted under article 57.

<sup>48</sup> [ICC-01/04-02/06-T-159-Red-ENG](#), p. 2, lines 15-20. See also [ICC-01/04-02/06-1883](#), para. 50.

calls of Mr Ntaganda only in May 2016 and thus several months after the Single Judge of Pre-Trial Chamber I had granted such access. This made it difficult for the Trial Chamber to take any measures in that period to prevent any potential prejudice resulting from the Prosecutor's access to additional material. It was only able to assess whether Mr Ntaganda suffered prejudice.<sup>49</sup>

## 2. The KSC system follows the ICTY model

37. While the ICC is locked into the above flawed system by legal texts which do not grant investigative powers to trial chambers, that is not the case at the KSC. To the contrary, as set out above, the KSC's Trial Panels have comprehensive powers, like those of the ICTY. The only relevant limit on a Trial Panel's powers is that it cannot try the contempt allegations itself (article 33(5) of the KSC Law). This does not prevent the Trial Panel from overseeing the investigation of any allegations of contempt, and determining how they shall be handled. Indeed, in contrast to the situation at the ICC, at the KSC this includes powers over investigative measures, which at the KSC are very clearly assigned to whichever Panel already has carriage of a case.
38. From the time of the filing of an indictment,<sup>50</sup> Article 39 of the KSC Law grants a Pre-Trial Judge comprehensive powers, including to make "orders pertaining to a special investigative opportunity and special investigative measures."<sup>51</sup> Under Article 40(6), all of those same powers are granted to the Trial Panel upon its assumption of the case.<sup>52</sup>
39. As elaborated above, a Trial Panel's authority over the case it is seized with is comprehensive and exclusive. This is equally so in respect of its power to authorise SIMs. The position is not altered by the fact that the Rules provide that

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<sup>49</sup> [ICC-01/04-02/06-2666-Red](#), paras 177-178.

<sup>50</sup> KSC Law Article 33(1)(a).

<sup>51</sup> KSC Law, Article 39(3).

<sup>52</sup> KSC Law, Article 40(6)(a).

SIMs are to be authorised by “a Panel”.<sup>53</sup> This is clearly intended to refer to the Panel which is seized of the case. The same phrase, “a Panel”, (or “the Panel”<sup>54</sup>) is used repeatedly in the Rules. For example, “a Panel”:

- (i) may issue arrest warrants, summonses, decisions or orders for the conduct of proceedings;<sup>55</sup>
- (ii) may order or request the transfer of a witness, suspect or Accused from a Third State;<sup>56</sup>
- (iii) may hold a site visit;<sup>57</sup>
- (iv) may withhold legal aid for frivolous or abusive submissions;<sup>58</sup>
- (v) may order protective measures;<sup>59</sup>
- (vi) may order the reclassification of filings.<sup>60</sup>

40. In only one place, the Rules expressly use the phrase “the Panel seized with a case”.<sup>61</sup> However, this is the only logical interpretation of the phrase “a Panel” or “the Panel” which are used interchangeably throughout the Rules. This reflects the scheme set out in the KSC Law, whereby in each case, a Pre-Trial Judge is assigned for the early period of the matter; and proceedings are then transferred to a Trial Panel. The phrasing “a Panel” or “the Panel”, is used for powers which can be exercised by either a Pre-Trial Judge or Trial Panel, depending on which is seized of the case.

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<sup>53</sup> Rules, Rule 31(1), 35(1) and 37(1).

<sup>54</sup> See for example: Rules 5, 8, 9. Context suggests that there is no difference between the intended meaning of “a Panel” and “the Panel”. Indeed, in some provisions, both are used: see for example: Rules 35, 37.

<sup>55</sup> Rules, rule 48. See also rule 53(1), rule 54.

<sup>56</sup> Rules, rule 50.

<sup>57</sup> Rules, rule 74(1).

<sup>58</sup> Rules, rule 75(4).

<sup>59</sup> Rules, rule 80(1).

<sup>60</sup> Rules, rule 82(3).

<sup>61</sup> Rules, rule 57(2)

41. “A Panel” cannot mean “any Panel”, because this would enable forum shopping and lead to absurd results. A party seeking an order for a site visit under rule 74(1) must surely request it from the Panel seized of the case to which the site visit relates. A decision to withhold legal aid in respect of a frivolous or abusive motion under rule 75(4) can surely only be made by the Panel before which the motion was filed. This is despite the use of “a Panel” in both rule 74(1) and 75(4). Enabling “a Panel” to be read as “any Panel” would allow a party to circumvent the Panel actually seized of the case when this appeared advantageous, for example by filing before a judge without access to material that could harm the application, or in order to seize a judge thought to be more sympathetic.

**D. THE SPO WAS REQUIRED TO BRING ANY CONTEMPT ALLEGATIONS BEFORE TRIAL PANEL II**

42. It is therefore clear that the Trial Panel II had exclusive subject-matter jurisdiction over all matters concerning Case 06. This included the power to sanction violations of Case 06 orders. It also included the power to authorise investigative measures concerning alleged interference with Case 06 witnesses. Moreover, and most significantly, if such investigations revealed that interference was occurring, it is clear from the ICTY caselaw cited above, that Trial Panel II had exclusive power and responsibility to determine what action should be taken. While article 33(5) of the KSC Law means that Trial Panel II could not have tried the contempt case itself, it was still responsible for determining how the matter should be disposed of, in order to guarantee the fairness of the Case 06 proceedings.
43. This means that when the SPO formed a view that individuals were breaching the orders of Trial Panel II, or seeking to interfere with witnesses due to testify before Trial Panel II, the correct judicial forum for raising those concerns was *before Trial Panel II*. That is made even clearer by the fact that the individuals suspected by the SPO were accused in Case 06, who were being held in detention under Trial Panel II’s authority. Trial Panel II itself stated, in December 2023, that it would



“take all necessary measures, on an ongoing basis, as are necessary to facilitate the fair and expeditious conduct of the trial proceedings and to protect the Accused, witnesses and victims.”<sup>62</sup>

44. If SIMs were considered necessary by the SPO, the appropriate forum for requesting them was, again, before Trial Panel II. It was for Trial Panel II to oversee any such measures, to ensure that they did not compromise the fairness of the Case 06 proceedings. It was likewise for Trial Panel II to determine if, for any reason such as bias, it had become more appropriate for the investigations into interference or prevention measures to be overseen by a different Panel, or if the matter warranted the issue of an indictment and a separate case. No such determination was ever made by Trial Panel II. Indeed, to the contrary, when the question was later put before it by the Defence, Trial Panel II ruled that no question of bias arose.<sup>63</sup>
45. In clear violation of Trial Panel II’s exclusive jurisdiction, the SPO instead seized an entirely separate Panel with *ex parte* filings on matters fundamentally linked to Case 06. The Single Judge was seized not pursuant to a decision from the competent judicial authority, Trial Panel II, but done simply in an act of impermissible forum shopping by the SPO.

#### **E. THE SPO’S FORUM ERROR HAS IMPERILLED A FAIR TRIAL IN CASE 06**

46. The Single Judge has previously expressed the view that the SPO’s seizing of another panel “[REDACTED].”<sup>64</sup> Therefore, the Defence here provides examples of how the fragmentation of these proceedings, initiated by the SPO, is undermining Trial Panel II’s power to guarantee a fair trial in Case 06.

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<sup>62</sup> [KSC-BC-2020-06/F01977](#), para. 22.

<sup>63</sup> *Ibid.*, para. 25.

<sup>64</sup> [REDACTED].



*Trial Panel II lost the ability to address allegations of contemptuous conduct*

47. By failing to seize Trial Panel II with its allegations, the SPO prevented that Panel from implementing measures to prevent or address the conduct which the SPO alleged. The SPO apparently believed, from 28 March 2023 (before the Case 06 trial began), that witnesses were being improperly influenced, and the value of its Case 06 evidence thereby undermined, by Accused in Case 06. At that point, the SPO should have sought the intervention of Trial Panel II. Had it done so, Trial Panel II could have itself determined whether interference was occurring, and if so given directions to address such alleged interference while ensuring the conduct of fair and impartial proceedings, in accordance with Article 40(2), including taken any necessary take steps to prevent it.
48. Instead, the allegations of interference have been investigated under the direction of a different panel and will now be determined by a separate Trial Panel in Case 12. The consequence is that any ruling by Trial Panel II on the SPO's allegations now risks conflicting with or prejudging the outcome of Case 12. If, as the SPO has requested,<sup>65</sup> Trial Panel II now makes factual findings on these matters, it may violate Mr Thaçi's right to be presumed innocent of the Case 12 charges. Any such findings would also become *res judicata* as against Mr Thaçi, rendering the Case 12 proceedings moot. If, as sought by the SPO, Trial Panel II were to take into account these matters in sentencing Mr Thaçi in Case 06, then *ne bis in idem* would preclude sentencing in Case 12.<sup>66</sup> By placing the allegations of interference before a different Panel in a separate proceeding, the SPO made it impossible for Trial Panel II to resolve these matters while upholding Mr Thaçi's rights to legal certainty and a presumption of innocence.

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<sup>65</sup> [KSC-BC-2020-06/F03120](#).

<sup>66</sup> A more detailed analysis of these issues is set out in the Defence's preliminary motion on severance and adjournment KSC-BC-2023-12/F00285, as well as in KSC-BC-2020-06/F03156/RED.

49. At the end of its case, the SPO has called into question the integrity of parts of its Case 06 evidence which it considers unfavourable, but without having afforded Trial Panel II an opportunity to ensure the evidence's integrity and prevent any such allegations. Moreover, Trial Panel II must now assess the Case 06 witness evidence which the SPO claims to be tainted, but cannot rule on the SPO's allegations of interference without interfering with the Case 12 proceedings.

*Trial Panel II's ability to manage Case 06 timelines has been undermined*

50. Among a Trial Panel's most fundamental roles is to manage the progress of a case: to guarantee that parties – especially the accused – have sufficient time to prepare, while also ensuring that proceedings progress expeditiously. It is the Trial Panel which manages the rate at which disclosure occurs, sets deadlines for filings, and schedules hearings, all of which determine whether an accused has sufficient time and facilities to prepare for trial.

51. Now, however, Mr Thaci's time and facilities for Case 06 preparation are being significantly influenced by the proceedings in Case 12. These proceedings operate outside the control of Trial Panel II. Trial Panel II not only cannot control the pace of disclosure, deadlines and hearings in this case; it will usually have at best partial information about those matters.

52. As addressed in the Defence's preliminary motion on severance and adjournment, filed yesterday,<sup>67</sup> the present case appears likely to come to trial in the second half of 2025, coinciding precisely with the timing of the possible presentation of defence evidence in Case 06. If this occurs, Trial Panel II should have grave concerns for Mr Thaci's ability to participate in his own defence at the most crucial part of Case 06. However, Trial Panel II would have no means at its disposal to manage this, other than dramatically slowing or adjourning Case 06 hearings, at

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<sup>67</sup> KSC-BC-2023-12/F00285.

the expense of the other Case 06 accused. As in *Ntaganda*, the Trial Panel can merely assess whether the second case is causing prejudice, but without any ability to remedy it.<sup>68</sup>

*Trial Panel II is unable to ensure Mr Thaçi's rights as a detainee*

53. Mr Thaçi was initially arrested and detained in the context of Case 06. Since receiving the Case 06 case file, Trial Panel II has overseen Mr Thaçi's detention. However, on confirming an indictment, the Pre-Trial Judge determined that this case gave rise to a separate regime of detention oversight for Mr Thaçi "based on its own legal basis and authority".<sup>69</sup>

54. The result is that on any matter concerning detention, neither the Pre-Trial Judge nor Trial Panel II has full oversight, as two layers of decision-making are applied. This has led not only to inefficiencies, as parallel requests (and responses) must be made before both Panels, but also to inconsistent decisions. Trial Panel II maintains the Mr Thaçi is not a flight risk;<sup>70</sup> the Pre-Trial Judge simultaneously holds that he is.<sup>71</sup> Recently, Mr Thaçi made a series of requests for compassionate release, in connection with the illness and passing of his father. On 19 March 2025 the Pre-Trial Judge and Trial Panel II both granted Mr Thaçi compassionate release, but with differing conditions regarding private visits with his mother, wife and sister.<sup>72</sup> The Defence asked the Pre-Trial Judge to amend her Decision in order to resolve this inconsistent regime<sup>73</sup> but the Pre-Trial Judge dismissed this request.<sup>74</sup> There is a real possibility in these circumstances that an order from Trial

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<sup>68</sup> See paragraphs 35-36 **Error! Reference source not found.** above.

<sup>69</sup> [KSC-BC-2023-12/F00037/RED](#), para. 34.

<sup>70</sup> For example, most recently: [KSC-BC-2020-06/F03106](#); [KSC-BC-2020-06/F02926](#), paras 15-17; [KSC-BC-2020-06/F02781](#), paras 13-17.

<sup>71</sup> [KSC-BC-2023-12/F00165](#), paras 22-28; [KSC-BC-2023-12/F00250](#), paras 23-27.

<sup>72</sup> [KSC-BC-2023-12/F00230/COR/RED](#); [KSC-BC-2020-06/F03037/RED](#).

<sup>73</sup> [KSC-BC-2023-12/F00233/RED](#).

<sup>74</sup> [KSC-BC-2023-12/F00235/RED](#).

Panel II is unable to be effected because of a parallel inconsistent decision from the Pre-Trial Judge. Similarly, the Single Judge and Pre-Trial Judge granted SPO requests [REDACTED], *de facto* depriving Trial Panel II of the possibility to control potential breaches of Mr Thaçi's right [REDACTED].<sup>75</sup>

55. These consequences arise from the SPO's actions in circumventing the jurisdiction of Trial Panel II. As set out above, Article 40(2) requires that a Trial Panel maintain oversight of all aspects of a case, in order that it can ensure the fairness and integrity of the proceedings. It is precisely to prevent difficulties like these that the Trial Panel has exclusive jurisdiction over the conduct of proceedings in the case before it. Fragmentation of a case, such as that which the SPO has triggered in this matter, will invariably undermine a Trial Panel's ability to ensure a fair trial. This is why it is not permitted, and instead all matter relating to the case may only be resolved by the Trial Panel seized with it, pursuant to Article 40(2).

56. By raising matters fundamentally connected to Case 06 before a separate Panel, and without prior authorisation from Trial Panel II, the SPO seized judges who were without subject-matter jurisdiction.

#### **IV. THE SINGLE JUDGE AND CASE 12 PRE-TRIAL JUDGE WERE ASSIGNED IN VIOLATION OF THE KSC LAW**

57. Not only did the SPO circumvent the rightful authority of Trial Panel II, but it did so by seizing a judge in effect operating as a combined standing judge for investigations and pre-trial matters. That purported judicial role violates the KSC's framework for the division of judicial responsibility in several respects.

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<sup>75</sup> [REDACTED].

**A. A SINGLE JUDGE CAN ONLY ACT WHERE NO PANEL IS ALREADY SEIZED OF A MATTER**

58. Under the KSC Law Article 25(1), the KSC's judicial roles include Pre-Trial Judge,<sup>76</sup> Trial Panels,<sup>77</sup> and "individual judges as necessary performing other functions required under this Law"<sup>78</sup> (as well as other judges in appellate and Constitutional functions).
59. Articles 39 and 40 concern the powers of the Pre-Trial Judge and Trial Panel, while Article 33 concerns the assignment of judges into these and other judicial roles. A Pre-Trial Judge is assigned upon the filing of an indictment,<sup>79</sup> and his or her powers include reviewing an indictment, ruling on preliminary motions and preparing a case for trial.<sup>80</sup> When these steps are completed and the Pre-Trial Judge has determined that the case is ready for trial, a Trial Panel is assigned,<sup>81</sup> which, under Article 40, "shall be responsible for the conduct of the trial proceedings".<sup>82</sup>
60. No similar defined tasks – such as overseeing investigative measures – are allocated by the KSC Law to a standing "Single Judge" or "Single Judge Panel". Rather, it permits the (*ad hoc* and temporary) assignment of single judges where a judicial power exists and there is no other judge or panel already assigned who can carry it out. Article 33(2) allows the President to assign a single judge "to deal with a matter which [...] requires the assignment of a judge other than the Pre-Trial Judge (a single judge panel)." When this assignment power was exercised for the first time, on 29 May 2018, the President noted that as an indictment had not yet been filed, there was not yet a Pre-Trial Judge. A single judge assignment

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<sup>76</sup> Article 25(1)(a).

<sup>77</sup> Article 25(1)(b).

<sup>78</sup> Article 25(1)(f).

<sup>79</sup> KSC Law, Article 33(1)(a).

<sup>80</sup> KSC Law, Article 39(1).

<sup>81</sup> KSC Law, Article 33(1)(b).

<sup>82</sup> KSC Law Article 40(1).

would enable a judicial determination of “a specific matter without the conditions for the assignment of a Pre-Trial Judge [...] being triggered.”<sup>83</sup> The assignment of a single judge under Article 33(2), in other words, fills a judicial lacuna where no existing Panel was otherwise assigned to the matter arising.

61. This is reinforced by the Rules. Rule 42(3) provides that:

Any challenge to a summons, order or investigative undertaking by the Specialist Prosecutor on the basis that it adversely affects the person’s rights, shall be brought before a Single Judge to be assigned pursuant to Article 25(1)(f) of the Law, *if a Panel has not otherwise been assigned.* (emphasis added).

62. In the present matter, SIMs were requested to investigate allegations of interference in Case 6: allegations which concerned Case 6 witnesses, Case 6 Accused, and orders made by Trial Panel II in Case 6. Manifestly, there was already a Panel assigned to manage those matters: Trial Panel II. Under the Law and the Rules there was simply no scope for the residual powers for which a Single Judge’s functions are intended.

63. Contrary to submissions made previously by the SPO,<sup>84</sup> the fact that a Single Judge has made orders does not mean that he or she had jurisdiction to do so. That is particularly so for orders made in an *ex parte* context and without SPO submissions on jurisdiction, or any apparent judicial consideration of the question. SIM requests were ruled on repeatedly for well over a year before any discussion of the Single Judge’s competence was first raised (by the Defence, in August 2024<sup>85</sup>). At that time, the SPO responded that the Single Judge had jurisdiction over the investigation because SIMs had been authorised by the Single Judge.<sup>86</sup> However, the SPO cannot create jurisdiction in a judicial Panel which

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<sup>83</sup> [KSCPR-2018/F00004](#), para. 11.

<sup>84</sup> KSC-BC-2023-12/INV/F00210, para .4.

<sup>85</sup> KSC-BC-2023-12/INV/F00203.

<sup>86</sup> KSC-BC-2023-12/INV/F00210, para. 4.

does not have it, simply by presenting a filing to it. Neither can a Single Judge give him or herself jurisdiction by granting an SPO request.

64. Likewise, the President's assignment of a judge does not, in itself, establish that judge's jurisdiction. Article 30(1) provides that a judge "shall have the authority and responsibility to perform judicial functions" for the proceedings "to which he or she may be assigned *and according to the modalities established by this Law*" (emphasis added). The assignment of a judge by the President is an administrative function, which cannot bestow judicial powers not granted under the KSC Law and the Rules. If it were otherwise, the President could simply use her Article 33 functions to override the division of judicial powers established by the KSC Law and the Rules. If the President had power to decide which matters would be handled by which types of Panels, this would render Articles 39 and 40 of the KSC Law meaningless.

**B. A SINGLE JUDGE HAS A TEMPORARY AND *AD HOC* ROLE, NOT A STANDING MANDATE**

65. On 29 May 2018, the President referred to a "forthcoming request for judicial authorisation" from the SPO.<sup>87</sup> Rather than assigning a single judge temporarily to deal only with this "specific matter" (the words used in Article 33(2) of the KSC Law), she assigned Judge Guillou 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 ensuring assignment of a Pre-Trial Judge under Article 33(1)(a) of the Law".<sup>88</sup>

66. In effect this became a standing judicial role. Judge Guillou was maintained as a "Single Judge Panel" handling all investigative matters arising at the KSC. When Judge Guillou resigned in June 2024, the President invoked Rule 5 of the Rules on

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<sup>87</sup> [KSCPR-2018/F00004](#), para. 2.

<sup>88</sup> [KSCPR-2018/F00004](#), p5.



the Assignment, which applies when a judge assigned to a Panel is unable to perform his or her duties,<sup>89</sup> and assigned Judge Masselot.<sup>90</sup>

67. Such a role, of permanent tribunal-wide judicial authority over investigative matters, is not foreseen in the KSC Law or the Rules. It would have been a simple matter for the KSC Law to create such a role; to define it in a provision equivalent to Articles 39 and 40; and to set out the conditions and terms of its assignment in Article 33. However, there is no mention in the KSC Law of a standing Single Judge (on investigations or any other issue). Rather, the KSC Law is explicit that the assignment of a Single Judge under Article 33(2) “*shall be temporary in nature*” (emphasis added). Such assignments “shall cease as soon as the matter triggering them has been disposed of”.<sup>91</sup>
68. This means that a Single Judge’s assignment must end once the specific issues in question no longer require judicial oversight or are transferred to a Pre-Trial Judge or Trial Panel. A new Single Judge would be assigned the next time a different matter arose which required *ad hoc* judicial resolution. It may be that all issues relating to a particular SPO investigation could be handled within a Single Judge assignment. However, the KSC Law does not permit that *every* KSC investigation should be handled by one, permanent Single Judge.
69. Involvement from the President each time a new matter is to be put before a Single Judge is a means of ensuring that this judicial mandate is used appropriately. The problems which have arisen in the present case demonstrate the need for that. Had there been no standing Single Judge, the SPO could not have acted unilaterally in improperly seizing that Judge with its SIM requests. It would have first had to request the assignment of a Single Judge from the President. At that

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<sup>89</sup> KSC-BC-2018-01/F00697/COR, para. 4.

<sup>90</sup> KSC-BC-2018-01/F00697/COR, p2. See also [KSC-BC-2018-01/F00698](#).

<sup>91</sup> KSC Law, Article 33(2).



point the President could then have assessed that there was no call for a Single Judge because jurisdiction over the SIMs lay with Trial Panel II.

**C. A PRE-TRIAL JUDGE MAY BE ASSIGNED ONLY WHEN AN INDICTMENT IS FILED, AND MUST BE A JUDGE NOT PREVIOUSLY ASSIGNED IN THE MATTER**

70. An even more significant problem has been created by the practice of additionally assigning this standing tribunal-wide investigative Single Judge to simultaneously serve as Pre-Trial Judge in all cases at that stage before the KSC.
71. During the period when he was assigned as a standing “Single Judge Panel” for all pre-indictment matters, Judge Guillou was also assigned as the Pre-Trial Judge in every instance of an indictment being filed (including the present case).<sup>92</sup> On his resignation, Judge Masselot was assigned to replace him not only as the “Single Judge Panel” for investigation matters, but also as Pre-Trial Judge in the two cases that Judge Guillou had remained seized of in that role (this case and Case 10).<sup>93</sup>
72. In practice then, the KSC is operating under a system whereby one specific judge oversees all pre-indictment investigative matters *and* serves as Pre-Trial Judge for all cases. Since the two roles are played by one judge, the KSC effectively has a Pre-Trial Judge who begins his or her work prior to the filing of an indictment. The only change that occurs at the point of the indictment is the semantic one of replacing the title “Single Judge” with “Pre-Trial Judge”.
73. A scheme of this kind has been used at some other international courts, most notably the Special Tribunal for Lebanon. However, it is not the scheme foreseen by the KSC Law. It defeats Article 33(1)(a)’s specific provision that a Pre-Trial Judge shall only be assigned once an indictment is filed. While Article 39(3) of the

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<sup>92</sup> [KSC-BC-2020-04/F00001](#); [KSC-BC-2020-05/F00001](#); [KSC-BC-2020-06/F00001](#); [KSC-BC-2020-07/F00061](#); [KSC-BC-2023-10/F00001](#); [KSC-BC-2023-11/F00001](#); [KSC-BC-2023-12/F00001](#).

<sup>93</sup> [KSC-BC-2023-12/F00015](#); [KSC-BC-2023-10/F00327](#).

KSC Law and Rule 85(2) do permit a Pre-Trial Judge some role in judicial oversight of investigations, it is a narrow role regarding any matters arising between the filing of an indictment and its confirmation. Procedures undertaken before the filing of an indictment are to be handled by a different judge.<sup>94</sup>

74. It must be assumed that Article 33(1) was framed in its current form for a reason. One obvious rationale of appointing a Pre-Trial Judge only upon the filing of an indictment, is to ensure that this judge brings a fresh mind to that document and the material in support of it. The Pre-Trial Judge should not be aware of the much wider range of matters which may have been investigated prior to the filing of an indictment and which may be prejudicial. A second reason for the separation of these roles is that it also enables the Pre-Trial Judge to impartially scrutinise the procedures by which any material in support of the Indictment has been gathered, if questions are raised about this (for example in preliminary motions). This is an important check and balance in the system established by the KSC Law.

75. This goal is also apparent in Article 33(4) of the KSC Law:

Having been assigned as Pre-Trial Judge or to a panel for a matter, a judge may not sit on another panel at a different phase of the same matter.

The clear intention of the KSC Law was to establish a system where the various stages of case are overseen by different judges.

76. In the present case, this did not occur. Judge Masselot was assigned as a “Single Judge Panel” overseeing the SPO’s SIM requests and the associated matters which gave rise to the material underlying the Indictment. She was also assigned to a different “panel” as Pre-Trial Judge, in the very same case. The same was true for Judge Guillou before her. These assignments meant that both Judge Guillou and Judge Masselot served two successive roles in the proceedings. They also had the

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<sup>94</sup> [KSCPR-2018/F00004](#), para. 11.

effect that the Pre-Trial Judge oversaw all investigative matters, including that which occurred prior to the filing of an indictment.

77. This is not merely a technical violation of the KSC's legal framework. It has real consequences. The Pre-Trial Judge is unable to serve as a genuine check on steps which have been taken prior to her assignment, having herself been involved in those processes.
78. Neither does the Pre-Trial Judge bring a fresh mind to the proceedings. Having served as Single Judge in the proceeding referred to as KSC-2018-01, the Pre-Trial Judge has had access to a wide range of documents filed in that proceeding concerning SPO investigations. Many of these documents do not form part of the file in Case 12 and are inaccessible to the Defence and co-accused in this case. Mr Thaçi has access to some of them through Case 06, when they concern other Case 06 accused and/or Case 06 witnesses.<sup>95</sup> Others are not accessible to him. However, these documents *are* available not only to the SPO but also to the Pre-Trial Judge. These documents are likely to reference or reflect SPO investigative theories prejudicial to the Defence which were not ultimately included within this case. Case 06 filings available to Mr Thaçi make clear that the SPO had envisaged a wide-ranging scheme of witness tampering.<sup>96</sup> This was not borne out by evidence (as demonstrated by the limited charges in this case). The Pre-Trial Judge's access to material which was premised on now-discredited SPO theories, and much of which the Defence cannot access, is inappropriate and potentially harmful. This is also precisely the situation that the KSC Law seeks to avoid by requiring that a Pre-Trial Judge is appointed only upon the filing of an indictment.

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<sup>95</sup> See for example [REDACTED].

<sup>96</sup> See, *inter alia*, [KSC-BC-2020-06/F01933/RED](#), paras. 1, 6-7 *et seq.*

79. In some instances, language has been used which seems intended to imply that Judge Masselot has been able to erect a mental division between her respective roles as Single Judge and Pre-Trial Judge. In her decision [REDACTED], as Single Judge, she wrote that she [REDACTED]<sup>97</sup> [REDACTED]:

[REDACTED].<sup>98</sup>

80. [REDACTED] later, this time as Pre-Trial Judge, Judge Masselot issued a decision [REDACTED], in which said that she:

[REDACTED].<sup>99</sup>

81. This focus on the change in title from Single Judge to Pre-Trial Judge cannot obscure the obvious fact that the role has been filled by a single judicial actor. The bulk of the material supporting the Indictment is the product of measures authorised or extended by Judge Masselot. Moreover, her objectivity is potentially undermined by her sight of potentially prejudicial documents which do not form part of this case, and to which the Defence has no access.

## V. CONCLUSIONS

82. Through a combination of errors made by the SPO and the President, this matter has been handled outside the judicial scheme foreseen by the KSC Law.

83. In the first instance, when it became concerned about the possible violation of Case 06 judicial orders, or the wrongful sharing of Case 06 confidential information, SPO should have seized Trial Panel II, enabling it to exercise its responsibilities under Article 40(2) as it best saw fit.

84. It remained open to the SPO to investigate Article 15 offences. However, if SIMs were to be issued, this could only be done by the panel with carriage of Case 06,

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<sup>97</sup> [REDACTED].

<sup>98</sup> [REDACTED].

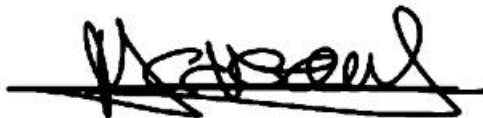
<sup>99</sup> [REDACTED].

Trial Panel II. If SPO investigations eventually led it to determine that new charges should be brought, it should first have sought leave of Trial Panel II.

85. Instead of following this path, as dictated by the text of the KSL Law, the SPO circumvented Trial Panel II and filed before a Single Judge and a Pre-Trial Judge who were without jurisdiction regarding Case 06 matters.
86. A second error occurred when the President then assigned this case to Pre-Trial Judges (Guillou and Masselot) who were also assigned as Single Judge, in violation of Article 33(1)(a) and (4).
87. The cumulative result of these errors is that both the Single Judges who granted SIMs to the SPO in this matter, and the Pre-Trial Judge, acted *ultra vires*. Most of the material underpinning the indictment was therefore obtained without legal basis. More fundamentally, the Pre-Trial Judge was not competent to review and confirm the Indictment.
88. For the above reasons, the Defence respectfully requests that the Pre-Trial Judge dismiss the Indictment.

[Word count: 8629 words]

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Menegon', with a horizontal line drawn through it.

Sophie Menegon

Counsel for Hashim Thaçi

8 May 2025

Paris, France