



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: 20 May 2025

Language: English

Classification: Public

Prosecution submission pertaining to periodic detention review of Hashim Thaçi

Specialist Prosecutor's Office

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I. INTRODUCTION

1. Pursuant to Article 41 of the Law¹ and Rule 57 of the Rules,² the Specialist Prosecutor's Office ('SPO') makes the following submissions in support of the need for the continued detention of the Accused Hashim Thaçi ('Thaçi'). The Pre-Trial Judge, the Court of Appeals, and this Panel have repeatedly held that Thaçi's detention is justified on multiple bases, that no conditions short of detention in the Kosovo Specialist Chambers' ('KSC') detention facilities would be sufficient to mitigate the risks, and that the detention period—taking all relevant circumstances into account—is reasonable. Since the most recent determination of this Panel on 11 April 2025,³ there has been no change in circumstances that merits deviating from that determination. To the contrary, the continued progression of trial and related developments further buttress the necessity and reasonableness of detention.

II. PROCEDURAL HISTORY

2. The relevant procedural history regarding Thaçi's detention is referenced in the Panel's most recent detention decision as having been set out extensively in previous decisions.⁴

3. On 3 April 2023, the trial commenced.⁵

¹ Law no.05/L-053 on Specialist Chambers and Specialist Prosecutor's Office, 3 August 2015 ('Law'). Unless otherwise indicated, all references to 'Article(s)' are to the Law.

² Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, KSC-BD-03/Rev3/2020, 2 June 2020 ('Rules'). All references to 'Rule' or 'Rules' herein refer to the Rules, unless otherwise specified.

³ Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F03106, 11 April 2025 ('Twentieth Detention Decision').

⁴ Twentieth Detention Decision, KSC-BC-2020-06/F03106, paras 1-4.

⁵ Transcript (Opening Statements), 3 April 2023.

4. On 27 March 2025, testimony of the one-hundred-twenty-fifth (125th) witness concluded.

5. On 15 April 2025, the SPO filed its notice of the closing of its case pursuant to Rule 129.⁶

6. On 23 April 2025, the Panel set deadlines for the Defence's Rule 130 motion(s) and ordered Victims' Counsel to submit, no later than 28 May 2025, lists of proposed witnesses and evidence, and related motions.⁷ Victims' Counsel's case is tentatively scheduled to commence in July 2025.⁸

III. SUBMISSIONS

7. The relevant applicable law is set out in Article 41, and Rules 56 and 57, and has been laid out extensively in earlier decisions.⁹

8. Since the most recent detention decision, there have been no developments that diminish the factors supporting the need and reasonableness of detention. To the contrary, the end of the presentation of the SPO's case and the disclosure of additional, sensitive information relating to witnesses and participating victims increases the risks of flight, obstruction, and commission of further crimes.

A. GROUNDED SUSPICION

9. Article 41(6)(a) requires a grounded suspicion that the detained person has committed a crime within the jurisdiction of the KSC.¹⁰ There remains a grounded

⁶ Prosecution notice pursuant to Rule 129, KSC-BC-2020-06/F03121, 15 April 2025.

⁷ Transcript, 23 April 2025, pp.26176-26177.

⁸ Transcript, 23 April 2025, pp.26175, 26186.

⁹ Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.6.

¹⁰ Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.9.

suspicion that Thaçi has done so.¹¹ The Confirmation Decision determined that there is a suspicion that Thaçi is liable for crimes against humanity and war crimes as identified in Articles 13, 14, and 16,¹² to a standard that exceeds the ‘grounded suspicion’ required for detention.¹³ The Pre-Trial Judge later also confirmed amendments to the Indictment that added further, similar charges against Thaçi.¹⁴ Nothing has occurred since the confirmation decisions that would detract from this determination. Indeed, it has been repeatedly confirmed that there remains a well-grounded suspicion that Thaçi has committed crimes within the KSC’s jurisdiction.¹⁵

B. DETENTION IS JUSTIFIED UNDER ALL ARTICLE 41(6)(B) FACTORS

10. The Court of Appeals has been clear that, once a grounded suspicion under Article 41(6)(a) is identified, an articulable basis of a single ground under Article 41(6)(b) is sufficient to support detention.¹⁶ The three grounds under Article 41(6)(b) justifying detention are: (i) risk of flight; (ii) potential obstruction; and (iii) risk of additional crimes.¹⁷ The applicable standard is articulable grounds that support a ‘belief’ that there is a risk of one of the Article 41(6)(b) grounds occurring.¹⁸ The ‘belief’ test denotes ‘an acceptance of the possibility, not the inevitability, of a future occurrence’.¹⁹ In other

¹¹ See Article 41(6)(a); Twentieth Detention Decision, KSC-BC-2020-06/F03106, paras 10-11.

¹² Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00026/RED, 26 October 2020, para.521(a).

¹³ Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.10.

¹⁴ Public Redacted Version of Decision on the Confirmation of Amendments to the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, KSC-BC-2020-06/F00777/RED, 22 April 2022, para.185; *see also* Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.10.

¹⁵ *See, e.g.*, Twentieth Detention Decision, KSC-BC-2020-06/F03106, paras 10-11.

¹⁶ *See Prosecutor v. Gucati and Haradinaj*, Consolidated Decision on Nasim Haradinaj’s Appeals Against Decisions on Review of Detention, KSC-BC-2020-07/IA007/F00004, 6 April 2022, para.49.

¹⁷ Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.12.

¹⁸ Decision on Hashim Thaçi’s Appeal Against Decision on Interim Release, KSC-BC-2020-06/IA004/F00005, 30 April 2021 (‘First Appeals Decision’), para.19.

¹⁹ First Appeals Decision, KSC-BC-2020-06/IA004/F00005, paras 14, 21.

words, the standard to be applied is less than certainty, but more than a mere possibility of a risk materialising.²⁰ The Panel has noted that ‘articulable’ in this context means specified in detail by reference to the relevant information or evidence.²¹ In considering whether an accused should be detained or released, the relevant panel must consider whether measures other than detention would sufficiently reduce the risk of the Article 41(6)(b) factors occurring.²²

i. Risk of Flight (Article 41(6)(b)(i))

11. Thaçi is aware of the serious confirmed charges against him, the possible lengthy prison sentence that may result therefrom, and now has full knowledge of the evidence in relation to those crimes.²³ The possible imposition of a lengthy sentence becomes more concrete with the expeditious progression of trial and the conclusion of the presentation of the SPO’s case. He also has now or will soon have further sensitive information relating to the witnesses and evidence that Victims’ Counsel proposes to call as part of his case. In addition, Thaçi now faces confirmed charges relating to obstruction offences due to the evidence that has been obtained of his attempts to obstruct proceedings in this case and commit further crimes.²⁴ All of the above must be taken into consideration in

²⁰ Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.12; First Appeals Decision, KSC-BC-2020-06/IA004/F00005, para.22; *Prosecutor v. Gucati and Haradinaj*, Public Redacted Version of Decision on Review of Detention of Nasim Haradinaj, KSC-BC-2020-07/F00507/RED, 21 December 2021 (‘Haradinaj Decision’), para.28.

²¹ Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.12 *citing* Article 19.1.31 of the Kosovo Criminal Procedure Code 2012, Law No. 08/L-032 defining ‘articulable’ as: ‘the party offering the information or evidence must specify in detail the information or evidence being relied upon’.

²² Judgment on the Referral of the Rules of Procedure and Evidence Adopted by Plenary on 17 March 2017 to the Specialist Chamber of the Constitutional Court Pursuant to Article 19(5) of the Law no. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, KSC-CC-PR-2017-1/F00004, 26 April 2017, para.14.

²³ Decision on Hashim Thaçi’s Application for Interim Release, KSC-BC-2020-06/F00177, 22 January 2021, para.31.

²⁴ Decision on the Confirmation of the Indictment, KSC-BC-2023-12/F00036, 29 November 2024, Confidential (‘Confirmation Decision’); Annex 1 to Submission of public redacted version of Confirmed Indictment, KSC-BC-2023-12/F00055/A01 (‘Confirmed Indictment’).

relation to prior findings concerning Thaçi's means to travel.²⁵ The combination of all of these factors elevates Thaçi's risk of flight to a 'sufficiently real possibility'.²⁶

ii. *Risk of Obstruction of Proceedings (Article 41(6)(b)(ii))*

12. Thaçi continues to present an extremely high risk of obstructing proceedings. In recently finding that such a risk continues to exist,²⁷ this Panel reiterated its previous determination that Thaçi's has (i) the interest and ability to interfere with the proceedings; (ii) attempted to undermine the KSC and offered benefits to persons summoned by the SPO; (iii) a position of influence in Kosovo which could allow him to elicit the support of sympathisers; and (iv) increased knowledge of the evidence underpinning the serious charges against him.²⁸

13. The conclusion of the SPO case does not obviate this risk, but increases it, as the Accused now have knowledge of the full scope of the case against them and witnesses remain at risk of obstruction even after their testimony.²⁹ Additionally, there are still

²⁵ See Decision on Periodic Review of Detention of Hashim Thaçi, KSC-BC-2020-06/F00994, 29 September 2022, para.28.

²⁶ See e.g. First Appeals Decision, KSC-BC-2020-06/IA004/F00005, para.31.

²⁷ Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.21.

²⁸ Twentieth Detention Decision, KSC-BC-2020-06/F03106, paras 17-20.

²⁹ In this regard, taking harmful action against a person 'with the intent to retaliate for providing truthful information relating to the commission or possible commission of any criminal offense to police, an authorized investigator, a prosecutor or a judge' is a punishable offence under Article 15(2) of the Law, as read with Article 388 of the 2019 Kosovo Criminal Code (renumbered from Article 396 of the 2012 Kosovo Criminal Code). For examples of such conduct from international courts, at the Special Court for Sierra Leone, five witnesses were subject to unlawful interference from a purported representative of the defence team, after the parties closed their cases and prior to delivery of a trial judgment, to induce them to recant their testimony against Charles Taylor. See SCSL, *Independent Counsel v. Eric Koi Senessie*, SCSL-2011-01-T, Judgment in Contempt Proceedings, 16 August 2012. Similarly, and over a sustained period between 2015-2018 following a final appeal judgment against Mr Augustin Ngirabatware, the accused and a group of his associates engaged in a highly organised scheme intended to manipulate and improperly influence five witnesses heard by the International Criminal Tribunal for Rwanda with the end goal of procuring recantations of their prior testimony. See IRMCT, *Prosecutor v. Nzabonimpa et al.*, MICT-18-116-T, Judgment, 25 June 2021. Similarly, in the SCSL case of *Bangura et al.*, two convicted persons and two of their associates

witnesses to be heard in the case – witnesses for the Victims³⁰ and possibly the Defence – for whom the risk of interference exists. As recently noted by the Panel, the risk of interference also includes: (a) any attempt to retaliate against witnesses who have testified in these proceedings; (b) attempts to incentivize a witness to recant; and (c) attempts to interfere with witnesses in parallel proceedings.³¹

14. The Panel has previously noted that the disclosure of highly sensitive information to the Thaçi Defence necessarily results in it becoming known to a broader range of persons, including the Accused.³² This continues to amplify the risk of sensitive information pertaining to witnesses becoming known to members of the public,³³ which, in the context of the release of an Accused, would not be conducive to the effective protection of witnesses.³⁴

15. Indeed, this risk has already been realised, evidenced by the Confirmation Decision³⁵ and Decision on Arrest and Transfer³⁶ in Case 12. Thaçi has violated the Trial Panel's orders by, *inter alia*, providing visitors with information elicited during the testimony of protected witnesses, and passing instructions intended for future SPO witnesses

engaged in an initiative to procure the recantation of witness testimony by way of a monetary bribe, with the aim of providing an avenue to seek review. See SCSL, *Independent Counsel v. Bangura et al.*, SCSL-2011-02-T, Judgment in Contempt Proceedings, 25 September 2012. In a recent IRMCT review proceeding, the Appeals Chamber found that financial transactions of Witness HH raised concerns as to the integrity of his purported recantation, such that Mr Ntakirutimana's original convictions were maintained. See IRMCT, *Prosecutor v. Gérard Ntakirutimana*, MICT-12-17-R, Review Judgment, 22 November 2024, paras 57, 62.

³⁰ Notably, the Panel has found that participating victims are especially vulnerable. See Provisional Release Decision, KSC-BC-2020-06/F03177, para.33.

³¹ See Decision on Veseli Defence Request for Provisional Release, KSC-BC-2020-06/F03177, 13 May 2025, para.32.

³² Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.18.

³³ See Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.18.

³⁴ See Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.19.

³⁵ Confirmation Decision, KSCO-BC-2023-12/F00036, paras 210, 228, 235, 249-250, 313(a).

³⁶ Public Redacted Version of Decision on Request for Arrest Warrants and Related Matters, KSC-BC-2023-12/F00037/RED, 29 November 2024, ('Decision on Arrest and Transfer'), paras 50-51.

regarding the form and content of their upcoming testimony.³⁷ As a result, this Panel concluded that the standard conditions of detention were insufficient to mitigate the risk of Thaçi and other Accused engaging in conduct that could interfere with the proceedings and/or present a risk to the safety and security of witnesses.³⁸ To address these risks, the Panel ordered significant modifications to detention conditions.³⁹ More specifically, this Panel has held that such conduct reinforces the Panel's finding that the Accused's release would create a risk of obstruction with the progress of KSC proceedings.⁴⁰

16. Additionally, the persistent climate of intimidation of witnesses and interference with criminal proceedings against former KLA members in Kosovo continues,⁴¹ which the Court of Appeals has agreed is a relevant 'contextual consideration'.⁴² Similar findings were made in the *Mustafa* Trial Judgment⁴³ and the *Gucati and Haradinaj* Appeal Judgment.⁴⁴ The Trial Panel in *Gucati and Haradinaj* considered that 'witness protection has continued to be a live and critical issue in Kosovo',⁴⁵ and credited the testimony of defence expert Robert Reid, who remarked that, in over 20 years in the field, he had never

³⁷ See Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.19.

³⁸ 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, Public ('Modification Decision'), para.41.

³⁹ See Modification Decision, KSC-BC-2020-06/F01977, paras 51-53, 55-60, 62-78, 84(b).

⁴⁰ See Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.26.

⁴¹ See Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.20.

⁴² Public Redacted Version of Decision on Hashim Thaçi's Appeal Against Decision on Review of Detention, KSC-BC-2020-06/IA017/F00011/RED, 5 April 2022, paras 41-48; Public Redacted Version of Decision on Kadri Veseli's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA014/F00008/RED, 31 March 2022, para.50; Public Redacted Version of Decision on Rexhep Selimi's Appeal Against Decision on Remanded Detention Review and Periodic Review of Detention, KSC-BC-2020-06/IA015/F00005/RED, 25 March 2022, para.43.

⁴³ *Prosecutor v. Mustafa*, Further Redacted Version of Corrected Version of Public Redacted Version of Trial Judgment, KSC-BC-2020-05/F00494/RED3/COR, 16 December 2022, para.57.

⁴⁴ *Prosecutor v. Guçati and Haradinaj*, Appeal Judgment, KSC-CA-2022-01/F00114, 2 February 2023, para.438 (quoting KSC-BC-2020-07, Transcript, 18 May 2022, pp.3858-3859).

⁴⁵ *Prosecutor v. Guçati and Haradinaj*, Public Redacted Version of the Trial Judgment, KSC-BC-2020-07/F00611/RED, 18 May 2022 ('Case 7 Judgment'), para.579.

seen witness intimidation on the level that exists in Kosovo.⁴⁶ This climate of witness intimidation continues to persist, as noted by the *Shala* Trial Panel⁴⁷ and as seen in media reports following testimony in public session.⁴⁸

17. All of the above demonstrates that the risk of obstruction is not only well-founded, but that Thaçi has actively engaged in unlawful conduct that is detrimental to the safety, security and well-being of witnesses, and directly prejudicial to the integrity of proceedings. Indeed, Thaçi presents an extraordinarily heightened risk of obstructing KSC proceedings to such an extent that even the standard communications restrictions and monitoring of the Detention Centre are insufficient to mitigate.

iii. Risk of Criminal Offences (Article 41(6)(b)(iii))

18. Thaçi continues to present a risk of committing further crimes, consistent with this Panel's recent conclusions.⁴⁹

19. The Panel recalled its previous finding that the risk of Thaçi committing further crimes continues to exist, opined that the same factors that were taken into account in relation to the risk of obstruction are relevant to the analysis of the risk of committing further crimes, and concluded that no new circumstances have arisen since the last detention review that would justify a different finding in respect of this matter.⁵⁰

20. Moreover, the crimes against humanity and war crimes that Thaçi is charged with are extremely serious, they are alleged to have been committed in cooperation with

⁴⁶ Case 7 Judgment, KSC-BC-2020-07/F00611/RED, para.577.

⁴⁷ See *Prosecutor v. Shala*, Summary of Trial Judgment, KSC-BC-2020-04, 16 July 2024, para.6.

⁴⁸ See Arberi, 'Denigrating graffiti for Fadil Geci are place in Pristina', 25 October 2024, accessed at www.koha.net/arberi/grafite-denigruse-per-fadil-gecin-vendosen-ne-prishtine.

⁴⁹ Twentieth Detention Decision, KSC-BC-2020-06/F03106, paras 23-25.

⁵⁰ Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.23.

others, and the Confirmation Decision describes Thaçi's personal participation in the commission of crimes.

21. The Panel highlighted the fact that the trial in this case is ongoing, that the identities of sensitive witnesses have been disclosed to Thaçi, and that any risk of the further commission of crimes must be avoided.⁵¹

22. This Panel's previous conclusion that the continuing disclosure of sensitive information presented an unacceptable risk for the commission of further crimes applies even more forcefully given the relevant obstruction findings and the continued progression of trial. Indeed, the fact that Thaçi now has specific insight into the overall case and evidence against him, furthers the risk that he may commit additional crimes, including against witnesses who have provided or could provide evidence in the case and/or appear before this Panel at future stages of the proceedings.⁵²

C. NO MODALITIES OF CONDITIONAL RELEASE ARE ABLE TO SUFFICIENTLY MITIGATE THE RISKS

23. The relevant risks can only be effectively managed at the KSC's detention facilities, as recently reaffirmed by this Panel.⁵³

24. Regarding the risks of obstructing the progress of KSC proceedings and committing further crimes, the Panel found that none of the formerly proposed conditions, nor any

⁵¹ Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.24.

⁵² See e.g. *Decision on the Twelfth Review of Detention of Pjetër Shala*, KSC-BC-2020-04/F00596, 20 July 2023, para.25.

⁵³ Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.31.

additional measures foreseen in Article 41(12) could sufficiently mitigate the existing risks.⁵⁴

25. Further, the Panel found that the measures in place at the KSC detention facilities, viewed as a whole, provide robust assurances against unmonitored visits and communications with family members and pre-approved visitors with a view to minimising the risks of obstruction and commission of further crimes.⁵⁵ Moreover, they offer a controlled environment where a potential breach of confidentiality could be more easily identified and/or prevented.⁵⁶

26. The Panel has concluded that it is only through the communication monitoring framework applicable at the KSC detention facilities that Thaçi's communications can be restricted in a manner that would sufficiently mitigate the risks of obstruction and commission of further crimes.⁵⁷

27. Nothing has occurred since the previous determination warranting a different assessment on conditions, either generally or for a discrete period of time. To the contrary, Thaçi's conduct now represents such an extraordinarily heightened risk that even the standard communications restrictions and monitoring of the Detention Centre are insufficient to mitigate it, necessitating the imposition of an even more strict regime by this Panel. Therefore, especially in conjunction with the continuation of trial and attendant further disclosure, the underlying risks are higher than ever.

D. DETENTION REMAINS PROPORTIONAL

⁵⁴ Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.29.

⁵⁵ Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.29.

⁵⁶ Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.29.

⁵⁷ Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.30.

28. Detention remains proportional. At the last detention review, this Panel found that Thaçi's detention for a further two months was necessary and reasonable in the specific circumstances of the case.⁵⁸

29. In that regard, the Panel recalled that the reasonableness of an accused's continued detention must be assessed on the facts of each case and according to its special features, which, in this case, include: (i) Thaçi's influence and authority; (ii) his knowledge of the charges and the evidence against him, and a possibly lengthy prison sentence; (iii) the risk that Thaçi would obstruct KSC proceedings; (iv) the risk of committing, instigating, or assisting further crimes; (v) the fact that restrictive measures on release are not sufficient to mitigate risks; (vi) the gravity and the complexity of the charges against Thaçi; and (vii) the trial is underway, demonstrating reasonable progression of proceedings.⁵⁹

30. Here, taking these same, and additional, factors into consideration, Thaçi's detention continues to be reasonable, especially in light of the continuing reasonable progression of proceedings.⁶⁰

IV. CONCLUSION

31. For the foregoing reasons, Thaçi should remain detained.

⁵⁸ Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.34.

⁵⁹ Twentieth Detention Decision, KSC-BC-2020-06/F03106, para.33.

⁶⁰ In this regard, *see* Twentieth Detention Decision, KSC-BC-2020-06/F03106, paras 34-35; Corrected Version of Consolidated Decision on Krasniqi Defence Request for Provisional Release and on Periodic Review of Detention of Jakup Krasniqi, KSC-BC-2020-06/F03176COR, 13 May 2025, paras 72-73; Consolidated Decision on Selimi Defence Request for Provisional Release and on Periodic Review of Detention of Rexhep Selimi, KSC-BC-2020-06/F03175, 13 May 2025, paras 65-66.

Word count: 3,326

A handwritten signature in blue ink, appearing to read 'Kimberly P. West', is written over a horizontal line.

Kimberly P. West

Specialist Prosecutor

Tuesday, 20 May 2025

At The Hague, the Netherlands.