

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 Christoph Barthe
Judge Guénaél Mettraux
Judge Fergal Gaynor, Reserve Judge

Registrar: Dr Fidelma Donlon

Filing Participant: Specialist Counsel for Hashim Thaçi

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Thaçi Defence Response to ‘Prosecution submission pertaining to periodic detention review of Hashim Thaçi’ (F03184)

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I. INTRODUCTION

1. The Defence for Mr Hashim Thaçi (“Defence”) has not filed submissions during the last nine detention reviews. This decision was based, in part, on the consistent nature of the SPO submissions and Trial Panel decisions. The present SPO Submissions,¹ however, introduce new arguments, which the Defence addresses below.

II. PROCEDURAL HISTORY

1. On 5 November 2020, following the confirmation of an indictment² and issue of an arrest warrant,³ Mr Thaçi resigned from his position as President of the Republic of Kosovo, voluntarily surrendered to KSC officials and was transferred to the KSC’s detention facility in The Hague.⁴

2. Since surrendering to the custody of the KSC, Mr Thaçi has been detained for four and a half years. In this time, Mr Thaçi has had his detention reviewed by the Trial Panel on 20 occasions. On each occasion, the relevant Panel has ordered Mr Thaçi’s continued detention.⁵

¹ KSC-BC-2020-06/F03184, Prosecution submission pertaining to periodic detention review of Hashim Thaçi, 20 May 2025 (“SPO Submissions”).

² KSC-BC-2020-06/F00026/CONF/RED, Pre-Trial Judge: Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, 26 October 2020, Confidential.

³ KSC-BC-2020-06/F00027/A01/RED, Pre-Trial Judge: Public Redacted Version of Arrest Warrant for Hashim Thaçi, 26 October 2020.

⁴ KSC-BC-2020-06/F00051, Registrar: Notification of Arrest of Hashim Thaçi Pursuant to Rule 55(4), 5 November 2020; KSC-BC-2020-06/F00065/Red, Report on the Arrest and Transfer of Hashim Thaçi to the Detention Facilities, 8 November 2020, paras. 3-7.

⁵ As noted by the Trial Panel in their most recent decision on detention, the procedural history has been set out extensively in previous decisions: *see*, KSC-BC-2020-06/F03106, Decision on Periodic Review of Detention of Hashim Thaçi, 11 April 2025, paras 1-4.

3. The trial in this case commenced on 3 April 2023 with the presentation of opening statements. On 27 March 2025, the last Prosecution witness scheduled to testify completed his testimony.

4. On 15 April 2025, the SPO closed its case.⁶

5. On 23 April 2025, the Panel set deadlines for the Defence's Rule 130 motion(s) and related SPO responses.⁷ The Panel also ordered the Victims' Counsel to present, by 28 May 2025, on a rolling basis, but no later than 1 July 2025, *inter alia*: (i) a list of proposed witnesses to be called should the Panel find Rule 130 motions unsuccessful; (ii) statements and/or reports of these witnesses; (iii) summaries of the witnesses' proposed evidence; and (iv) a list of evidentiary items to be tendered.⁸

6. On 20 May 2025, the SPO filed its submissions for the twenty-first review of detention, seeking the continued detention of Mr Thaçi.⁹

III. APPLICABLE LAW

7. Article 41(6) of the KSC Law¹⁰ provides that the KSC shall only order the detention of a person when there is a grounded suspicion that the person has committed a crime within the jurisdiction of the KSC, and there are articulable grounds to believe that the person: (i) is a flight risk; (ii) will destroy, hide, change or forge evidence of a crime, or specific circumstances indicate that the person will obstruct the progress of criminal proceedings; or (iii) will repeat the criminal offence,

⁶ F03121, Specialist Prosecutor, Prosecution Notice Pursuant to Rule 129, 15 April 2025.

⁷ Transcript of 23 April 2025, Page 26176.

⁸ Transcript of 23 April 2025, Page 26177.

⁹ SPO Submissions.

¹⁰ Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("KSC Law").

complete an attempted crime, or commit a crime which he or she has threatened to commit.

8. Article 41(10) of the Law and Rule 57(2) of the Rules¹¹ provide that, until a judgement is final or until release, upon the expiry of two (2) months from the last ruling on detention on remand, the Panel seized with the case shall examine whether reasons for detention on remand still exist and render a ruling by which detention on remand is extended or terminated.

IV. SUBMISSIONS

A. RISK OF FLIGHT (ARTICLE 41(6)(B)(I))

9. Mr Thaçi is not a flight risk. He has never been assessed by either the Pre-Trial Judge, or the Trial Panel, as being a flight risk. This conclusion accords with a consistent and now-lengthy pattern of his cooperation with these proceedings, starting with his most significant act of cooperation on 5 November 2020, being his resignation as President of Kosovo and voluntary surrender to the Court. As the Trial Panel has been able to witness, Mr Thaçi has continued to appear and engage with the trial process throughout the trial over the past two years, in a manner which is incompatible with a desire to abscond from justice and spend his life on the run.

10. The Trial Panel has consistently held, and confirmed again in its most recent decision on detention, that “Mr Thaçi’s continued detention is not justified at this time based on the risk of flight.”¹² This conclusion correctly took into account Mr Thaçi’s ongoing presumption of innocence,¹³ and his cooperation with the relevant authorities

¹¹ KSC-BD-03/Rev3/2020, Rules of Procedure and Evidence Before the Kosovo Specialist Chambers, 2 June 2020 (“Rules”).

¹² F03106, para. 15.

¹³ F01720, Decision on Periodic Review of Detention of Hashim Thaçi, 16 August 2023, para. 15.

associated with his detention and transfer.¹⁴ These factors have not changed. Importantly, the Trial Panel dismissed as unpersuasive the SPO's argument that the risk of flight increases with the progression of the trial, and found that the SPO had failed to establish its claim of a "sufficiently real possibility" that the Accused will abscond if released based on the stage of the proceedings.¹⁵ The Panel also rejected the SPO's argument that the risk of flight is heightened by Mr Thaçi's awareness of charges of criminal offences against the administration of justice having been confirmed against him, and instead found that that the new charges do not constitute a significant change in circumstances justifying a different finding on risk of flight.¹⁶

11. The SPO raises the same arguments that have been repeatedly rejected by the Trial Panel concerning knowledge of the evidence in relation to the alleged crimes, the possible imposition of a lengthy sentence, and Mr Thaçi's awareness of charges relating to obstruction offences.¹⁷

12. The SPO now also submits that Mr Thaçi "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".¹⁸ This factor is in no way relevant to an assessment of the risk of flight. The SPO does not even attempt to explain why access to information related to the Victims' case should be taken into account, especially since the Panel did not even consider the progressive disclosure of sensitive information related to SPO case to be a relevant factor in this respect.¹⁹

13. The SPO's submissions in relation to the question of flight risk are unfounded,

¹⁴ F01720, para. 14.

¹⁵ F03106, para. 14.

¹⁶ F02926, Decision on Periodic Review of Detention of Hashim Thaçi, 13 February 2025, para. 15.

¹⁷ F03106, para. 14.

¹⁸ SPO Submissions, para. 11.

¹⁹ See e.g. F01302, Decision on Periodic Review of Detention of Hashim Thaçi, 17 February 2023, paras. 15-20.

unpersuasive, and speculative. Mr. Thaçi has never been a flight risk. It cannot reasonably be argued that the ‘expeditious progression of trial’ and the conclusion of the presentation of the SPO’s case is enough to alter this reality and give rise to a “sufficiently real possibility” that he will abscond if released.

B. RISK OF OBSTRUCTION OF PROCEEDINGS (ARTICLE 41(6)(B)(II))

14. The SPO’s new argument in relation to the risk of obstruction of proceedings, namely that the conclusion of the SPO case does not obviate this risk but instead increases it, is similarly unpersuasive and should be disregarded by the Trial Panel.

15. As noted by the Appeals Panel, in the normal course of events, the risk of obstruction will diminish with the passing of time as investigations are finalised, witnesses have testified and the evidence is submitted.²⁰ The SPO does not explain or substantiate why this should not be the case in the present circumstances, nor how the Accused now having ‘knowledge of the full scope of the case against them’ would increase the risk of obstruction of proceedings. Insofar as this remark is meant to suggest that that evidence presented by the SPO since the last detention review has bolstered the SPO’s case against the Accused, the Defence for Mr. Thaçi respectfully submits that this proposition is strongly contested. Indeed, as Mr. Thaçi has told the Trial Panel on several occasions through his Specialist Counsel at status conferences,²¹

²⁰ KSC-BC-2020-07/IA007/F00004, Consolidated Decision on Nasim Haradinaj’s Appeals Against Decisions on Review of Detention, 6 April 2022, Public, para. 42. Other Chambers at the ICTY and ICC have also considered that following the conclusion of evidence at trial, the accused no longer posed a danger to witnesses or victims. See *e.g.* ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15-1733-Corr, Corrected version of Decision on the Defence Request for Immediate Release and the Communication Restrictions Applying to the Accused, 17 April 2020, para. 25; ICTY, *Prosecutor v. Prlić et al.*, IT-04-74-T, Decision on Jadranko Prlić’s Motion for Provisional Release, 24 November 2011, para. 32; ICTY, *The Prosecutor v. Prlić et al.*, IT-04-74-T, Decision on Motion for Provisional Release of the Accused Milijov Petkovic, 30 November 2011, para. 32.

²¹ See *e.g.* Transcript of 19 February 2025, page 25467; Transcript of 23 April 2025, page 26163.

Mr. Thaçi considers the SPO's case so weak that he has considered not even putting on a Defence case.

16. In any event, it is important to note that the Panel's conclusion in relation to risk of obstruction was centered around the finding of a risk of sensitive information pertaining to SPO witnesses becoming known to members of the public. The closing of the SPO's case therefore represents a key change of circumstances. The risk of witness interference is now significantly reduced.

17. Moreover, the SPO's reliance on cases tried before other jurisdictions in relation to examples of post-trial witness interference is unwarranted, improper and speculative. At most, these cases support the existence of a possibility that, in theory, a witness who testified in a criminal trial may be approached in the future to be induced to recant. The factual circumstances underpinning those cases have absolutely no bearing on the case of Mr Thaçi, nor could they impact the assessment of the risk of Mr Thaçi obstructing proceedings in the absence of specific, concrete circumstances substantiating such a risk. The SPO has not presented any information or evidence capable of supporting the conclusion that Mr Thaçi will attempt to interfere with a witness to induce them to recant, or try to seek revenge against a witness who has testified.

18. Further, the SPO's argument that the risk of interference exists regarding witnesses for the Victims and possibly the Defence²² ignores the different considerations that apply to different categories of witnesses. The burden of proof rests upon the SPO, and the evidence it has presented during its case. It is only evidence by the Prosecution that can support a conviction, at the end of a trial. Victims' Counsel can only present evidence related to harm or injury done to victims, and not

²² SPO submissions, para. 13.

to the accused's individual responsibility.²³ This is a fundamental difference that logically leads to the conclusion that any risk of obstruction with reference to witnesses for the Victims is inherently lower, in general terms.

19. In concrete terms, at this stage of the proceedings, there is no evidence of any risk of interference with witnesses for the Victims. Victims' Counsel has indicated that he intends to call only two international expert witnesses,²⁴ who are not vulnerable witnesses, are non-Kosovars who live outside Kosovo, have already submitted their reports and already testified in other cases, and for whom the risk of interference is non-existent. Any risk of interference with witnesses for the Victims cannot simply assumed in hypothetical and general terms, but rather needs to be supported by evidence, which has not been presented by the SPO.

20. Similar considerations apply with reference to any risk of interference with possible Defence witnesses. The SPO failed to refer to any information or evidence supporting the assertion that such a risk exists. This is unsurprising, given that at this stage of the proceedings, the Defence has not confirmed whether any witnesses will be called. Therefore, any risk of interference in that respect is abstract and speculative.

21. In light of the above considerations, the Defence respectfully invites the Trial Panel to disregard the new arguments presented by the SPO in their Submissions.

[Word count: 2141 words]

Respectfully submitted,

²³ KSC-BC-2020-06/F01226/A01, Order on the Conduct of Proceedings, 25 January 2023, Public, paras 34, 36.

²⁴ KSC-BC-2020-06/F03160, Public Redacted Version of Victims' Counsel's submission of expert reports with a request to admit them into evidence with eight confidential annexes, 2 May 2025, Public; KSC-BC-2020-06/F03205, Victims' Counsel's Submissions on the Presentation of the Victims' Case, 28 May 2025, Public, para. 6.



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At New York, United States